

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., June 12, 2019  
Wayzata City Hall

**1. CALL TO ORDER**

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

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**Members present:** Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Dan Baasen, Wayzata; Ben Brandt, Mound; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Chris Rich, Woodland; Nicole Stone, Minnetonka; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

**Members absent:** Bill Cook, Greenwood; and Jake Walesch, Deephaven. Excelsior Vacant.

**4. APPROVAL OF AGENDA**

**MOTION:** Hughes moved, Rich seconded to approve the amended agenda that was distributed adding Item 12A.

**VOTE:** Motion carried unanimously.

**5. CHAIR ANNOUNCEMENTS**

Chair Thomas commented that the LMCD hosted a booth at Art on the Lake in Excelsior and thanked those members from the Board and staff that participated. He noted that many positive comments were received in support of the LMCD efforts and actions. He encouraged other Board members to participate in local events in their communities on behalf of the LMCD.

**6. APPROVAL OF MINUTES- 05/22/2019 LMCD Regular Board Meeting**

**MOTION:** Baasen moved, Molitor, seconded to approve the 05/22/2019 LMCD Regular Board Meeting minutes as submitted.

**VOTE:** Ayes (7), Abstained (4), (Thomas, Rich, Kroll, and Zorn) Motion carried.

**7. APPROVAL OF CONSENT AGENDA**

**MOTION:** Zorn moved, Hughes seconded to approve the consent agenda as presented. Items so approved included: **7A**) Audit of Vouchers (06/01/2019 – 06/15/2019); **7B**) May Financial Summary and Balance Sheet; and, **7C**) Resolution Accepting Save the Lake Contributions (04/01/2019 – 05/21/2019).

**VOTE:** Motion carried unanimously.

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

Richie Anderson, Orono, stated that he has 3,800 feet of lakeshore over multiple properties. He stated that it seems that the wakeboard boats always take the brunt of negative comments but noted that he supports that type of activity. He stated that there are other big boats on the lake that create larger wakes than a wakeboard boat. He commented that the 600 feet no wake zone was a good decision by the LMCD. He noted that the hardcover in this area has increased tremendously and therefore runoff increases and fills the lake. He referenced bays that he recently heard were no wake bays. He noted signs might be helpful. He stated that perhaps thought be given to those no wake bays to running those similar to Grays Bay, where it is shutdown during certain weekend hours. He stated that he appreciated the proactive activity that people have taken in managing the lake level by the Minnehaha Creek Watershed District. He noted that marina owners also met with the Sheriff and his Deputies and found that meeting helpful to feel more informed. He referenced the LMCD 2020 budget, specifically the \$100,000 line item marked as a budget amendment. He mentioned line item 17 for Save the Lake program and he didn't believe that cities would support a 2.4 percent levy increase when the line item 17 for Save the Lake programs. He stated that the Orono representative clarified that the lake management program falls into that category.

Chair Thomas agreed that the Minnehaha Creek Watershed District and Hennepin County Sheriff's Office are doing a great job to manage the lake. He noted that there is no line item 17 in the budget document. He noted that the Save the Lake falls under line item 16.

**9. PUBLIC HEARING**

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

Matt Cook stated that this is a continuation of the public hearing which took place at the May 22<sup>nd</sup> meeting for a variance request related to dock use area length and side setbacks. He provided background information on the request noting that this is a previously existing dock and the applicant is seeking a variance to ensure compliance. He provided additional details on the side setback reduction requested and the length variance requested. He displayed the proposed site plan, which includes staff notes, noting that the length extension is requested because of the shallow water in that area. He noted that no comments were received from public agencies. He provided a summary of the comments received at the May 22<sup>nd</sup> public hearing. He stated that based upon staff inspections in 2018 and review of aerial photographs, there is no significant obstruction in existence for navigation; the setback distance is increased with the inclusion of the fire lane, not decreased; and angling the docks would require adjustments of neighboring dock use areas, and could expose boats to more of a broad side wind and wake.

Thomas opened the public hearing at 7:26 p.m. No comments were offered, and the public hearing was closed at 7:26 p.m.

Matt Cook stated that staff recommends that the Board approve the length variance but does not recommend approving the proposed side setbacks. He stated that because the shoreline is shallow for that stretch, it would not be unreasonable to keep the 15-foot setback for 100 feet or more of dock for that stretch of the lake.

Chair Thomas asked if the boat house or canopy would be impacted by the setback.

Matt Cook stated that if the setbacks were adjusted to 15 feet, that would allow for the canopy but would still require a variance.

Klohs asked if something similar has been done for other docks.

Matt Cook confirmed that similar approvals have been given but for docks that only store one or two boats and not the maximum number of boats allowed.

Zorn stated that staff proposed considering a 15-foot side yard setback and asked if that was shared with the applicant.

Matt Cook stated that different options were discussed with the applicant. He stated that the effective dock use area begins further out from shore because of the lack of depth available and that is why staff would support a side yard setback of 15 feet, rather than 20 feet.

Zorn asked if there are other residents in this stretch that have a side yard setback.

Matt Cook stated that staff is not aware of variances for length or setbacks in this area.

Rich stated that it sounds like there are two issues, converging lot lines and the shallow water along the shoreline for all the neighbors in that area. He stated that would seem to be a hardship as a 50-foot dock would not serve a purpose.

Molitor stated that Minnetrista recognizes this area, Douglas Beach, with special zoning that has decreased side yard setbacks because of the narrow widths of the lots.

Eric Funderburk, 5345 Cedar Point Road, applicant, stated that this is the first time that he has heard the recommendation from staff regarding a 15-foot side yard setback. He stated that he has 32 feet of dock on a 57.5-foot lot. He noted that the math would not work out to have 15 feet on each side of the dock. He stated that there is a process for variances. He noted that in order to reach the depth of water to support his boat, he would need a variance to reach four feet of water. He stated that he is using the lake in a reasonable manner and therefore the strict application of the rules would impede on his enjoyment of the lake. He stated that there are small lot widths in that area and his boats and dock fall within his property area. He noted that there are many properties in this stretch of the lake with similar docks and setbacks, but the only reason he is here is because of a complaint from a neighbor that has a dispute with him. He noted that granting the variance would not alter the character of the area as most docks in the area do not meet the setback

requirements, noting that neighbors have simply come to agreements. He asked for the support of the Board.

Chair Thomas noted that it was his understanding that with the 15-foot setback variance, the applicant could provide a 15-foot setback to the west and then could be closer to the property to the east, if that neighbor did not object.

Mr. Funderburk replied that he could do that but noted that would shrink the navigable area between he and the neighbor to the east, which would make it more difficult for both parties. He stated that he would like to remain fair to the neighbor in support of the request as well.

Rich stated that he would be in favor of both variances, noting that this is a hardship that the applicant did not cause because of the depth and converging lot line. He noted that this would not change anything from what currently exists.

Stone agreed, noting that it seems the LMCD is being used as a weapon.

Hughes stated that he would also support the variances. He noted that there are many properties on this lake that do not meet the standards.

Zorn stated that cities have put property owners in this position to begin with and asked if the LMCD has contacts with the cities as they are working with developers to review the downstream impact to the lake. She stated that they are putting people in unfair positions. She stated that she supports the variances for length and setback.

Klohs stated that perhaps the reduction in setback from 20 feet to 15 feet for shallow water should be done as a code amendment, if that is desired. He noted that the properties were platted years ago and thought was not given to the impact on the lake. He stated that the property owner could meet the 20-foot setback on the west and encroach on the property to the east without having a variance. He noted that he would agree to the length variance. He noted that there is not a hardship for the setback, as boat size is not a hardship.

Hoelscher stated that she is not opposed to the length variance. She appreciated the comments from Molitor about the narrow lot widths in this area. She agreed that what happens on land does not always translate to water activity, but also agreed that they should recognize what happens on land. She stated that she would support reducing the side setback to better align with the reduced land setbacks.

Baasen asked if every riparian landowner is entitled to four boats regardless of lot size.

Matt Cook stated that up to four watercraft can occur as long as the property owner owns the boats. He asked if the setbacks would be adjusted simply to meet boat sizes on narrow lots.

Molitor stated that these homes were built well before Minnetrista was incorporated. He stated that in terms of future use there is consideration for lot size and relation to shoreline regulations. He stated that as you go around the lake, the applicant's boat is 33 feet in length, and it is not uncommon to see a boat of that length or

more on this lake. He referenced the reduced side yard setbacks and stated that this appears to be a standard dock setup for this lake. He stated that if the setback is reduced to only have 15 feet, a boathouse would not be available that would fit. He stated that if you do not approve the setback variance, the boathouse would not be allowed and stated that boathouses are very common on the lake. He noted that if there are a lot of variance requests for the same topic, then a code amendment should be considered. He advised that if only a few variances are received, the variance route should continue. He noted that he supports both variance requests.

Gilchrist stated that the draft order is incomplete in the packet because he was unsure the direction the Board would go and therefore recommended that the motion be to direct legal counsel to prepare an order allowing or disallowing, which will provide him the opportunity to draft the order that would come back before the Board at the next meeting.

**MOTION:** Molitor moved, Rich seconded to direct the LMCD legal counsel to prepare Findings of Fact and Order approving the variance from Eric Funderburk for the property located at 5345 Cedar Point Road in Minnetrista.

**VOTE:** Ayes (8), Nays (3), (Baasen, Klohs, and Zorn) Motion carried.

**B) Tonka Yacht Rental: New Commercial Dock License, New Non-Intoxicating Liquor License Application, and Ports of Call for 4801 Shoreline Drive**

Matt Cook presented a request from Tonka Yacht Rental for a commercial dock license and non-intoxicating liquor license. He stated that the existing dock is not currently licensed for commercial use, noting that the applicant would propose to store a charter boat and three personal boats, noting that this would not be a port of call. He explained that the non-intoxicating liquor license is sought to enable alcohol to be consumed on the charter boat. He identified the subject property on an aerial view along Seton Channel. He reviewed the proposed conditions for the commercial dock license noting that the large boat slips have been in existence for a couple of years and the applicant is wishing to legally operate and store a charter boat. He reviewed the site plan for the north and south docks. He reviewed the commercial dock criteria and how they apply to this request. He reviewed the comments received by public agencies (MN DNR and City of Mound) and noted that as of 1:30 p.m. today, no public comments had been received.

Molitor asked and received confirmation that it is his understanding that the dock, as built, meets the required codes.

Thomas opened the public hearing at 8:05 p.m.

Thomas invited the applicant to address the Board; applicant declined at this time.

No comments were offered, and the public hearing was closed at 8:06 p.m.

Matt Cook stated that staff recommends approval of the commercial dock license as proposed and approval

of the non-intoxicating liquor license, subject to the conditions noted. The PowerPoint presentation noted conditions included liability insurance, approval by cities for ports of call, passes inspections of watercraft and dock facility, completion of all other applicable code requirements.

Baasen asked if the applicant has operated this in the past or whether this would be a new operation.

Steve Biddell, 4823 Bartlet Boulevard in Mound, stated that he has always made his living on the water and provided background information on his family's history. He stated that he is often on the lake as a boater but noted that this would be a new operation. He stated that he would follow a model similar to PaddleTap, where most activity would occur from Lord Fletchers.

Baasen referenced the listed ports of call and noted that he was unaware that Maynards allows commercial pickup.

Mr. Biddell stated that he knows the owners of Maynards and has their blessing to use that business as a port of call.

**MOTION:** Thomas moved, Kroll seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the 2019 Commercial Dock License applications for the property located at 4801 Shoreline Drive in Mound as presented.

**VOTE:** Ayes (10), Abstained (1), (Baasen) Motion carried.

**MOTION:** Thomas moved, Rich seconded to approve a 2019 Non-Intoxicating Liquor License for Tonka Yacht Rental's *Fait Accompli* with the following authorized ports of call: Lord Fletchers, Spring Park; Wayzata City Docks, Wayzata; Lafayette Club, Minnetonka Beach; and Maynards, City of Excelsior.

**VOTE:** Ayes (10), Abstained (1), (Baasen) Motion carried.

## 10. OTHER BUSINESS

There was none.

## 11. OLD BUSINESS

### A) Preliminary 2020 Budget

Thomas noted that the Board has reviewed the proposed budget on multiple occasions.

Kroll expressed concern from the Orono City Council regarding a line item of \$25,000 for public relations.

Schleuning stated that an attachment contains the summary of concerns received, including the item expressed by

Kroll.

Hoelscher clarified that the \$25,000 is not in the 2020 budget and is instead coming out of the current 2019 budget, therefore that is not included in the vote tonight.

Rich stated that he also shares the concern of adding to the levy and would instead like to see that money taken from the reserves. He stated that if that change is not made, he would not be supporting the budget.

**MOTION:** Baasen moved, Molitor seconded to approve the 2020 Budget as presented and direct staff to certify the budget to the governing body of each municipality in the District, with a statement of the proportion of the budget to be provided by each municipality by July 1, 2019.

**VOTE:** Ayes (9), Nays (2), (Kroll and Rich) Motion carried.

Thomas encouraged Board members to discuss the budget with their member city.

#### **B) Draft Communications & Public Engagement RFP**

Hoelscher stated that the Board has discussed this item on several occasions and before the Board is a draft RFP to solicit proposals from communications firms to gain support with public engagement. She stated that this would come from the 2019 budget. She stated that the LMCD has exciting things going on and is in the news, therefore this assistance would help bring the LMCD webpage up to speed and would help to get information out to the public.

Thomas noted that when the performance review of the Executive Director was done, the Board discussed things that could be done to lighten the load on that employee. He noted that this action would help staff maintain their current workload.

Klohs stated that the LMCD has been operating with one less employee for three years and the understanding was that certain actions would be contracted out to provide that additional support. He noted that a contracted position is easier to control and manage compared to adding a regular employee.

Zorn noted that this is a great step. She referenced the timeline and asked if that should be pushed out to recognize the holiday.

Stone stated that she is in support this and believes this is a great idea.

**MOTION:** Zorn moved, Hughes seconded to approve the publication of the request for proposal and authorize the Executive Director to solicit submittals from appropriate sources.

**VOTE:** Ayes (8), Abstained (3), (Molitor, Rich and Kroll) Motion carried.

## **12. NEW BUSINESS**

**A) High Water Declaration Regulated Areas**

Schleuning referenced that some of the areas that had a small sliver of area that would be open for regular speeds and noted that perhaps a better review of the different bays occur at the next meeting to determine where it would make sense to have full slow zones compared to the 600 feet. She confirmed that they might end up with another high-water declaration. She encouraged people to pay attention to the wake and slow down if wakes are reaching the shores.

Kroll stated that he has received a lot of complaints on North Arm, noting that 17 percent of North Arm is not covered by the 600-foot limits and it is impossible to navigate that sliver. He stated that he had to replace 10 boards on his dock because of the high water. He suspected that there are a lot of people that use that sliver as an excuse to wakeboard around North Arm. He stated that they will either have to put reasonable limits on the narrow bays or purchase drones for the Water Patrol to enforce.

Thomas stated that one thought would be to add North Arm Bay as a no wake bay during high water. He stated that he would prefer to complete that action with a public hearing to be transparent. He noted that there may be other bays in similar situations.

Molitor stated that he lives on a no wake bay and stated that is not much of a solution as people either ignorantly or willfully ignore that direction. He noted that he simply wanted to provide reasonable expectations. He stated that signage is a big factor as it helps to eliminate the issue of ignorance. He explained that speed does not equal wake.

Hughes noted that a navigation license is required for drone operation.

Thomas commented that the Water Patrol has drone equipment but was not certain if there is a drone program. He noted that he lives on a small lagoon and has people coming in from the channel at full throttle. He stated that the LMCD attempts to manage Lake Minnetonka to the best extent possible, noting that there are a variety of different activities that occur on the lake and sometimes those activities compete with each other. He stated that the LMCD is not charged with regulating those activities but simply how those activities are done.

Rich commented that there is no one solution that will solve the problem. He commented that awareness is a huge factor. He noted that if the bay is changed to no wake, there would be more opportunity for the Water Patrol to monitor and enforce. He agreed that signage would be important to help educate the public.

Schleuning stated that the high-water signs were successful and noted that while most people complied with the regulations there will always be some that do not. She stated that perhaps there is a better way to indicate where the 600-foot mark is. She noted that the proactive education that high water may be coming also helped to spark comments from the public prior to the declaration.

Baasen noted that boaters should be aware that their wake will cause issues not only to private property, shorelines and others and is a constant concern, not only in times of high water. He stated that in terms of education, more time should be spent talking about wake effect.



Thomas commented that the staff did a marvelous job trying to get the word out in multiple formats.

### 13. TREASURER REPORT

No report.

### 14. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- New owners for the Caribbean Marina in Tonka Bay are not planning any changes in the operations this season and are working to reopen the restaurant. However, they will be looking at options in the future.
- First Meeting for the Lake Minnetonka Vegetation and AIS Master Plan is June 18<sup>th</sup> from 6:00 to 7:00 p.m. at the LMCD office. The meeting date was chosen since it worked with the consultants, many of the board members, and the room was available.
- Clarification was provided on recent press coverage the LMCD received. She stated she did not say the harvesting program did more harm than good, nor did she say the harvesting program was very good at preventing the spread of AIS. She stated the harvesting program and alternatives would be reviewed as part of the Lake Minnetonka Vegetation & AIS Master Plan process.

### 15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: No report.

Budget Workgroup: No report.

Recodification Workgroup: Gilchrist had no updates.

Save the Lake Committee: Baasen reported that the group has not held a regular meeting but advised that the safe boater program was conducted earlier this week. He reported that there were approximately 30 attendees, a mix of youth and adults. He stated that it is a challenge to help all students and more assistance is requested from the Board in the future. He stated that they are a bit ahead in regard to contributions received thus far this year.

Strategic Plan Subcommittee: No report.

Thomas stated that he believed that there was recent consensus to form a work group that would meet with commercial marinas but noted that he has not received notification back on possible dates available for the meetings.

Thomas stated that he sent a follow-up email to the marina owner that brought forward that request but has not yet received a response.

Baasen stated that it is his understanding that the marinas have monthly meetings and the intent would be for some members of the Board to attend.

Thomas confirmed that four Board members volunteered to participate.

Baasen stated that there is a strong interest from the Board in closing that gap, if one does exist.

**16. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:53 p.m.

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Gregg Thomas, Chair

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Ann Hoelscher, Secretary