

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 P.M., MAY 10, 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; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Environmental Administrative Technician; Maisyn Reardan, Administrative Coordinator; and Interim Executive Director Jim Brimeyer.

Members absent: Mike Kirkwood, Minnetrista; Deborah Zorn, Shorewood.

Persons in Attendance: Kurt Wehrmann, Jeffrey Dahl, Mike Kelly, Shawn Wischmeier, Dan Gustafson, Sheriff Dawanna Witt, Lieutenant Rick Rehman, Major Shane Magnuson.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Chair Hoelscher introduced Sheriff Dawanna Witt who was elected in 2022.

Sheriff Witt introduced the members of her team present with her and thanked the Board for its support of public safety on the lake through the Save the Lake grant. She commented that there are four response boats on the water and ready to go. She stated that they have also partnered to have an EMT on the boats during the weekends. She provided an overview of the 2022 services of Water Patrol on Lake Minnetonka. She stated that the grant secures two deputies solely for the lake to help promote education and safety. She also provided an overview of the services the Sheriff's Department provides to the lake communities.

Chair Hoelscher thanked Sheriff Witt for taking the time to attend the meeting.

Anderson commented on the great working relationship between Orono and the Sheriff's Department. He noted Orono had commented on the lack of PFDs which have now been supplied to the Orono squads. He thanked the Sheriff's Department for their cooperation with Orono PD and the DNR.

Baasen thanked the Sheriff's Department and Water Patrol for the partnership which has allowed dedicated officers on the lake as that provides for a much better experience for all users of the lake.

Sheriff Witt commented that while she feels that she was the best person for the job, she also recognizes room for growth. She commented that she likes to be proactive and encouraged the Board to reach out if they would like to have conversations with her.

6. APPROVAL OF MINUTES- 04/26/2023 LMCD Regular Board Meeting

MOTION: Baasen moved, Kroll seconded to approve the 04/26/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (12), Abstained (1), (Klohs). Motion carried.

7. APPROVAL OF CONSENT AGENDA

Anderson referenced a voucher from Gleason Printing for the summer rules brochure. He noted that he was not aware of the full cost and had questions as to which line item should be funding that in the future.

MOTION: Kroll moved, Walesch seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (05/01/2023 – 05/15/2023); **7B)** Resolution Accepting Save the Lake Contributions (03/30/2023 – 05/03/2023); **7C)** Approval of Findings of Fact and Order for Caribbean Marina; and **7D)** Approval to Change Bank Depository to Bridgewater Bank.

VOTE: Motion carried unanimously.

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

Kurt Wareman, 444 West Lake St in Excelsior, inquired about the status of a complaint he made in 2020 related to the property at 450 West Lake Street. He stated that in November of 2020 he met with LMCD staff and has continued to do so since then. He asked if the paperwork has been sent to criminal court as the property remains out of compliance.

Kroll apologized for the way this was handled. He stated that this was to have gone to the prosecutor last summer, but he was informed by the prosecutor that he had not heard of the case but could have forgotten because of his case load. He stated that after follow up the previous Director was hoping for compliance voluntarily and this appeared to have fallen through the cracks. He stated that they would be working to bring this forward to the court.

Gabriel Jabbour spoke as a resident. He stated that his neighbor, who just spoke, has been coming and going for several years and was told untruthful information. He stated that he lives next door to the property in violation as well. He believed that man was owed an apology. He commented that he believes that there are a lot of good people on the Board, but they are buried by the actions of others. He commented that he will be

resigning from the Board as he believes that he can more effectively enact change as a resident. He commented that the State of Minnesota is owed an apology. He stated that the LMCD continues to repeat poor choices and behavior. He commented on an incident with Save the Lake, which he previously owned and gave to the LMCD and stated that he is unsure that could even be trusted at this time.

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) Approval of Findings of Fact and Order for Panoway Project

Hoelscher clarified that at the last meeting Wayzata presented three applications for a multiple dock license, special density license, and variance application all of which were directed for approval upon review at this meeting. She stated that Wayzata did not submit an application for the dock length variance, although information was provided regarding the width variance. She stated that the Board did grant approval for the length variance, should it be needed. She stated that notice was provided as required. She asked whether the Board would like to approve something that was not requested in the paperwork.

Walesch stated that he made the motion at the last meeting to include the length variance, as it was his understanding that the applicant applied for that variance. He stated that the length was provided in the presentation, so he was not aware that the applicant did not submit that paperwork. He stated that he did not intend to grant a variance for something that was not applied for. He asked for clarification on the notice and what is required by law in terms of specificity for variances and/or other applications.

Langel commented that public notice is not required for a variance. He stated that in general public notice would include minimal information to alert the public of the subject matter.

Jabbour commented that the LMCD always told the neighbor what the other neighbor is requesting and that helps to alert the resident as to whether they should attend the meeting. He stated that when he wanted to waive two variances that he had received, he was told that there would need to be a public hearing to do so. He stated that the motion made was to provide the variance if needed, as there was a provision in the Code that may apply and could allow up to 200 feet. He commented that he believes that the Wayzata application is extremely inaccurate. He stated that there is demonstrated practical hardship and public benefit in

increasing the width of the boardwalk. He encouraged the City to either conform with 150 or come back with a PUD that would allow 200 feet. He stated that he spoke with the cruise ships and they did not require that length, therefore the purpose would simply be aesthetic.

Hoelscher stated that the Board can still approve the multiple dock license, special density license, and boardwalk width. She noted that her question would be whether the length should be included.

Anderson stated that based on the information included in the last Board packet, he could see how the confusion arose as 200 feet was mentioned. He stated that someone would have had to ask for 200 feet in order for that to be included if it was never asked for. He commented that there are no dimensions on the sketch provided by the applicant. He commented that he would be concerned with deicing at this location unless the Panoway is shut down in the winter. He commented that a Board member should be able to make a motion, which was seconded and approved by all but one member and have that motion stand.

Walesch stated that he could make a new motion.

MOTION: Walesch moved, Baasen seconded to approve Findings of Fact and Order for a New Multiple Dock License, Special Density License, and Variance Application(s) for City of Wayzata located at 402 Lake Street East in the City of Wayzata (PID 06-117-22-31-0001), amending the Findings of Fact to remove number nine and to remove 1d from the Order as well as removing number four from the introductory paragraph and any other reference to a length of 200 feet.

Further discussion: Hoelscher asked for clarity on deicing.

Tully commented that the site currently has deicing allowed on the depot side. He stated that if the deicing is expanded a new deicing license would be required but has not yet been presented.

Hoelscher stated that she believes that statement should then reflect that a new deicing license would be required rather than a new multiple dock license.

Walesch provided new language that should be reflected in 1l under the order to state that a new deicing license would be required if that were desired for expansion.

Baasen agreed to the additional amendment.

Anderson asked if a detailed site plan should be required.

Walesch believed that there was a condition requiring an updated site plan.

Anderson commented that the condition requires an as-built but asked what that would be compared to without a detailed site plan.

Tully stated that he included 200 feet on the Board memo to acknowledge to scale but included parenthesis not to exceed 150 feet.

Walesch stated that he would add another condition F stating that prior to issuance of a license to construct the docks, the applicant shall submit a site plan with exact dimensions of what is proposed to be built and then submit the as-built as stated in the condition.

Baasen stated that it was his understanding that they did not have to go back to ground zero as the facts and findings supported everything but the extension to 200 feet.

Walesch confirmed that this would not rearrange the site, but to require the site plan to show dimensions.

Tully commented that the site plan is to scale but is not depicted to the typical format.

Jabbour thinks that only the walkway should be approved, and the applicant should decide if they want to come back to demonstrate practical difficulty for the additional length. He stated that the applicant could come back with a PUD, separate from the walkway. He believed that neighbors should be notified of a variance.

Klohs commented that these are computer generated drawings, but the dimensions simply are not stated. He stated that the drawings are professionally done and could be easily verified. He stated that Wayzata could do exactly what Excelsior has done in terms of extending to 200 feet without a variance.

Anderson and Jabbour did not believe that was an accurate statement.

Hoelscher recapped the motion.

Jabbour commented that he thinks the applicant would need to reapply because the application is incorrect to the detriment of the applicant.

Hoelscher stated that the applicant could reapply for a variance or work within the Code.

Anderson stated that he will be voting against this as it should have been placed on the Consent Agenda. He believed that this process was wrong.

Brandt asked if the dock would work without deicing.

Tully replied that would be a question for the applicant.

Walesch commented that both docks are currently deiced.

Brandt commented that the docks currently are not intended for year-round use, whereas the Panoway project does propose year-round use.

Mike Kelly, representing the applicant, stated that the Boardwalk is designed in a manner that would not require deicing, but the docks would. He stated that they would apply for a new deicing license when that time comes.

VOTE: Ayes (12), Nays (1), (Anderson). Motion carried.

Baasen stated that for clarification the Board has approved the construction of the boardwalk and dock structure up to 150 feet. If the applicant wants to extend past 150 feet, they will need to request a variance or go through the PUD process.

13. NEW BUSINESS

A) 2022 Financial Audit Presentation

Tyler See, Abdo, presented the 2022 financial audit reported an unmodified or clean opinion. He stated that there was one finding related to financial reporting because of the small size of the organization, noting that this has been a recurring finding. He provided an overview of the general fund, Save the Lake fund, and cash balances.

Anderson thanked Mr. See for being prompt in answering his questions. He asked if 35 percent should be the target for the reserve funds.

Mr. See commented that the current policy for the reserve balance is to fall within 30 to 50 percent of the following year's budget but that could be changed to 35 percent of the current budget.

Anderson noted that it has previously been approved to aim for 35 percent, noting that the current balance falls at 98 percent. He stated that he would like to speak with Mr. See as he did not believe the general journal entries were entered correctly into the computer.

Jabbour stated that unlike cities the LMCD does not have the same infrastructure requirements, therefore expenditures could be absolute unless something comes up. He stated that the revenue should be 100 percent predictable with the exception of fines. He noted that applications are currently a negative cash flow.

Mr. See stated that they review on a smaller scope than a city because the budget is lower and therefore smaller budget variances are noticed. He stated that this audit is not done in the same manner as a city.

MOTION: Baasen moved, Anderson seconded to accept the 2022 Financial Audit Report, provided by Abdo.

VOTE: Motion carried unanimously.

14. TREASURER REPORT

A) Balance Sheet – April 2023

Anderson provided an overview of the balance sheet.

B) Update on 2024 Budget

Anderson provided a brief overview of the 2023 budget compared to the information drafted thus far for the proposed 2024 budget.

C) Proposed Levies for Cities

Hoelscher stated that a draft for the levies to the cities was included proposing a zero change from 2023. She recognized the desire to spend down the reserve and asked when that would be anticipated to be reached so that the cities can be informed on when the levies would increase.

Anderson provided some estimations that the levy could stay static through 2026 or 2027. He stated that he did get an inquiry from Minnetrista asking why more funds were not being levied.

Hoelscher asked the Board to bring this information back to their city for feedback.

Jabbour asked what would be received if the maximum was levied by law, it was noted that would be about double. He stated that if cities wanted to contribute more funds, they could do so.

Hoelscher noted that the Board can review the information and the budget will be voted on at the next meeting.

15. EXECUTIVE DIRECTOR UPDATE

A) Administrative Fines

Brimeyer provided background information on the administrative fine process, which can help to resolve matters without having to go to court. He stated that he did consult with legal counsel and the LMCD does have the authority to implement administrative fines. He stated that he will review the White Bear Lake Conservation District, which already has a similar policy in place, and bring back a proposal to the Board.

B) Intern Announcement

Brimeyer stated that the announcement for the intern position was included in the Board packet.

C) May 24th Board Retreat

Brimeyer noted the upcoming Board retreat scheduled for May 24th.

D) Authorize Staff to Amend Tonka Bay MDL License to Add BSU

Brimeyer stated that he discovered that the LMCD has a truck, trailer, and boat. He stated that the current process is to drive the boat and trailer it when done. He was told that the LMCD previously docked the boat at Tonka Bay and that entity has agreed to allow the LMCD to dock the boat if their license would be amended to allow one additional BSU for the exclusive use of the LMCD.

Nellis commented that he will meet with the City Council the following day and will talk to them about it.

Jabbour stated that law enforcement boats do not count against the license and a government boat also does not count towards the license.

E) Authorize Interim Director to Negotiate Office Lease

Brimeyer stated that the lease of the office expires in September of 2023. He stated that notice is required by June 1st as to whether they intend to stay there. He stated that he will be pursuing a lease extension.

Walesch agreed that the lease should be extended as moving would be a huge, unnecessary distraction at this time.

The Board consensus was to authorize the Interim Director to negotiate a lease extension.

Hoelscher asked if any applications have been received for the intern position.

Reardon replied that one application has been received at this time. It was noted that May 12th is the deadline but that could be extended if needed.

Kroll stated that originally, he opposed the concept of administrative fines, but has come around and believes that should be implemented as soon as possible.

Hoelscher asked if the intern announcement should be shared on other formats to increase interest.

Brandt commented that he would be happy to help with the posting.

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: No report. The next meeting is June 9th.

Communications: Hoelscher reported that the meeting scheduled for May 11th has been canceled. The communications consultant did provide some press packets for the 300-foot rule change that will go out Monday.

Executive Director Selection: No report.

Finance: Brimeyer provided an update on discussions with the bank related to investments.

Operations: Cook reported that this group will meet next week.

Save the Lake: Baasen reported that the group will meet on June 14th. He commented that it has seemed to work well to include the solicitation letter with the summer rules.

- Save the Lake Contribution Recognition: Baasen recognized the donations that have been received.

Anderson asked if there was interest from the Board in discussing the requirement to have an observer for boating activities such as skiing, tubing, or wakeboarding. He noted that on most lakes you are allowed to use a mirror.

Hoelscher noted that was on the list for a future agenda and suggested that Anderson obtain the proposal from the resident and bring it forward to the officer's meeting or operations committee.

17. ADJOURNMENT

MOTION: Cook moved, Walesch seconded to adjourn the meeting at 8:47 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Jake Walesch, Vice Chair