

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., September 13, 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; Kristi Conrad, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Deborah Zorn, Shorewood. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Manager of Code Enforcement; Maisyn Reardan, Office and Finance Manager; Raina Arntson, Executive Assistant Code Enforcement and Operations; and Interim Executive Director Jim Brimeyer.

**Members absent:** Mike Kirkwood, Minnetrista; and Ryan Nellis, Tonka Bay.

**Persons in Audience:** Tony Jewitt, Craig Weinstock, Miriam Goldfein, Kenneth Kloock, James Ronning, Sandra Swenson, Jeffrey Dahl, Johanna Mouton, Robert Williams, Eric Evenson, and Bill Cook.

**4. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**5. CHAIR ANNOUNCEMENTS**

**A) Bill Cook Recognition**

Chair Hoelscher recognized Cook, thanking him for his service from 2017 to 2023, noting his resignation. She highlighted some of the items that Cook assisted with during his time on the Board. She noted that Greenwood has appointed a successor to the LMCD and welcomed her.

Langel administered the Oath of Office to Kristi Conrad.

Conrad joined the Board for the meeting and introduced herself.

**B) Other**

Hoelscher welcomed back Baasen, noting that his presence had been missed.

Baasen commented that it is nice to be back.

Hoelscher noted that they are also pleased to have Brimeyer present tonight.

**6. APPROVAL OF MINUTES - 08/09/2023 LMCD Regular Board Meeting**

**MOTION:** Zorn moved; Stone seconded to approve the 08/09/2023 LMCD Regular Board Meeting minutes as submitted.

**VOTE:** Ayes (11), Abstained (2), (Baasen and Conrad). Motion carried.

**7. APPROVAL OF CONSENT AGENDA**

**MOTION:** Walesch moved; Brandt seconded to approve the consent agenda as presented. Items so approved included: **7A**) Audit of Vouchers (08/16/2023 – 08/31/2023); and **7B**) Audit of Vouchers (09/01/2023 – 09/15/2023).

**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**

There were no presentations.

**10. PUBLIC HEARING**

**A) 4290 Cottonwood Lane Variance**

Tully presented a variance request for the property at 4290 Cottonwood Lane. He identified the location of the property on an aerial map and stated that the applicant's current dock does not meet the LMCD standards although it has been in place for many years. He noted that the current dock is 90 feet in length and encroaches over the western side site line. The applicant is asking for a length variance to reach a more navigable water depth as well as a setback reduction due to conflicting dock use areas. He commented on the abnormal site conditions as the site is located on a large sand bar. He noted that the neighboring properties in the area are also out of LMCD compliance. He provided a summary of the application proposal and displayed the proposed site plan. He reviewed the characteristics of the site and provided an overview of the subject property compared to the other docks in the area. He noted that the proposed structure would be very similar to the other docks in this area. He reviewed the variance standards and related findings. He noted that there were no comments received from public agencies. He stated that one comment was received from a neighboring property supporting the request. He stated that staff recommends approval based on the conditions included in the packet.

Newell referenced the statement that other properties in this area are out of compliance and asked if that complicates this decision.

Tully replied that he reviews the Code when considering a variance and there have been zero-foot setbacks when there are conflicting dock uses areas. He stated that he does not believe that this configuration would impact any of the neighboring properties.

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

Tony Jewitt, 4290 Cottonwood Lane, thanked the Board and staff for considering his request. He stated that he is attempting to bring his dock into compliance and noted that they have enjoyed living at the property for the past ten years. He stated that there are difficulties with the converging lot lines and shallow water depth. He noted that he has worked with LMCD staff on this for the past two years to determine the best method to move forward. He commented that this is not a perfect solution, but he is comfortable with what is proposed.

Walesch asked if the applicant read the staff recommended conditions for approval and whether there were any issues with those conditions.

Mr. Jewitt replied that he has read those recommended conditions. He asked if he would be grandfathered in to continue to have the four boat storage units.

Tully replied that any property along the lake can have up to four BSUs, recognizing that it is easier for some properties. He stated that the watercraft at this property were all within compliance.

Craig Weinstock, 20620 Linwood Road, encouraged the Board to deny this request. He stated that he is in 100 percent alignment that the shoreline is shallow and would agree to extend the dock. He commented that he is a neighboring property owner, and the boat canopy is directly on the property line. He stated that he would prefer the boat canopy to be in the center as that would less restrict his view. He commented that the measurements on the dock are incorrect as there are sections of the dock that are five and six feet wide, not four feet wide. He stated that the current platform is also out of compliance. He stated that he had spoken with the neighbor on the other side, who did not want to further block access to his dock. He commented that he was unaware of the request until he saw the presentation tonight and did not believe the information shared with the residents was accurate. He stated that the existing dock configuration should be changed to be smaller. He asked the Board to deny the request and have the applicant resubmit a new request. He noted that he will be before the Board in the coming months to request a longer dock length as well.

Zorn commented on the lot line as it exists, noting that the dock of the resident speaking is not centered in the way that he is requesting the applicant's dock to be centered. She commented that the LMCD does not consider lake views.

Newell referenced the covered boat house which has docks to the left and right. He commented that he has a boat house, and it is serviced by a dock on one side, which is adequate. He asked if the boat house, as

proposed, could be serviced with just one dock section rather than two.

Hoelscher stated that would be a question for staff.

Mr. Weinstock commented that he would propose to eliminate that U towards the boat house and then reconfiguration of the platform.

Tully commented that as part of the variance, they did request that the platform is brought into LMCD compliance, and the applicant did make that smaller. He stated that the Board could request that be made smaller, but the staff does not have an issue.

Hoelscher stated that she would assume that in a variance request, the LMCD would require compliance with the Code related to dock width and platform size.

Sandy Swenson, 4285 Cottonwood Lane, commented that she lives directly east of the applicant's property and has had a wonderful experience with the applicants, noting that they are very accommodating to all of their neighbors. She requested that the Board approve the variances as requested. She commented on a short dock, which was incorrectly identified by the previous neighbor, noting that the dock is very short and is shared by the neighborhood and has plenty of room. She stated that she took her boat out yesterday and completely ruined her prop because of the low water conditions. She commented that it is great for swimming, but it is very shallow water for boats. She noted that there are many other docks in this area with converging lot lines and therefore are very tight. She stated that if the proposed dock were moved to the east, it would cause additional problems for all the dock owners on that side. She supported the proposal from the applicant.

Klohs asked if the resident would support the variance if the platform was removed and the dock were moved over 20 feet.

Ms. Swenson commented that she would not ask to remove the swim platform.

Klohs asked if the resident would be okay if the platform then encroached on her property.

Ms. Swenson commented that she would not want that because it would cause a problem for others as well.

Klohs stated that the property owner to the west was requesting that the dock be centered to be fair.

Ms. Swenson stated that she supports the application as proposed and noted that if it were moved to the east, it would impact a number of neighbors.

Kenneth Kloock, 4305 Cottonwood Lane, stated that he lives across the street from this property. He understood the need to lengthen the dock but had concern with the dock location. He noted that moving the canopy would ruin their dock but recognized that view is not a matter for the LMCD to concern. He stated that in the past there were huge arguments about dock length, noting that he is a partner in the short dock. He

was concerned with starting a large fight amongst the neighbors and believed this should be better discussed with the neighbors before this is approved. He commented that he loves the applicants and the applicants even let them use their dock to get on and off their boat. He commented that it was awful to live there when people did not get along and he did not want to see that issue repeated. He stated that this is no rush for this to be approved as it is the end of the season.

Hoelscher agreed that it is best when neighbors can all get along and figure things out.

Ms. Swenson commented that the occupants of Cottonwood Lane share the shared dock. She noted that only three of the Cottonwood Lane properties are on the lake and therefore there is always a fight between the neighbors that are not on the lake and there is a longstanding agreement between the owners that the shared dock can be no longer than 60 feet.

Mr. Kloock stated that when there were big arguments, the applicant agreed to move his dock in to appease everyone and everything has been good since that time which is why he was a bit shocked that he wanted to move the dock back out.

No additional comments were offered, and the public hearing was closed at 7:43 p.m.

Jabbour asked if the water depth in the staff presentation was adjusted to 929.4.

Tully confirmed that to be true.

Jabbour asked and received confirmation that the LMCD is not taking into consideration that the water is low, but just the shallow depth of the water because of the sand bar. He stated that the LMCD allows a dock to reach a depth of four or five feet and asked a dock reaching that water depth would require a variance or an administrative review.

Tully replied that a variance request would need to be considered by the Board.

Jabbour commented that the Code allows a depth of four feet and the current dock is well below that. He stated that sometimes under low water a dock can extend a bit further.

Tully confirmed that unless there was a variance, a dock can extend a bit further under low water declaration.

Jabbour asked the status of this review compared to the 60-day review period.

Tully replied that there would be time to delay action if desired. He confirmed that the applicant has attempted to work on this for the past two years with the LMCD staff.

Jabbour asked if staff advised the applicant that he has the ability to request a lot line extension adjustment, meaning that he could take the area to the west side and move that line further towards the dock shown on the left.

Tully replied that staff did not advise or recommend that.

Jabbour noted that has been done repeatedly.

Tully confirmed that to be true.

Jabbour commented that the lake is circular and the land around that is not, therefore the applicant could make that request.

Anderson asked if there is a photograph of where the homes are. He referenced the comments about view and what is legal. He stated that everyone on the lake that has a canopy has an issue with the view. He noted that the home to the west has a problem with view because of where that home is situated. He stated that everyone has a canopy on Lake Minnetonka, and everyone is looking past that. He stated that the issue is not that the water is low right now, but the water depth is always low in this location.

Tully noted that the existing dock reaches 3.7 feet of depth and adding additional length would reach four feet.

Anderson commented that it is allowed in Code to reach four feet in depth. He stated that the issue of view is not relevant because the interpretation is different for every person. He stated that he is comfortable with the staff opinion and noted that the applicant stated that he agrees with the recommendation of staff as well.

Walesch referenced the mention of a zero-lot line setback for the canopy and asked if the canopy is four feet from the dock section.

Tully commented that from the western side there would be a zero-foot setback from the canopy.

Walesch asked if the dock section would be reviewed to ensure that it meets the LMCD Code.

Tully confirmed that to be true.

Walesch asked if the applicant came in because of a complaint based on the previous configuration of the dock and noted that he has been working to find a solution that would work for all parties.

Tully confirmed that this situation occurred because of a complaint and then began to work with the applicant to find a solution and this has been decided as the best path forward after working on this for over two years.

Klohs commented that this situation is not unique on the lake as a number of shoreline sections have low water. He stated that granting this variance would effectively grant a variance for the whole neighborhood, as every neighbor could then request to extend out. He commented that while it seems justifiable, this will decide for the whole neighborhood, acknowledging that all parties would still need to come in and request the variance.

**MOTION:** Jabbour moved; Anderson seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Tony Jewett for the property located at 4290 Cottonwood Lane in for final approval at the September 27, 2023 LMCD Board meeting.

Further discussion: Jabbour commented that he would like LMCD staff to inspect the dock after installation to ensure compliance. He noted the practical difficulties of converging lot lines and low water.

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

## 11. OTHER BUSINESS

There was no other business.

## 12. OLD BUSINESS

### A) Approval of Modified Waterski Observer Rule 9-1.01

Hoelscher recapped the previous discussion and direction for legal counsel to prepare an amendment to the LMCD ordinance. She noted that following that, comments were received from Water Patrol against the changes to the observer rule. She stated that two proposed amendments were included in the packet for the Board to consider. She noted that the first draft ordinance would change the observer rule as previously discussed while the second draft ordinance would simply bring the language up to date and into compliance but would not change the observer rule portion of the ordinance. She noted that several people have requested to make comments and invited the public to address the Board.

James Ronning, 740 Tonkawood Road, commented that he would like to address the letter to the LMCD from Sheriff Witt, noting that he supports her emphasis on the safety of Lake Minnetonka and believed that all lake users share that view. He stated that unfortunately the letter includes some inaccuracies related to the proposed change to the observer rule and failed to address that the density of traffic on the lake varies greatly depending on the time of day. He noted that the proposed changes to the rule would balance considerations of safety and reasonableness. He stated that the proposed amendment does not remove the spotter requirement as the letter implies, noting that the rule would be modified to remove the requirement when traffic does not warrant a requirement of a spotter. He stated that the letter commented that you could not compare Lake Minnetonka to any other lake in the state and he noted that while that is true during peak traffic times, in the peaceful early morning hours Lake Minnetonka is the same as any other lake in Minnesota. He noted that during those times a wide-angle mirror would still be required in lieu of an observer. He referenced the comments in the letter related to BUIs and acknowledged that while that is a concern, it seems very unlikely those occur during the times the observer rule is proposed to be lifted. He stated that the letter also references the high rental rates on the lake and emphasizes that many of those renting is inexperienced, noting that it is unlikely that those rentals are occurring during the proposed times for the change. He referenced the statement that endorsing this change would be the same as endorsing distracted driving, noting that is an unfair and inaccurate characterization. He stated that Minnesota law allows for a wide-angle mirror in lieu of an observer and that is considered to be reasonable and safe given its

longstanding existence. He commented that early morning skiers and surfers are not only inconvenienced by the current rule, but it can also prohibit them from enjoying their respective recreational activities by the requirement to find a third person. He stated that White Bear Lake uses a similar time of day approach although with considerably larger time windows, given the lesser traffic, and to his knowledge that has been successful with that compromise between safety and reasonableness. He referenced the issue that was brought up in August when a Water Patrol boat struck and injured a skier that was being towed without an observer and noted that not all accidents are preventable. He commented that it is difficult to see how that would have been prevented by a rear facing observer in the ski boat, although perhaps could have been prevented by a forward-facing observer in the Water Patrol boat. He stated that this proposal is a rational change to the observer rule and believed that this would improve the opportunities for those that like to use the lake during quieter times.

Mariam Goldfein, 200 Birch Bluff Road, commented that she is a concerned citizen and active user of the lake. She stated that when she read about the proposed change, she was very surprised that she had not heard about this issue before reading about it in a newsletter and also did not understand why this would be proposed on such a busy lake. She stated that she has lived on the lake for 20 years and there has been an increase in traffic, especially with wake surfing. She stated that she is a paddleboarder and restricts herself to paddling near the shore, wears bright clothes, and remains aware of her surroundings. She stated that she loves to paddle during the mornings when the water is quieter. She appreciated the citizen survey of Stubs Bay but noted that is not typical of the traffic levels in all areas. She commented that there are so many distractions for drivers on the lake and hoped that this would not become another.

Hoelscher noted a letter of opposition received from the Lake Minnetonka Association.

Eric Evenson, Lake Minnetonka Association, stated that LMA supports the option which would bring the language into compliance but keep the observer rule as it is. He recognized the comments of the first speaker and his desire to get on the water when it is most quiet. He recognized that it can be difficult to find a third person or want a third person. He stated that this rule would be applied to wake surfers and others towing. He stated that there are people out there using the lake early in the morning and there are no definitive times or areas that are quiet. He commented that surf boats are not getting smaller, and the lake is not getting less busy. He stated that this ordinance would allow a 12-year-old to operate a boat and tow a sibling that is 10 years old without an observer. He was unsure that a 12-year-old would have the judgement and skills to watch out for what is going on in front of them while also looking behind in a mirror. He noted that his 17-year-old neighbor was injured on the lake while operating a jet ski this summer. He noted that this change would be asking for trouble and encouraged the LMCD to simply update the ordinance to be compliant and up to date.

Hoelscher noted an email received from a lakeshore owner stating their opposition to changing the observer rule.

Kroll commented that he supports moving forward with the ordinance. He commented that he is a supporter of the LMA and Mr. Evenson but believed that several of those comments were not helpful in explaining the impact of the ordinance change. He commented that there are big wakes generated from a wake boat and if



a wake boat were in a bay, people would not be skiing in that bay. He stated that he would also be concerned with a 12-year-old towing a skier but was not sure having another 12-year-old observer would provide benefit. He stated that he is supportive of law enforcement but in this case, he disagrees with the letter from Water Patrol. He noted that the letter from Sheriff Witt was not statistically convincing. He stated that Water Patrol, in the case of the accident, was a tough situation. He stated that the Water Patrol Deputy hit the skier's rope because they were blinded by the rising run and therefore it was not relevant whether or not there was an observer, but it is relevant that Water Patrol chose to issue a ticket to the tower for not having an observer. He believed that Water Patrol is emotionally conflicted in this case, which may help explain why they are against updating this ordinance. He commented that people skiing without an observer, with the use of a wide-angle mirror, before 10 a.m. is reasonable. He referenced the issue of distracted driving, noting that people are expected to drive their cars on busy freeways with the use of a rearview mirror and therefore could cognitively manage looking in a wide-angle mirror on the lake. He supported moving ahead with the changes as previously discussed.

Hoelscher noted that as drafted the ordinance amendment would remove the observer rule for all towing activities.

Kroll stated that he would support that language as proposed but could also live with a narrowing of the language to only remove the observer rule during those time for waterskiing.

Jabbour commented that in 1972 he received a ticket for skiing on Stubs Bay without an observer. He stated that sometime in the past, the previous Chair of the LMCD t-boned a boat because there was not an observer. He commented that he holds Water Patrol in high esteem and stated that if the boat in that incident had an observer, they would have noticed the lights of the Water Patrol boat and could have warned the driver. He noted that he has worked with the DNR on two accesses and there were over 100 organized fishing contests on the lake. He stated that boats have gotten larger, and he does not see the need to remove the observer rule. He referenced the Coast Guard summary of accidents and within the top ten reasons are improper look out and alcohol. He stated that although the Board had discussion and direction to amend the observer rule, higher powers are telling them that this would not be a good idea.

Zorn commented that she can appreciate a desire to maximize all recreational activities on the lake, however the pure existence of the LMCD is unique and there is a different intensity of traffic on this lake. She stated that she also wants to support the perspective of Water Patrol and therefore leads towards denying the amendments to the observer rule but would support bringing the language within the ordinance up to date.

Conrad commented that her father previously served on the White Bear Lake Conservation District and noted that during that time an observer was required. She asked when that rule changed. She stated that she grew up on White Bear Lake and grew up waterskiing. She stated that she knew everything about the lake and everyone that skied in the mornings followed the rules and knew the routes. She stated that she thought that was a big lake but when she came to Lake Minnetonka, she could not believe the activity on the small bays and the overall traffic on the lake. She commented that she sees this Board as acting as a connection between all the bays and every bay is so different, therefore, to change the law and blanket is for each bay would not seem appropriate.

Newell commented that they have been talking about quiet times and other times, noting that the LMA collected data on Maxwell Bay was interesting. He stated that the times they have assumed as quiet are not always quiet, as shown in that data. He stated that the lake is a busy place early in the morning and he believes that observers are needed.

Anderson stated that he initially brought forward this concept because Mr. Ronning has been trying to bring this forward for over two years. He stated that he previously supported this change. He noted that the LMCD has determined that their focus is dock control and safety. He stated that if the Sheriff's Office vehemently opposes this concept, which should be supported by the LMCD as the Water Patrol enforces safety for the lake. He stated that he would oppose changes to the observer rule but would support updating the language to come into compliance.

Hoelscher stated that she agrees with Anderson noting that many members of the Board initially agreed with the proposal to change the observer rule but after receiving the comments from Water Patrol she has changed her position. She stated that this is the strongest response she has seen from Water Patrol in her ten years on the Board and cannot vote against the wishes of Water Patrol.

**MOTION:** Anderson moved; Newell seconded to approve an ordinance amending Section 9-1.01, subdivision 1 to be consistent with State language to add wake surfing.

Further discussion: Conrad asked if it has ever been considered to have a waterski club.

Hoelscher stated that there are always opportunities to have special permits for certain activities at specific times and dates.

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

#### **B) Approval of Employee Organization Chart and Flex Time**

Brimeyer commented that this has been talked about several months ago, moving employees from an hourly rate to a salary rate while also recognizing the positions for the work they each do. He stated that he also suggested a change from sick/vacation time to flex time.

Hoelscher agreed that the Board discussed this at the last meeting and delayed action to allow additional time for review.

Brimeyer stated that if adopted, this will provide new titles to employees to recognize what they have done. He stated that overtime would no longer be used, and employees would generate comp time, providing details on that process.

**MOTION:** Stone moved; Anderson seconded to adopt the LMCD staff organizational chart and flex time policy.

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

**C) Wayzata Panoway Project**

Brimeyer provided background information on the Multiple Dock License previously approved by the Board and the language tweaks that are requested by the City of Wayzata in order to support their bonding request from the legislature. He noted that the Multiple Dock License would still require renewal.

Hoelscher recapped that the special density license had already been approved and this would add special language that is required for bonding.

**MOTION:** Kroll moved; Baasen seconded to approve the amendment to the Multiple Dock License awarded to the City of Wayzata, allowing a boardwalk of ten feet versus eight feet in width.

Further discussion: Jabbour commented that he has a problem acting on something of which he is unsure. He commented that he is not familiar with these statutes and in the history of the LMCD, the LMCD has not been involved with bonding. He asked if there is any possible liability as a result of this.

Langel provided an overview of the different statutes which provide restrictions on how the funds are used and the lifespan of the constructed improvement. He commented that the risk is upon the city and not the LMCD.

Jabbour commented that is between the city and the state and is unsure why the LMCD is involved. He stated that an agreement dated October 2020 is also referenced and he does not recall seeing that agreement. He stated that perhaps Wayzata could indemnify the LMCD to ensure there is not a financial risk. He did not think this body was equipped to manage this.

Hoelscher stated that Langel stated that this would not put obligation on the LMCD and would put that obligation on the City of Wayzata. She asked if a statement could be inserted that would state that this does not put financial obligation on the LMCD.

Langel confirmed that could be done but noted that the reality is that the LMCD does not have financial obligations in this, as that is between the state and the city.

Walesch noted that would simply be a statement under the findings of fact and would not be binding. He asked for details on the reference to the agreement from 2020.

Jeffery Dahl, Wayzata City Manager, stated that they have been working with the state for the past two years and October 2020 is when the agreement was drafted. He stated that they are attempting to get reimbursement for the expenses as they are under construction and because this is a unique project that is not on dirt, the state wants assurance that nothing is going to take the dock away and that the LMCD is aware of that.

Walesch asked if Langel has read the MMB agreement. He stated that if that has not been read, perhaps it should be stated that, "The applicant represents that due to the use of general obligation bonds...:

Langel confirmed that he would not oppose the use of that language as it would not impact the terms of the findings.

Dahl commented that sounds rational, but he does worry about language changes as this has been an extensive process. He noted that if the Board supported that language, he would agree to it as well.

Brimeyer stated that the only thing the LMCD is agreeing to is that if Wayzata were to make any changes, the LMCD would have the role or reporting that to the MMB.

Langel stated that he has seen those types of agreements before, and they reflect the statutory process.

Brandt referenced the extension of the length from 150 to 190 feet and asked if that would come before the Board.

Brimeyer stated that Wayzata has notified the LMCD that they will come in for a variance on length. He commented that the variance is a separate issue and that is a possibility that he has made the Board aware of.

Anderson stated that he likes this but noted that it needs to be recorded to ensure staff remains aware of this required notice as staff does change over. He used the scenario that it is not recorded properly, and the new staff members do not provide the six-month notice and asked if that would make the LMCD liable or the 14 member cities liable. He referenced the original motion that was made on May 10, 2023 noting that item four was supposed to be removed but it is still within the facts and findings as presented.

Brimeyer noted that deals with the threshold for the EAW.

Hoelscher stated that is not within the order but the findings of fact. She stated that was within the proposal as the length and the EAW was mentioned in the findings of fact, but the order did not include anything in respect to length.

Walesch noted that perhaps that is a new number four, and the original number four was removed.

Anderson believed that it remained within the new order.

Hoelscher stated that is a fairly easy problem to solve as the minutes can be reviewed.

Anderson noted that the boardwalk was approved but the city is supposed to come back with the dock structure request.

Walesch suggested that the language be changed to dock use area as it refers to an EAW.

Hoelscher stated that staff can go back and listen to the recording of the meeting to ensure the correct language was removed. She commented that it seems there is a conflict with the motion made and the reflection within the document.

Langel stated that in reviewing the minutes the reference to number four was within the introductory paragraph, not finding number four.

Jabbour asked if the motion included the language suggested by Walesch as they had not read the document.

Hoelscher stated that it has not been amended.

Jabbour suggested amending paragraph 2A to add the statement "The applicant represents that due to the use of Minnesota general obligation bonds...:

Kroll accepted that amendment.

Baasen did not agree to the amendment and expressed concern that changes to the language could impact the path forward with MMB and the City of Wayzata.

Anderson referenced the findings of fact and asked to see exhibit A which is referenced and asked if that is the boardwalk or the entire structure which included a dock going out to 200 feet.

Tully stated that because the EAW originally identified a length of 180 to 200 feet, the order only allowed a length of 150 feet and required a as built to be provided.

Anderson commented that it is odd that the panoway has been approved but the dock structure has not yet been approved. He asked why the dock structure is included in the facts and findings.

Brimeyer commented that exhibit A is part of the original presentation.

Anderson commented that today is the first time they have seen the facts and findings and order.

Hoelscher stated that the facts and findings and order were approved on May 10<sup>th</sup>. She stated that the only thing being reviewed is the additional language related to the bond.

Jabbour commented that he is unsure whether this is going to be a friendly amendment. He noted that they have not read the agreement and do not know what it says, therefore an additional statement should be added.

Robert Williams, Wayzata City Attorney, commented that he has a marked-up version showing the language

proposed to be added.

Hoelscher stated that everyone is aware of that new language, and the question now is the issue that the Board has not reviewed the grant agreement referenced in 2A. She asked if the City Attorney would agree if that language were to be amended to add the statement mentioned by Walesch.

City Attorney Williams replied that he cannot say yes or no because the LMCD acknowledgement language was chosen by the MMB. He commented that it is important to the MMB that the LMCD acknowledge the agreement and the rights of the MMB related to the boardwalk, which are spelled out in this additional language.

Hoelscher stated that the concern of the Board is that this could open up the Board to financial obligation and asked if the City Attorney could assure that the LMCD would not have such liability.

City Attorney Williams replied that he would defer to the statement of the LMCD legal counsel that there are no financial obligations connected to the MMB rights that could impose financial liability as the LMCD is not a party of that grant agreement.

Langel commented that paragraph A is an acknowledgement, or a background fact, and the only obligation to the LMCD would be in paragraph E while the rest is background facts between the state and Wayzata. He stated that the issue of remembering would apply to the conditions placed upon every permit.

Walesch commented that he does not believe that the members of the Board need to read all the agreements mentioned, but if those documents are referenced it would be implied that the LMCD has read and agreed to the terms of the agreement. He stated that if LMCD staff and legal counsel have not read the agreement, he would have concern with that.

City Attorney Williams commented that it was not his suggestion to imply that acknowledgement would be consent or becoming a party to, simply acknowledging that there is a separate agreement out there. He clarified that the LMCD would not become a party to that agreement. He stated that if this improvement were to occur on land, this would not even need to occur and therefore the MMB needs to let the LMCD know that the agreement is out there.

Kroll thanked Jabbour for flushing out this issue and stated that he feels comfortable that he is aware of the obligations of Wayzata to MMB. He called the question on his original motion.

Anderson asked for details on the change from 20 years to 25 years.

City Attorney Williams replied that 20 years would be the expected life expectancy and 25 years would be 125 percent of that term.

**VOTE:** Ayes (9), Opposed (3) (Jabbour, Anderson, and Brandt), Abstained (1), (Conrad). Motion carried.

### **13. NEW BUSINESS**

There was no new business.

### **14. TREASURER REPORT**

- A) August Balance Sheet
- B) August General & STL Income and Expense Reports

Anderson provided a brief update. He encouraged Newell and Kirkwood to assist with the solicitation letter for Save the Lake.

### **15. EXECUTIVE DIRECTOR UPDATE**

- A) Update on Ongoing Complaints
  - i. Schussler
  - ii. Cripe

Brimeyer stated that contact has been made with the dock owner for the first case and the property owner wants to work something out. He noted that staff members met with the property owner to review some issues that could resolve the issue. He stated that they are having a tough time getting the second property owner to collaborate with staff or to set a court date.

- B) Prosecution Attorney Update

Brimeyer stated that he provided an update on the prosecuting attorney who is changing law firms. He provided a brief overview of the written report which highlighted recent cases that the prosecuting attorney is working on.

- C) Professor Newman Status

Brimeyer provided an update on the sub-basin request from Professor Newman, noting that the DNR does not support the change.

- D) Watercraft for Hire Workgroup Update

Brimeyer stated that a note from the Chair was included in the packet updating the group on progress.

- E) JJ Hill and Apple Days Update

Brimeyer commented that LMCD staff attended JJ Hill Days and noted that Kroll and former Director Thomas would be attending Apple Days.

Hoelscher acknowledged the low water levels, noting that there was a similar issue last year and the Board deferred declaring low water because of the late time in the season and reached consensus that is the same approach the Board would like to take this year.

Anderson commented that people do not look at all the papers printed within the folders for the meetings and would prefer to save trees.

Hoelscher stated that she disagrees as she does look at that material. She noted that the only items included in that folder are the late items that have not been reviewed in the digital packet information.

Anderson provided additional comments on flowering rush.

## 16. ADJOURNMENT

**MOTION:** Walesch moved; Newell seconded to adjourn the meeting at 9:39 p.m.

**VOTE:** Motion carried unanimously.

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Ann Hoelscher, Chair

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Jake Walesch, Vice Chair