



LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

AGENDA
LAKE MINNETONKA CONSERVATION DISTRICT
Wednesday, April 27, 2022
Wayzata City Hall
600 Rice Street, Wayzata, MN 55391

PUBLIC PARTICIPATION

Those attending the meeting, please complete the attendance sheet. Those desiring to participate in the meeting should complete the *Public Comment Form* at the meeting if the online [Public Comment Form](#) was not submitted. The Chair may choose to reorder the agenda for a specific agenda item if it would benefit the needs of those in attendance. Please see *Public Comments* Section for more information.

WORK SESSION AGENDA

6:00 p.m.

The purpose of the Work Session is to allow staff to seek input from the Board and for the Board to discuss matters in greater detail than generally available at the formal Board Session. The Board may give staff direction or express a preference, but does not formally vote on matters during Work Sessions. While all meetings of the Board are open to the public, Work Session discussions are generally limited to the Board, staff, and designated representatives. Work Sessions are not videotaped. The work session may be continued after the formal meeting, time permitting.

1. No Work Session- Meeting Starts at 7:00 p.m.

FORMAL MEETING AGENDA

7:00 p.m.

The purpose of the Formal Session is to allow the Board to conduct public hearings and to consider and take formal action on matters coming before the LMCD.

- 1) CALL TO ORDER**
- 2) PLEDGE OF ALLEGIANCE**
- 3) ROLL CALL**
- 4) APPROVAL OF AGENDA**
- 5) CHAIR ANNOUNCEMENTS**, Chair Gregg Thomas
- 6) APPROVAL OF MINUTES** (04/13/2022 LMCD Regular Board Meeting)
- 7) APPROVAL OF CONSENT AGENDA**

- A) Audit of Vouchers (04/16/2022 – 04/30/2022)
- B) Approval of Joint Variance Applications for 21100 Excelsior Blvd and 5600 Maple Heights Road, Greenwood, MN 55331, St. Albans Bay, Adjusted Dock Use Area (Setbacks, Length)

8) CONTRIBUTION RECOGNITION

- 9) PUBLIC COMMENTS** – *Provides an opportunity for the public to address the board on items that are not on the agenda. Public comments are limited to 5 minutes and should not be used to make personal attacks or to air personality grievances. Please direct all comments to the Board Chair. The Board generally will not engage in public discussion, respond to or correct statements from the public, or act on items not on the agenda. The Board may ask for clarifications or direct staff to report back on items at future meetings.*

10) PUBLIC HEARING

- A) Continued Petition for Quiet Water Area on Buoy Channel at Cedar Point West between Cooks Bay and Upper Lower Lake

11) OTHER BUSINESS

12) OLD BUSINESS

13) NEW BUSINESS

14) TREASURER REPORT

15) EXECUTIVE DIRECTOR UPDATE

16) STANDING LMCD COMMITTEE UPDATE

- Aquatic Invasive Species
- Communications
- Finance
- Operations
- Save the Lake

17) ADJOURNMENT

Future Items for Review – Tentative

- Lake Use Vision and Policy Discussion Continuing Series
 - Deicing Eligibility Expansion Review

ITEM 6

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
6:00 P.M., April 13, 2022
Wayzata City Hall**

WORK SESSION

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

Members Present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ben Brandt, Mound; Mark Chase, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Jake Walesch, Deephaven. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Maisyn Prueter, Administrative Coordinator.

Members Absent: Dan Baasen, Wayzata; Bill Cook, Greenwood; Ann Hoelscher, Victoria, and Deborah Zorn, Shorewood.

Persons in Audience: Eric Evenson

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

Gilchrist provided training to the Board on State open meeting laws, conflict of interest and LMCD business policies. He provided clarification on items within those topics. Due to time limitations, the information will be continued at a future meeting.

The work session was adjourned at 7:02 p.m.

FORMAL MEETING

7:00pm

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; Ben Brandt, Mound; Mark Chase, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Jake Walesch, Deephaven. Also present: Troy Gilchrist, LMCD Legal Counsel; and Vickie Schleuning, Executive Director.

Members absent: Dan Baasen, Wayzata; Bill Cook, Greenwood; Ann Hoelscher, Victoria; and Deborah Zorn, Shorewood

Persons in Audience: Jay Soule, Jordan Hagel, Keenashanne Maher, Ashley Bergdoll, Brandon Audette, Sgt. Richard Waldon, David Engebretsen, Phillipa Hartley, and Yvonne Cheek.

4. APPROVAL OF AGENDA

MOTION: Kirkwood moved, Brandt seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 03/23/2022 LMCD Regular Board Meeting

MOTION: Brandt moved, Stone seconded to approve the 03/23/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (8), Abstained (2), (Kirkwood and Walesch). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Kroll moved, Stone seconded to approve the consent agenda as presented. Items so approved included: **7A**) Audit of Vouchers (04/01/2022 – 04/15/2022).

VOTE: Motion carried unanimously.

8. CONTRIBUTION RECOGNITION

None.

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

There were no public comments.

10. PUBLIC HEARING

A) Joint Variance Applications for 21100 Excelsior Blvd and 5600 Maple Heights Road, Greenwood, MN 55331, St. Albans Bay, Adjusted Dock Use Area (setbacks)

Schleuning presented a joint variance application from two properties and the potential actions the Board could choose to take. She stated that the variance would be to adjust the dock use area, primarily related to length and side setbacks. She stated that for the purpose of this application they will view the dock use area as one for the two properties. She provided background information on the properties, proposed boat storage units (BSUs), proposed setbacks, proposed length, and boat slip walkways. She provided additional background information on the properties and previous litigation.

She stated that property ownerships have changed, and it is the desire of all parties to resolve the current ongoing litigation with intent of providing a more desirable, safer docking arrangement for all three parties resulting in submission of these joint variance applications. She stated that LMCD staff has spent extensive time and involvement over the years, from litigation to complaints and consultation on these properties and commended the properties owners for proposing this shared use proposal in which all the neighbors have good use. She reviewed the proposed Site Plan and variance review criteria. She stated that based on the history of these sites, the request, and overall legal consequences based on the LMCD Code and case law, it is recommended that the LMCD continue to work with the parties to accomplish an agreed upon resolution to the litigation. She stated that staff recommends the Board approve with the minimum conditions noted in the staff report and presentation. She stated that no comments or feedback were received from agencies and noted that the City of Greenwood expressed support for the request.

Walesch asked if all the parties are in agreement that they would like this approved as presented.

Schleuning confirmed that all the parties are in agreement with this proposal. She acknowledged that it was a lot of work to get to that point.

Thomas opened the public hearing at 7:20 p.m. No comments were offered, and the public hearing was closed at 7:20 p.m.

Kirkwood asked if everyone understands the length of their boat must fall within those dimensions. It was confirmed to be so.

MOTION: Kroll moved, Brandt seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the joint variance applications from Keenashanne Maher, owners of 21100 Excelsior Blvd and Jordan Hagel, owners of 5600 Maple Heights Rd, for final action at the April 27, 2022 LMCD Board meeting.

VOTE: Motion carried unanimously.

Jordan Hagel, 5600 Maple Heights Road, asked if they can start on the dock or whether they need to wait for the official approval on April 27th.

Schleuning stated that technically the project would be approved at the next meeting, and they would not recommend work begin before that time.

Gilchrist stated that the motion tonight was to direct preparation of the documents of approval and the formal approval will occur at the next meeting.

Anderson asked if the Board would be okay with work beginning at this time, as it is an opportune time to complete that work. He stated that if the item were not ultimately approved, the dock could be removed.

Gilchrist stated that he would not give that advice, but if the applicant chose to follow that path, the liability would fall to them.

Schleuning stated that once the court documents and easements are finalized, those will also need to be submitted along with the updated Site Plan as part of the process.

Gilchrist confirmed that the LMCD would like the order to be integrated with this case to ensure there are no gaps in the future should the properties change hands again.

B) Petition for Quiet Water Area on Buoy Channel at Cedar Point West between Cooks Bay and Upper Lower Lake

Schleuning stated that a request for a quiet water area (QWA) has been received for the buoy channel at Cedar Point West between Cooks Bay and Upper Lower Lake and reviewed the actions the Board could take. She stated that LMCD received concerns regarding safety in the buoy channel and the City of Minnetrista submitted a letter expressing concerns related to the high traffic levels, large wakes, and safety concerns supporting the request for the QWA at the buoy channel. She stated that since receiving the request, staff has made several visits to the site and as observed traffic, violations, and potential safety concerns. She explained the criteria that are used to determine QWA. She stated that this area was previously reviewed in 2010, noting that the area is very shallow. She reviewed the different observations that were completed during 2021 from LMCD staff and Water Patrol. She also reviewed the summary of findings determined from the observations. She provided examples of where buoys could be placed in the channel. She stated that a public hearing is required for this consideration. She noted that several comments have been received from the public and those were provided to the Board. She stated that based on observations and communication with Hennepin County Sheriff Office Water Patrol, staff recommends a Code amendment to designate QWA for the Cedar Point West buoy channel at a distance to reduce safety risks of those using the channel in a manner that does not relocate or create a new problem. She stated that Hennepin County will provide two slow/minimum wake buoys for this channel, new or relocated.

Thomas opened the public hearing at 7:46 p.m.

Thomas noted that the office received about six emails all in support of a QWA designation and read aloud the names and addresses of those residents.

No additional comments were offered, and the public hearing was closed at 7:48 p.m.

Anderson stated that it has been well established that there are going to be two buoys placed for safety and therefore the question would be whether two or four buoys should be placed. He stated that he would prefer to leave Hennepin County to place the two additional buoys and support that action rather than placing additional burden on the LMCD.

MOTION: Anderson moved, Newell seconded to support the proposed action of Hennepin County Water Patrol to place two buoys in the channel as described and not designate the channel as a quiet waters area.

Further discussion: Kroll stated that everyone realizes that this is a problem area and boat traffic needs to be slowed. He stated that if Water Patrol is going to place buoys, he would wonder what the action before the LMCD would be to consider. He asked if the intention was to place four buoys rather than the two proposed.

Anderson stated that if four buoys are going to be placed, two would need to be supplied and placed by the LMCD.

Schleuning stated that the information from the Water Patrol came to her today. She stated that signage and brochures would still need to be done by LMCD regardless of this action. She confirmed that LMCD staff believe two buoys would be sufficient for this location.

Thomas clarified that staff would suggest declaration of this as a QWA. He stated that the buoy placement and quantity is then determined by Water Patrol.

Schleuning stated that if the buoys are not placed out far enough, it moves the issue down further to adjacent areas.

Kirkwood stated that he honors the point that there should be a wide enough area to create a safe traffic area. He stated that he would support two buoys.

Newell stated that the comparative provided by staff was the other Cedar Point in Woodland, which is in his neighborhood. He stated that from his perspective the buoys were very effective in controlling the problems that were occurring. He stated that people do slow down when they see the buoys. He agreed the area should be declared QWA and the Water Patrol should determine the locations of the buoys.

Walesch stated that from what he understands of the motion on the floor, Anderson moved to have two buoys that the County would fund and install and that the LMCD would designate this a QWA.

Anderson stated that if the Board designates this as a QWA there is a list of requirements that come into play at the burden of the LMCD. He stated that his motion did not include the designation of QWA as that would already occur from the placement of the buoys. He stated that the Water Patrol is already planning to complete these actions, therefore he did not feel a designation of QWA is needed by the Board.

Walesch asked if the Board needs to designate this as a QWA.

Gilchrist stated that the Board would not have to designate this as a QWA but there is a list within the Code of QWA which specifies a speed limit. He was unsure if there is a speed limit that applies to simple buoy placement. He noted that the QWA designation would provide additional enforcement opportunities that would not exist without that designation. He stated that the motion as stands would deny the request for designation of QWA.

Walesch stated that if the QWA is designated, would be recommendations have to be included as well.

Gilchrist stated that this would be a one sentence Code amendment that would add this as a QWA.

Walesch referenced the requirements to post flyers and distribute materials at launches.

Gilchrist confirmed that would not be required but is included in an LMCD policy. He stated that this would not create a new separate set of obligations, it would simply add this area to the list.

Schleuning stated that they do want to promote this as an area of reduced speed and therefore it would be added to promotional materials and to the website.

Newell stated that once the buoys are placed, whether it is declared this or that, Water Patrol can still pull over a boat.

Schleuning noted that it would receive more promotion if designated as a QWA and would provide additional tools for enforcement similar to the other areas.

Stone asked if Anderson would be against the QWA designation now that it has been further explained.

Anderson confirmed that he would still be against something that causes additional work of the LMCD and would prefer to leave the task to Water Patrol.

Kroll asked if it is in the bylaws that negative motions cannot be made. He stated that this would appear to say that the LMCD is going to nothing as Water Patrol would be putting the buoys up at no cost.

Thomas stated that another way around that would be to deny the request for QWA.

Gilchrist agreed that a negative motion can be confusing as the effectiveness would be to deny the QWA.

Anderson stated that he views the QWA as a nonissue because of the actions the Water Patrol will take on its own.

Walesch asked if there are areas with buoys that are not designated as QWA.

Schleuning was unsure but could not think of any, but will review.

Walesch stated that if someone is speeding through the area without the speed limit of QWA he would not believe there would be enforcement to fall upon.

Gilchrist referenced language within the rules and suspected that there would be something when designated by buoy there is a speed limit. He stated that the LMCD language is a little different and therefore without the QWA designation, any enforcement in that channel would need to come from the State rules rather than LMCD Code.

Kroll stated that he would have trouble supporting this action. He stated that Water Patrol is willing to place the buoys and therefore did not believe the motion makes sense.

Brandt asked the confidence that Water Patrol is going to place the buoys for this season. He stated that it is clear that there is a safety issue that needs to be addressed.

Schleuning stated that she heard officially today that buoys would be placed, but LMCD cannot require or force that to be done by others. She stated that adding the QWA designation would provide another tool for enforcement as that language is clear and enforceable. She stated that designating this as a QWA would not interfere with the placement of the buoys but would ensure the speed limit would be in place whether the buoys are placed or not and would be consistent with other locations on Lake Minnetonka.

Thomas stated that the LMCD has designated QWAs throughout the lake. He stated that one of Anderson's concerns is payment for the buoys and asked how the other QWA buoys were funded.

Schleuning stated that Hennepin County stated they will pay for and bring the buoys out and take them in similar to other Quiet Water Areas. She estimated a number of QWAs on the lake.

VOTE: Ayes (1) (Anderson), Nays (9). Motion failed.

Thomas invited the representative from Water Patrol to make comment.

The representative declined to comment.

Kirkwood asked if it would be beneficial to table the QWA request until there is certainty on the safety determination by the Water Patrol.

Schleuning did not believe there was a reason to wait as the actions are complementary.

Kirkwood stated that if the QWA were approved, the LMCD would still support the two buoys funded by Hennepin County but there is no other obligation or financial cost to the LMCD. He stated that it would add the channel to the list of QWA and provide an enforcement tool for the Water Patrol.

Schleuning identified the current QWAs and noted that they are along similar water channels.

Walesch stated that from what he understands, the County and Water Patrol are moving forward to order and place buoys in the channel irrespective of what the LMCD decides. He stated that he would like to know more information about QWAs and would like to compare enforcement of QWA areas and areas marked with buoys. He stated that he would also like feedback on whether the Water Patrol would like the QWA designation.

MOTION: Walesch moved, Stone seconded to continue this discussion to the April 27, 2022 Board meeting for additional review and time to address concerns.

Further discussion: Walesch commented that it seems the buoys will be placed no matter the decision of the Board and therefore he would like more information on what the QWA designation would mean.

VOTE: Motion carried unanimously. (Anderson abstained)

Kroll stated that he always assumed that you cannot speed when you see a slow wake buoy, so he would also be interested to know the difference.

Thomas stated that he would be more interested in knowing what the QWA designation would or would not do, rather than knowing about funding of buoys. He asked if there is something to be gained or lost with the designation.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

A) Hennepin County Sheriff's Office Funding Request for Dedicated Water Patrol Services for 2022

Newell stated that Save the Lake discussed this the previous night and the Committee unanimously supports the request and thanks the Sheriff's Office for the work they complete.

Schleuning stated that \$78,250 was raised through Save the Lake contributions the previous year and was dedicated for this purpose. The remainder of the funding will come from reserves or continue to be raised this year.

MOTION: Anderson moved, Kroll seconded to approve the Hennepin County Sheriff's Office funding request in the amount of \$84,000 from LMCD Save the Lake funds to provide dedicated patrol services to Lake Minnetonka during peak boating times and authorize staff to enter into and execute an agreement for these law enforcement and boater safety services with the same contract terms used the previous year.

Further discussion: Schleuning clarified that it was not LMCD staff that expressed concerns with the contract language. It was the legal representation from Hennepin County that wanted changes to the contract and staff were attempting to work with all parties.

Thomas stated that the Board does not need to get into contract language and should leave that to staff and legal counsel.

Gilchrist stated that the Board could take the proposed approach, but if the attorney representing the County believes the language needs to be changed, this would setup a take it or leave it situation. He stated that typically they prefer a cooperative approach with governmental units.

Kroll stated that he misunderstood the motion and withdrew his second on the motion.

Anderson stated that he does not want to pay attorney fees for something that may not be needed but recognize that negotiation may be needed.

Kroll suggested that the motion be amended to state based on last year's contract but providing flexibility to staff.

Walesch offered a friendly amendment that the contract be substantially similar to that of the previous year.

Anderson accepted the amendment.

Kroll reinstated his second and the friendly amendment.

MOTION: Anderson moved, Kroll seconded to approve the Hennepin County Sheriff's Office funding request in the amount of \$84,000 from LMCD Save the Lake funds to provide dedicated patrol services to Lake Minnetonka during peak boating times and authorize staff to enter into and execute an agreement for these law enforcement and boater safety services with a substantially similar contract terms used the previous year.

VOTE: Ayes (8), Nay (1) (Thomas). Motion carried.

14. TREASURER REPORT

Anderson referenced his previous suggestion for quarterly reporting but noted that he has determined that would be cost prohibitive. He asked for details on why the Board is using a bank in North Dakota.

Walesch noted that bank is out of North Dakota but has branches in Minnesota.

15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- A new employee will start on April 25th
- New website information regarding licenses and permits, and low water information

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt had nothing new to report.

Communications: No report.

Finance: Anderson reported that he requested clarification on the charges from legal consulting and provided examples of legal costs for the different recent applications the Board has considered. He asked if LMCD could charge applicants for the legal time spent reviewing their application.

Gilchrist stated that it is not uncommon in the zoning world to have a required escrow for a permit submittal with the understanding that the City incurs costs to review the application. He noted that the escrow is used to reimburse the City for legal and engineering fees related to the review of the application. He believed it would be appropriate to consider that but noted that the last time the LMCD considered that, it triggered a backlash.

Operations: No report.

Save the Lake: Newell commented that the group is finishing thank yous for last year and has a goal of raising \$90,000 for this year. He stated that \$5,000 has been allocated to repair/replace buoys lights. He also advised of an upcoming boater education class.

17. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:35 p.m.

Gregg Thomas, Chair

Dan Baasen, Secretary

3:51 PM

04/20/22

Lake Minnetonka Conservation District
Check Detail
 April 16 - 30, 2022

ITEM 7A

Date	Num	Name	Memo	Account	Class	Paid Amount
04/30/2022	EFT-22-43	ADP Service Fee		Alerus Checking		
			Payroll 4/16/22 - 4/30/22	4180M10 · Professional Services - Admin.	Admin.	-84.55
TOTAL						-84.55
04/30/2022	EFT-22-44	ADP		Alerus Checking		
			Salaries - Admin	4020M10 · Salaries-002 - Admin	Admin.	-8,034.93
			P.E.R.A.	2020 · Payroll Liabilities -	Admin.	1,119.49
			ER PERA	4022M10 · ER PERA - Admin	Admin.	-599.73
			ER/FICA Medicare - Admin	4021M10 · ER Share of Admin FICA/Medicare	Admin.	-611.74
			Long Term Disability	2020-LT · Payroll Liabilities - UNUM	Admin.	81.16
TOTAL						-8,045.75
04/20/2022	EFT-22-45	SelectAccount Group Service Fee		Alerus Checking		
			HSA Administrative fee for April 2022	4380M10 · Employee Benefits - Admin.	Admin.	-1.60
TOTAL						-1.60
04/20/2022	EFT-22-46	Medica		Alerus Checking		
			March Health Insurance (Schleuning)	4380M10 · Employee Benefits - Admin.	Admin.	-721.50
			March Health Insurance (Duncan)	4380M10 · Employee Benefits - Admin.	Admin.	-721.50
			Credit Cook March 2022	4380M10 · Employee Benefits - Admin.	Admin.	721.50
TOTAL						-721.50
04/20/2022	EFT-22-47	P.E.R.A		Alerus Checking		
			Payroll 4/16/22 - 4/30/22	2020 · Payroll Liabilities -	Admin.	-1,119.49
TOTAL						-1,119.49
04/28/2022	22113	ECM Publishers, Inc.		Alerus Checking		
04/02/2022	Inv.#885238		Laker PH Quiet Water Cedar Pt W	4110M10 · Public Info Legal Fees- Admin.	Admin.	-23.13
TOTAL						-23.13
04/28/2022	22114	LMCC		Alerus Checking		
04/13/2022	Inv.#1476		VOD Services for Meeting 4/13/22	4182M10 · Media (Cable/Internet) - Admin.	Admin.	-100.00
TOTAL						-100.00

3:51 PM

04/20/22

Lake Minnetonka Conservation District
Check Detail
 April 16 - 30, 2022

Date	Num	Name	Memo	Account	Class	Paid Amount
04/28/2022	22115	Minnesota Trophies		Alerus Checking		
04/07/2022	Inv.#32504		Name Plates for new board member and staff	4230M10 · Meeting Exp. - Admin.	Admin.	-117.69
TOTAL						-117.69
04/28/2022	22116	TimeSaver Off Site Secretarial, Inc.		Alerus Checking		
03/30/2022	Inv.#M27206		Board Minutes 3/23/22	4230M10 · Meeting Exp. - Admin.	Admin.	-346.38
TOTAL						-346.38
04/29/2022	22117	City of Mound		Alerus Checking		
		City of Mound		2090 · Accounts Payable		-1,691.20
TOTAL						-1,691.20



ITEM 7B

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: April 27, 2022 (Prepared April 22, 2022)

TO: LMCD Board of Directors

FROM: Vickie Schleuning, Executive Director

SUBJECT: Joint Variance Applications for 21100 Excelsior Blvd and 5600 Maple Heights Road, Greenwood, MN 55331, St. Albans Bay, Adjusted Dock Use Area (Setbacks, Lengths)

ACTION

Board approval of Findings of Fact and Order for a joint variance for an adjusted dock use area (side setbacks and length) for two parcels: 21100 Excelsior Boulevard and 5600 Maple Heights Road on St. Albans Bay in the City of Greenwood MN 55331.

BACKGROUND

The LMCD held a public hearing on April 13, 2022 to consider the joint application of Applicants, Keenashanne Maher, owner of 21100 Excelsior Boulevard and Jordan Hagel, owner of 5600 Maple Heights Road, for an adjusted dock use area for side setbacks and dock length. An easement is associated with 5600 Maple Heights Road. The easement holder is Ashley Bergdoll and Brandon Audette, property owners of 21080 Excelsior Boulevard.

BUDGET

N/A

STRATEGIC PRIORITIES

<input type="checkbox"/> Operational Effectiveness	<input type="checkbox"/> Clear & Timely Communications	<input type="checkbox"/> Effective Governance	<input checked="" type="checkbox"/> Lake Protection	<input type="checkbox"/> Other
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ATTACHMENT

- Draft Findings of Fact and Order
- Proposed Site Plan
- April 13, 2022 Presentation
- April 13, 2022 Public Hearing Memo (without attachments)

Type: Variances for Adjusted Dock Use Area and Length and Side Setbacks
Date: April 27, 2022
Applicants: Keenashanne Maher; and, Jordan Hagel
PIDs: 35-117-23-11-0058
35-117-23-11-0037; and, 35-117-23-11-0024
Addresses: 21100 Excelsior Blvd
Greenwood, MN 55331; 5600 Maple Heights Rd
Greenwood, MN 55331; and, 21080 Excelsior Blvd
Greenwood, MN 55331

**LAKE MINNETONKA CONSERVATION DISTRICT
HENNEPIN COUNTY, MINNESOTA**

IN RE:

Joint Application of Keenashanne Maher and Jordan Hagel for Variances for Adjusted Dock Use Area, Length and Side Setbacks for the properties located at 21100 Excelsior Blvd and 5600 Maple Heights Rd, Greenwood, MN

**FINDINGS OF FACT
AND ORDER**

The Lake Minnetonka Conservation District (“LMCD”) received a combined application from Keenashanne Maher and Jordan Hagel (collectively, the “Applicants”) for variances from the length and setback requirements to allow them to install docks within the required setbacks from the side site lines. This application applies to the properties located at 21100 Excelsior Blvd (“21100 Property”), 5600 Maple Heights Rd (“5600 Property”), and the long-term easement located at 21080 Excelsior Blvd (“21080 Property”) which shares riparian rights with the 5600 Property, all within Greenwood, Minnesota and which are legally described in the attached Exhibit A (collectively, the “Subject Properties”). The LMCD Board of Directors (“Board”) held a public hearing, after due notice having been provided, on the requested variances on April 13, 2022. Based on the proceedings and the record of this matter, the Board hereby makes the following Findings of Fact and Order:

FINDINGS OF FACT

The Subject Properties are located in the City of Minnetonka and are on St. Albans Bay, which is part of Lake Minnetonka (“Lake”). The unusual configuration of the 21100 Property and 5600 Property results in the side site lines of their dock use areas to converge, narrowing their respective dock use areas. The Applicants are collectively seeking side setback and length variances to accommodate docks and boat storage to allow all Applicants to have reasonable use of the Lake.

1. LMCD staff has spent a considerable amount of time discussing docking configurations and watercraft storage arrangements in and around the site with the Applicants. The current dock use area is prescribed by a court order and variance, both issued in 2007. Litigation has since arisen over some lakeshore property boundaries that could impact the dock use area. The ownership of the properties has recently changed and all parties wish to resolve the current litigation. To that end, the owners of the Subject Properties have now come to an agreement regarding docking arrangements on the Subject Properties and the Applicants have submitted joint variance applications for the proposed layout. The intent of the variances granted herein is to facilitate the agreed upon resolution in a manner consistent with the court’s decision and existing variance.
2. The Applicants are proposing three boat storage units (“BSUs”): one for the 21080 Property (identified as “BSU 1”); one for the 5600 Property (identified as “BSU 2”) (BSU 1 and BSU 2 in a combined area measuring 21.5 feet wide with a length of 32 feet long for BSU 1 and 30 feet long for BSU 2); and, one for the 21100 Property measuring 10 feet wide by 24 feet long (identified as “BSU 3”).
3. The Subject Properties have approximately 53.7 feet of 929.4 OHW shoreline. The 21100 Property has approximately 26 feet of shoreline and the 5600 Property has approximately 27.7 feet of shoreline according to the submitted site plan. However, the measurements for each property may change based on current litigation and associated court orders.
4. The proposed dock structure would be set back approximately one foot from the southern side site line of the Subject Properties and approximately zero feet from the northern side site line of the Subject Properties. Section 2-3.03 of the LMCD Code of Ordinances (“Code”) requires setbacks of 5 feet for the individual sites.
5. Any canopy at the proposed dock structure must have a 20-foot setback as required by the Code.
6. The proposed dock structure exceeds the maximum length allowed by Code, but is less than the 80 feet allowed by the current court order. Code Section 2-3.03 permits a maximum length to allow access to four feet of water depth as measured from 929.4 feet OHW, but not more than 60 feet.
7. No comments were received from the Minnesota DNR or the Minnehaha Creek Watershed District. The City of Greenwood submitted a comment generally in favor of the request. No

public comments were received prior to the hearing.

8. The unusual configuration of the extended lot lines causes a conflict among the Applicants for the same area of the Lake for docking and other structures and for reasonable access to the Lake.
9. Based on amount of shoreline, parcel age, and other property characteristics, the number of watercraft proposed does not violate the maximum watercraft density as described in Sections 2-4.05 and 2-4.09 of the Code.
10. The Applicants propose to install a dock structure as shown on the dock plan attached hereto as Exhibit B (“Dock Plan”).
11. Additional information regarding this matter is provided in the LMCD staff report and presentation presented at the April 13, 2022 meeting (collectively, the “Staff Report”). The Staff Report is incorporated herein by reference, except that the approvals and conditions contained in this document shall be controlling to the extent there are any inconsistencies.
12. Section 6-5.01, Subd. 2 of the Code, allows for the granting of variances where there is any unusual configuration of shoreline or extended lot lines, which causes a conflict between the owners of two or more adjacent or nearby sites as the use of the same area of the Lake for docks, mooring areas or other structures or for reasonable access thereto.
13. Section 6-5.01, Subd. 6 of the Code allows the granting of a variance if the Board determines practical difficulties exists and that granting the variance with whatever conditions it deems are necessary does not adversely affect the purposes of the Code, the public health, safety, and welfare, and reasonable access to or use of the Lake by the public or riparian owners.
14. The term “practical difficulties” is defined in Section 1-3.01, Subd. 76 of the Code as meaning “one or more unique conditions of a property that prevent the property owner from using the Lake in a reasonable manner permitted by the Code and that serve as a basis for the property owner to request a variance from the strict application of the provisions of the Code. Practical difficulties only exist with respect to a particular property if the conditions preventing the proposed reasonable use of the property are unique to the property, were not created by the property owner, and are not based solely on economic considerations.”
15. Unusual configurations of shorelines and converging side site lines are challenges for a number of properties on the Lake. Often in such cases, as is true here, the conditions do not reasonably allow a dock to be installed that strictly complies with the requirements of the Code.
16. Granting the requested variances will not alter the essential character of the area or adversely affect the purposes of the Code as dock structures are common and the use of the proposed dock structure furthers the purposes of the Code by promoting reasonable access to the Lake. The requested variance is also not contrary to the public health, safety, or welfare in that the dock does not pose a safety or navigation problem on the Lake; and appears to provide safer

user and navigation than the prior configuration. The proposed dock structure is consistent in length with other docks in the area and does not interfere with the navigation of watercraft to or from the neighboring docks.

17. The Applicants' proposed location of the dock structure to facilitate access to the Lake is a reasonable use of the Subject Properties.
18. Practical difficulties exist under the facts of this case that support the Board exercising its authority under Section 6-5.01 of the Code to grant the requested length and setback variances for the Subject Properties.

ORDER

ON THE BASIS OF THE FOREGOING AND THE RECORD OF THIS MATTER, IT IS ORDERED by the Board as follows:

1. Side Site Line Variance. Side site line and authorized dock use area variances are hereby approved to allow the installation of a dock structure with the following setbacks:
 - (a) For the southern side site line of the 21100 Property setback one foot; and
 - (b) For the northern side site line of the 5600 Property setback zero feet.All dock structures shall be installed and maintained in the locations as shown on the Dock Plan attached hereto as Exhibit B.
2. Dock Length Variance. A dock length and authorized dock use area variance no greater than 62.5 feet from the southern shoreline and 62 feet on the northern shoreline is hereby approved for to allow the installation of a dock as shown on the Dock Plan attached hereto as Exhibit B.
3. Dock Length Extension. No extension of the length of the dock structure will be granted during periods of low water.
4. Boat Storage Units. Three boat storage units are approved for the Subject Properties to be used solely by persons who reside at one of the three properties as follows (listed from south to north);
 - (a) BSU 1 for the 21080 Property with dock, watercraft, and other structures not to exceed distance from shore as indicated on the Dock Plan attached hereto as Exhibit B;
 - (b) BSU 2 for the 5600 Property with dock, watercraft, and other structures not to exceed distance from shore as indicated on the Dock Plan attached hereto as Exhibit B; and,
 - (c) BSU 3 for the 21100 Property with dock, watercraft, and other structures not to exceed distance from shore as indicated on the Dock Plan attached hereto as Exhibit B.

5. Boat Canopies. No canopies are allowed.
6. Site Plan. All court orders and other legal documents affecting easements or property lines of the Subject Properties shall be submitted to LMCD within 30 days of the order. An updated Site Plan shall be submitted to the LMCD Executive Director.
7. Easement Termination. If the long-term easement agreement for the 21080 Property is terminated, an application for a new variance must be submitted within 30 days of the termination to adjust the authorized dock use area.
8. Conditions. The variances granted in this Order are subject to compliance with all of the following conditions:
 - (a) All watercraft must be stored within the dimensions of the BSUs: BSU 1 and BSU 2 in a combined area measuring 21.5 feet wide with a length of 32 feet for BSU 1 and 30 feet for BSU 2; and, BSU 3 measuring 10 feet wide by 24 feet long. Prohibited extensions include any portion of the watercraft, including all attached equipment in its stored position, that extend beyond the ends of the boat slip.
 - (b) The angled-adjusted section of the dock at the lakeward end of the north side of BSU 3 shall be removed. The angled-adjusted section of dock on the north side of BSU 2 shall remain so long it does not constitute a safety hazard.
 - (c) Any structures placed as part of these variances shall be maintained in good condition and shall promptly be removed, together with any watercraft stored on them, if this variance is ever revoked by action of the Board or if it is rendered null and void.
 - (d) This Order shall be rendered null and void in event any of the Subject Properties are subdivided.
 - (e) If any of the Subject Properties are combined with another property or otherwise altered, the Applicants shall request a review of the variance by the LMCD Executive Director to determine if a new or amended variance is required. If the Executive Director determines that a new or amended variance is required, the Applicants shall submit an application for the variance to the LMCD within forty-five (45) days of the determination or bring the Subject Properties into conformance with the Code without reliance on this variance within the same period.
 - (f) This Order grants no vested rights to the use of the Lake. Use of the Lake shall at all times remain subject to regulation by the LMCD to ensure the public of reasonable and equitable access to the Lake.
 - (g) Utilization of the Lake pursuant to this Order constitutes, and shall be deemed, acceptance of, and agreement to, the terms and conditions of this variance without exception, qualification, or reservation.

BY ORDER OF THE BOARD OF DIRECTORS of the Lake Minnetonka Conservation
District this 27th day of April 2022.

Gregg Thomas, Chair

ATTEST:

Dan Baasen, Secretary

EXHIBIT A
Legal Description of Subject Properties

21100 Property

Tract A, Registered Land Survey No. 1004, Hennepin County, Minnesota

5600 Property

, Hennepin County, Minnesota

21080 Property

, Hennepin County, Minnesota

DRAFT

EXHIBIT B
Dock Plan

[attached hereto]

DRAFT



ITEM 7B Attachment 4

To preserve and enhance the "Lake Minnetonka experience"

21100 EXCELSIOR BLVD & 5600 MAPLE HEIGHTS RD ST. ALBANS BAY, GREENWOOD JOINT VARIANCE APPLICATION PUBLIC HEARING

**Lake Minnetonka Conservation District
Board Meeting
April 13, 2022**

Presented by: Vickie Schleuning, Executive Director

OVERVIEW

- Action
- Application Summary
- Background
- Public Hearing
- Recommendation
- Q & A

POSSIBLE ACTIONS

- Consideration of Variance
- Options
 - **Approve**
 - Direct staff and legal counsel to prepare Findings of Fact & Order for approval at the April 27, 2022 Board Meeting; or
 - **Continue**
 - Continue public hearing at the April 27, 2022 Board Meeting for additional review and time to address concerns; or
 - **Deny**
 - Direct legal counsel to draft Findings of Fact and Order for denial based on specific reasons with consideration at the April 27, 2022 Board Meeting

APPLICATION SUMMARY

- Applicants submitted joint application for variance to adjust the dock use area (side setbacks, length) of the following two parcels:
 - 21100 Excelsior Blvd (Keenashanne Maher)
 - 5600 Maple Heights Road (Jordan Hagel)
 - Long-Term Easement Holder: 21080 Excelsior Blvd (Ashley Bergdoll, Brandon Audette)
- Combined sites have 53.7 feet of 929.4 OHW shoreline
- Boat Storage Units (BSUs): Three (3) BSUs across two sites
 - One (1) measuring 10 feet wide by 24 feet long; and
 - Two (2) located in an area measuring 21.5 feet wide by 33 feet long
 - Proposed cover less than 30 inches in material height

APPLICATION SUMMARY CONT...

- Side Setbacks: Proposed dock structure would be set back approximately zero (0) feet from the northern site line of 5600 Maple Heights Road and approximately one (1) foot from the southern side site line of 21100 Excelsior Blvd.
 - No interior setbacks
- Length: Dock structure extends approximately 62.5 feet to 64.8 feet, southern to northern sides respectively, from the 929.4 feet OHW
- Boat slips walkways 2.5 feet wide for the double boat slip and 3.5 feet main and other walkway

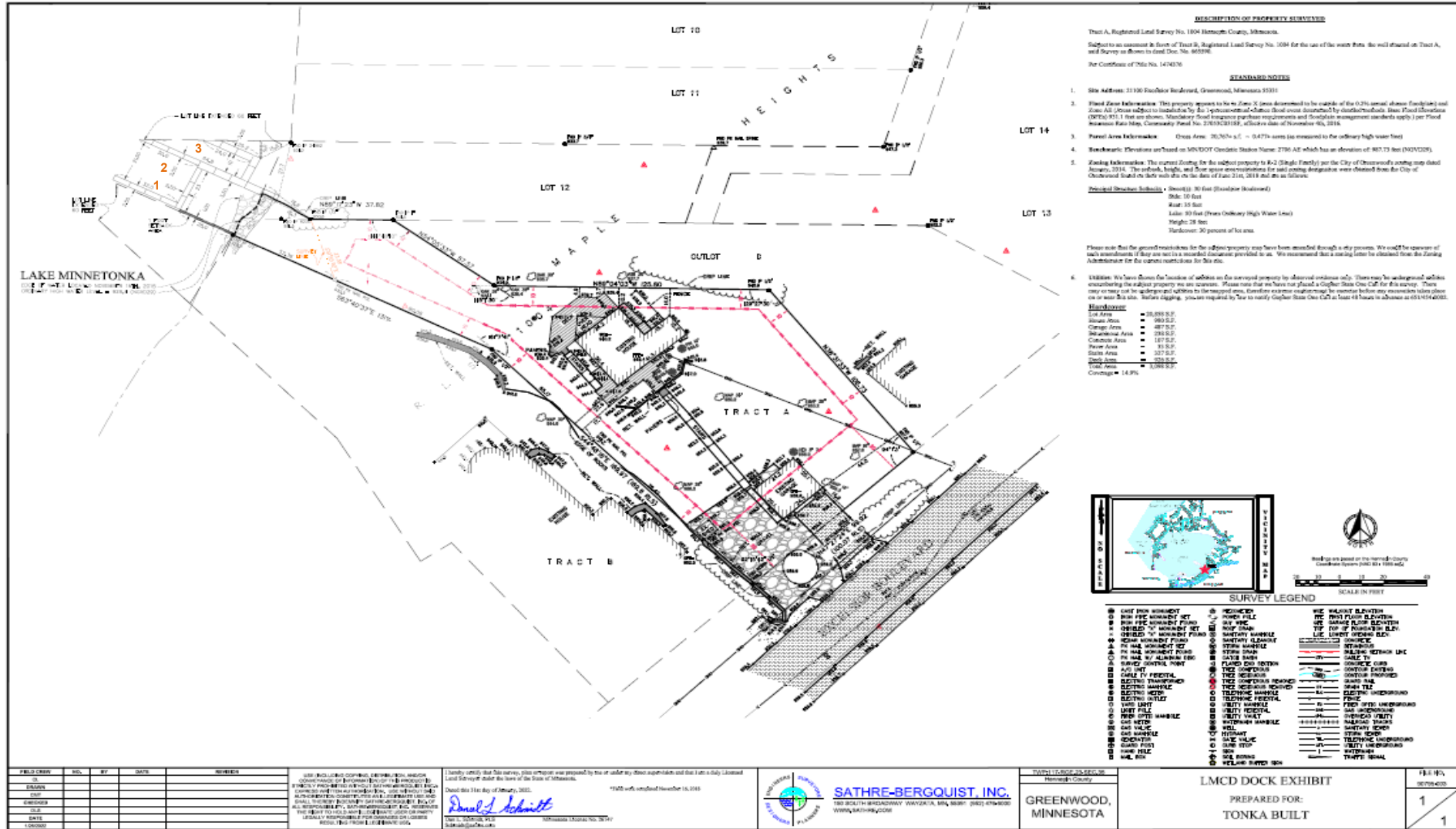
21100 EXCELSIOR BLVD & 5600 MAPLE HEIGHTS RD



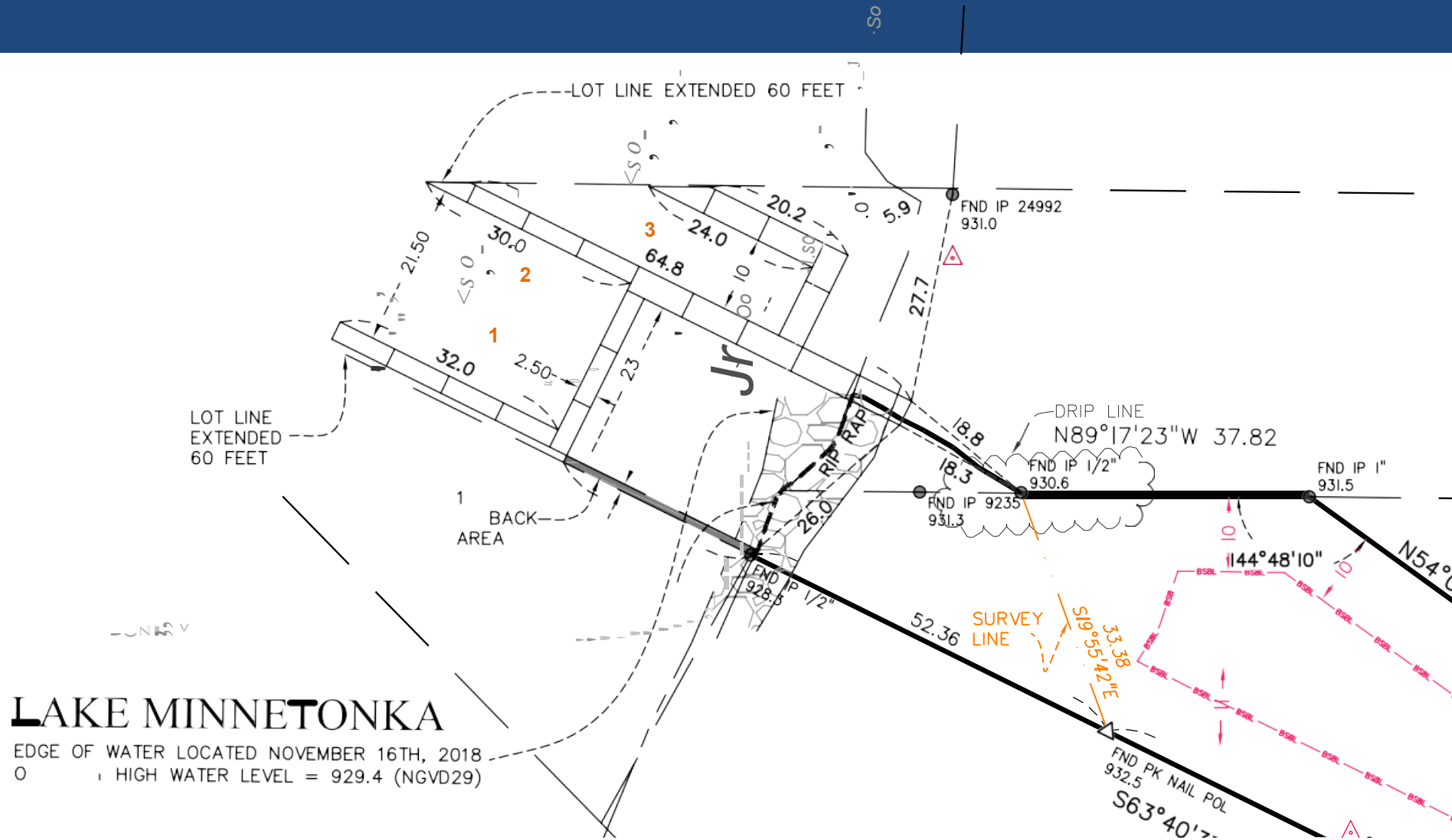
BACKGROUND

- Current dock use area prescribed by 2007 court order and variance.
- 1 foot to 0 setback on southern side, 0 setback on northern side, 1 foot internal setbacks
- 28 foot to 80 foot maximum length, southern to northern sides respectively
- Long-term easement holder 21080 Maple Heights Rd not lakeshore property owner, shared riparian rights with 5600 Maple Heights Rd.
- In past couple years, lakeshore property boundaries in dispute and resulting litigation, potentially impacting the internal extended side site line.
- Ownership of properties changed (in 2018, 2021, 2021)
- All parties wish to resolve current ongoing litigation with intent of providing a more desirable, safer docking arrangement for all three parties resulting in submission of these joint variance applications.
- LMCD extensive time and involvement over years, from litigation to complaints to consultation

PROPOSED SITE PLAN



PROPOSED SITE PLAN (ZOOMED IN)



AERIAL OVERLAY



VARIANCE CRITERIA

The following items need to be considered when considering granting a variance:

1. Has the Applicant sufficiently demonstrated practical difficulties exist such that each of following are true?
 - a. Strict application of code prohibits property owner from using Lake in reasonable manner that is otherwise permitted by the code.
 - b. Granting a variance is within spirit and intent of the Code.
 - c. Plight of property owner is due to circumstances:
 - (1)Unique to property;
 - (2)Not created by property owner; and
 - (3)Not based solely on economic considerations.
 - d. Granting a variance does not alter essential character of the area.
2. Is the Applicant proposing a use not allowed under the code?
3. Would a variance, if granted and with conditions imposed, adversely affect:
 - a. Purpose of Code?
 - b. Public health, safety, and welfare?
 - c. Reasonable access to or use of the Lake by public or riparian owners?

VARIANCE CRITERIA REVIEW

- Based on history of these sites, the request, and overall legal consequences based on the LMCD code and case law, it is recommended that the LMCD continue to work with the parties to accomplish an agreed upon resolution to the litigation.
- The situation is unique and decision will unlikely create precedent.
- Riparian owners have a right to use the lake in front of their properties, subject to reasonable regulation by the LMCD. The review also considers the impact to other lake users and the health of the lake.
- In general, the structures and watercraft storage proposed allow collectively reasonable access to the lake, without overall creating a greater impact to the lake than previously approved by the court order and variance. The reconfiguration appears to provide safer use and navigation than the prior configuration.

CODE SECTIONS HIGHLIGHT

- **Section 2-3.03. Determination of Authorized Dock Use Area**
- Subd. 2. Length. The length of the authorized dock use area is measured on a line parallel to the site side lines as extended into the Lake and is limited as provided in this subdivision.
 - (d) Existing Site – February 5, 1970. The authorized dock use area for a site in existence on February 5, 1970 shall be determined as follows:
 - (1) Over 40 feet of Frontage. If the site has a Lake frontage of 40 feet or more, but less than 60 feet, the authorized dock use area extends into the Lake a distance of 60 feet.
 - (2) Under 40 feet of Frontage. If the site has a Lake frontage of less than 40 feet, the authorized dock use area extends into the Lake to the point necessary to reach a water depth of four feet, measured from 929.4 NGVD, except that no such dock shall be located or extended more than 60 feet into the Lake. Side setbacks requirements shall be observed unless the Board issues a setback variance under Section 6-5.01.

CODE SECTIONS HIGHLIGHT

Section 2-3.03. Determination of Authorized Dock Use Area

- Subd. 3. Width. The width of an authorized dock use area is determined in accordance with the provisions of this subdivision.

For that portion of the length of the authorized dock use area which extends from the shore:	The setback from the side site line as extended in the Lake shall be:
Zero to 50 feet	10 feet
50 to 100 feet	15 feet
100 to 200 feet	20 feet

- (c) Sites with 50 feet of Width or Less – February 2, 1970. If a site in existence on February 2, 1970 has an authorized dock use area with a width of 50 feet or less, the authorized dock use area may be expanded to a side setback limitation of five feet, provided that such setback in no way impairs access to neighboring docks.
- (d) Canopies. Canopies must be setback from side site lines a minimum distance of 20 feet.

RECOMMENDATIONS

LMCD staff recommends Board approval with the minimum following conditions, noting it may change based on information received as part of the public hearing process. *Items have been offered by Applicants.

1. Setbacks as indicated by the variance request and plan. Even though the dock use area is moderately expanded beyond the previously prescribed requirements with the watercraft navigation extending beyond the extended side site lines, the configuration does not appear to create navigation hazards or obstruct access to adjacent sites. The adjacent site owner to the north has not expressed any objection at this point.
2. The length of the docks as indicated by the variance request site plan; the maximum is less than the prior 80 feet.
3. No canopies, as described per LMCD code, are allowed.
4. Consider removal of the triangle pieces of dock section.

RECOMMENDATIONS CONT...

5. *The BSUs must be used as indicated from south to north and solely by persons who reside at one of the three properties to include:
 - BSU 1- 5600 Maple Heights Rd easement (21080 Maple Height Rd)
 - BSU2- 5600 Maple Height Rd
 - BSU3- 21100 Excelsior Blvd
6. *Submittal to LMCD a new site indicating court ruling for property boundaries, final court orders and easements.
7. If the easement agreement is discontinued, a new variance application must be submitted to adjust the authorized dock use area.
8. No length extensions granted during low water.
9. Structures and watercraft stored in the dock use area shall be in strict conformance to the site plan.
10. Other standard variance conditions are applied.

AGENCY REVIEW / PUBLIC COMMENTS

- Public Agencies Comments
 - Agency Review Request Comments due April 7, 2022
 - No agency comments received
 - City of Greenwood generally in favor of application request
- No Public Comments Received prior to meeting
 - Public Hearing to be held

PUBLIC HEARING

- Legal requirement with established process
- Provides opportunity for interested individuals to present their views to the Board for consideration
- Important part of reviewing impact of a project
- Only items under the LMCD Code and Board authority may be considered as part of any approval or denial decision
- Legal Notification
 - Published in March 17, 2022 edition of official newspaper Sun Sailor and March 19, 2022 edition of Laker Pioneer
 - Mailed to residents and owners of property within 350 feet of site on March 28, 2022.
 - Posted online



To preserve and enhance the "Lake Minnetonka experience"

QUESTIONS

THANK YOU



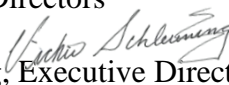
ITEM 7B Attachment 5

LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

DATE: April 13, 2022 (Prepared April 8, 2022)

TO: LMCD Board of Directors

FROM: Vickie Schleuning,  Executive Director

SUBJECT: Joint Variance Requests for Adjusted Dock Use Area and Setbacks for 21100 Excelsior Blvd, Greenwood MN 55331 and 5600 Maple Heights Rd, Greenwood MN 55331

ACTION

Board consideration of joint variance requests for an adjusted dock use area, side setbacks, and length for two parcels: 21100 Excelsior Blvd, Greenwood MN 55331 and 5600 Maple Heights Rd, Greenwood MN 55331 on St. Albans Bay, and consideration of public input as part of the public hearing process.

The following motions are offered depending on whether the Board wishes to approve or deny the request:

Approval

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order approving the joint variance applications from Keenashanne Maher, owner of 21100 Excelsior Blvd and Jordan Hagel, owner of 5600 Maple Heights Rd for final action at the April 27, 2022 LMCD Board meeting <subject to the following conditions>...

Continuation

I make a motion to continue the public hearing for the variance application from Keenashanne Maher, owner of 21100 Excelsior Blvd and Jordan Hagel, owner of 5600 Maple Heights Rd for final action at the April 27, 2022 LMCD Board meeting in order to...

Denial

I make a motion to direct LMCD legal counsel to prepare Findings of Fact and Order denying the variance application from Keenashanne Maher, owner of 21100 Excelsior Blvd and Jordan Hagel, owner of 5600 Maple Heights Rd for final action at the April 27, 2022 LMCD Board meeting based on...

APPLICATION SUMMARY

The joint Applicants, Keenashanne Maher, owner of 21100 Excelsior Blvd and Jordan Hagel, owner of 5600 Maple Heights Rd for final action at the April 27, 2022 LMCD Board meeting (collectively, "Applicants") submitted a variance application their respective properties located on St. Albans Bay (collectively, "Site") for an adjusted dock use area and side setbacks.

The Applicants have submitted joint applications for variances to adjust the dock use areas of the following three parcels with shoreline (929.4-foot elevation contour / OHW) measurements as shown:

Joint Variance Requests on St. Albans Bay, Greenwood
LMCD Board Meeting
April 13, 2022

- The combined sites have 53.7 feet of 929.4 OHW shoreline.
 - 21100 Excelsior Blvd., 26 feet of OHW shoreline, owner Keenashanne Maher
 - 5600 Maple Heights Rd., 27.7 feet of OHW shoreline, owner Jordan Hagel
 - Easement Holder: 21080 Excelsior Blvd (Ashley Bergdoll, Brandon Audette)

Over the years, LMCD staff have spent a considerable amount of time discussing dock configurations and watercraft storage arrangements for the two sites with the two joint variance Applicants and the existing easement holder. The current dock use area is prescribed by a previous court order and variance (approximately 2007). While the easement holder does not have lakeshore property, the shared riparian rights are being considered as part of the joint variance applications.

In the past couple of years, some lakeshore property boundaries that could impact the dock use area have been in dispute resulting in litigation. The ownership of the properties have changed, and all parties wish to resolve the current ongoing litigation with their intention of providing a more desirable, safer docking arrangement for all three parties. Therefore, the two lakeshore property owners have submitted joint variance applications for consideration.

Watercraft Storage

The Applicants are proposing three boat storage units (BSUs) across the two sites. The BSUs measure approximately 10.75 feet wide by 32 feet long, 10.75 feet wide by 30 feet long, and 10 feet wide by 24 feet long.

Generally, the number of watercraft proposed for each parcel does not appear to violate maximum watercraft density for each parcel as described in LMCD Code Sections 2-4.05 and 2-4.09

Setbacks

The proposed dock structures would be setback approximately 1 foot from the southern site line for 12100 Excelsior Blvd and 0 feet from the northern site line for 5600 Maple Heights Rd. from adjacent properties. The internal setback for these properties is zero. These proposed setbacks require a variance from LMCD Code Section 2-3.03. These are similar to the exterior side setbacks previously prescribed by a court order and LMCD variance.

A covering with materials of less than 30 inches in vertical height is proposed over the 2 BSUs at 12100 Excelsior Blvd. If the material was greater in height, it would be considered a canopy, which requires a typical 20-foot setback required by LMCD Code.

Length

The proposed dock structure is 62.5 feet on the southern side and 64.8 feet on the northern side. For the combined properties, the LMCD Code Section 2-3.03 permits a maximum length of 60 feet as measured from 929.4 feet OHW. The previously prescribed dock length for these sites varied from 28 feet for 21100 Excelsior Blvd to 80 feet for 5600 Maple Heights. The Applicants are requesting a length variance to 65 feet.

VARIANCE STANDARDS

The following items need to be considered when considering granting a variance:

1. Has the Applicant sufficiently demonstrated practical difficulties exist such that each of following are true?
 - a. Strict application of code prohibits property owner from using Lake in reasonable manner that is otherwise permitted by the code.
 - b. Granting a variance is within spirit and intent of the Code.
 - c. Plight of property owner is due to circumstances:
 - (1) Unique to property;
 - (2) Not created by property owner; and
 - (3) Not based solely on economic considerations.
 - d. Granting a variance does not alter essential character of the area.
2. Is the Applicant proposing a use not allowed under the code?
3. Would a variance, if granted and with conditions imposed, adversely affect:
 - a. Purpose of Code?
 - b. Public health, safety, and welfare?
 - c. Reasonable access to or use of the Lake by public or riparian owners?

PUBLIC COMMENTS

In compliance with MN DNR General Permit 97-6098, the MN DNR, MCWD, and the City of Greenwood were provided information regarding the applications on March 28, 2022. City and agency comments were due by April 7, 2022. A comment was received from the City of Greenwood. Any comments received will be provided at the Board meeting for review.

PUBLIC HEARING

The public hearing provides an opportunity for interested individuals to present their views to the Board for consideration. This is an important part of reviewing the impact of a project. Only items under the LMCD Code and Board authority may be considered as part of any approval or denial decision.

A hearing notice was published in the March 17, 2022 edition of the Sun Sailor (official LMCD newspaper) and the March 19, 2022 edition of the Laker Pioneer. On March 28, 2022, a public hearing notice was mailed to persons who reside upon or are owners of property within 350 feet of the Site. In addition, the Board packet was posted online and the agenda was posted on the LMCD bulletin board.

RECOMMENDATION

Staff have consulted with LMCD legal counsel regarding the history of these sites, the request, and overall legal consequences based on the LMCD code and case law. The LMCD may continue to work with the parties to accomplish an agreed upon resolution to the litigation in some manner without creating precedent.

Riparian owners have a right to use the lake in front of their properties, subject to reasonable regulation by the LMCD. The review also considers the impact to other lake users and the health of the lake.

In general, the structures and watercraft storage proposed allow collectively reasonable access to the lake, without overall creating a greater impact to the lake than previously approved by the court order and variance. The reconfiguration appears to provide safer use and navigation than the prior configuration.

Based on information available at the time of this report, LMCD staff recommends Board approval with the minimum following conditions and some suggestions to be discussed as listed below. The recommendation may change based on information received, presented, or reviewed as part of the public hearing process.

1. The setbacks as indicated by the variance request and plan. Even though the dock use area is moderately expanded beyond the previously prescribed requirements with the watercraft navigation extending beyond the extended side site lines, the configuration does not appear to create navigation hazards or obstruct access to adjacent sites. The adjacent site owner to the north has not expressed any objection at this point.
2. The length of the docks as indicated by the site plan.
3. No canopies, as described per LMCD code, are allowed.
4. The BSUs must be used solely by persons who reside at one of the three properties to include:
 - a. One BSU 21100 Excelsior Blvd.
 - b. One BSU 5600 Maple Heights Rd.,
 - c. One BSU for 21080 Excelsior Blvd (Easement Holder)
5. Consider removal of the triangle pieces of dock section.
6. If the easement agreement is discontinued, a new variance application must be submitted to adjust the authorized dock use area.
7. No extensions granted during low water.
8. Structures and watercraft stored in the dock use area shall be in strict conformance to the site plan.
9. Other standard variance conditions are applied.

BUDGET

N/A

STRATEGIC PRIORITIES

<input type="checkbox"/> Operational Effectiveness	<input type="checkbox"/> Clear & Timely Communications	<input type="checkbox"/> Effective Governance	<input checked="" type="checkbox"/> Lake Protection	<input type="checkbox"/> Other
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ATTACHMENTS

1. LMCD Code Excerpts
2. Location Map
3. Site Plans
4. Application Narrative (as submitted by Applicants)
5. Variance Application
6. Public Hearing Notice (Sun Sailor & Laker Pioneer)
7. Public Hearing Notice Mailing
8. Prior Variance and Court Order (2007)

Kennedy

&

Graven

CHARTERED

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MEMORANDUM

To: LMCD Board of Directors

From: Troy Gilchrist, LMCD Civil Attorney

Date: April 22, 2022

Re: Quiet Waters and Slow No-Wake Designations

The intent of this memo is provide the Board information to better understand how the designation of quiet waters areas under the LMCD Code compares with the County placing slow-no wake buoys on the Lake without a quiet waters designation.

The following lists the regulations associated with quiet waters areas ("QWA") under the LMCD Code and the slow-no wake ("SNW") provisions under Minnesota Statutes and Rules to give a better sense of how they compare.

QUIET WATERS AREAS

SLOW-NO WAKE

Code Citation	Description/Comment	Statute/Rule Citation	Description/Comment
8-2.03, subd. 1(c) & 8-2.05, subd. 1	Five miles per hour speed limit or at a speed which results in more than a minimum wake	86B.005, subd. 16a	"Slow-no wake" means operation of a watercraft at the slowest possible speed necessary to maintain steerage, but in no case greater than five miles per hour.
8-2.05, subd. 2	Only applies to areas specifically designated as quiet waters in the Code	86B.311, subd. 6	Operate at SNW within 150 feet of law enforcement watercraft with lights on
8-5.15, subd. 3	Quiet water restrictions apply to "waterborne aircraft"	86B.313, subd. 1(a)(3)	PWC must operate at SNW within 150 feet of shore and other listed items
		6110.3700, subp. 5(A)	Establishes uniform standards for surface water standards, including speed limit for SNW

QWA Summary

I understand the QWA's designated in the LMCD Code encompass the designated SNW areas and those violating the speed limit associated with the designated can be, and likely are, written as a violation of the LMCD Code. The QWA designation process allows the Board to consider a range of public safety and other factors aimed at protecting the Lake when deciding whether to make the designation. As such, if the Board were to agree a speed limit should be imposed at Cedar Point West it would be consistent with past practice, and provide for uniform enforcement practices, to designate it a QWA.

SNW Summary

The laws and rules associated with SNW speak more to defining what it means and trying to create uniformity among those who regulate surface waters so a SNW buoy on one lake means the same thing on another lake. Most of the rules associated with the rules of the road on lakes and related issues are addressed in Minnesota Rules, chapter 6110. As mentioned, there are provisions that speak specifically about SNW, but there is not a specific provision about placing SNW buoys and enforcing them. Instead, Minn. R., part 6110.1500, subp. 5 authorizes the placement of regulatory and informational signs and buoys by a "public authority or under a permit issued by the sheriff of the county." Under Minn. R., part 6110.2200, a person who violates the requirements of the chapter "shall be guilty of a misdemeanor." So if the County places the buoys under its own authority without the designation of QWA a citation for violating the speed limit would need to reference the state law rather than the LMCD Code.

Recommendation

There is no question the County has the authority to place and enforce SNW buoys under state laws and rules. However, because the LMCD is the primary prosecuting authority for violations on the Lake, and I understand violations are primarily written under the LMCD Code, I recommend the Board amend the LMCD Code to include Cedar Point West as a QWA if it desires to impose a 5 m.p.h. speed limit in that area. That way the limit can be enforced and prosecuted in the same manner as other QWA/SNW speed limit violations on Lake Minnetonka.

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

ORDINANCE NO. _____

**AN ORDINANCE DESIGNATING CEDAR POINT WEST
A QUIET WATERS AREA UNDER THE LAKE MINNETONKA
CONSERVATION DISTRICT CODE OF ORDINANCES**

THE BOARD OF DIRECTORS OF THE LAKE MINNETONKA CONSERVATION
DISTRICT ORDAINS:

Article I. Quiet Waters Area. Article 8, Chapter 2, Section 8-2.05, Subd. 2 of the LMCD Code is hereby amended by adding an additional quiet waters area as follows:

(m) The portion of the Cedar Point West buoy channel located between Cooks Bay and Upper Lower Lake that is marked with slow-no wake regulatory buoys.

Article II. Effective Date. This Ordinance is effective upon the first day of publication.

Article III. Incorporation of Amendments. The LMCD Attorney is authorized to incorporate this amendment into the LMCD Code and is authorized to make such corrective changes as may be needed to correct formatting, maintain internal consistency, renumber sections, and as may otherwise be needed to implement the changes intended by this ordinance.

Article IV. Declaration. This enactment is adopted by a majority vote of all the members of the Board, has the effect of an ordinance, and is in effect on the first day of publication after adoption.

Adopted this 27th day of April 2022.

BY THE BOARD OF DIRECTORS

Gregg Thomas, Chair

ATTEST:

Dan Baasen, Secretary

Date of Publication: _____, 2022.

New material is double-underlined and deleted material is ~~stricken~~.

**LAKE MINNETONKA CONSERVATION DISTRICT
STATE OF MINNESOTA**

RESOLUTION NO. ____

**A RESOLUTION APPROVING SUMMARY LANGUAGE
FOR PUBLICATION OF ORDINANCE NO. ____**

WHEREAS, on April 27, 2022, the Board of Directors (“Board”) of the Lake Minnetonka Conservation District (“LMCD”) adopted Ordinance No. ____, “An Ordinance Designating Cedar Point West a Quiet Waters Area under the Lake Minnetonka Conservation District Code of Ordinances” (“Ordinance”);

WHEREAS, Section 1-1.09, subdivision 8 of the LMCD Code allows the publication of an ordinance by title and summary instead of publishing the full text; and

WHEREAS, the Board determines that publishing the full text of the Ordinance is impractical and that publishing a summary of the Ordinance, together with placing it on the LMCD’s website and making it available in the LMCD office for review, is sufficient to inform the public of the Ordinance.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors hereby approves the following summary language for publication:

**AN ORDINANCE DESIGNATING CEDAR POINT WEST
A QUIET WATERS AREA UNDER THE LAKE MINNETONKA
CONSERVATION DISTRICT CODE OF ORDINANCES
ORDINANCE NO. ____**

The Board of Directors of the Lake Minnetonka Conservation District adopted the above referenced ordinance to designate “The portion of the Cedar Point West buoy channel located between Cooks Bay and Upper Lower Lake that is marked with slow-no wake regulatory buoys” a quiet waters area under the LMCD Code. Watercraft speeds in such areas are limited to 5 m.p.h. The ordinance is effective immediately. A copy of the full ordinance is available on the LMCD website and may be obtained by contacting the LMCD office.

Vickie Schleuning, Executive Director

Adopted on this 27th day of April 2022.

BY THE BOARD OF DIRECTORS

Gregg Thomas, Chair

Attest: _____
Dan Baasen, Secretary