

LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 P.M., August 9, 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; Rich Anderson, Orono; Mike Kirkwood, Minnetrista; Bill Cook, Greenwood; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Deborah Zorn, Shorewood. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Environmental Administrative Technician; Maisyn Reardan, Administrative Coordinator; Raina Arntson, Administrative Intern; and Interim Executive Director Jim Brimeyer.

Members absent: Dan Baasen, Wayzata and Jake Walesch, Deephaven.

4. APPROVAL OF AGENDA

MOTION: Kirkwood moved; Kroll seconded to approve the agenda as amended with item 7A having additional vouchers added to the audit and new item 7D.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 07/12/2023 LMCD Regular Board Meeting

Cook commented he was not noted as present nor absent in the minutes.

Chair Hoelscher directed staff to make the necessary change.

MOTION: Cook moved; Newell seconded to approve the 07/12/2023 LMCD Regular Board Meeting minutes with the addition of Director Cook being added to the minutes.

VOTE: Ayes (8), Abstained (4), (Zorn, Kirkwood, Nellis, Klohs). Motion carried.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

Newell asked for details on the agreements included in the consent agenda. Hoelscher noted that it is an agreement that is required every five years.

Brimeyer explained that this allows the prosecuting attorney to access files from different entities related to criminal cases. He noted that the agreement allows information sharing between the LMCD attorney and the other entities.

Anderson commented about a voucher included in the audit to reconfirm it was placed in the correct category.

MOTION: Stone moved; Zorn seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (07/16/23 – 07/31/23 and 08/01/23 – 08/15/23); **7B)** Resolution Accepting Save the Lake Contributions (06/10/23 – 07/31/23); **7C)** Findings of Fact and Order for New Multiple Dock License for Reconfiguration of Non-Conforming Structure, Groveland HOA; **7D)** Joint Powers Agreement with Criminal Justice Agency and Court Data Services Subscriber Amendment with CJDN.

VOTE: Motion carried unanimously.

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

Jane Anderson, 5060 Edgewater Drive in Mound, and Sherry Wallace, 2135 Overland Lane in Mound, commented that they cofounded the Harrison Bay Association. Ms. Anderson thanked the LMCD for the work it does, noting that it is amazing. She commented on the recent action of the Board to lift the ban on night bowhunting for the veterans event. She commented that 120 veterans and retired fire and police members bow hunted for one night on Lake Minnetonka and took out 8,000 pounds of carp at no charge. She commented that it was phenomenal, and the participants enjoyed the event. She hoped that the event could continue in the future. She commented that they heard about a local company, Two Mikes, which uses carp to make organic fertilizer. She stated that they drove to meet with the owners of the company, and they were thinking this could be an opportunity to brainstorm with the AIS Committee.

Ms. Wallace commented that she is aware that some people were not aware of the bowhunting activity and were asking questions on a social media platform. She commented that the community does not like carp but may not fully be aware of the devastating impact on the ecology of the lake because of carp. She stated that they need to develop unique ways to educate the public about the impact of carp and different ways to manage that population. She thanked the LMCD for the support they have given for researching and tracking carp and would like to continue to find unique ways to get carp out of the lake that do not cost money to the taxpayers.

Hoelscher thanked the residents for the input and update.

9. PRESENTATIONS

There were no presentations.

10. PUBLIC HEARING

There were no public hearings.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) Administrative Fines History

Brimeyer stated that this has been before the Board several times and at the last review there had been a request from one of the cities for additional information. He stated that they did send the information to all the cities welcoming input, and they received four responses, thanking the LMCD for input and one city voiced support. He stated that in terms of legality administrative fines are not allowed and not prohibited by state law, but many municipalities utilize this system. He stated that they received a letter from the Lake Minnetonka Association (LMA) which provides the opinion that administrative fines are not legal.

Jabbour stated that perhaps rather than stating it is not allowed or prohibited by state law, it would be better stated that the item is not addressed by state law.

Brimeyer agreed.

Eric Evenson, LMA, stated that when he heard this was the direction the LMCD was heading it was surprising. He stated that he discussed this with the LMA Board, as to whether the LMCD has the legal authority to charge administrative fines. He stated that they contracted with an attorney to ask that question. He stated that although he does agree that administrative fines have their place and can be effective, it is the opinion of LMA and the legal counsel it sought that it would be illegal for the LMCD to charge administrative fines. He commented that administrative fines can be misused, although he does not believe that current LMCD staff would abuse that ability. He noted that because administrative fines can be abused, the legislature provides clear authority on how the fines can be used. He stated that he understands that White Bear Lake Conservation District uses administrative fines but would be cautious about basing this decision on the fact that a similar entity uses that process. He commented that there are wealthy individuals on Lake Minnetonka that have the ability to fight, there are also individuals that may not have the ability to fight back or afford the penalty. He commented that this would be a big hammer to use against people. He commented that LMA is opposed to this process and believes it to be illegal.

Hoelscher noted that the written correspondence from LMA would be entered into the record for the meeting.

Jabbour asked about the knowledge that Evenson has related to how White Bear Lake Conservation District

(WBLCD) has applied this. He stated that the LMCD was told that WBLCD never used this process.

Evenson stated that it is his understanding that WBLCD attempted to use it, but questions arose about the legality and therefore the staff and legal counsel decided not to use it. He commented that in the case of a marina with an issue related to density, the fine could be charged per slip that is out of compliance.

Hoelscher noted that there is a cap of \$25,000.

Evenson noted that would be per case, therefore if there were five violations that would be five times that cap.

Kirkwood asked how this came to be presented from LMA, whether it was discussion of the Board or the perspective of Evenson.

Evenson replied that the letter from the attorney is on behalf of the LMA and approved by the LMA, not just himself. He stated that he attended an LMCD meeting where the topic was discussed, which led to him asking more questions in attempt to gain answers. He stated that he is familiar with the administrative fine process, as the watershed was provided that authority through the legislature. He stated that he was surprised that the LMCD would be doing this outside of having the legislative ability to do so. He stated that if the LMCD would like this authority, it should request the legislative change to gain that authority.

Newell commented that he does not want the LMCD to put itself in the position where it could be legally penalized down the road and asked legal counsel for his opinion.

Langel replied that as he has said before there is no expressed authority for this, likewise that authority does not exist for cities and cities have been using this authority for years. He stated that there is case law which goes back decades and provided details on those rulings. He commented that it is not black and white on whether the LMCD has implied power as that is an open question, similar to cities. He stated that the League of Minnesota Cities has acknowledged that cities use administrative penalties that is beneficial in providing due process and avoiding legal actions. He stated that the League has also cautioned that it has been questioned as to whether cities have that implied authority. He disagreed with whether the issue is black or white or absolutely illegal, but also cannot say there is unquestioned authority to do so. He noted again that cities would fall into that same category.

Newell asked if Langel was aware of any cities that have been challenged and overturned by using this process.

Langel replied that he is not, noting that cities have been doing this for years and continue to do so on a daily basis.

Kroll commented that he is torn on this and has concerns with the deep state and fines. He stated that he also believes that the LMCD needs a softer hammer below threatening to lock someone up for 90 days. He stated that there is a court case that is currently going on where the property owners have not responded to requests for compliance for over two years. He stated that he has come around to supporting the concept of

administrative fines as it would provide another tool.

Cook agreed with Kroll.

Klohs stated that there is a lot of litigation around the lake and would expect this to be challenged. He asked legal counsel for input on that process and how long that challenge process could take, noting that some people could find it entertaining to challenge the LMCD.

Langel stated that litigation could easily drag on for two years, similar to the case mentioned. He stated that he would assume that would be covered under the League of Minnesota Cities coverage. He stated that he could not guarantee that the LMCD would prevail.

Klohs asked if it would be possible that the League policy would not cover this.

Langel stated that would depend upon the scope of the coverage, noting that he has not read that policy.

Klohs commented that it would seem that it would be possible that the LMCD could have to pay those court costs out of pocket.

Langel replied that he would guess a challenge to ordinance would be covered under the policy but would have to review the scope of coverage.

Kirkwood asked what the process would be to have a law passed by the legislature that would provide support for this authority.

Hoelscher stated that they would have to lobby the legislature and it would have to come forward as an amendment to the enabling ordinance or through another statute.

Jabbour commented that process would be three to five years and could open the door to changing or eliminating the LMCD.

Kirkwood asked if it would make sense to pursue that to address this issue for the longer term.

Hoelscher stated that would be a secondary question. She suggested that they deal with this matter tonight.

Stone commented that she supports this for the same reasons as Kroll as it would provide a softer hammer. She stated that the example of someone that refuses to respond for two years is a waste of staff time and energy. She stated that it seems like an entity wants to make this an issue and therefore she was unsure if this would be worth pursuing.

Anderson commented that he was a champion of this cause initially. He noted that they used the example of WBLCD to base this model on and referenced the example where WBLCD attempted to use the policy, charging a fine for each slip which was out of compliance. He stated that when reviewing what the LMCD is

legislated to do, there are express powers to fine \$100 or 90 days in jail. He stated that he cannot believe that the LMCD is not different from a city in using administrative fines. He used the example that an administrative fine is charged and that is then challenged, noting that cost is then unknown. He stated that the cost is known for the prosecuting attorney to take these cases to court. He stated that even though he likes the idea of administrative fines, he would not support this because the expressed authority provides the ability for a fine of \$100 or 90 days in jail.

Newell stated that personally he is trying to sort through the information to decide. He stated that on appearance he thinks administrative fines would add another tool to the toolbox and if properly used, provides another option. He stated that he is still unsure about the fine amounts but would lean towards having this option to use.

Jabbour stated that the enabling act is based around choosing, with the language may versus shall. He stated that the language cautioned against unfunded mandates. He stated that 100 percent of the ordinance is written as a criminal act. He stated that the LMCD has a problem, that it is taking three to five years to address complaints, which was a staff problem related to the former lack of leadership. He stated that is the same feeling coming from the law enforcement. He stated that people should be given 30 days and then the complaint is filed in court. He noted multiple cases that are four to six years old where the complaints have not even been filed in court. He asked the LMCD to think about a different way to engage in those services. He stated that \$25,000 could put someone out of their home. He stated that if he gets a ticket, he would want to go in front of the judge as the enabling ordinance states that the penalty for a criminal act would be \$100, but this would provide a penalty of \$25,000 for a civil act. He stated that when the state established this organization \$100 was specified and that is clear. He stated that this would be a decision of the LMCD to state that it is within its power to do this. He commented that there is a difference between a City which has elected officials compared to a Board that is appointed. He stated that he has an enormous amount of conflict with this issue. He stated that the one task the LMCD is tasked to handle is docks, and if they do not believe they could handle that, the power should be given back to the cities.

Nellis referenced the letter from Evenson which states Board members who vote to approve of this ordinance in violation of state law have no legal immunity and could be subject to criminal or civil lawsuits. He asked legal counsel if the insurance would apply to the LMCD, individuals on the Board or staff, and/or both.

Langel replied that typically insurance of that nature would cover staff and elected officials acting within the course of their duties. He stated that the only time the coverage would not cover those people is when they are blatantly acting outside the course and scope of their duties. He stated that taking a vote on an ordinance would be within the scope of duties.

Nellis commented that he would vote against this as it seems too risky.

Zorn commented that she is also in between as she likes to provide the ability to address these lingering, ongoing enforcement issues on the lake but also feels that the WBLCD provides precedent. She commented that she feels that there are elements to support a decision to move forward based on the history of municipalities. She believes that lobbying the legislature for a change would be too big of a beast to hinge

this decision upon. She stated that if there have been instances in WBLCD where they have been able to work with the homeowner, the administrative fines could be motivating.

Hoelscher agreed with many of the comments made. She commented that she believes this would be a positive step that would provide another tool and lesser hammer to gain compliance. She stated that this would not be used on every violation on the lake but could help staff to be more efficient and to gain response from residents. She stated that unfortunately the LMA has seemed to draw a line in the sand saying they would back someone to challenge this, which is not a fight that she wants to get into. She did not believe it would be worthwhile to proceed when it has been blatantly threatened and therefore, she will not support this.

MOTION: Kroll moved; Cook seconded to approve the Administrative Fines Ordinance as presented.

VOTE: Ayes (4) (Stone, Kroll, Kirkwood, Cook), Nays (8). Motion failed.

B) Strategic Plan Adoption

Hoelscher stated that the revised Strategic Plan for 2023/2024 was included in the Board packet.

Anderson referenced the language related to AIS, noting that the concept was to be an incubation for other groups to begin AIS treatments and management.

Cook agreed. He suggested using “encourage” rather than “fund”.

Hoelscher suggested the word “support”

Cook noted that he also considered that word but prefers encourage.

Klohs commented that encourage would seem to leave out contributing at all.

Cook stated that encouraging could provide time, resources, money, etc.

Anderson referenced lake use and safety noting that there are two different nomenclatures. He asked for clarification on the use of “ensure public safety on Lake Minnetonka” and “fully support Water Patrol activities”.

Cook stated that he does not like the word ensure as that is a synonym for guarantee.

Hoelscher stated that they could spend all night wordsmithing the document. She stated that they had discussed this in the workshop and if additional wordsmithing is needed, perhaps this is brought back to a future workshop.

Anderson commented that they had a workshop, and this is the final document to vote on, noting that he just had additional input. He stated that people can still provide opinions on the language.

Hoelscher asked for input from the Board on whether this item should be postponed to the next workshop.

Kroll commented that if they are going to change more than one or two words, this should go to a workshop.

Newell stated that he liked that the AIS Committee was an incubator where people could bring in ideas that could be vetted before deciding whether to bring it forward to the Board. He stated that as that committee structure has been changed, he was curious as to how new ideas would come forward.

Hoelscher commented that is a good question and the thought process would be that items could be discussed at an Officer meeting or in a workshop setting. She stated that if there are issues with the Strategic Plan, she would prefer to hold off to the next workshop to ensure everyone is comfortable.

Jabbour asked how they would deal with the fact that they had to wait ten minutes to gain a quorum at the workshop to discuss the Strategic Plan. He stated that it is his opinion that people either show up and participate or trust those that showed up to participate. He stated that if the changes proposed are limited to two or three words, they could proceed.

MOTION: Anderson moved; Cook seconded to adopt the 2023/2024 LMCD Strategic Plan, with the changes as discussed and described by Anderson.

Further discussion: Newell asked if this change would result in no funding for AIS from the LMCD.

Anderson replied that he would not see the strategy changing, simply the language changed in the document. He stated that an applicant could still come to the LMCD, where the concept could be discussed, and if deemed appropriate a funding request could still come before the Board at a regular meeting.

VOTE: Motion carried unanimously.

C) Update to Waterskiing/Towing Observer Ordinance

Hoelscher noted that Anderson requested an update on this item. She noted that since voting on the item, they have received feedback from Water Patrol that they are strongly against changing the observer rule and therefore that should come back before the Board for additional consideration. She noted that they would still want to proceed with the updates to the language which would bring it into compliance with State law.

Kroll stated that he would ask that Water Patrol be specific with its concerns about the updates.

Hoelscher stated that a letter has been received from Water Patrol that can be distributed to the Board.

Jabbour commented that the U.S. Coast Guard accident summary was released for 2022 and the third cause was lack of observer. He stated that the former LMCD representative from Mound t-boned a boat because he did not have an observer. He commented that two years ago, with the sun in the eyes of the Water Patrol and lack of observer, the Water Patrol hit the rope of the skier and the skier ended up in the hospital. He

noted that the driver of that boat received a ticket for not having an observer and that matter is in litigation. He stated that they cannot continue to operate in a vacuum.

Hoelscher noted that will return to the Board at the next meeting or first meeting in September.

13. NEW BUSINESS

A) Watercraft for Hire Work Group

Hoelscher stated that there was a workshop on this topic in the last month and staff has since met with Water Patrol to discuss the issues. She stated that because this is a large issue there has been a desire to create a working group for this matter. She noted that Jabbour and Walesch have expressed interest in joining that group and asked that other members interested reach out to staff. She stated that for those that are not going to participate in the work group, they could offer input at this time.

Anderson asked if there would be outside members on the work group, or only Board members.

Hoelscher stated that the work group would include members of the Board and staff and that group could consult with others that they feel would add necessary input.

Newell stated that he would like to consider having Mr. Evenson attend a future workshop to discuss Maxwell Bay including boat traffic and the impact of weeds.

Hoelscher noted that at this time she is requesting input for the Watercraft for Hire Work Group.

Brimeyer commented that this is an example of why workshops are held every other Wednesday and attendance is necessary so that information is not repeated at the regular meeting. He stated that they spent a lot of time with Water Patrol on this to review the information and make suggestions. He stated that they do not believe that this document needs a lot of tweaking, and this should not be dragged out for months.

Hoelscher stated that there was a workshop on this issue but there was not a lot of structure, therefore she believed that a smaller more structured group could provide a framework for the rest of the Board to discuss.

Brimeyer commented that if people do not attend the workshop and bring up questions at the regular meeting, there should be some repercussion. He reviewed the members that would be at the work group meeting including Jabbour, Nellis, and Walesch.

Hoelscher stated that this group would meet with staff to develop the framework that will be reviewed with the full Board in a workshop setting.

Brimeyer noted that the moratorium was only three months, so the clock is ticking.

Anderson commented that he agrees with Brimeyer that there were three members of Water Patrol at the last

meeting and a lot of time has been spent developing this document. He stated that he feels solid moving forward with this document.

Brimeyer noted that he was not expecting action tonight, but believed that the document is about 75 percent done. He believed that the work group could meet to finish this. He noted that they are not going to cancel anymore workshops and they will be holding two workshops per month. He noted that the first meeting of the work group would be August 17th.

14. TREASURER REPORT

A) June and July 2023 Balance Sheets

Anderson provided an overview of the June and July balance sheets. He noted the interest payment received from the new bank.

Brimeyer commented that if the change from hourly to salary payments to employees is approved there would be a change in the next payroll, providing additional details and noting when the old bank account would be able to be closed out.

B) July 2023 General and STL Income and Expense Reports

No additional comments.

15. EXECUTIVE DIRECTOR UPDATE

A) James J. Hill Days (Sept. 8th – 10th) – Volunteers for September 9th and 10th

Brimeyer stated that volunteers are needed for this event.

Hoelscher stated that she spoke with Baasen tonight and he is recovering well. She stated that Baasen has been following along and reading minutes, hoping to come back in September. She noted that Baasen typically staffed this event but asked that someone else step up this year to assist.

Jabbour commented that while the LMCD used to go to these events, it does not mean it still has to. He believed that they should stop attending these events and perhaps instead hold a town hall meeting to gather public input.

Hoelscher commented that some members enjoy staffing a booth at their city event. She noted that members that would like to volunteer for this event of Apple Days should reach out to staff.

B) Excelsior Apple Days (Sept. 15th – 17th) – Volunteers for September 16th and 17th (Gregg/Mark)

No additional comments.

C) Employee Organizational Chart

Brimeyer provided background information on the staffing changes and how he evaluated the duties that people were handling and enjoyed and those that they did not. He stated that he used that information in order to create this organizational chart. He asked that the Board review this and he will present it for action at the next meeting along with compensation.

D) Flex Time

Brimeyer commented that he is not a fan of letting employees accumulate sick time which is then paid out at 30 percent when they leave. He stated that he would prefer to use flex time which can be used for time off, whether that is when someone is sick or on vacation. He explained that employees would not lose any of their current accrued time off and explained how that bank would be used. He stated that this would be fair for employees and would not cause employees to call in sick when they simply want to use their accrued paid time off.

Hoelscher stated that she believes that this item and the previous are great ideas and would love to hear from Board members that have more experience in this area.

Zorn commented that she fully supports both noting that they are updated and modern.

Hoelscher confirmed the consensus of the Board.

Anderson commented that Brimeyer has done a wonderful job with this and appreciated that. He stated that in terms of the organizational chart he also likes the elimination of Environmental Specialist. He agreed that this would be within the budget.

E) Tonka Bay Boat

Brimeyer commented that the slip is in, and the boat will go in tomorrow.

F) Scanning

Brimeyer reported that there was a delay with the scanning, and they arrived yesterday and left with 135 boxes, when 91 boxes were estimated. He noted that the cost would then be increasing.

Hoelscher stated that there are funds within the reserves to cover that expense.

G) Other

Brimeyer commented that the newest member of the LMCD tabulated a list of answers to general questions the Board may receive.

Anderson asked if a permanent dock was installed at Tonka Bay.

Brimeyer stated that they did not install a permanent dock at this time. He noted that it was a condition that he mentioned.

Anderson stated that he would be opposed to that as they would not need to put in a permanent dock.

Newell suggested that one of the workshop topics include Mr. Evenson and information that he discovered about Maxwell Bay.

Brimeyer confirmed that he has a list of workshop items and that is on the list.

Anderson asked if the City of Wayzata has presented a variance to go to 200 feet.

Tully replied that the city has not submitted such request.

Brimeyer commented that Wayzata received funds through the state bonding bill for the boardwalk and additional questions are being asked about the project. He stated that the dock license will most likely need to be amended in at least four spots so the state can ensure that the city is following the requirements.

Hoelscher stated that it would seem Wayzata would submit the request for the Board to review.

Brimeyer confirmed that the attorney for Wayzata has reached out in attempt to resolve this matter, therefore it will come forward to the Board.

Jabbour commented on the fiasco about carp fishing and noted that everyone should know that was done inappropriately. He stated that what they did was illegal. He commented that the LMCD needs to pay attention to state law more than the LMCD law, using the example of water towing and noting that the LMCD could simply refer to the state law and follow that process. He believed that the LMCD should rehab the way it does things to make it easier and more modern.

16. ADJOURNMENT

MOTION: Kroll moved; Cook seconded to adjourn the meeting at 8:41 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary