

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

6:30 P.M., August 10, 2022
Wayzata City Hall

WORK SESSION

6:30 p.m. to 7:00 p.m.

Members Present: Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Dan Baasen, Wayzata; Ben Brandt, Mound; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Denny Newell, Woodland; and Nicole Stone, Minnetonka (arrived at 6:45pm.) Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Thomas Tully, Administrative Environmental Technician.

Members Absent: Bill Cook, Greenwood; Mark Kroll Excelsior; Rich Anderson; Orono; Mark Chase, Spring Park Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood.

Persons in Audience: Jay Hereby. Travis Anderson, Greg Blasko, Aaron Bean, Scott Albrecht, Sandy Kennedy, Jill Sims, Jim Dustrude, Andrew Krenzer. There may have been others in attendance that did not sign in.

1. Managing Risk: State Open Meeting Laws, Conflict of Interest, LMCD Business Policies

Gilchrist provided a presentation to the Board related to State open meeting laws. He provided information on the Data Practices Act and explained how that can apply to the Board. He also reviewed conflict of interest and other LMCD policies with the Board for informational purposes.

Hoelscher asked if someone with a conflict of interest could state their conflict and abstention from the vote but still participate in discussion.

Gilchrist commented that there are differing opinions on this matter. He stated that, someone from the Board that has a conflict of interest could still participate in discussion as a member of the podium, explaining that person should excuse themselves from the dais and speak at the podium as a resident.

Kirkwood referenced fiduciary duty and was surprised that the Director's own fiduciary duty to the LMCD and not the appointing city rather than both. He asked for clarification.

Gilchrist recognized that the city is the appointing authority, but the LMCD is an independent Board, and the Director should act in the interest of the Board. He provided an example where a city and the LMCD could be on opposite sides.

The work session adjourned at 6:48 p.m.

Formal Meeting

7:00 p.m.

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; Rich Anderson, Orono; Ann Hoelscher, Victoria; Dan Baasen, Wayzata; Ben Brandt, Mound; Mark Chase, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Thomas Tully, Administrative Environmental Technician.

Members absent: Bill Cook, Greenwood.

Persons in Audience: Jay Hereby. Travis Anderson, Greg Blasko, Aaron Bean, Scott Albrecht, Sandy Kennedy, Jill Sims, Jim Dustrude, Andrew Krenzer. There may have been others in attendance that did not sign in.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

Anderson asked if an item could be added to the agenda.

Gilchrist commented that if there is a motion made to add something to the agenda, which could be added to the agenda.

MOTION: Anderson moved; Stone seconded to add an item to the agenda to reconsider the ability for a licensed charter boat to launch from a residential dock.

VOTE: Ayes (7), Opposed (5), (Baasen, Kirkwood, Klohs, Kroll, and Thomas), Motion carried.

Director Zorn arrived at 7:05 p.m.

5. CHAIR ANNOUNCEMENTS

Chair Thomas commented that Gilchrist provided a great presentation at the work session tonight and asked those members that were not in attendance to review the slideshow. He reported that the Board Officers met the previous week to discuss paperwork and staff reduction. He stated that the suggestion was made that staff not provide paper copies of the presentations/slideshows as that information is available online for review. He stated that members could still request a hardcopy if desired. He stated that within the agenda

tonight there was duplicative information that was included in the agenda two weeks ago and it was determined that information would not be required in subsequent meeting agendas.

Walesch agreed and stated that he would also opt out of receiving a hardcopy of information as he views it all online.

Newell asked if staff could send him specific pages in hardcopy format.

Thomas confirmed that type of request could be made.

6. APPROVAL OF MINUTES- 07/27/2022 LMCD Regular Board Meeting

MOTION: Kirkwood moved; Stone seconded to approve the 07/27/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (9), Abstained (4), (Baasen, Zorn, Chase, and Klohs). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Baasen moved, Walesch seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (08/01/2022 – 08/15/2022); **7B)** Resolution Accepting Save the Lake Contributions (07/20/2022 – 07/31/2022); **7C)** Approval of Variance Application for 4425 North Shore Drive, Orono, MN 55364, West Arm, Adjusted Dock Use Area Including Setbacks; and **7D)** Denial of Watercraft for Hire Application, Stephen Crumley, MA778893, MN Boat Master.

VOTE: Motion carried unanimously.

8. RECOGNITIONS

Baasen recognized those that have recently contributed to Save the Lake.

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

Andrew Krenzer, 3173 Lakeshore Boulevard in Minnetonka, stated that he was interested in clarification on watercraft for hire and the requirements as stated on the LMCD website. He stated on the website it states that watercraft must be berthed (stored) at a licensed commercial site. He stated that from what he understands some watercraft for hire have been granted a certificate that are stored at a licensed commercial site and some that are not berthed (stored) at a commercial site. He also wanted clarification on the types of watercrafts for hire based on the activity completed. He reviewed the definition of watercraft for hire and stated that he has not seen distinction based on the type of activity (pleasure cruise, ski lessons, fishing, etc.). He noted that he was simply desiring clarification on those items.

Chad Anderson, 4100 Enchanted Lane, stated that he is present with some of his neighbors. He stated that they are interested in getting a no wake zone in their channel because of the quick erosion of the shoreline in

that area. He asked for consideration to have minimum wake buoys in that channel.

Thomas stated that anyone can send a request into the LMCD but noted that the issue will not be addressed tonight. He urged the resident to send a written request into the LMCD office to begin that process.

Schleuning provided contact information for that resident to submit his request.

10. PUBLIC HEARING

There were no public hearings.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) Boat Generated Wakes – Review Draft Code Amendment Options

Thomas stated that this item has been discussed at the last few meetings, including a public listening session. He stated that Gilchrist included the original draft ordinance as well as an updated version.

Gilchrist stated that he attempted to update the proposed draft ordinance based on the input from residents and the Board at the last meeting. He stated that currently watercraft must be 150 feet away from shoreline, docks, and other objects. He stated that the original ordinance replaced the 150 feet with 300 feet. He stated that based on the input at the last meeting, he believed it was the consensus that there was an appetite for 300 feet from shore and 150 feet from other objects which is provided in the updated draft ordinance. He stated that the updated draft ordinance would also make this change effective January 1, 2023, which would provide sufficient time to focus on education prior to the next boating season.

Thomas acknowledged that these are not the only options but an attempt to reflect the discussion from the past meeting. He stated that Anderson has requested to share a short video clip, but they do not have the capability to do so tonight.

Anderson provided background information on a location he visited that uses swim buoys to identify the 300 feet from shore distance. He noted that the area was packed with boaters, but he only noticed one boat with wake inside of that 300 feet area. He stated that he would not be suggesting buoys because that would be a huge endeavor. He agreed with the distance of 300 feet from shore and 150 feet from a structure or other element. He stated that some buoys would be helpful in the future.

Thomas agreed that the discussion tonight is not related to buoys but changing the 150 feet from shore rule.

Schleuning provided additional input on the additional information that staff prepared and included in the Board packet.

Hoelscher asked if there is an official response from Water Patrol.

Schleuning replied that there is not an official response. She noted that there is a concern with additional buoy requests because of the increased costs. She stated that Water Patrol has stated that they will enforce what is passed by the LMCD.

Kirkwood stated that the map with the 300-foot distance shown demonstrates there is still a lot of lake out there to use and does not restrict the use of the lake.

Thomas agreed that this would not close down bays as it had previously been mentioned by residents.

Newell stated that he supports the change to 300 feet from shore and will provide a needed response. He looks forward to gathering additional information from the continued studies of the university.

Zorn asked if this item should be tabled to the next meeting to review the additional information staff has prepared as this would not take effect until January. She noted that she is supportive of the draft ordinance.

Thomas noted that there is not any additional information that was not included in the packet.

MOTION: Anderson moved, Newell seconded to accept the draft ordinance using a distance of 300 feet from shore and 150 feet from other structures and swimming areas as outlined in option two.

Further discussion: Hoelscher referenced the watercraft speeds section, C3, which would use the distance of 150 feet. She asked for the definition of an authorized bathing area and asked if that would technically be from shore.

Gilchrist confirmed that to be true and noted that is how the code language is currently written.

Schleuning noted that an authorized bathing area has defined requirements, such as buoys and the distance of 150 feet would apply to the buoy marked area.

Hoelscher asked how non-motorized things would be considered and whether those should fall into the distance from 150 feet, meaning that watercraft would need to stay 150 feet from those items.

Anderson replied that would muddy up the discussion and therefore he would not suggest adding that.

Gilchrist stated that he used existing language. He reviewed the definition of watercraft and noted that non-motorized watercraft would fall into that same category.

Klohs stated that the 150 feet from structures and other watercraft would not be changing, only the distance from shore would be changing from 150 feet to 300 feet. He stated that redefining items would be for another meeting. He stated that the only substantive change would be the distance from shore.

Schleuning stated that in State Code there is a regulation regarding PWCs that deals with anchored and non-motorized watercraft that would still apply even if it were not included in the LMCD Code.

A resident expressed outrage that public comment was not being solicited.

Thomas explained that the Board allowed public comment at the last meeting as well as the listening session prior to that but is not being accepted at this time.

Gilchrist commented that public comment is not required by law, but the Board chose to accept public comment at its last meeting.

Anderson stated that in the past, comments would have been allowed during the agenda item or during public comment. He noted that the Board has always allowed people to speak during the agenda item or during public comment prior to the agenda item.

Thomas commented that this was discussed at the last meeting and public comments were allowed. He did not believe any new information would be gathered tonight. He invited the resident to speak at the podium.

Chris Bank, 2600 West Lafayette Road, asked if the draft ordinance was drafted and presented for open to public conversation at the last meeting.

Thomas commented that the draft ordinance was discussed at the last meeting where public comment was available.

Gilchrist commented that the verbiage has changed as the original draft ordinance considered 300 feet from shore and 300 feet from structures, whereas this contemplates 300 feet from shore and 150 feet from structures which is less burdensome for boaters.

Thomas stated that the public was considered thoroughly throughout the process. He stated that if people feel they need to make additional comments, he will allow that but would want to hear new comments and not information repeated.

Bank commented that a resident of the lake he gets the impression that the Board is tired of this issue and ramrodding this through the system without waiting to see what the State may do through legislation. He felt that the LMCD is pushing to say it did something about it. He would prefer the LMCD hold back and see what happens. He noted that Lake Minnetonka tends to set precedent in other parts of the country because it is such a large lake. He appreciated that the Board is in a tough spot and thanked them for listening to him.

Eric Evenson, Director of the Lake Minnetonka Association, asked if there is a requirement that the ordinance in its final form be sent to all the cities.

Gilchrist replied that there is not prior notice requirement to the cities. He stated that the LMCD has adopted a lot of ordinances over the years. He stated that the notice was publicized as part of the last packet and this packet and therefore the Board can move forward with the motion as proposed.

Travis Anderson, Maxwell Bay resident, commented that he understands the process, and everyone is tired of one individual making a lot of noise and causing annoyance. He did not believe that pushing something through is the answer. He stated that education takes time. He asked that the Board slow down a bit.

Greg Blasko, 3295 Crystal Bay Road, commented on the speed of this process. He stated that the Board requested comments from Water Patrol, and it still does not seem that statement has been provided. He stated that there are some good maps that were put together but noted that not all the buoys were identified on the map. He stated that Crystal Bay could have a potential safety hazard because of this change. He believed that additional study should be done to determine the impacts that would result from this change. He asked that the Board allow a 30-day comment period.

Thomas stated that he appreciates all the opinions expressed tonight. He commented that he and others on the Board will not be making a vote tonight because of duress from any individual or group. He stated that the people on the Board took an oath to do what is right for Lake Minnetonka.

Jim Sims, National Marine Manufacturers Association, stated that her organization submitted their comments two weeks ago. She stated that she covers 14 states for government affairs and believes that the LMCD has done a wonderful job in allowing public participation and engagement. She commented that she works on a lot of regulatory issues and felt that this process has allowed her organization to weigh in and felt that the LMCD had honored that whether they agree or disagree. She felt that ample notice and discussion was provided and allowed during this process.

Anderson commented that it was smart to allow public comment as the language was changed from the originally presented ordinance.

Brandt commented that options one and two were available in the Board packet and were available for the public to view as of last Friday. He stated that one option is chosen tonight, and the vote take place at the next meeting. He stated that he would be interested in more information from Water Patrol.

Thomas believed that the vote would need to take place.

Gilchrist stated that someone could make a motion to table if desired.

Anderson stated that he is in constant conversation with the Water Patrol and they like the concept of buoys but cannot comment on it because it would put them in a position.

MOTION: Brandt moved, Hoelscher seconded to table this item and move option two forward for a formal vote at the next meeting.

VOTE: Ayes (4), (Brandt, Hoelscher, Zorn, Walesch) Nays (9). Motion failed.

Thomas stated that the Board will now vote on the original motion.

Baasen asked that the draft ordinance be recapped for clarity prior to the vote.

Gilchrist recapped the draft ordinance language.

Kroll stated that he is confused by the term anchored boat or watercraft. He asked if the adjective anchored is distributed against both boat and watercraft.

Gilchrist replied that boat is being deleted and it will read raft or watercraft. He noted that one the charges early on was to provide consistency and to keep it simple.

Kirkwood commented that he does not feel that this has been rushed as this has been a topic of discussion for months and included an extensive public listening session.

VOTE: Ayes (10), Nays (2), (Brandt, Zorn), Abstained (1) (Kroll). Motion carried.

Baasen commented that this will go into effect January 1, 2023. He commented that people are not boating in the winter months which provides additional time for education.

13. NEW BUSINESS

A) Discussion Related to Docking Locations for Licensed Watercraft for Hire

Anderson commented that the Board has previously considered the topic of watercraft for hire and the requirement for commercial berthing locations. He stated that there is rumor that someone was licensed using Grays Bay as their port of call. He noted that two other applications have been denied because they were not docked at a commercial location. He stated that he wanted more discussion to determine if the rumor is true.

Thomas stated that many people voted to add this to the agenda and therefore this could be turned back to staff to bring back for discussion at a future meeting.

Stone stated that this also came to her attention as a Minnetonka resident was denied last year because he did not have a commercial berthing location. She stated that at the last meeting the Board considered a similar application from another resident and formal action was taken tonight to deny that application because of the lack of a commercial berthing location. She commented that it was also brought to her attention that in the time since the last meeting, a person was granted a license when they do not even have a dock on the lake. She asked for clarification as the Board decided that they did not want to change the Code to allow watercraft for hire to berth from their own residential dock. She stated that if the Code is not going to applied uniformly to everyone, she has a problem with that.

Newell stated that he has seen a number of very qualified people make applications that he would be happy to approve, but then learned that this could cause issues with neighboring property owners. He believed that it would be worth it for the Board to review the item. He noted that reasonable requests have been denied because of the existing standards.

Thomas commented that legal counsel has stated that the applications could not be approved based on the language in the ordinance, but the Board would have the authority to change that ordinance if it wanted to allow residential berthing of watercraft for hire.

Gilchrist confirmed that this would be a policy decision for the Board. He stated that it has been applied in the manner written but the Board can change the policy.

Walesch asked if the differentiator between the two denied applications and the administratively approved license was that the person does not live on the lake and does not keep the boat at a residential dock.

Schleuning replied that the LMCD regulations apply to Lake Minnetonka. She stated that LMCD does its best to educate the public on its website. She stated that this is the first request where a person has requested to trailer the boat and staff consulted with legal counsel prior to approval of the license.

Walesch commented that it would then seem that the residents that live on the lake are punished for living on the lake.

Thomas stated that he would not use the word punished.

Walesch commented that he would use the word punished as would anyone with common sense.

Hoelscher stated that this is the first time that this issue has come up and believes that the Board should talk about this with a memorandum and information from staff to review and make educated decisions.

Stone agreed but noted that there was not a forum for them to do this as she only recently became aware the license was approved. She agreed with Hoelscher that this should have continued discussion.

Thomas suggested that staff be allowed time to compile information so that the Board can have an informed discussion on the ordinance.

Walesch asked when the license was issued.

Schleuning commented that the license was issued a few months ago. She noted that the option to trailer would be available to residents on the lake as well. She stated that there has been a lot of staff time put into this issue and complaints fielded. She stated that if the Board would like to make a change to the ordinance, they could propose that. She stated that they attempt to enforce equally and place helpful information on the website. She stated that staff will bring information back for review and the Board can decide whether to amend the ordinance.

Anderson stated that he does not believe that the stance necessarily needs to be changed about residential berthing but does have an issue with allowing someone to trailer in a boat to be used for watercraft for hire. He stated that he does not support changing the ordinance but would like to be informed and have a vote.

Hoelscher commented that consistency is the desire.

Anderson stated that he would like to deny the license as it was not brought before the Board.

Gilchrist commented that under the Code the Board does not have the decision-making authority at the first

level. He stated that if the proposal is to deny the license, then it comes forward to the Board. He stated that administratively approved licenses that are consistent with the Code do not come forward to the Board.

14. TREASURER REPORT

Anderson commented that he is working on the second quarter report.

15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Staff has been busy and responding to inquiries
- Low water declaration may be needed, and staff continues to monitor water levels

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt reported that an application for funding has been requested for a carp population and spawning assessment. The committee reviewed the request and recommended approval; therefore, it will come to the Board at the next meeting.

Communications: Hoelscher reported the committee met the previous day and are scheduling a tour of the lake for the Board in place of the September 28th Board meeting from 4:30 to 6:30 p.m.

Finance: No report.

Operations: No report.

Save the Lake: Baasen reported that Save the Lake met the previous night and had an open discussion about sustainability, safety on the lake, and the contracts with Water Patrol. He stated that things are moving along nicely with the contracts that have been extended and they are in a good position to cover their obligations for the next 1.5 years.

17. ADJOURNMENT

Being there no further business, the meeting was adjourned at 8:18 p.m.

Gregg Thomas, Chair

Dan Baasen, Secretary