

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 P.M., APRIL 12, 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; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; Denny Newell, Woodland; and Deborah Zorn, Shorewood. Also present: Joseph Langel, LMCD Legal Counsel; Thomas Tully, Environmental Administrative Technician; Maisyn Reardan, Administrative Coordinator; and Interim Executive Director Jim Brimeyer.

Members absent: Dan Baasen, Wayzata; and Nicole Stone, Minnetonka.

Persons in attendance: Major Shane Magnuson, Lieutenant Bret Cline, Captain Mike Jerde, Dan Gustafson, Jay Soule, Jenna Soule.

4. APPROVAL OF AGENDA

MOTION: Kirkwood moved; Jabbour seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

A) Oath of Office to Mike Kirkwood (Minnetrista), Mark Kroll (Excelsior), and Jake Walesch (Deeaphaven)

Langel administered the Oath of Office to Kirkwood, Kroll, and Walesch.

B) Letter to Rep Myers – Re: Winter Trash Cleanup Regulation

Chair Hoelscher commented that the Board has been asked to support legislation proposed by Representative Myers. She stated that a draft letter of support was included in the Board packet and welcomed input.

MOTION: Cook moved, Jabbour seconded to direct staff to mail the draft letter of support as presented.

Further discussion: Jabbour stated that they worked hard to produce an ordinance enforced by the Water Patrol. He stated that if Representative Myer wants to do something that is great, but they already have an ordinance.

Hoelscher stated that this is more related to winter and the DNR would be tasked with cleanup and enforcement.

Jabbour stated that a ticket could still be written under the LMCD ordinance. He explained that when a ticket is written under LMCD ordinance the revenue is provided to the LMCD whereas if the ticket is written under the State, the State receives that revenue. He stated that he will support this but would appreciate more communication in the future.

Hoelscher stated that perhaps edits are made to the last paragraph of the letter and provided a suggestion.

Jabbour stated that he is critical of whether the representative is aware of the LMCD rules and purpose of the organization.

VOTE: Motion carried unanimously.

Hoelscher stated that in the past when a letter of support is sent there are copies sent to member cities and other agencies and asked for input on whether that should be done. It was the consensus of the Board that practice should be followed.

Hoelscher stated that they had been doing some housekeeping at the LMCD office and found boxes of photographs. She welcomed members of the Board to go into the office to check them out this week.

6. APPROVAL OF MINUTES- 03/08/2023 LMCD Regular Board Meeting

MOTION: Anderson moved; Newell seconded to approve the 03/08/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (9), Abstained (3), (Kirkwood, Kroll, and Walesch). Motion carried.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Zorn moved; Walesch seconded to approve the consent agenda as presented. Items approved included: **7A)** Audit of Vouchers (03/16/2023 – 03/31/2023); and **7B)** Resolution Accepting Save the Lake Contributions (02/14/2023 – 03/24/2023).

VOTE: Motion carried unanimously.

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

Dan Gustafson, 1040 East Circle Drive in Wayzata, commented that he made a public data request on

January 26, 2023 related to his application and has not seen any of that data. He would like an update.

9. PRESENTATIONS

There were no presentations.

10. PUBLIC HEARING

A) Variance for Adjusted Dock Use Area and Length, 5310 Elmridge Circle, Shorewood, MN, 55331, East Upper Lake

Tully presented a variance application for adjusted dock use area and length for the property at 5310 Elmridge Circle in Shorewood on East Upper Lake. He displayed an aerial image of the property and provided background information. He explained that the current dock does not meet the standard LMCD code requirements although it has existed in this location for many years, with some reconfiguration to allow for access to more navigable waters. The current dock structure is 125 feet in length and encroaches over the side site line to the east. He provided additional details on the proposal of the applicant and displayed the proposed site plan. He provided details on the site characteristics and water depths in that area. He also provided images of other docks in the area that do not meet LMCD code. He reviewed the variance standards. He stated that no comments were received from other agencies or members of the public. He highlighted other considerations and recommendations of staff. He also reviewed the recommended conditions, should the Board choose to approve the request.

Kroll commented that while he sympathizes, there would not be much gained by extended the additional length. He noted the cost for an additional 100 feet of dock to only reach another six inches of water.

Walesch asked for clarification on the length of dock the applicant could have.

Tully replied that under the standard code the dock could be 100 feet in length.

Walesch stated that he has no issue with the application but believes that as a Board they should discuss trying to remain consistent as applications are reviewed. He believed that there needs to be a standard of who is checking the water depth. He commented that it could be problematic to have the applicant check and report the depth and therefore perhaps there should be a standard to have that measured by a professional. He stated that four feet has always been the standards depth that an applicant is allowed to reach, whereas this would be roughly at 4.5 feet and another recent application where staff recommended a depth of five feet. He stated that the Board should choose a depth to apply consistently.

Tully commented that staff does typically require a survey. He noted that this applicant was told that a survey would be needed. He also agreed with the comments related to consistency moving forward, noting that the code reads as five feet.

Walesch stated that if the code specifies five feet, which should be the consistent application.

Hoelscher referenced the section of code which provides that language and read that portion aloud.

Kirkwood asked the distance of the buoys from the existing dock. He also asked the direction traffic is being directed by the buoys, whether that is away from the dock or between the buoys and the dock.

Tully replied that he did not have the distance information because of the ice conditions of the lake. He believed that traffic was being directed around the buoys, although there would be some traffic between the two.

Kirkwood asked if this would be a situation which would be exempt from the ability to extend further in a low water declaration.

Tully replied that was not included in the findings as proposed but would be a good addition.

Kirkwood asked if this would be contingent upon the reporting of the depth survey that was mentioned.

Tully replied that the applicant has provided a full-depth survey.

Zorn noted the request for an eight foot by 20-foot platform and asked the requirements of code.

Tully replied that the code would allow eight by eight, or one side could be greater than the other. He explained that at least one side would have to be eight feet or less but the other could be longer, therefore this would be allowed.

Klohs asked for clarification on the water depth. He stated that the intent in allowing up to a depth of five feet would be to protect the environment and therefore did not believe that would be applicable and the four-foot rule would apply. He noted that the sand could be dredged if additional depth is desired.

Hoelscher agreed that specification is provided in the language.

Klohs reiterated that the rule is four feet for navigable water and up to five feet is allowed to protect the environment.

Nellis asked if dredging would be good for the environment.

Tully stated that he did reach out to the Watershed District about that, and the comment was provided that there would be a thorough investigation before additional dredging would be considered. He confirmed that a lot of dredging would be needed, if it were to be approved by the Watershed District.

Jabbour commented that there was a favored applicant in which staff allowed a depth of five feet without question. He commented the dredging is harmful and requires continuous maintenance. He stated that the bottom of the lake has been surveyed and plotted as part of the wake study and could be shared with the

LMCD.

Hoelscher opened the public hearing at 7:38 p.m. No comments were offered, and the public hearing was closed at 7:38 p.m.

Walesch stated that between the four and five feet that is a crucial element the Board should try to reach consensus on. He stated that it appears that the rule is four feet unless there is an environmental reason to go to five feet. He noted that in this case perhaps the environmental issue would be related to dredging.

Klohs commented that it is his understanding that the applicant intends to dredge even if approved. He stated that if the variance is going to be approved, perhaps a condition should be added prohibiting dredging. He noted that many properties in this area have dredged.

Walesch asked if the applicant intends to dredge.

Tully stated that the applicant collaborated with staff on this issue and provided more details on those discussions. He stated that the applicant hopes to not do any dredging, but if there were dredging it would be a lesser amount.

Hoelscher stated that there was a dock before that encroached on the neighbors. She asked why that dock does not work anymore.

Tully commented that slowly over the course of years the dock has been moved further and further over because of changing water depths. He stated that with the low water conditions of the past year, the applicant approached staff and was made aware of the nonconformities and worked with staff to develop this plan.

Jabbour commented that it seems that the LMCD is stuck in the past and continues to do the same thing over and over. He stated that when the ordinances were adopted there were many different conditions and last year many boats had to be dragged off the boat lifts. He stated that boat lifts require deeper water. He stated that he is also bothered by the fact that neighboring docks do not conform and only this property owner is being required to go through this process.

MOTION: Jabbour moved, Anderson seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Mark Zurcher for the property located at 5310 Elmridge Circle in for final approval at the April 26, 2023 LMCD Board meeting.

Further discussion: Anderson asked the conditions to be amended, removing conditions three and eight and amending the language related to setbacks.

Jabbour agreed and accepted that as an amendment to the motion.

VOTE: Motion carried unanimously.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) LMCD Strategic Plan Workshop May 24, 2023

Hoelscher stated that information was included in the packet as to why this type of workshop is recommended for the Board to complete. She believed that as the organization is going through leadership changes it would make sense to undergo this strategic planning process. She confirmed the consensus of the Board to schedule the workshop for May 24, 2023.

13. NEW BUSINESS

A) Hennepin County Sheriff's Office Funding Request for Water Patrol Deputies

Major Shane Magnuson thanked the Board for making this opportunity available for community members to make contributions towards this service to keep the lake safe. He stated that this year they are requesting \$87,000 because of salary adjustments. He recognized that the amount included in the Save the Lake budget was \$84,000 and stated that they would also agree to that amount if need be. He stated that he would like to have this approved tonight in order to train the new deputies in order to begin by Memorial Day. He stated that the Sheriff's Office is experiencing extreme employee loss, noting that in the last three weeks they have had to alter or put contracts on hold. He stated that this contract would allow the office to keep two people on the lake each day. He stated that they have declined service to cities and reduced service to a hospital because of staffing shortages. He stated that they put a lot of hours on the lake and that continues to be a priority.

Hoelscher expressed appreciation on behalf of the Board and is supportive of the work the Water Patrol does. She welcomed feedback and advice on what could be done to make the job easier.

Kirkwood asked if the assigned Water Patrol officers would remain on the lake under the contract and could not be pulled off to respond to another incident.

Magnuson confirmed that the assigned officers would not be pulled from Lake Minnetonka. He stated that if there was an extremely serious incident, such as an officer involved shooting in a lake community, a deputy may be pulled off for a matter of minutes to assist. He noted that overtime is also paid for holidays to keep a strong presence on the lake.

Anderson asked if the agreement from the previous year worked well.

Magnuson confirmed that they did not have any issues keeping the language from the previous agreement.

Anderson stated that the packet includes data from 2016. He believed that in 2020 they changed to the dedicated officer on the lake that could not be pulled.

Magnuson stated that he was unsure when that change was made, whether that was 2018 or 2020 to ensure there would be a dedicated officer on the lake and then the addition of another officer was made in 2021.

Kroll appreciated the great service of Water Patrol. He referenced the midnight cutoff and asked what would occur if someone were to leave an establishment at bar close.

Magnuson commented that there is an officer on the lake until 2 a.m.

Jabbour provided background information on how they got this partnership. He recognized the large budget that Hennepin County has, exceeding the budget of 13 states. He stated that in the late 1990s two officers were subsidized and when those funds ran out, they attempted a public/private partnership to fund the position. He stated that he and Anderson assisted in fundraising to contribute to the position when there was pressure on the Sheriff's Department during the riots. He recognized that there are extreme staffing challenges facing the Sheriff's Office at this time. He noted that volunteers have also decreased from 54 to 12. He stated that funding that has been provided through Save the Lake for this purpose is unsustainable as people will not continue to donate those amounts. He suggested that the fine revenue be rerouted for this purpose in the future.

Nellis referenced the request for \$87,000 rather than \$84,000 and asked Anderson for his opinion as the Treasurer as to whether there would be available funds to support the additional \$3,000.

Anderson stated that they assumed that \$84,000 would be needed when they set up the budget last year and believed they should stick with that figure. He stated that he will work with Magnuson in an attempt to get a better estimate for 2024 in order to properly budget. He asked for the opinion of Cook as a member of the Finance Committee.

Cook replied that he would be comfortable supporting \$87,000.

MOTION: Cook moved, Kroll seconded to approve the Hennepin County Sheriff's Office funding request in the amount of \$87,000 from LMCD Save the Lake funds to provide dedicated patrol services to Lake Minnetonka during peak boating times and authorize staff to enter into and execute an agreement for these law enforcement and boater safety services.

Further discussion: Anderson stated that he would like to use the \$84,000 from the budget and raise the additional \$3,000.

Cook commented that while he supports fundraising, he would suggest the remaining \$3,000 be taken from the reserve noting that amount could be replenished from fundraising.

Kroll and Anderson agreed.

Hoelscher asked and received confirmation that members of the Board could still request to do a ride alone.

Newell mentioned the concept of funding Water Patrol through fine revenue. He noted that may be perceived as self-serving.

Hoelscher noted that will be a discussion in the budget process.

VOTE: Motion carried unanimously.

B) Update on Wayzata Panoway Project

Jeff Dahl, Wayzata City Manager, stated that he intends to provide an update and noted that a request will come before the Board at one of the next LMCD meetings. He commented that the Wayzata City Hall will be making some technology updates which will assist with the LMCD meetings and has always appreciated the working relationship with LMCD staff. He provided an overview of the improvements that were made in the first phase of the Panoway project as well as the improvements proposed for the second phase. He provided more information on the proposed depot docks, Broadway docks, boardwalk, along with cost and the funding plan. He reviewed the next steps and noted that once final permits are approved, they would like to begin construction on phase two in June, or once the fish hatching is complete.

Cook stated that he would like to have the slideshow that was used tonight, as well as the presentation that will be provided at the next meeting within the Board packet.

Jabbour stated that it is his understanding that the award for the docks has already been granted.

Dahl replied that that has not occurred, but the bids have been opened.

Jabbour stated that there is a project manager, a low bidder has been identified from the bidding process and yet the LMCD permit has not yet been requested/obtained. He also did not believe the LMCD had participated in this planning process.

Klohs replied that the LMCD has been involved.

Dahl replied that although they have opened bidding, everything is contingent upon the proper permitting being obtained. He noted that there is a very short construction window and therefore wanted to have everything in place to begin construction. He explained that if that window is lost, they would need to wait another year.

Jabbour stated that his concern would be that if the configuration of the docks were changed, the City may have to rebid the project.

Klohs commented that he attended a number of meetings about 12 years ago, noting that the whole Board

was invited. He asked if the boardwalk is entirely over water.

Dahl replied that 99.9 percent of the boardwalk is over water with only the entrance and exit on the land. He noted that the land is railroad owned. He confirmed that they have received approval from the railroad, and they will also be making improvements to the crossings to make those safer. He stated that the DNR, Watershed District, and City of Wayzata have all provided approval for the project. He stated that they will still need to obtain approvals from the LMCD and SHIPPO. He confirmed that the docks and boardwalk were bid on separately. He stated that the depot docks will be entirely rebuilt but explained that a portion of the boardwalk docks would remain.

Anderson asked how far out the dock would be that comes off the railroad crossing.

Dahl estimated 200 to 225 feet from the shore.

Anderson commented that he does not recall a ten-foot-wide dock in any situation other than a gas dock. He provided details on another configuration that could be more budget friendly.

Jabbour asked if the railroad assigned the riparian right to the City.

Dahl confirmed that the City does have that approval and is part owner of that land that they need access to. He thanked the Board for the feedback.

14. TREASURER REPORT

A) February Financials – Income and Expense Reports

No comments.

B) Balance Sheet

No comments.

15. EXECUTIVE DIRECTOR UPDATE

Brimeyer provided the following information:

- The strategic planning workshop will impact the Executive Director search and additional information was provided in the Board packet. The search firm proposed would have a cost of \$8,000.
- Additional staff time is needed, and the option would be to either pay the Interim Executive Director more money for more hours or to have a summer intern. He believed the intern option would be the most cost-effective effort and reviewed some of the duties that could be managed by that position. The Board agreed for staff to continue to look into the option for a summer intern.

Kroll commented that a summer intern sounds like a great idea.

Anderson commented that he would prefer for the Interim Director to have more hours. He noted that they could also begin a Dock Committee that could assist staff with some of the duties.

Hoelscher agreed that an intern would be a cost-effective option. She noted that the LMCD has had a summer intern in the past, so it is not a new concept. She also noted the benefit that the intern would receive in real life experience on the job.

Jabbour noted that perhaps Judd Harper could come back as well temporarily to assist staff along with the intern position.

Zorn stated that she would support a summer intern. She suggested carefully crafting a list of duties for the position to ensure they are not sending the intern out when a staff member should be sent instead.

MOTION: Kroll moved; Walesch seconded to direct staff to pursue the option of a summer intern.

VOTE: Motion carried unanimously.

Brimeyer asked if the Board would assist staff with cleanup after the meeting.

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt reported that the committee will be meeting on Friday to review the upcoming plans for the season, noting the different entities that will provide presentations.

Communications: Hoelscher stated that the revised reactive message for the boat wake rule change was provided in the packet based on the input of the Board at the last meeting. She explained that the intention of the message is for informational purposes for the Board members and will not be publicly posted or shared. She stated that the summer rules have been finalized and will be sent in the coming weeks.

Klohs asked if this information could be sent electronically to the member cities so that those cities can include them in their Council packets to reach more people.

Brimeyer confirmed that he could follow up to ensure the City Managers receive copies.

Hoelscher stated that the committee will meet the following Tuesday. She encouraged Nellis to quickly visit different committees to determine where he would like to serve.

Executive Director Selection: No report.

Finance: Anderson stated that he has reviewed the workman's comp information and did not believe the employees were properly categorized. He asked for authorization to work with the insurance agent to update that.

Hoelscher recommended that Brimeyer follow up on that item.

Anderson stated that the committee met the previous week and reviewed some of the strategic initiatives such as investment opportunities. He provided some options the group began to discuss. He noted other strategic initiatives that the group discussed including the fee schedule.

Brimeyer agreed noting that he was shocked at the small charge for a variance request from the LMCD, providing comparison information from cities. He noted that the variance should also be required to be recorded with Hennepin County to ensure that new property owners are aware.

Operations: Cook stated that the committee met, and he has been appointed as Chair with Zorn as Secretary. He stated that at the next meeting they will begin to review the strategic plan as a whole as well as specific initiatives.

Save the Lake: Newell reported that the group met the previous day and Baasen was reappointed as Chair with Newell elected as Vice Chair. He stated that the committee approved the \$84,000 for Water Patrol and believed that would be amended to reflect the \$87,000 approved tonight. He stated that the group liked the fundraising information developed by Goff. He stated that the group would like to mail the summer solicitation with the summer rules in order to save on postage and reach a larger option.

- Save the Lake Contribution Recognitions: Noted.

17. ADJOURNMENT

MOTION: Kroll moved; Walesch seconded to adjourn the meeting at 9:00 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary