

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., May 22, 2019  
Wayzata City Hall

**WORK SESSION**

**6:00 p.m. to 6:55 p.m.**

**Members present:** Dan Baasen, Wayzata; Ben Brandt, Mound; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mike Molitor, Minnetrista; Nicole Stone, Minnetonka.

Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matthew Cook, Environmental Administrative Technician.

**Members absent:** Bill Cook, Greenwood; Ann Hoelscher, Victoria; Mark Kroll, Orono; Chris Rich, Woodland; Gregg Thomas, Tonka Bay; Jake Walesch, Deephaven; and Deborah Zorn, Shorewood. (Excelsior Vacant.)

Acting Chair Baasen called the Work Session to order at 6:05 p.m.

**1. BUDGET DISCUSSION**

Executive Director Schleuning provided an overview of the changes presented this meeting in response to feedback from the Board regarding the 2020 preliminary budget. The revised budget includes two options, both that are balanced. The recommended budget by the financial workgroup (Treasurer Cook, Chair Thomas, Director Hughes, and Executive Director Schleuning) is to increase the overall budget by 1.1%. This would increase the city levy by an average of 2.4%. The second option was to not increase the city levy, but use \$15,500 of reserve funds to cover the gap.

The recommended budget would allow an appropriate reserve fund amount. These reserve funds are important and appropriate for use for strategic initiatives.

Schleuning reviewed the updated 2020 preliminary budget and commentary. She explained a meeting with member cities would be scheduled June 5, 2019. Comments would be compiled for review by the board the next meeting.

**REGULAR MEETING**

**7:00 p.m.**

**1. CALL TO ORDER**

Acting Chair Baasen called the meeting to order at 7:00 p.m.

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**Members present:** Ann Hoelscher, Victoria; Dan Baasen, Wayzata; Ben Brandt, Mound; Gary Hughes,

Spring Park; Dennis Klohs, Minnetonka Beach; Mike Molitor, Minnetrista; Nicole Stone, Minnetonka; and Jake Walesch, Deephaven. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

**Members absent:** Gregg Thomas, Tonka Bay; Bill Cook, Greenwood; Mark Kroll, Orono; Chris Rich, Woodland; and Deborah Zorn, Shorewood. (Excelsior Vacant)

#### 4. APPROVAL OF AGENDA

**MOTION:** Hughes moved, Walesch seconded to approve the agenda as submitted.

**VOTE:** Motion carried unanimously.

#### 5. CHAIR ANNOUNCEMENTS

Acting Chair Baasen noted that Chair Thomas is still looking for volunteers for the June 8<sup>th</sup> event in Excelsior.

#### 6. APPROVAL OF MINUTES- 05/08/2019 LMCD Regular Board Meeting

**MOTION:** Hughes moved, Brandt seconded to approve the 05/08/2019 LMCD Regular Board Meeting minutes as submitted.

**VOTE:** Ayes (9) Abstained (1) Molitor. Motion carried.

#### 7. APPROVAL OF CONSENT AGENDA

**MOTION:** Molitor moved, Walesch seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (05/16/2019 – 05/31/2019); **7B)** April Financial Summary and Balance Sheet; and, **7C)** Executive Director Compensation.

**VOTE:** Motion carried unanimously.

#### 8. PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda (limited to 5 minutes)

There were no public comments.

#### 9. PUBLIC HEARING

##### A) 5345 Cedar Point Road, Variance for Dock Use Area Length and Side Setbacks

Matt Cook presented a variance application for 5345 Cedar Point Road in Minnetrista. He stated that the Board action recommended tonight would be to continue the public hearing to consider the application at the June 12, 2019 Board meeting that will provide adequate opportunity for public input and follow up regarding

any public comments made tonight. He stated that the notice sent to the surrounding residents was two days late and therefore staff wants to ensure that adequate time is provided to receive comments. He identified a previous fire lane located west of the parcel that has been vacated. He noted that the applicant has since obtained 7.5 feet of the fire lane for their property and shoreline. He provided background information noting that the applicant's property has approximately 57.5 feet of shoreline and is one parcel. He stated that this is a previously existing dock and the applicant is seeking a variance to ensure compliance. He noted that in 2018 a complaint was received regarding setbacks and the length of the dock structure and watercraft. He reviewed the variance request for the dock use area adjustment that would reduce the side setback and would include a length extension. He displayed the site plan as submitted. He reviewed the variance standards and how those apply to this request. He stated that comments were solicited from the MN DNR, MCWD and Minnetrista and no comments were received. He noted that staff received an email from a resident of a neighboring property to the east in support of the variance as requested and stated that a representative of the property owners to the west expressed opposition. He noted that because the last notice was less than ten days, staff will send another ten-day notice, and this will be considered at the June 12<sup>th</sup> meeting.

Acting Chair Baasen asked and received confirmation that public comments will be received tonight but no formal action will be taken as the action will be continued to the next meeting.

Gilchrist confirmed that the purpose of continuing the hearing would be to allow additional time for those residents that received eight days of notice rather than ten.

Klohs asked if there is an aerial of the docks installed.

Matt Cook replied that he does not have that image. He stated that the dock to the east would be of similar length because there is inadequate depth at 60 feet.

Acting Chair Baasen asked the nature of the objection.

Matt Cook replied that he believed the objection was due to the length of the dock, side setback and the number of boats.

Hoelscher stated that it seems there are converging property lines and asked the rule for that.

Matt Cook replied that converging lot lines are considered an area rather than a line itself. He stated that the idea of safe navigation is what is kept in mind. He stated that the Board should consider whether this action would impede access for the property to the west that has the converging lot line. He provided additional details on the swim platform and slide.

Klohs asked if anyone has received dredging permits for this area.

Matt Cook replied that he is not aware of any such permits but has not looked into that topic.

Acting Chair Baasen opened the public hearing at 7:18 p.m.

Andrew Marnach, Attorney representing the property owners of 5355 Cedar Point Road, stated that the property owners are opposed because of convergence. He stated the property to the west would have an impact on their dock to allow the continued violation of the LMCD rules. He explained that the dock length has far exceeded the length of dock allowed and the number of boats allowed. He stated that he does not presume to know the reasoning behind the restrictions on dock length but would assume it is related to convergence on adjacent properties. He stated that the neighbor to the east has his dock right up to the lot line, which may be why he supports the request. He stated that if the variance is not approved, the applicant would need to move his dock to the east, which may intrude on that property owner's desires. He provided aerial photographs showing the length of the dock and lower side setbacks, which both impact the property owner at 5355 Cedar Point Road. He stated that this variance would cause an issue between the two property owners. He noted that the applicant has a boat 15 feet wide and therefore with the existing dock location, the boat extends over the property line. He confirmed that his client objects to both the side setback and dock length.

Klohs asked if there is anyone in that area that has received a length variance for their dock.

Marnach replied that he is not aware of any other variances. He stated that he believes that the limitation on dock length would be to prevent situations of this nature where one property owner could encroach on another. He explained that the fire lane is going to be divided between the two property owners, each property owner would receive 7.5 feet. He explained that if the setback is granted, the property owner will move that dock to the west further once the fire lane area is added to his parcel. He stated that once the fire lane is split, the issue of encroachment will increase.

Brandt stated that it appears that all the docks along that area of shoreline have similar lengths, presumably to reach deeper water.

Acting Chair Baasen asked and received confirmation that the applicant is not a new resident and has lived at the property for multiple years.

Pete Hanson, 5335 Cedar Point Road, stated that he has lived in his home for ten years and has never had any issues with setbacks. He read language from the LMCD website that states many property owners work with each other to avoid the need to obtain a variance. He stated that the purpose of having longer docks is to reach navigable water for the boats. He stated that most of the homes in this area have 50 feet of shoreline. He stated that obviously not everyone can meet the code and have instead discussed the issue with each other to avoid issues. He believed the main issue is that the property owner to the west is new to the area and uses the property as a rental property rather than living there as a resident. He stated that the docks are close together but still far enough apart to enjoy the lake as property owners with boats and children swimming. He stated that his dock is 108 feet. He stated that the applicant's property is further in than his property and that may be why additional length is needed.

Bruce Allen, 5325 Edsall Road, stated that he has lived in his home for three years and his dock is a similar

length to the other docks in the area. He stated that all the property owners are in the same situation, a boat could not navigate the waters without longer docks because of the shallow water. He explained that the property owners in the area have worked together to find a solution that works for everyone.

Applicant, Eric Funderburk, stated that he has lived in his home for 19 years and over that time, his boats have increased in size and decreased in speed. He stated that he does have a 1997 Searay, which is 33 feet long and 13.5 feet wide. He stated that there is a 20-foot boathouse over that boat as well. He stated that in order to have sufficient setbacks he would need a larger lot, as 60 feet would be required, and he only has 57 feet. He stated that he needs at least four feet of water under the boat to avoid churning. He stated that the dock is 128 feet in length. He stated that the investors to the west have a 96-foot-long dock with 85 feet of shoreline, which means they also exceed the limit. He explained that all docks in this area exceed the limit in order to reach navigable waters. He believed that his request would meet the criteria for a variance. He noted that this variance would not move the dock location and he would actually be decreasing the size of the swim platform to bring that into compliance. He stated that he would not be moving further to the west, he would simply leave the dock in the same location. He stated that if they move their dock to the east that would simply cause a chain reaction of issues for the properties to the east. He stated that as situated, everyone is able to reach navigable waters in the current dock locations.

Klohs asked the number of watercraft the applicant has.

Funderburk replied that he has four watercraft in the water with additional watercraft above the OHW mark. He stated that they have two boats and two jet skis in the water and the remaining are above the OHW mark. He stated that all the watercraft are registered to him, he is not renting any dock slips. He noted that one of the boats shown in the aerial photograph by the neighbor attorney was sold two years ago.

Acting Chair Baasen noted that this public hearing will be continued to the June 12<sup>th</sup> meeting. He welcomed members of the public to return at that time if they wish to make additional comments.

Marnach stated that as the applicant's dock currently sits, the 13.5-foot-wide boat exceeds 3.5 feet over the boundary line. He stated that the property owner to the east puts his dock right on the property line and was unaware if there is a waiver, whether that is formal or informal. He stated that the property owner to the west of his client's property also puts his dock right on the lot line. He noted that his client has attempted to speak with that property owner to the west but was not successful as the resident did not speak English.

Funderburk stated that when he reviewed the variance criteria there is a mention of a unique situation. He stated that he is in a dispute with his property owner to the west that rents their property as a vacation home and believes that their comments in opposition are a weapon in this disagreement. He noted that the property owner to the west is much closer to that objecting property and no opposition has been formally filed with the LMCD from the rental property owner. He asked that the Board approve the request.

Rich Anderson, 3205 Crystal Bay Road, stated that there is a similar situation in his area. He stated that if there is no issue with the property to the east, perhaps the docks in that area could be moved slightly or turned and that would solve the problem of the objecting property owner.

No additional comments were offered, and the public hearing was closed at 7:49 p.m.

Gilchrist noted that the hearing will be reopened at the June 12<sup>th</sup> meeting.

Klohs noted that this is a perfect example where no one in the area is compliant and a better solution would be for the homeowners to come to an agreement, as has been done in the past for this area.

**MOTION:** Walesch moved, Hughes seconded to approve a continuance of the public hearing and to consider the application at the June 12, 2019 Board meeting to provide adequate opportunity for public input and follow up regarding any public comments received.

**VOTE:** Motion carried unanimously.

#### 10. OTHER BUSINESS

There was no other business.

#### 11. OLD BUSINESS

Acting Chair Baasen noted that the 2020 budget was discussed at the workshop earlier tonight. He stated that Cook adjusted his forecasts to show a 2.4 percent inflationary increase, which would balance the budget. He stated that preliminary approval would be needed for the budget and the final adoption will occur in June.

Hughes asked who will be representing the cities at the meeting schedule for June 5<sup>th</sup>.

Acting Chair Baasen explained that the cities are invited to voice any concerns.

Schleuning stated that the previous year none of the cities attended.

**MOTION:** Walesch moved, Stone seconded to approve the proposed preliminary 2020 budget and direct staff to solicit input from member cities.

**VOTE:** Motion carried unanimously.

#### 12. NEW BUSINESS

There was no new business.

#### 13. TREASURER REPORT

No report.

#### 14. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Lake Minnetonka Vegetation & AIS Master Plan Progress: An initial meeting was held to discuss engagement activities and timing for information to be available.
- Solar lights were repaired and maintenance over the past few weeks and are ready to be installed.
- Although higher water levels continue, high water has not yet been declared and the LMCD continues to monitor the issue.

#### 15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: No report.

Budget Workgroup: No report.

Recodification Workgroup: Gilchrist reported that he received a few comments in support of the draft letter he composed. He noted that a link will be made available on the website to receive comments.

Save the Lake Committee: Baasen reported that the letter will soon be sent out.

Strategic Plan Subcommittee: Schleuning reported that more information will be brought forward in the future.

#### 16. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:07 p.m.

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Gregg Thomas, Chair

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Ann Hoelscher, Secretary