

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

6:00 P.M., July 13, 2022
Wayzata City Hall

WORK SESSION

6:00 p.m. to 7:06 p.m.

Members Present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and, Deborah Zorn, Shorewood (arrived at 6:40 p.m.). Also present: Troy Gilchrist, LMCD Legal Counsel; and Vickie Schleuning, Executive Director.

Members Absent: Jake Walesch, Deephaven; Mark Chase, Spring Park

Persons in Audience: None.

1. Boat Generated Wakes – Review of Written Comments and Board Discussion

Thomas noted the previous listening session the Board hosted to receive input on this topic. He stated that the Board has many options that it could consider. He recognized that there are diverse opinions on the Board on this topic and what should or should not be done. He anticipated that this discussion may not be wrapped up in just one work session. He noted that written comments were provided within the packet and stated that he was struck by the number of comments from those that do not use Lake Minnetonka. He recognized that this is an issue that has widespread interest. He stated that there were comments asking the Board not to ban wake surfing or wake boats and noted that was not an option the Board was considering.

Klohs commented that he believes the LMCD should be proud that the public listening session went well, and all speakers were respectful. He commented that people did their homework, spoke in representation of larger groups, there were not a lot of repetitive comments, and there were many facts provided. He commented that the Board has received a lot of information on this topic, and recognized that more information will continue to come in. He believed that the LMCD should take some type of action for Lake Minnetonka and should not wait for action from the State or another entity.

Kirkwood commented that he read the comments twice and separated into different categories. He was unsure how to proceed as there is a lot to digest. He wondered if there should be a subcommittee assigned to review this and make a recommendation to the Board.

Thomas stated that thought had not occurred to him but that would be an option. He noted that in the past Baasen participated in a workgroup that involved both Board members and stakeholders for the purpose of creating a qualified marina license. He asked Baasen for input on that process.

Baasen commented that was different as it involved certain dockage and structures. He stated that marina owners had commented that the process of the LMCD was burdensome and therefore the workgroup developed a more efficient and less burdensome for all parties. He commented that all the parties agreed in the end and noted that this would be a different process.

Thomas commented that his point was that the workgroup was not just members of the Board but also included marina owners and municipalities.

Kirkwood stated that the Board start with the items that everyone agrees upon, such as everyone has the right to enjoy and use the lake.

Kroll stated that someone from the industry challenged him to go on a wake boating adventure. He commented that he enjoyed the activity with his granddaughter and has a better understanding of why people are so passionate about the water sport. He stated that the person wake surfing is just a few yards from the boat and therefore you can have a conversation and encourage them from the boat. He commented that he likes the idea of a working group, as there are too many moving parts to hash this out in a meeting of 14 people.

Newell commented that he is not on a mission to eliminate anything. He stated that he wants the lake to be available to everyone, however he has read many scientific papers by the industry and independent organizations. He stated that if there were a subcommittee, he would like to be on it as he wants the discussion to be fair and data based as there is a lot of misinformation going around which he finds frustrating.

Baasen commented that everyone is passionate about this issue, regardless of the water activity they enjoy. He believed that a key element of the lake has been lost due to boat density and the wake boats seem to take the lightning bolt when the issue is related to boat density. He believed that the LMCD should provide guidance and support cooperation on the lake to ensure all boaters and lake users can enjoy the lake. He stated that he would not want to see Lake Minnetonka become the first lake to say what could or could not be done and boaters should be respectful of other users.

Thomas noted that education was missing from the process document. He noted that a representative from the Association of Lakes and Rivers invited the LMCD to be involved in a larger discussion on the topic.

Hoelscher stated that she missed the listening session but did review the minutes from the meeting and written comments. She appreciated the input from people on both sides of the issue. She commented that although she does not have a wake boat, wake surfing is a fun activity but also acknowledged that it can disrupt other activities. She stated that the discussion should focus on the results, which is the waves, regardless of the type of boat that generates those waves. She referenced the suggestion that the LMCD begin with requiring all boats to stay 300 feet from shore. She noted that whatever the LMCD chooses to do, there needs to be a buy in from users and the industry. She commented that there has been progress made through recent educational campaigns. She stated that enforcement must also be considered. She believed that something should be done this year, whatever the Board chooses to do.

Anderson commented that he previously brought forward the suggestion for 300 feet from shore buoys as he noticed in Iowa. He noted that would provide a unified Code requirement for all users, rather than requiring different distances for boats and jet skis. He noted that while density on the lake was high in 2020, it ebbs and flows and has become slower this year than it had been during 2020.

Cook commented that he was struck by the simplicity of Jabbour's comments at the public listening session. He commented that some compromises will need to be made and he likes the idea of being consistent between wake boats and everyone else, setting one standard for all users. He stated that as a starting position he would begin by using the distance limits for jet skis and applying that to all boats on the lake. He stated that if a subcommittee were setup, he would like them to consider that as a starting point.

Thomas recognized that not everyone will agree with whatever is done. He stated that Jabbour's name has come up a few times in the discussion tonight. He noted that Jabbour commented at the listening session that he felt there were a few members of the Board he believed to have conflict with the issue. He asked for the opinion of legal counsel on what would constitute a conflict on this issue.

Gilchrist noted that the issue of conflict has come up multiple times in his time with the Board, noting that the Board has a rule in its bylaws related to conflict of interest. He read the rule to the Board which provides detail on potential conflicts of interest and explained how the issue could be raised if there is a perception that a member of the Board may have a conflict. He believed that some of the concern that has been raised on this topic is that certain members may have raised an opinion on the issue. He stated that it is not a conflict to have a position on a policy issue. He provided some examples of conflict that could include financial gain or relation to an applicant.

Thomas asked if a person would have a financial stake in the decision, would that preclude them from being involved in the discussion or just the vote.

Gilchrist commented that if there is a conflict, the person cannot participate in the discussion as a Board member. He believed it would be fine for that person to join the audience and participate on behalf of themselves as a resident if there is a public hearing, but not as a member of the Board during Board discussion.

Klohs commented he believes there is more than enough information to decide. He stated that there is consensus that whatever is done should be easy, consistent, and that something should be done. He commented that Anderson has the most impact financially of anyone on the Board if he supports the 300 feet from shore distance, he believes that should move forward. He suggested that come back on the next agenda for consideration. He noted that could be the first step and if something additional should be done, that could be done in the future.

Anderson stated that he would support the 300 feet from shore distance and would then suggest the placement of buoys at 300 feet from shore.

Klohs commented that he believes a subcommittee would have nothing to add as this has gone on for over two years already and there is a lot of good data available. He noted that this would be a small step

that would treat everyone on the lake equally.

Thomas asked Schleuning for her opinion on changing the distance from shore from 150 feet to 300 feet.

Schleuning stated that last year the Board approved a pilot program for distance buoys and staff is still gathering information. She noted that there is a 150-foot buoy from the docks and swimming area and another buoy at 300 feet. She commented that with the changes in the types of boats using the lake, she believes the 300 feet distance would be beneficial from the standpoints of safety and the environment. She commented that some of the large charter boats and people towing or having tubes closer in were causing more damage than wake boats. She noted that the educational campaign has helped noting that staff observed some of the wake boats at a distance of 500 to 600 feet from shore.

Hoelscher stated that currently the rule is 150 feet from docks, swimmers, or boats. She asked if the 300 feet would be from shore, because with the length of docks that additional distance from shore would not change much than 150 feet from docks as some docks are 100 to 200 feet in length.

Schleuning provided clarification on the current regulations. She stated that the 150 feet is from shores, swimmers, docks, and boats. She stated that she would ask the type of information that the Board would find helpful for future discussions.

Klohs stated that he would suggest the distance be from shore, structures, swimmers, or anything else in the water. He confirmed that he would like the rule to apply equally to all boats and jet skis for consistency.

Thomas noted that this is a work session and therefore action cannot be taken. He referenced Klohs suggestion to have this come back to the next meeting for consideration of a potential ordinance and asked legal counsel for input.

Gilchrist commented that it is common to reach consensus and provide direction during a work session. He stated that given the interest in this topic, he would recommend scheduling a hearing once the Board is comfortable with the potential ordinance. He stated that he could draft an ordinance for the Board to review at the next meeting and if there is support from the Board, they could schedule it for a public hearing at the next meeting, although noting that the public hearing is not required.

Thomas agreed that he supports having transparency.

Newell stated that he has felt for some time that the distance of 150 feet is outdated and there should be an update to reflect the recent technology. He wanted to ensure that the Board recognizes that this is incremental and what is gained through this step may need additional action in the future.

Hoelscher noted that jet skis have unique hours of operation and asked if that would be discussed.

Klohs stated that he believes the Board should take a win and act where there seems to be consensus. He did not believe wake boats are operating with surfers after dark. He recognized that this is a moving target on a controversial issue and therefore he believes the Board should take action where there seems

to be agreement.

Thomas stated that Klohs suggested Gilchrist draft an ordinance to be reviewed by the Board at the next meeting, and if there were agreement, that would then go forward to a public hearing. He clarified that the distance of 300 feet would be from any structure, swimmers, etc., like the existing ordinance of 150 feet.

Kirkwood stated that he would like to see language that this is a preliminary step and further action may be considered.

Thomas stated that he did not hear any comments that this would be the final step, but this could be a first step. He confirmed the consensus of the Board to direct staff to prepare a draft ordinance that could be reviewed by the Board at the next meeting using a distance of 300 feet rather than the existing 150 feet.

Cook stated that he would suggest noticing the public for the next meeting as well.

Gilchrist noted that he will be drafting an ordinance for the Board to review and provide input on, therefore the language of the ordinance may be changed by the Board and therefore he would suggest waiting for public involvement until the second meeting when the Board has provided input.

Kroll commented on enforcement and methods that could be used to enforce the distance regulation.

Thomas noted that enforcement would be the decision of the Sheriff's Department.

Gilchrist commented that should remain a separate issue than this discussion to keep this moving forward.

There being no further business, the work session was adjourned at 7:06 p.m.

FORMAL MEETING

7:11 p.m.

1. CALL TO ORDER

Chair Thomas called the meeting to order at 7:11 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; and Vickie Schleuning, Executive Director.

Members absent: Jake Walesch, Deephaven; Mark Chase, Spring Park.

Persons in Audience: Jim Dustrude, Joe Shneider, John Bendt.

4. APPROVAL OF AGENDA

MOTION: Hoelscher moved, Kroll seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 06/22/2022 LMCD Regular Board Meeting

MOTION: Thomas moved; Kroll seconded to approve the 06/22/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (10), Abstained (2), (Hoelscher and Zorn). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Baasen moved, Cook seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (07/01/2022 – 07/15/2022); and **7B)** Resolution Accepting Save the Lake Contributions (06/16/2022 – 06/30/2022).

VOTE: Motion carried unanimously.

8. RECOGNITIONS

Baasen recognized those that have recently made donations to Save the Lake.

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

John Bendt, 1120 Tonkawood Road, representing Citizens for Sharing Lake Minnetonka, stated that he felt that the work session was beneficial and was glad to see the LMCD wants to do something. He reminded the LMCD that wake surfing is different from other activity because of the wake generated and the prop wash. He cautioned against having one distance from shore for any activity as that goes against the different research available. He did not believe it would be feasible to have one single standard that applies to all water recreation because wake surfing is unique. He commented that there is no other water activity that has the same potential for adverse environmental impacts. He referenced a DNR study done in 2020 noting that in that study 94 percent of boaters said some restriction should be put in place for wake surfing, and that should be done on a lake-by-lake basis.

10. PUBLIC HEARING

A) New Municipal Dock License, North Shore Marina – Continued to Future Meeting

Thomas stated that this agenda item was posted for a public hearing, but an extension was requested and therefore the discussion will not occur tonight.

Gilchrist commented that the application is still active and will be continued to the next meeting.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

Kirkwood commented that because of the discussions at the last meeting related to use of the reserves and the levy, he would like to report that the City of Minnetrista recognizes the need of the LMCD to reduce its reserves and their perspective is that the LMCD should aim to have reserves within the range of 35 to 50 percent. He stated that the city would also prefer to have level funding requests come forward rather than a variability year to year.

Anderson commented that the goal is to get to level funding, but they must also reduce the reserves to achieve that goal.

13. NEW BUSINESS

A) Funding for University of Minnesota Research on Boat Generated Wake and Prop Wash Produced by Recreational Watercraft, Phase II

Thomas stated that he and Schleuning received a funding request today via email, which has been distributed to the Board. He noted that the scope of the project and other details were also provided and asked if the Board wants to provide funding as the LMCD provided funding for Phase I.

Anderson recalled that the LMCD contributed \$5,000 for Phase I.

Thomas acknowledged that the amount shown on the first page of the report was shown as \$1,000 but the correct figure of \$5,000 was shown within the report.

Anderson commented that he believes there is at least \$10,000 available for education within the budget. He noted that he also believes there are funds available within the communications line item and Save the Lake would be another option. He stated that he would use \$5,000 from communications and \$5,000 from Save the Lake.

Hoelscher asked why funds would not come from education.

Anderson commented that those funds would not be used.

Thomas clarified that Anderson is suggesting using \$10,000 from education, \$5,000 from communications, and \$5,000 from Save the Lake for a total contribution of \$20,000.

Hoelscher stated that \$5,000 was contributed for Phase I, so she believed \$5,000 should be contributed for Phase II.

Anderson explained that in Phase I, the total amount of funding needed had already been obtained whereas at this time additional funding is needed.

MOTION: Anderson moved, Brandt seconded to approve funding in the amount of \$20,000 for the University of Minnesota (UMN) research for Phase II on boat generated wake and propellor wash produced by recreational watercraft; using \$10,000 from education, \$5,000 from communications, and \$5,000 from Save the Lake.

Further discussion: Kirkwood stated that he would prefer not to use communications funds as they are attempting to relaunch as discussed at a recent meeting.

Hoelscher commented that staff has an agreement to collaborate with the consultant on an hourly basis, up to \$25,000 this year, therefore those funds may already be spoken for.

Thomas stated that the Board should discuss the amount and the Finance Committee can then determine where funding should come from. He noted that the LMCD is attempting to spenddown the reserve, therefore that could be used.

Anderson stated that he would then amend his motion to reduce the contribution to \$15,000, eliminating the \$5,000 from communications.

MOTION: Kirkwood moved; Stone seconded to amend the motion to decrease the contribution to \$15,000.

Baasen commented that Save the Lake has an approved budget of \$42,000 and needs to raise \$84,000 to make a payment to Water Patrol for 2023. He commented that to arbitrarily take funds away from Save the Lake would not make sense.

Anderson suggested that the contribution be reduced to \$10,000.

Brandt commented that he believes that \$20,000 is the right number. He asked why the reserves would not be used.

Anderson commented that there is \$10,000 in education that would not be spent. He commented that he was not aware of the funding commitments from communications and Save the Lake, therefore he was suggesting use of those funds but was comfortable pulling back those two after receiving input from the Board. He stated that \$100,000 was already used from reserves for 2022 and \$125,000 is proposed to be used from reserves for 2023. He asked why reserves would continue to be used.

Brandt commented that use of the reserves would continue to accelerate the use of reserves to get within the desired range.

Zorn discussed weighing the request against the strategic planning initiatives of the LMCD. She believed that the request should be comparable to the previous donation. She noted that while it would be wonderful to fund \$20,000, she questioned what would be done when there is a Phase III and the LMCD is approached for even more funding.

Thomas commented that Saint Anthony Falls Laboratory has confirmed there will be a Phase III of the study.

Stone agreed that the LMCD should not arbitrarily provide a contribution and there should be a reason to support such an increase as there will be another funding request for Phase III. She agreed that the decision should be more strategic based on the value to the LMCD that will be provided.

Brandt commented that this issue has the most significant and widespread issue the Board has faced since it considered whether to continue harvesting. He stated that the LMCD should be basing its decisions off data.

Anderson commented that he only supports using the \$10,000 from education.

Thomas called the vote for the amendment to \$15,000.

VOTE: Ayes (5) (Newell, Hoelscher, Cook, Kirkwood, Brandt), Nays (7). Motion failed.

Thomas stated that the Board will now vote on the motion to fund the study at \$20,000.

VOTE: Ayes (4) (Klohs, Kirkwood, Brandt, Kroll), Nays (8). Motion failed.

MOTION: Anderson moved, Baasen seconded to approve funding in the amount of \$10,000 for the University of Minnesota (UMN) research for Phase II on boat generated wake and propellor wash produced by recreational watercraft; using the education line item.

Further discussion: Hoelscher stated that if there is \$13,500 available in that line item, she would wonder why that balance would not be used.

Anderson explained that he is not certain that full balance is available after the class that was held, which is why he was comfortable with \$10,000.

Zorn asked if staff is aware of anything that had been earmarked for education that would no longer be possible if these funds are used.

Schleunig commented that \$5,000 has already been spent from that line item. She stated that there may be more coming out of that line item but there are other funds that can be used if needed.

Zorn stated that she did not recall previous motions being made designating specific line items to provide funding.

Thomas stated that he suggested that a broader motion be made, but Anderson made his motion.

VOTE: Ayes (11), Nays (1) (Klohs). Motion carried.

B) AIS Management Funding Request – Smithtown Bay

Brandt stated that the AIS Committee received an application from Smithtown Bay for treatment of Eurasian Water Milfoil (EWM). He stated that Eric Evenson from the LMA brought the application forward on behalf of the residents in that bay. He stated that the committee recommended approval of the request, funding 35 percent of the survey and 25 percent for the treatment. He noted that the surveys have been completed and the estimated cost for treatment has come in significantly less than originally believed.

Hoelscher stated that she is a resident of Smithtown Bay and spoke with Evenson about the treatment options. She stated that the contractor is recommending the combination treatment and if that is done in fall, additional treatment may not be needed the next year.

Brandt stated that the AIS Committee was willing to fund 35 percent of the surveys and 25 percent of the AIS treatment and would continue that recommendation, reflecting the updated treatment cost.

MOTION: Brandt moved, Cook seconded to authorize funding for Smithtown Bay for Aquatic Invasive Species (AIS) management up to 35% for vegetation surveys and up to 25% for AIS treatment; and to authorize payment directly to service provider(s) upon verification by AIS Committee and Finance Committee of proof of completed work, receipt of copies of surveys, etc.

Further discussion: Anderson stated that the not to exceed number should be calculated as it was in the past funding requests.

Brandt stated that he would make that not to exceed number \$4,000.

Hoelscher suggested that they speak with Evenson to get the right numbers, noting that this action could be delayed to the next meeting. She noted that she will be abstaining from the vote tonight.

Anderson stated that he is a resident of a bay that was previously approved for funding and the estimate used to make the not to exceed amount was lower than the actual cost, which left residents to raise the remaining funds, therefore he would like to see a not to exceed amount to provide consistency.

Brandt agreed that would make sense and agreed that there is additional time to consider the request as this would be planned for treatment later in the season.

Gilchrist stated that this item could be continued.

Anderson stated that he believed the Board could come up with the number tonight.

Brandt stated that he does not believe the cost of the surveys would change, therefore that funding amount would be \$665 based on the 35 percent calculation. He stated that the combination treatment cost is shown

as \$11,681 therefore 25 percent of that would be short of \$3,000, therefore he believed a not to exceed amount of \$4,000 would be sufficient.

MOTION: Anderson moved; Kroll seconded to amend the motion to include a not to exceed amount of \$4,500.

Further discussion: Baasen stated that he heard that there was one cost for one application and an additional cost for the combination treatment.

Brandt stated that the initial estimate was \$57,000 but after the surveys were completed, two options were suggested and reviewed those costs, noting that the combination treatment would have costs of \$10,643 and \$1,037.

Hoelscher agreed with those numbers.

Thomas asked whether the decision needs to be made tonight or could be pushed to the next meeting.

Hoelscher stated that she would prefer to wait.

Zorn stated that her bay worked with Evenson for treatment last year and the longer window there is for the contractor, the better.

Brandt believed that a not to exceed amount of \$4,500 would be safe and if an amendment is needed in the future that could be considered.

VOTE: Motion carried unanimously. (Hoelscher abstained)

14. TREASURER REPORT

Anderson had nothing further to report.

15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Aquatic Plant Identification Workshop
- AIS Volunteer Activities
- Starry Trek will be on August 20th at Excelsior Commons and registration is open

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt thanked the Board for its support on the application. He stated that it has been great to see the five applications come through and to build partnerships across the lake. He stated that there will be some upcoming opportunities related to carp as well.

Communications: Hoelscher stated that the committee will meet on the 19th at 8:30 a.m. at the LMCD office.

Finance: Anderson stated that the group has not met since developing the budget but will next discuss the charges related to variance requests.

Operations: Zorn stated that the July meeting will be delayed to August.

Save the Lake: Baasen reported that the committee met the previous night to review the results of the first solicitation letter and amended the plans for the remainder of the year. He asked the Board to provide potential businesses that may be interested in donating and the committee will reach out in a direct appeal. He stated that the committee is approved to have nine members, with six of those being Board members and three members from the outside community. He stated that there is one additional Board member that would like to join the committee and would propose that be allowed.

Thomas asked the additional Board member that would like to join.

Baasen commented that Kirkwood would like to join.

MOTION: Baasen moved, Thomas seconded to allow a total of seven Board members on the Save the Lake Committee.

VOTE: Motion carried unanimously.

17. ADJOURNMENT

Being no further business, the meeting was adjourned at 8:05 p.m.

Gregg Thomas, Chair

Dan Baasen, Secretary