

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**
7:00 P.M., June 28, 2023
Wayzata City Hall

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; Mike Kirkwood, Minnetrista; Bill Cook, Greenwood; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; Ryan Nellis, Tonka Bay; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Environmental Administrative Technician; Maisyn Reardon, Administrative Coordinator; and Interim Executive Director Jim Brimeyer.

Members absent: Dan Baasen, Wayzata; Mark Kroll, Excelsior; and Deborah Zorn, Shorewood.

4. APPROVAL OF AGENDA

MOTION: Cook moved, Walesch seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 6/14/23 LMCD Regular Board Meeting

MOTION: Brandt moved, Stone seconded to approve the 6/14/23 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (8), Abstained (3), (Newell, Jabbour, Walesch). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Walesch moved, Stone seconded to approve the consent agenda as presented. Items so approved included: **7A**) Audit of Vouchers (6/16/23 – 6/31/23); and **7B**) Resolution Accepting Save the Lake Contributions (5/10/23 – 6/09/23).

VOTE: Motion carried unanimously.

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

Lieutenant Rehman, Hennepin County Water Patrol, read a statement from the Sheriff related to the proposed ordinance change related to spotters. The Sheriff's Office opposes the change as it believes that it would make the lake less safe. The statement references the differences between Lake Minnetonka and other lakes in the state, the large number of inexperienced boat operators, and compared this ordinance change to supporting distracted driving.

Hoelscher commented that the Board values the input and experience of Water Patrol and will take that into account when considering the ordinance amendments.

9. PRESENTATIONS

A) Bowfishing Tournament Presentation from Home Town Heroes Outdoors

Curtis Cich, Edge Bow Fishing and Home Town Heroes Outdoors, commented that they are looking to request a variance to allow night bow fishing in order to host a veterans bow fishing tournament on Lake Minnetonka. He commented that the organization hosts a veterans night bow fishing tournament, and the lake would be a good fit for carp fishing. He explained that the tournament is held at night to better target the fish. He commented that there are 30 to 70 boats taking veterans out and is one of the largest events that they hold each year. He commented that the organization is fully insured and is alcohol free. He commented that the carp would be taken offsite after caught. He commented that the event would be on July 29th.

Walesch commented that it sounds like a cool event that would also get the carp out of the lake.

Hoelscher asked if the group would be in a certain area or all over the lake.

Cich commented that the lake is quite large and therefore they would stay in a more confined area. He commented that two or three boats could be in a bay without intermingling.

Cook commented that he is concerned with the distance to shore and distance to residential properties with lights and asked for more details.

Cich replied that they look at the lakeshore to find more open terrain and try to avoid residential areas. He provided more details on the State regulations.

Cook commented that there is a shallow area in St. Alban's Bay that has carp.

Hoelscher stated that there is a bow fishing ordinance and asked how this proposal would match up against that.

Tully commented that the group is looking for permission to bow fish outside of the normal hours.

Hoelscher noted that it is one night for a great cause. She commented that special events are typically permitted through Water Patrol.

Tully commented that the Board could take formal action or acknowledge support.

Hoelscher asked the representatives from Water Patrol if there were any objections, and none were expressed.

Jabbour asked if the violation of that code is of a criminal nature or civil nature as he did not believe a variance could be issued for a criminal issue.

Langel clarified that the hours set by code does not make it criminal, although there could be a penalty. He stated that unless the State law makes it a crime to bow fish after those hours, it would not be a crime. He commented that this would be a variance to the hours within the code.

Hoelscher confirmed the consensus of the Board to support the bow fishing tournament as presented. She noted that perhaps staff could also advertise on the website prior to the event so that residents are aware.

B) Special Event Presentation from Project Got Your Back

Paul Davis, Executive Director of Project Got Your Back, provided details about their event scheduled for August 19th where they intend to break two Guinness World Records. He noted that they have been working with LMCD staff and did receive a special event permit from the Sheriff's Office. He explained that the event will raise funds for their veteran orientated organization. He commented that they will be attempting to break the record for longest boat parade at a total of 1,180 and the second will be the most people floating on pool noodles noting that they would need 254 people for that record. He provided details on where the boat parade would start and travel as well as where the pool noodle portion would take place.

Newell commented that he supports the cause but was a bit concerned with the congestion that already exists near Big Island and Lord Fletchers. He stated that Excelsior Bay is probably a better area.

Mr. Davis commented that they have taken off Lord Fletchers for that same reason.

Jabbour commented that he thinks this is a horrible idea. He commented that they worked hard to get rid of the Big Island partying. He commented that he supports veterans and takes thousands out on the lake each year. He offered to make a donation in the amount the event would raise in lieu of the event.

Anderson echoed the comments of Jabbour. He commented that there was just a statement from Water Patrol and this event would be unpoliceable.

Brandt asked if this event would be aimed at lake residents or those trailering in boats.

Mr. Davis replied that they would be targeting lake residents. He recognized that it would be unlikely that they would break the boat parade record but is more confident that they could break the pool noodle record.

Brandt commented that while it might be fun for those involved, the parade would block traffic on the lake and would be a disaster for everyone else on the lake.

Mr. Davis estimated that the parade would be about 45 minutes.

Cook commented that 1,000 boats 20 feet long is four miles, so even four across would be one mile long.

Newell commented that he is also nervous about people floating in the water with 1,000 boats around.

Mr. Davis commented that the area would be roped off for the noodle float.

Walesch asked if this was simply a presentation and not a request.

Mr. Davis commented that it is his understanding that they have received the special event permit and was sharing the information with the LMCD.

Lieutenant Rehman commented that he will review the approval to determine what was included in the permit.

Kirkwood asked how the boats will be organized once they arrive.

Mr. Davis commented that they have a number of volunteers that would have admin boats to guide those participating as well as a lead boat that is very identifiable.

Hoelscher recognized that the LMCD does not have authority over the event but noted the safety concerns expressed by the Board.

Jabbour cautioned against blocking off public waters. He stated that he has 52 years of serving the lake and this is a terribly bad idea.

10. PUBLIC HEARING

A) Variance for 135 Mound Avenue

Walesch proposed that this issue be tabled in hopes that staff can work with the applicant to possibly look at language that would mitigate their concerns rather than attempting to work this out in a meeting setting.

Klohs commented that the Board has already ruled on this and therefore there is no reason to reopen it.

Hoelscher stated that she believes the applicant had issues with the findings of fact and therefore was required to submit a new application. She stated that the applicant is entitled to the public hearing and a decision from the Board.

MOTION: Walesch moved, Brandt seconded to table the variance application from Dennis G. Nelson and Barbara Franta for the property located at 135 Mound Avenue in Tonka Bay.

Further discussion: Langel asked and received confirmation that this motion would postpone this item to the next LMCD meeting.

VOTE: Ayes (9), Nays (2), (Kirkwood, Klohs). Motion carried.

Hoelscher asked if the applicant is comfortable with this process.

Dennis Nelson, 135 Mound Avenue, commented that he is comfortable with this process. He commented that he wanted a chance to have a discussion with the attorney and was told the only path to do so was to do so at a meeting.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

A) Administrative Fines Cover Memo, Notice of Violation, and Draft Ordinance

Brimeyer stated that if a violation cannot be resolved, the current path is to go to court which is a long, tedious, and expensive process. He commented that these are not criminal offenses and would be more akin to a zoning violation. He stated that municipalities gain compliance through administrative fines, which would be a more efficient process for the LMCD as well. He stated that he gained information from the White Bear Lake Conservation District and used that model as a template, with changes recommended by LMCD legal counsel. He provided a brief overview of the proposed administrative fine process.

Hoelscher used the scenario that a dock is out of compliance and the maximum fine is accumulated but the dock is then removed at the end of the season and replaced in the spring in violation. She asked if that would go forward to a criminal offense.

Brimeyer commented that in that case he would not recommend going through the fine process again and would recommend that case go to court.

Hoelscher asked for clarification on the education enforcement officer and a hearing officer.

Brimeyer commented that it could be the Executive Director, a Board member, or staff member from a member city.

He stated that in Spring Park they contracted with Minnetonka to provide that service.

Klohs asked for input on the White Bear Lake experience.

Brimeyer commented that he did not go into in-depth detail, but the ordinance has been very effective on that lake and with municipalities.

Klohs stated that he would be interested in more details.

Walesch asked how closely the fine and time periods compare to White Bear Lake.

Brimeyer commented that the two are very similar in that manner.

Walesch asked if the fine process has been challenged. He commented that sometimes there is a violation, but the property owner is working with staff to address the issue and asked if there would be flexibility in that instance.

Brimeyer confirmed that if someone is working on it and communicating with staff, that would be allowed before fines would begin.

Walesch asked if there would be any issues with this type of application that takes into account different circumstances.

Langel replied that there would not be any issues. He commented that it is uniform that the structure is provided in code, but they are always working with people to avoid fines and penalties. He confirmed that municipalities use this system.

Klohs commented that most people that have docks installed incorrectly are aware of that. He commented that when they are asked to change it, they do not and therefore it seems that this process would delay the court process by one year. He stated that the maximum value of the fines is still less than the value of lakeshore rights.

Brimeyer commented that they could increase the fines.

Walesch recognized the impression that every lakeshore owner is throwing money off the boat, but he believed that these fines would get people's attention.

Hoelscher stated that this seems to be another tool that would ease the burden on staff and could help to resolve some of the issues.

Jabbour commented that he likes a process where people have an appeal.

Hoelscher stated that this would provide that opportunity.

Jabbour commented that he likes people to have the opportunity to come before the Board. He did not feel

comfortable that people would have no recourse to speak with the Board. He stated that he does not like that violations are criminal as it could impact their futures. He commented that the enabling act limits the ability to levy a \$100 fine. He asked if the White Bear Lake enabling act is worded differently.

Brimeyer commented that he believes that the enabling act provides authority to do more than levy a \$100 fine.

Jabbour commented that there are big egos on the lake and a \$25,000 fine will make some people mad, therefore he wants to ensure there is legal ground to do this.

Brimeyer commented that if the LMCD wants to continue to go to court, it can do that.

Jabbour commented that he does like this process but would want to ensure that it is legal for the LMCD. He commented that he was at the mercy of bad staff during the past ten years and paid the price himself.

Nellis asked if Brimeyer has discussed this with any of the member cities.

Brimeyer replied that he did not ask that question, although cities have their own administrative fine process. He commented that he has reached out to the administrators that he knows.

Hoelscher commented that she thinks this is a good idea but has concern that it would be challenged. She stated that it would be interesting to know if White Bear Lake has been challenged.

Nellis commented that he believes that the member cities should be consulted, and the fees should be lower.

Hoelscher confirmed consensus of the majority of the Board with this concept but would like additional information on whether this concept has been challenged in White Bear Lake and whether this is allowed.

Langel commented that conceptually he believes that they are fine, and he is not concerned with overlapping the cities because the city authority is on land and the LMCD authority is on water. He confirmed that they could do some more work before bringing this back.

Klohs commented that there are pending issues and asked if those would go on hold and whether they would start over with the process if this were implemented.

Langel commented that would be the decision of the Board as it would become effective upon adoption.

Brimeyer commented that anything pending should continue to follow its current path.

Hoelscher asked and received confirmation that an egregious violation could proceed directly to court.

Anderson stated that his only concern is with the enabling ordinance mention of \$100.

B) Variance Fees, Escrow, Recording

Brimeyer stated that the current variance fee is \$500, of which \$250 is refundable. He noted that multiple variances have gone on for months with legal fees exceeding that cost. He stated that he spoke with multiple cities to obtain their variance process and related fees. He stated that with one exception, all variances are recorded. He stated that when a variance is not recorded it creates issues when properties change ownership. He recommended raising the fee from \$500 to \$750 to cover LMCD staff time. He also suggested that an escrow be required to cover additional costs such as legal fees, surveys, etc.

Nellis asked the maximum a lake owner would occur if they followed the variance process that ended up taking significant time.

Brimeyer commented that the only fee would be \$750. He stated that the \$1,500 escrow would be used, only if needed and if additional funds were needed the applicant would be responsible for that.

Walesch commented that in his experience all cities require an escrow for outside costs, which is unlimited if additional funds are needed. He commented that if a review has additional costs, that should be paid by the applicant and not the taxpayers.

MOTION: Walesch moved, Anderson seconded to approve the variance and escrow fee schedule and requirement for recording.

Further discussion: Stone commented that the recording element is key. She noted that with her experience in real estate that is important when properties change hands.

VOTE: Motion carried unanimously.

14. TREASURER REPORT

A) May Balance Sheet and I and E Reports

Anderson provided a brief overview. He noted the Save the Lake contributions received January through June and noted a discrepancy that needs correcting. He noted that the donation for solar lights should be moved from Save the Lake to the solar lighting line item.

15. EXECUTIVE DIRECTOR UPDATE

A) Summer Hours

Brimeyer commented that during the summer Fridays are pretty quiet. He noted that the LMCD offices in the Mound building, which has summer hours as do many of the lake communities. He stated that staff supports the change in hours as he is recommending.

MOTION: Jabbour moved, Kirkwood seconded to approve the new summer hours effective July 3, 2023, Monday through Thursday 7:30 a.m. to 5:00 p.m. and Fridays 8:00 a.m. to 11:30 a.m.

VOTE: Motion carried unanimously.

B) Staff Compensation

Brimeyer stated that he met with Anderson to discuss staff compensation and they developed a two-step process to determine the new formula using the hourly rate and overtime. He suggested that as of September 1st they go to a regular salary pay plan for all employees. He commented that these staff members have really stepped up to handle the LMCD office duties. He stated that he discussed this with the officers who supported this recommendation. He commented that if approved, this would go into effect the next payroll. He noted that LMCD still uses vacation and sick time, and he may bring forward a request to eliminate those and change it to paid time off.

Langel asked and received confirmation that the change tonight is just for hourly and not a change to salary.

Anderson stated that he supports this change. He noted water businesses have peaks and valleys of when they are busy, and the salary formula works good when both parties use it properly. He stated that with salaries the payments are exactly the same each time. He also provided some information from the perspective of finance.

Brimeyer commented that he would like to hold off on the salary change for now.

Langel agreed that they should hold off on the salary portion as there are IRS standards to meet.

MOTION: Anderson moved, Cook seconded to approve increasing staff compensation, retroactive to June 1, 2023.

VOTE: Motion carried unanimously.

C) Banking Update

Brimeyer provided an update on the proposed banking changes.

D) Scanning Update

Brimeyer provided an update to prepare for scanning noting that he is hoping to present a bid to the Board in July.

Nellis commented that he would want to ensure that the proposals are apples to apples comparison. He agreed to assist in reviewing the proposals.

E) Other

Brimeyer commented that staff did a great job organizing and running the boater education class. He and the Board commended Jay and the others involved in the event as well. He also provided an update on an ongoing LMCD case of noncompliance.

Hoelscher stated that she will schedule an officers work group for July 6th. She provided an update on Baasen who is currently hospitalized.

Jabbour provided a progress update on Baasen's condition.

Nellis commented that Jabbour's city refuses to accept his resignation from the LMCD Board.

Jabbour commented that the Mayor of Spring Park refused to accept his resignation from the LMCD Board and out of respect for that city he will continue to serve. He asked if a moratorium could be passed tonight.

Hoelscher replied that staff will work on that issue and if warranted would bring that back for the next meeting.

16. ADJOURNMENT

MOTION: Walesch moved, Cook seconded to adjourn the meeting at 8:37 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary