

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**
7:00 P.M., April 26, 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; Ben Brandt, Mound; Bill Cook, Greenwood; Dan Baasen, Wayzata; Gabriel Jabbour, Spring Park; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Deborah Zorn, Shorewood. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Environmental Administrative Technician; Maisyn Reardon, Administrative Coordinator; and Interim Executive Director Jim Brimeyer.

Members absent: Dennis Klohs, Minnetonka Beach; and Ryan Nellis, Tonka Bay.

Persons in Attendance: Dan Gustafson, Shawn Wischmeier, Jeffrey Dahl, Mike Kelly, and Scott Jordan

4. APPROVAL OF AGENDA

MOTION: Kroll moved, Stone seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 04/12/2023 LMCD Regular Board Meeting

Baasen stated that under Save the Lake Committee report, the elected Officers should be listed with himself as Chair and Newell as Vice Chair rather than Co-Chair.

MOTION: Walesch moved; Kirkwood seconded to approve the 04/12/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (10), Abstained (2), (Anderson and Stone). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Baasen moved, Cook seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (04/16/2023 – 04/30/2023); **7B)** Resolution Approving 2023 Alcoholic Beverage License Renewals; and **7C)** Approval of Findings of Fact and Order for

an Adjusted Dock Use Area and Length, 5310 Elmridge Circle, Shorewood, MN 55331, East Upper Lake.

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

10. PUBLIC HEARING

A) Groveland Homeowners Association, New Multiple Dock (moved to May 10th Board Meeting)

B) Caribbean, New Multiple Dock

Tully presented a request from the Caribbean for a new multiple dock license for the property located at 135 Lakeview Avenue, 100 and 110 Sunrise Avenue. He provided background information on the property and aerial photograph with the current configuration of the marina. He reviewed the current approved site plan and compared that to the proposed site plan. He provided additional explanation of the request to convert four Boat Storage Units (BSU) from "rent" to "transient" to allow for more public access to the restaurant and to utilize one preserve BSU for transient use in 2023 and beyond noting that no additional dock structure is proposed for the additional BSU. He stated that the applicant's proposal would continue to be less than the total number of BSUs and total linear length of BSUs in the original approval of the nonconforming structure on the site. The existing variances on the site would be maintained. He stated that no comments were received from the general public or other agencies. Staff recommends approval subject to the conditions noted in the staff report.

Walesch asked for details on the variance request.

Tully explained that the variance has existed on the site and is not a new request and explained that it has been an LMCD practice to reaffirm the variances that exist under a new request.

Kirkwood referenced slip 128 and asked if there would be adequate space to the south.

Tully replied that it would be a tight squeeze but staff did not interpret that as a notable change.

Anderson referenced an email from staff related to square feet versus linear feet and asked if the attorney was consulted on the code requirement.

Tully commented that the Board memorandum used square footage for the BSUs, and after review of the code he made the change to linear feet based on the historical interpretation of legacy status.

Anderson replied that he was never made aware of that when he reconfigured his marinas and asked for more explanation on legacy status.

Tully noted the section of code that discusses reconfiguration of nonconforming marinas. He noted that this site was allotted a large number of BSUs and when changes were made in 1978, the marina was allowed to continue with those previous allowances. He noted that when the reconfiguration was made, the marina was allowed to bank the BSUs and linear footage not being used.

Jabbour stated that he does not have a problem with the application but believed that they are on the wrong track. He referenced the envelope concept that is used for reconfiguration and believed that the Caribbean came in under that type of request. He provided additional context on square footage versus linear footage. He stated that State law prohibits expansion of nonconforming use. He asked whether there is additional time for review under the 60-day rule.

Tully confirmed that there would be additional time for review.

Jabbour commented that he does not believe that converting the slips from rental to transient would be expansion of a nonconforming use.

Kroll commented that he believes that it is time to approve this as additional boat parking is needed for the restaurant.

Hoelscher opened the public hearing at 7:22 p.m.

Shawn Wischmeier, applicant, commented that he agrees with the comments of Kroll as this will continue to allow more public access to the marina. He stated that they have a new restaurant operator that they have been working with to support this request.

No additional comments were offered and the public hearing was closed at 7:23 p.m.

MOTION: Anderson, moved, Kroll seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the multiple dock license from Caribbean Marina & Restaurant for the property located at 135 Lakeview Avenue, 100 Sunrise Avenue, and 110 Sunrise Avenue in Tonka Bay for final action at the April 26, 2023 LMCD Board meeting.

Further discussion: Walesch asked if State law would prohibit this action because of the nonconforming use status.

Langel explained that if the use were discontinued for a one-year period that statute would come into play and therefore would not apply in this instance.

Jabbour asked if the extra slip would be an expansion of the use.

Langel read the statute and exception that is provided within that language. He explained how the LMCD code allows BSUs to be banked.

VOTE: Motion carried unanimously.

C) Wayzata Panoway

Tully presented a request from the City of Wayzata for a multiple dock license related to its Panoway Project for the property located at 402 Lake Street East. He provided an overview of the municipal multiple dock license request noting the special requests related to setback, length and density. He reviewed the current approved site plan and compared that to the proposed site plan. He provided details on the proposed dock structure which did trigger an Environmental Assessment Worksheet (EAW). He stated that the EAW was completed in 2018 and nothing has significantly changed since the approval of the EAW and City Council declaration that an EIS was not necessary. All partnering agencies have approved relative licenses or permits for the proposed projects. He stated that there have not been any comments from related agencies or the general public. Staff recommends approval subject to the conditions noted in the staff report.

Brimeyer referenced the statement that the railroad has given permission to cross the tracks in two locations, noting that is not necessary as the City already has that right-of-way. He did believe it was still the right thing to do in terms of working cooperatively but was not technically needed.

Kirkwood asked for information on the portion of the dock that would exceed past 200 feet.

Tully commented that the dock length would vary and identified areas that would protrude. He commented that if the length were restricted, the applicant would need to decide how to adjust within that area.

Walesch commented that marinas are allowed to a length of 200 feet and asked if similar approval could be given to this municipality rather than restricting to 150 feet.

Tully replied that the code specifies that municipalities can asked for widths over eight feet and are restricted to a length of 150 feet. He noted that a length of 200 feet would require a variance.

Jabbour commented that this request mixes a variety of things. He believed that the LMCD has changed the rule to allow a municipality to go to 200 feet, noting that Excelsior received that approval. He stated that a variance would be needed if a width of ten feet were to exceed past 150 feet. He stated that he was incorrect when he previously suggested that Wayzata did not ask the LMCD to participate in its planning process as he has since found out that the LMCD was involved. He commented that the LMCD is the Responsible Government Unit (RGU) and did not think the organization could give up that role to the city, although he believed that the LMCD could come to the same conclusion on the EAW that was completed. He asked if the city is still proposing to have the boardwalk extend to the caretaker home.

Hoelscher stated that it was her understanding that because no substantial changes were made to the plan

since approval of the EAW, that could be approved.

Langel stated that there is language within the rules relating to issues that arise over who would be the RGU. He explained that the LMCD can agree to have the city act as the RGU and accept that ruling.

Jabbour asked if the LMCD is obligated to review the findings and conclude the same.

Hoelscher stated that staff and legal counsel have reviewed those findings and agree with the ruling.

Jabbour commented that the Watershed District and DNR have approved the request and if those agencies support ten feet, he believes that the LMCD should as well.

Walesch stated that after his conversation with legal counsel and a representative from the Environmental Quality Board (EQB) there is no need for an EAW without substantial change and the LMCD can allow the city to be the RGU in this instance. He noted that staff and legal counsel have reviewed the findings and the city has responded to all of the agency comments that were raised. He believed that there was sound reasoning for not requiring an EIS. He believed that a finding of fact should be added that the LMCD agrees with the findings of the negative declaration, and accepting the EAW. He believed that would resolve the role of the LMCD in regard to the EAW.

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

Anderson asked and received confirmation that the dock would be designed to American Disabilities Act (ADA) specifications. He asked if any of the regulations for an EAW have been changed since the acceptance of the EAW. He also asked when the project would begin.

Mike Kelly, Wayzata Public Works Director, commented that the project is proposed to begin at the end of June per the permit issued by the DNR as that permit states June 30th as the date work could begin.

Anderson stated that he did not see language related to when poles could be pounded within the EAW, but believed that typically is restricted during spawning season and therefore should not be an issue.

Mr. Kelly stated that the responses to the EAW comments state that the city would follow all applicable regulations at time of application, which would be as of 2023 and therefore they would any new regulations.

Anderson asked if the Excelsior docks are out to 200 feet.

Jabbour confirmed that is correct and believed that was allowed under the LMCD code.

Tully stated that staff interpreted the language differently, providing additional explanation and apologized if that was incorrect or out of date.

Anderson commented that municipalities often get permissions that the general public cannot.

Hoelscher stated that when there is a variance or change from typical procedure there is consideration of public benefit and priorities versus the flexibility requested which is something the Board can consider.

MOTION: Walesch moved, Baasen seconded to direct LMCD staff and legal counsel to prepare Findings of Fact and Order approving the City of Wayzata, New Multiple Dock License application for the property located at 402 Lake Street East in Wayzata as the draft conditions are presented for final approval at the May 10, 2023 Board meeting, with the amendment for condition two to allow a length of 200 feet (by code or variance).

Further discussion: Anderson commented that he likes everything about this with the exception that this would create an arbitrary circumstance that could be used as example by qualified marinas requesting additional depth and therefore will vote against this.

VOTE: Ayes (11), Nays (1), (Anderson). Motion carried.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

A) AIS Management Funding Request – Antenna’s on Harrison and Painter’s Creek

Brandt stated that the Aquatic Invasive Species (AIS) Committee met on April 14th and the President of the Harrison Bay Association presented a request for the carp project. He provided a brief update on the progress of the project noting that this would be the second phase of the study. He reviewed what would be included in the second phase along with details of the funding request. He stated that the Committee recommends \$5,000 of funding towards this project which would come from the equipment project in order to install the two antennas.

Anderson clarified that this would come from the equipment side of the AIS budget.

Kirkwood asked if the LMCD would then own the antennas.

Brandt replied that the antennas would be rented through Carp Solutions.

MOTION: Anderson, moved, Newell seconded to approve funding of \$5,000 for the rental of two antennas through Carp Solutions as requested for the Harrison and Painter’s Creek project.

VOTE: Motion carried unanimously.

Hoelscher commented that she likes the way this is moving forward with providing funding for AIS projects to get started around the lake. She commented that perhaps there could be a plan to utilize the communications consultant to better promote the AIS program.

14. TREASURER REPORT

A) Balance Sheet – March 2023

Anderson reviewed the balance sheet and provided a brief summary.

B) Update on 2024 Budget

Anderson reported that the audit presentation will be provided at an upcoming Board meeting and work has begun to prepare for the 2024 budget. He stated that an amendment has been requested for the 2023 budget, as the communications line item exceeded its allocation of \$20,000 and requested that be adjusted to \$30,000 and in turn reduce the AIS budget from \$80,000 to \$70,000.

MOTION: Baasen, moved, Cook seconded to approve an amendment to the 2023 budget to reduce the AIS line item from \$80,000 to \$70,000 and increase the communications line item from \$20,000 to \$30,000.

VOTE: Motion carried unanimously.

Hoelscher asked that the table showing the levy to each city be provided in the future 2024 budget discussions.

15. EXECUTIVE DIRECTOR UPDATE

Brimeyer provided the following information:

- Summer rules have been mailed. Packets are available at the LMCD office for Board members to share with their respective city.
- An outline was provided for the upcoming planning session to be held May 24th.
- Staff is collecting data to present an update to the variance fee.
- A shredding company will be completing work to clean out the garage next week.

Cook commented that the finance and operations committees will be bringing a recommendation forward to the Board at an upcoming meeting to gain direction from the Board in terms of updating those fees.

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt reported that the committee met on April 14th and will meet next on June 9th.

Applications have been received for herbicide treatments that will be considered in June. He thanked the Board for its support on these funding applications.

Jabbour commented that there is a gap in the system as the LMCD previously received a minimum of \$60,000 from the DNR. He stated that funding was reallocated to counties, but the LMCD does not have control over any of those funds and is not getting those funds from Hennepin County.

Hoelscher stated that the LMCD has a communications consultant that also lobbies and suggested that the committee develop a proposal for the Board to consider. She stated that the consultant could then be engaged to lobby for the organization.

Jabbour commented that he is not on the committee.

Hoelscher stated that Jabbour could attend a committee meeting or share his comments with Brandt.

Jabbour commented that he believes that the LMCD should reclaim what should be allocated to the lake.

Walesch asked if the percentage is known that should be allocated to Lake Minnetonka based on the formula.

Jabbour commented that he is not aware of the exact number but could look into that.

Hoelscher suggested that Jabbour bring that data forward for discussion on a future agenda.

Communications: Hoelscher commented that the summer rules should be arriving in mailboxes and was pleased in the timing. She asked that the Board provide any feedback to herself, Kirkwood or Brimeyer, as those could be incorporated into future versions.

Zorn asked and received confirmation that the mailing went to all lakeshore property owners and asked if a drop was also made to marinas to distribute.

Tully commented that they have provided flyers with the rules to Water Patrol and marinas and would also be providing those to the Board to share with their member city.

Executive Director Selection: No report.

Finance: Anderson commented that the committee has been working on the license fee updates, specific to variances. He met with representatives from a local bank and brought forward those options to the committee to discuss.

Operations: No report.

Save the Lake: Baasen reported that the spring solicitation was included with the summer rules mailing

which provided a cost savings in the mailing. He thanked the committee and communications consultant as the solicitation was mailed much earlier than in previous years.

- Save the Lake Contribution Recognitions: Noted.

Anderson referenced the action related to the Caribbean and asked for clarification as to whether the allowance under code was up to 200 feet or whether that would be done through a variance.

Walesch stated that if a variance is needed, that would be granted. He stated that Anderson would not need to change his vote as that could be done when the matter comes back for final consideration.

Hoelscher stated that the answer can be provided prior to the next meeting.

17. ADJOURNMENT

MOTION: Kroll moved; Newell seconded to adjourn the meeting at 8:28 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary