

LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
6:00 P.M., JULY 12, 2023
Wayzata City Hall

WORK SESSION

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

Members Present: Ann Hoelscher, Victoria; Jake Walesch, Deephaven; Rich Anderson, Orono; Gabriel Jabbour, Spring Park; Mark Kroll, Excelsior; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also Present: Maisyn Reardan, Administrative Coordinator; Raina Arntson, Administrative Intern, and Jim Brimeyer, Interim Executive Director.

Members Absent: Mike Kirkwood, Minnetrista; Ben Brandt, Mound; Dan Baasen, Wayzata; Dennis Klohs, Minnetonka Beach; Ryan Nellis, Tonka Bay; Deborah Zorn, Shorewood; and Bill Cook, Greenwood.

Persons in Audience: Eric Evenson, Dan Gustafson.

1. DISCUSSION

A) Revised Strategic Plan

Board Directors present discussed making language changes to the second desired outcome listed under the first strategic priority on the Strategic Plan that states "Analyze competing lake uses and lake management options." After heavy discussion, the Board of Directors agreed to remove the language all together so that there is only one desired outcome remaining under the first strategic priority.

B) Future Workshop Discussion List

Chair Hoelscher asked Board members to provide topics of discussion for upcoming workshop sessions.

Director Kroll suggested the Board consider imposing quiet days of the week for small bays on Lake Minnetonka.

Director Newell suggested having Eric Evenson present on AIS management options.

Director Jabbour suggested a statutory change to have each Board Member be elected instead of appointed by their affiliated City.

Director Anderson suggested switching all staff members to salaried income and implementing flex time for summer and winter seasons.

Chair Hoelscher commented about public walk-in hours and questioned whether they need to be reduced.

ADJOURNMENT

The work session was adjourned at 6:51 p.m.

FORMAL MEETING

7:00 p.m.

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Ann Hoelscher, Victoria; Jake Walesch, Deephaven; Rich Anderson, Orono; Bill Cook, Greenwood; Gabriel Jabbour, Spring Park; Mark Kroll, Excelsior; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also present: Thomas Tully, Environmental Administrative Technician; Maisyn Reardan, Administrative Coordinator; Raina Arntson, Administrative Intern, and Interim Executive Director Jim Brimeyer.

Members absent: Mike Kirkwood, Minnetrista; Ben Brandt, Mound; Dan Baasen, Wayzata; Dennis Klohs, Minnetonka Beach; Ryan Nellis, Tonka Bay; and Deborah Zorn, Shorewood.

Persons in Audience: Eric Evenson, Dan Gustafson, Mike Jilek, Dennis Nelson, Major Shane Magnuson, Lt. Rick Rehman, Sgt. Rick Waldon, and Mary Santiago.

4. APPROVAL OF AGENDA

Hoelscher requested to add an item to the agenda, 135 Mound Avenue Variance, under Old Business. She noted that there has been an agreement between the applicant and the staff.

MOTION: Hoelscher moved; Walesch seconded to amend the agenda, making the change noted by Hoelscher above.

VOTE: Motion carried unanimously.

MOTION: Walesch moved; Stone seconded to approve the agenda as amended.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Chair Hoelscher invited Water Patrol to provide an update on the Fourth of July.

Major Magnuson noted that the statistics were much higher than they wanted, with over 800 violations observed. He commented that there were almost as many BUIs over Fourth of July as there had been during the entire last boating season. He noted that there were 642 verbal warnings, 123 citations, and 160 calls for service answered by water patrol. He acknowledged that it was a longer "weekend" as they counted it as a five-day weekend, but the numbers were much higher than they would have liked. He commented that having paramedics on the boats during weekends has been a great program.

Hoelscher and the Board thanked the Water Patrol. She noted that she and Kirkwood participated in a ride along with Water Patrol last week, which was very educational. She encouraged other Board members to participate in a ride along as well. She noted that one of the largest safety violations is lack of throwable cushions. She stated that in the past, Save the Lake distributed throwable cushions as a promotion and perhaps they could provide some throwable cushions to Water Patrol to provide to those that are found without.

Anderson noted the two mentioned medical calls and asked if there were other medical issues that were addressed but not classified as a medical call.

Magnuson replied that there were no additional issues during the weekend. He noted that the paramedics have assisted in other instances, but thankfully they did not have any large medical issues during that weekend.

Jabbour asked if the DNR is also providing coverage and whether those hours were included in the totals.

Magnuson replied that the DNR was also out in addition to Water Patrol and that was not counted in these totals. He believed there were six DNR individuals on the water during the holiday weekend.

Jabbour commented that they should be cognizant that if the DNR pulls their people, LMCD and Water Patrol will need to increase coverage. He referenced the recent changes to marijuana law and asked if that is a concern and how testing would be done for BWI.

Magnuson replied that currently there is no roadside testing other than observation. He stated that legislation is ahead of the testing process. He noted that the current process is long and drawn out. He noted that they can still pull impaired drivers off the water. He confirmed that if they arrest someone for driving under the influence on the water, that deputy is off the water for about half the day. He commented that they do have partnerships with lake communities and the office at the Orono Police Department. He explained that BWIs are tracked separately from the written citations and noted 11 BWIs.

Hoelscher noted that the Lake Minnetonka Association (LMA) provided a letter to the Board and that has been entered into the record.

6. APPROVAL OF MINUTES- 06/28/2023 LMCD Regular Board Meeting

MOTION: Walesch moved; Stone seconded to approve the 06/28/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

Anderson referenced the bill from Your Computer Hero for \$750. He stated that he would pay the bill but is going to follow up as he believed that was going to be \$500.

MOTION: Anderson moved; Walesch seconded to approve the consent agenda as presented. Items approved included: **7A)** Audit of Vouchers (07/01/2023 – 07/15/2023).

VOTE. Motion carried unanimously.

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

There were no public comments.

9. PRESENTATIONS

There were no presentations.

10. PUBLIC HEARING

A) New Multiple Dock License Groveland HOA – Reconfiguration of Non-Conforming Structure

Tully presented a request from Groveland HOA for a new multiple dock license. He provided background information on the site which has a nonconforming dock structure that currently has 32 BSUs and a density of 1:15. He stated that the applicant is proposing a reconfiguration based on water depth, navigation, as well as use and safety. He provided the current approved site plan and compared that to the newly proposed site plan. He noted that no additional BSUs or change to the BSU dimension is proposed. He stated that they would maintain the existing variance for the site. He stated that no comments were received from public agencies, or the general public and staff recommends approval of the request based on the conditions noted in the staff report.

Cook asked if there has been discussion about the backside of the dock as it seems that would be an opportunity for BSU creep.

Tully commented that because this is a nonconforming structure, the applicant would not be able to expand in BSU count. He commented that the applicant is not exceeding what exists, just reconfiguring.

Cook stated that he would like a condition that there is a maximum number of BSUs.

Mike Jelik, Dock Director for Groveland HOA, commented that they require boatlifts therefore there would not be any creep and they would not exceed the approved number of BSUs. He stated that there are a good number of boat slips in shallow water, which is the reason for this request, along with safety. He also believed this will look better and clean up the shoreline a bit.

Newell commented that he believes that one of the concerns of the neighborhood was the swimming area and how exposed that was, but the new configuration would better protect that area.

Anderson commented that this would also be better for the littoral zone.

Jabbour commented that this is a great plan. He noted that in 1992 the previous HOA director sat on a committee with him to make this type of thing allowed.

Hoelscher opened the public hearing at 7:27 p.m.

Mary Santiago, Groveland resident, commented that she does not support this plan. She believed that only one option had been proposed and she would prefer not to see boats lined up along the entire lakeshore. She stated that they also need a location for visiting boats to drop off and pick up, which she believes this plan is lacking.

No additional comments were offered, and the public hearing was closed at 7:28 p.m.

MOTION: Walesch moved; Jabbour seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the multiple dock license from Groveland HOA for the property located at PID 0711722440158 in Woodland for final action at the next LMCD Board meeting, with the added condition that parking on the inside of the dock can only occur at slips 10 and 30.

VOTE: Motion carried unanimously.

11. OTHER BUSINESS

A) Moratorium on New Charter Boat Applications

Brimeyer stated that this has become an issue of discussion for several months, as to what is allowed or not allowed. He stated that at the June 28th work session, the Board directed staff to prepare moratorium language, which has been done by legal counsel. He noted that this would become effective the date of passing and publication. He stated that he met with Water Patrol earlier today to identify areas where the LMCD Code could be changed to make enforcement easier.

MOTION: Jabbour moved; Kroll seconded to approve the Moratorium on Watercraft for Hire ordinance.

VOTE: Motion carried unanimously.

12. OLD BUSINESS

A) Administrative Fines

Brimeyer provided a brief background on this item which has been discussed at multiple recent meetings. He provided an overview of the fine schedule proposed including the option to appeal for an administrative hearing. He noted that he has reached out to Minnetonka and that city seems willing to serve in that capacity as they do for other municipalities. He stated that the ordinance is quite long and suggested that the Board authorize publication of title and summary.

Kroll stated that he supports this and hopes that it will encourage people to come into compliance. He asked a question related to consistency and provided an example.

Brimeyer noted that was a typo and confirmed that the maximum should be \$25,000 in each instance.

Kroll asked if White Bear Lake Conservation District has ever had to enact a property lien.

Brimeyer replied that the entity has not enacted that measure.

Hoelscher stated that she spoke with legal counsel and that would be done through judgement. She noted that the numbers for the daily fines need to be updated to correlate within the ordinance to match the staff memorandum.

Brimeyer noted that he would make that change.

Cook asked for clarification on the different steps for fines.

Brimeyer provided that clarification.

Jabbour asked if the city of Tonka Bay requested that this be tabled.

Brimeyer stated that he spoke with the City Manager for Tonka Bay this morning and stated that he would be happy to speak with the City Council to provide an explanation. He did not believe that this would need to be tabled tonight.

Jabbour stated that if the LMCD wants to partner with cities, and a request is made to table, that should be acknowledged. He asked what would be done with fine revenue.

Brimeyer stated that an account would need to be set up for that.

Jabbour asked if the LMCD could be accused of extortion to generate revenue.

Brimeyer noted that the current process would take these people to court and the revenue would be granted in that manner.

Jabbour commented that the LMCD cannot use the fine system to subsidize its budget.

Brimeyer noted that could be said about every item they collect.

Jabbour stated that he is a stickler for the law and there would need to be justification. He stated that the LMCD manages docks which is the only responsibility.

Brimeyer asked why it should then be made a criminal offense.

Jabbour commented that the code was written in that manner. He acknowledged that perhaps the code should be redone. He stated that he does support this concept because there are cases that have been ongoing for multiple years, some current cases are three and four years. He stated that he just wants to ensure that this would be bullet proof.

Newell stated that conceptually he is in favor of this. He stated that this would provide a process rather than just going to court.

Anderson provided a scenario and asked for details on how the process would work.

Brimeyer commented that the violator would receive a letter with a deadline for compliance.

Anderson commented that is similar to the current process with the exception that the current process has no teeth as the only option is to go to court and violators often do not care if they go to court against the LMCD. He stated that he strongly supports this as this will assist staff in tracking violations and hopefully gaining compliance. He believed that this was well written. He stated that perhaps a maximum of \$25,000 is too steep and \$15,000 may be better.

Stone stated that she is generally in favor of this, but also had questions about the \$25,000 fine structure. She believed that this would streamline things and give the LMCD power where it has been absent. She noted that while she would support this method, she does have pause if a member city has requested that this be tabled.

Walesch commented that he has not read the ordinance and therefore would abstain, but conceptually this makes sense. He understood the comments of Jabbour but did not think would result in the LMCD collecting tens of thousands of dollars from multiple, multiple people. He commented that things can always be contested as unfair, and a judge could make that determination if needed.

Kroll referenced the criminal option, which states that the charged person could withdraw at any time and choose to go to court. He believed that the threat of a fine would make more people think about fixing the

violation. He noted that this could also help avoid unnecessary court cases. He believed that this tool would help a lot.

Brimeyer commented that he spoke with the prosecutor today and he also supports this tool. He noted the expense of going to court for the LMCD.

Hoelscher stated that she agrees with the comments thus far and this will provide the LMCD with another tool. She shared the concern that a city has raised an issue. She stated that she is also concerned with approving this with the small number of members present tonight and would prefer to table this to the next meeting when there will be more people on the Board in attendance.

Cook reiterated the concern that a city has requested the LMCD to postpone action until they could learn more about this process and would also be interested in tabling this to the next meeting, with direction for staff to provide that information to the city.

Anderson noted that this recommendation was made by Brimeyer years ago and does not want to see this be delayed and skipped over again. He stated that the entire Board had the opportunity to be here tonight. He stated that he will defer to Cook and Jabbour if they feel strongly that this should be postponed.

Cook stated that he would like this to have a short timeline for approval and therefore would want staff to work with Tonka Bay to resolve their questions.

MOTION: Cook moved; Walesch seconded to table the consideration of Administrative Fines to the next Board meeting and direct staff to collaborate with member cities to ensure they have appropriate notification and the information they need.

Further discussion: Jabbour asked if this would require a public hearing.

VOTE: Motion carried unanimously.

B) 135 Mound Avenue Variance

Brimeyer stated that at the last Board meeting this request was tabled with direction for staff to collaborate with the applicant.

Tully explained that legal counsel, LMCD staff, and the applicant worked hard to come to agreement on the language. He noted that some changes were also made to the Board memo as reflected in the findings of fact.

Dennis Nelson, 135 Mound Avenue, thanked the Board for allowing him to collaborate with the staff. He stated that while he did not get everything he wanted, he was educated on other ways he could solve those problems. He commented that Tully was very professional, and he believed this process worked well.

Hoelscher opened the public hearing.

No comments.

Hoelscher closed the public hearing.

MOTION: Jabbour moved; Walesch seconded to adopt the new resolution and finding of fact with direction that the variance will be recorded against the property per the new policy.

VOTE: Motion carried unanimously.

13. NEW BUSINESS

A) Scanning Agreement

Brimeyer provided background information on the impetus to consider scanning documents and the process they followed to obtain quotes. He stated that they considered the low bid but also considered whether the company would create usable files that would be user friendly for staff. He noted that ARC was both the low bidder and the company that staff feels most comfortable with in terms of understanding the needs of the LMCD. He stated that the staff recommends hiring ARC, noting that part of the proposal includes storage of the documents for 90 days and then document shredding. He noted that he did consult with Nellis because of his professional experience, and he also supports this action.

Anderson commented that he suggested digitizing the documents because of a fire he experienced at his marina.

MOTION: Anderson moved; Walesch seconded to approve the Scanning Agreement with ARC with the additional contingency as mentioned.

VOTE: Motion carried unanimously.

14. TREASURER REPORT

Anderson stated that he was hoping to have six-month data on a report and hopes to have that at the next meeting.

15. EXECUTIVE DIRECTOR UPDATE

Brimeyer provided an update on changes in banking as previously discussed. He noted that there is no meeting on July 26th as that has been canceled.

A) Boat Slip Applications

Brimeyer stated that the Park Commission and Dock Commission, but the City still wanted the LMCD to follow

the formal application process. He stated that the Tonka Bay City Council have reviewed the request it as well. He stated that Excelsior Fire currently rents a resident slip and the Tonka Bay City Council requested that LMCD and Excelsior Fire work together to place a permanent dock for these two slips which would open up the resident slip currently occupied by Excelsior Fire to a resident. He stated that he did provide the option of a temporary dock for the use for the remainder of this season, and they could then work together for a permanent dock for next season.

Jabbour commented that he had given Excelsior Fire a slip for a decade or decade and a half. He stated that Excelsior Fire has the desire to move to a fire lane and perhaps there should be a dialogue with Excelsior Fire.

B) Letter of Support – Subbasin Numbers on Lake Minnetonka Bays

Brimeyer provided information on data that is being gathered on subbasins and a request has been made for a letter of support from the LMCD. He stated that after speaking with Hoelscher, it was suggested that he speak with Erik Evenson.

Erik Evenson, LMA, stated that after speaking with Doctor Newman it was explained that he would like to see consistency between different agencies. He expressed concern with how that could impact bay treatments and there was additional discussion. He commented that he believes that numbering these basins would be good and provide a uniform platform to work with. He acknowledged that it might create a bit more work for bay treatments, but he is supportive of the request.

Brimeyer stated that draft language for the letter of support was provided in his memorandum.

MOTION: Jabbour moved; Cook seconded to approve the LMCD letter of support for Doctor Newman and authorize submission to the appropriate entities.

VOTE: Motion carried unanimously.

Hoelscher noted that information was included in the packet related to a drought update.

Tully commented that the dam has been closed because of the water levels.

Jabbour commented that he was confused with the setup of the agenda. He stated that he was appalled that 10 out of 11 Board members eliminated a good regulation about water skiing. He stated that Water Patrol made a recommendation and asked if that is going to be followed.

Hoelscher stated that she would hope that there is support for the Water Patrol. She noted that the action will still come back before the Board for final consideration as there were two parts to the update of the ordinance.

Jabbour commented that the LMCD is one group, and he does not support pockets of information. He asked for an update on Schussler.

Hoelscher stated that legal counsel was going to provide an update, but he was unable to attend tonight.

Tully stated that the Minnetonka Beach attorney and another attorney are collaborating with that individual.

Jabbour asked for an update on Petra.

Tully commented that is being managed by the prosecuting attorney.

16. ADJOURNMENT

MOTION: Cook moved; Newell seconded to adjourn the meeting at 8:24 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Jake Walesch, Vice Chair