

**LAKE MINNETONKA CONSERVATION DISTRICT**

**BOARD OF DIRECTORS**

7:00 P.M., October 26, 2022

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; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Ben Brandt, Mound; Gabriel Jabbour, 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, Environmental Administrative Technician.

**Members absent:** Dan Baasen, Wayzata.

**Persons in Audience:** Kurt Wenrueann, Dennis Nelson, Kathleen Mallery.

**4. APPROVAL OF AGENDA**

**MOTION:** Cook moved; Hoelscher seconded to approve the agenda as submitted.

**VOTE:** Motion carried unanimously.

**5. CHAIR ANNOUNCEMENTS**

Chair Thomas recognized Jabbour for receiving a "leadership and service" award from the North American Lake Management Society. He recognized Jabbour's contributions to the lake, the community at large, and the nation.

He also thanked Hoelscher who chaired the last two Board meetings in his absence.

**6. APPROVAL OF MINUTES-** 09/14/2022 LMCD Regular Board Meeting

Anderson noted on page four, the third paragraph should state, "~~...the policy~~ all commercial marinas on the lake." In the same paragraph, it should state, "...could be a problem but frankly he did not see anything he looked at that talks about an opt-in, not a single reference; so, it was either a blanket across the board and all single licenses were extinguished."

Gilchrist stated that he did not recall the exact language and was concerned that it would be seemed to suggest that this would solidify something being in the Code rather than replying to comments. He stated that the Code is not written in that manner.

**MOTION:** Anderson moved; Cook seconded to approve the amendment to the 09/14/2022 LMCD Regular Board Meeting minutes.

**VOTE:** Ayes (9), Abstained (4), (Klohs, Thomas, Zorn, and Kroll). Motion carried.

**MOTION:** Kroll moved; Walesch seconded to approve the 09/14/2022 LMCD Regular Board Meeting minutes as amended.

**VOTE:** Ayes (12), Abstained (1), (Thomas). Motion carried.

## 7. APPROVAL OF CONSENT AGENDA

**MOTION:** Anderson moved; Walesch seconded to amend the voucher list by removing the payment to North Shore Marina.

Further discussion: Anderson commented that he does not want to be paid before his licenses are reinstated and would like it all to happen at the same time.

**VOTE:** Motion carried unanimously. Motion carried.

**MOTION:** Cook moved; Kroll seconded to approve the consent agenda as revised. Items so approved included: **7A)** Audit of Vouchers (09/16/2022 – 09/30/2022), (10/01/2022 – 10/15/2022), (10/16/2022 – 10/31/2022); and **7B)** Resolution Accepting Save the Lake Contributions (09/08/2022 – 09/22/2022).

**VOTE:** Motion carried unanimously.

## 8. RECOGNITIONS

Thomas acknowledged the recently made contributions to Save the Lake.

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

Kurt Wenrueann, 444, West Lake Street in Excelsior, asked the status of his court case related to his complaint against the property at 450 West Lake Street. He stated that he started this process two years ago and his issue is less important than others and he is not getting any answers. He stated that he sent four emails this year and received an email from a staff member stating that they are checking on the status of the court case and would get back to him. He asked if the case has gone to litigation.

Kroll thanked the resident for keeping him in the loop on this matter. He asked if the case is in the criminal process and whether they are limited on what could be said.

Schleuning stated that this case is in the hands of the prosecutor and therefore they cannot make public comment. She stated that when the case gets into the formal complaint process, it is a lengthy process, and they are still in the process from things done in 2021. She stated that the courts are not putting the same priority on these types of cases versus robberies and other violent crimes.

Thomas stated that the Board is completely out of the process once it enters litigation.

Schleuning stated that the property owner at 450 West Lake Street has been notified. She stated that typically people understand the importance of protecting the lake and cooperate. It is in prosecution and therefore additional information cannot be made public.

Jabbour commented that this property is next to his as well. He asked if the prosecutor is taking action.

Schleuning stated that action is being taken which triggered a response to staff from the person being prosecuted. She commented on the slow time process because of the slowdown in the courts after the shutdowns from COVID.

Anderson asked if there could be an update from the prosecutor on different cases, he is managing to keep people informed.

Thomas commented that once a case enters the court system, he believes that the Board should not be involved.

Anderson commented that it would be great to have a Board update on the general cases.

Schleuning stated that she does attempt to include updates in her Board updates on some of the cases of interest.

## **10. PUBLIC HEARING**

### **A) Variance for Adjusted Dock Use Area and Setbacks, 135 Mound Avenue, Tonka Bay, Gideons Bay**

Tully presented a variance application for the property at 135 Mound Avenue on Gideons Bay in Tonka Bay. He provided a highlight of recent history related to this property, adjacent properties, and watercraft storage on the sites between LMCD staff, City of Tonka Bay staff, City legal counsel and the applicant. He noted that both the city and applicant agree to the variance to resolve the longstanding issues. He provided background information on the requested variance which would allow the applicant to use a portion of the fire lane shoreline towards dock length and side setbacks. He reviewed both the original submittal and application option request and provided a comparison between the two. He reviewed the variance standards to be considered and noted that no comments were received from other public agencies outside of the support from the City of Tonka Bay. He provided recommendations that should be considered should the Board choose to approve the variance.

Klohs asked if the city articulated what it means by “riparian purposes may change in the future.”

Tully replied that currently many people use the fire lane for access via paddleboard, canoes, etc. They would want to ensure that area remains accessible for those purposes as well as the purpose of the applicant.

Schleuning stated that the city currently designates the fire lane for launching of things without trailer and do not have an intention to change that, although that could change in the future.

Klohs asked if the city would be foregoing a dock structure.

Schleuning confirmed that the city is consenting to this dock structure in the fire lane. She noted that this process will formally address concerns that have been ongoing for many years. She stated that LMCD staff, the applicant, city staff, and city legal counsel have all been involved and everyone is on the same page.

Klohs stated that it would appear the property owner would be moving forward with this as permanent.

Schleuning commented that is not correct. She stated that the city is consenting to this use at this time but could change their mind in the future.

Gilchrist commented that the city is consenting to occupancy of a part of its dock use area but is not relinquishing that in perpetuity. He stated that the city could tell the homeowner to vacate the fire lane area in the future.

Kirkwood commented that these are two willing partners proposing this use. He was surprised that the city is as amenable as it is.

Jabour commented that the city declined to allow the use of its perceived riparian right and therefore it would be the responsibility of the Board to determine lot line extension. He commented that currently the city is okay with this, but the applicant would still have the right to request a lot line extension in the future to have a dock. He commented that they must also think about practicality. He commented that the LMCD Code does grant the two adjacent neighbors the ability to eliminate the property line between them to allow encroachment without needing to attend a public hearing.

Schleuning stated that the variance provides some assurance for the property owner because turnover of city staff and it has been an issue over the years.

Zorn commented that the existing dock would be the original proposal and then there was an amended proposal. She asked if the existing dock would be considered grandfathered in.

Tully replied that the dock structure has existed for some time but there have been some changes over time such as increase in size.

Zorn asked if eliminating a boat lift would eliminate the need for a variance.

Schleuning stated that it would be challenging to meet setbacks with 38 feet of shoreline and converging lot lines.

Zorn asked if there have been other similar shaped lots that have had supported requests.

Schleuning confirmed that there have been issues of converging lot lines, but this is unique in that there is a fire lane which would allow additional space. She noted that each request must be considered on its own merit.

Thomas stated that the narrative from the applicant provided another example that was approved earlier this year which was similar.

Newell commented that this includes a few different dock configurations and stated that it would help to have an overlay comparing the two.

Walesch asked if the extended lot lines would place this on the applicant's property or whether the variance would still be needed.

Tully identified the extended lot lines and provided more explanation.

Walesch stated that it is clear there is a practical difficulty with the converging lot lines and the city approves, therefore the question would be whether to allow the canopy.

Hoelscher asked if the city had a preference on the options.

Tully replied that the city did not have input on that and left that to the Board.

Schleuning stated that the applicant currently has the cover with the boat lift, which is the original option. The second option would be to remove the boat lift and install a canopy.

Thomas invited the applicant to address the Board.

Dennis Nelson, 135 Mound Avenue, applicant, stated that he has lived in the home for 33 years and has learned some things over the years. He believed that his dock shared riparian rights of abutting easements and properties which his submissions have detailed and hoped that the Board would agree. He provided a brief history on the property, the vacation of roadway that occurred and the recognition that the fire lane provides public access. He also provided a history of docks for his property going back to the 1970s. He stated that his dock is not built in the fire lane but shares riparian rights with it. He noted that the dock was reviewed by the LMCD 21 years ago and led him to believe the dock placement was reasonable after removal of the canopy. He noted that the LMCD and city of Tonka Bay

have allowed reasonable sharing of fire lanes in other similar instances. He explained the option of a boat house canopy as water levels needed for the existing boat lift with automatic cover are in question.

Anderson asked if this would be the same setup that was previously approved in Tonka Bay.

Nelson replied that this would be less than what was approved in that case.

Anderson commented that the Board recently approved a canopy that was ten feet from the property line with opposition from the neighbor.

Jabbour commented that if there is a top without sides that is not a canopy. He stated that you cannot apply neighborhood examples to the next city. He stated that Tonka Bay is recognizing the use of their riparian rights in fire lanes at their marina.

Schleuning commented that this fire lane is not used at the marina. She commented that each case must be reviewed individually. She stated that the reason for a longer distance is for access. She commented that staff believes this to be a reasonable combined use.

Walesch commented on the difference between a full canopy and one side open in terms of the setback.

Schleuning commented that beyond 50 feet you still need a setback of 15 feet.

Thomas opened the public hearing at 8:10 p.m.

Kathleen Mallory, 145 Mound, commented that she fully supports the request. She noted that Nelson is an amazing steward of the lake who often rakes lake weeds and cleans up the fire lane dock use area. She commented that she appreciates him as a neighbor.

No additional comments were offered, and the public hearing was closed at 8:12 p.m.

**MOTION:** Jabbour moved; Kroll seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application for option one or two from Dennis G. Nelson and Barbara Franta for the property located at 135 Mound Avenue in Tonka Bay for final approval at the November 9<sup>th</sup>, 2022, LMCD Board meeting.

Further discussion: Gilchrist asked and received confirmation that the motion would allow the applicant to choose either option one or two.

**VOTE:** Motion carried unanimously.

**B)** New Multiple Dock License, 540 Big Island, Orono; Lower Lake South – Continued to November 9,

2022

Thomas stated that the applicant has requested this to be continued and therefore this will be considered at the November 9<sup>th</sup> meeting.

Schleuning stated that this has been delayed because of applicant requests as they are not in the country.

## 11. OTHER BUSINESS

There was no other business.

## 12. OLD BUSINESS

There was no old business.

## 13. NEW BUSINESS

### A) Authorization of Draft RFP and Materials for Civil Attorney Legal Services

Thomas stated that Gilchrist has provided a letter that Kennedy and Graven will provide services through November 29<sup>th</sup>, 2022, but the LMCD will need to find new counsel after that time. He commented that Gilchrist has served the LMCD very well and will be missed. He stated that Schleuning provided a draft RFP which would need to be approved or amended to move forward. He noted that he had a few grammatical changes that he will provide to staff.

**MOTION:** Hoelscher moved; Cook seconded to approve the draft RFP for civil attorney legal services.

**VOTE:** Motion carried unanimously.

Thomas commented that there will be a selection committee composed of the four officers and two additional Board members. He welcomed volunteers that would like to assist in reviewing applications.

Klohs, Cook, and Jabbour volunteered.

### B) LMCD 2023 Employee Benefits Package

Thomas stated that there was a 5.0 percent increase in the health insurance premiums and a 3.5 percent increase in the dental insurance.

Anderson commented last year he asked which option was preferred and asked that question to staff again.

Schleuning commented that she was hoping to have comparison information from other cities, but this is still

a good option, noting that it is a similar plan, but the deductible was raised. She stated that they were fortunate not to have the same increases that some other entities have experienced. She stated that option one is like what the employees currently have with a minimal increase. She stated that a family coverage option has been added but was unsure if anyone would choose that option.

**MOTION:** Anderson moved; Thomas seconded to approve the employee benefit package as recommended with the employer paying \$883 per month for single coverage and up to \$1,450 per month for family coverage and continuing other portions of the benefits package.

**VOTE:** Motion carried unanimously.

#### **C) Draft Letter to Cities 2023 LMCD Board Member Appointments**

Schleuning commented that the Board reviews and approves the letter prior to staff sending it.

Zorn noted an edit to page three.

**MOTION:** Cook moved; Jabbour seconded to authorize staff to send the draft letter to the cities for 2023 LMCD Board member appointments.

**VOTE:** Motion carried unanimously.

Jabbour asked if the Board should ask Water Patrol if they have any new business.

Thomas stated that he asked the water patrol and there was no interest in making a presentation today.

Schleuning commented that the check for \$84,000 to Water Patrol was included in the audit of vouchers that was approved tonight. She commented that the past few years have been challenging with increased use of the lake during COVID and noted that Water Patrol has done an excellent job, especially with some of the LMCD staffing shortages.

#### **14. TREASURER REPORT**

Anderson had nothing further to report.

#### **15. EXECUTIVE DIRECTOR UPDATE**

Schleuning provided the following information:

- Solar lights have been removed
- Buoys are in the process of being removed
- Low water discussion – water levels are the lowest in 10 years
- Update on two recent permit issuances

- DNR is offering grants for "No Child Left Inside" to promote ideas to connect children with the environment
- More zebra mussels in Smith and Rabbit lakes
- Winter rules brochure will be updated

## 16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt reported that the group has not met recently but payments have been processed for the treatments that were approved.

Jabbour commented that the University of Minnesota study that was based on his property received good data and will be analyzing that over the next year.

Newell commented that he also heard that Jeff Marr tested a wide variety of boats.

Communications: Hoelscher reported that the committee met the previous week and will meet again in December. Staff collaborates with the consultant to get out the fall newsletter and winter rules. They also worked with LMCC to prepare a video of the distance buoys to develop educational material for the spring.

Finance: No report.

Operations: Zorn reported that the group met prior to this meeting and there will be additional language added to the multiple dock license renewal form to reflect language discussed related to commercial marinas and amenities. She stated that there is a vacancy on the committee and extended an invitation to the Board to participate on the committee.

Save the Lake: No report.

Jabbour asked why the previous meeting was canceled.

Thomas replied that the meeting was canceled as there were no urgent items of business so that allowed staff to work on other items.

Jabbour commented that he is planning to fly in for most of the meetings and would not want to fly in to find a canceled meeting. He suggested that staff ask the Board at least one week before the meeting regarding their plans to attend so that meetings can be cancelled way in advance if needed.

## 17. ADJOURNMENT

**MOTION:** Cook moved; Kroll seconded to adjourn the meeting at 8:47 p.m.

**VOTE:** Motion carried unanimously.

Lake Minnetonka Conservation District  
Regular Board Meeting  
October 26, 2022

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Gregg Thomas, Chair

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Dan Baasen, Secretary

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