

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., February 28, 2024
Wayzata City Hall

1. CALL TO ORDER

Chair Hoelscher called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. NEW BOARD MEMBER OATH OF OFFICE

A) Matthew Thompson, Wayzata

Langel administered the Oath of Office to new member Matthew Thompson representing Wayzata.

4. ROLL CALL

Members present: Ann Hoelscher, Victoria; Deborah Zorn, Shorewood; Nicole Stone, Minnetonka; Mike Kirkwood, Minnetrista; Brian Malo, Greenwood; Matthew Thompson, Wayzata; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; and Denny Newell, Woodland. Also present: Joe Langel, LMCD Legal Counsel; Thomas Tully, Manager of Code Enforcement; Maisyn Reardan, Office and Finance Manager; Raina Gabler, and Executive Assistant Code Enforcement and Operations.

Members absent: Jake Walesch, Deephaven; Rich Anderson, Orono.

Persons in Audience: Owen Sweeney, John Smyth, Robert Sandum, David Aul, Dan Pagel, Lt. Richard Rehman, Sgt. Rick Waldon, Sgt. Troy Kostohryz, and Eric Evenson.

5. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

6. CHAIR ANNOUNCEMENTS

A) Introduced Legislation for Boater Safety and License Plates

Chair Hoelscher shared the Representative Andrew Myers has introduced legislation for a Lake Minnetonka License Plate that would fund Boater Safety and has support from Senator Kelly Morrison in the state Senate.

Chair Hoelscher also shared that some Board Directors had questions about whether the Treasurer had to supply a bond when taking office and she stated that the League of Minnesota Cities, LMCD's insurance agency, covers everyone including the Treasurer, Executive Director, and Board Members.

In addition, Chair Hoelscher also mentioned the new seating arrangement for Board meetings and provided an update on the Save the Lake Solicitation Letter that was scheduled for distribution back in December but unfortunately there was an issue with the publisher, so now the plan is to distribute the letter in the coming weeks when the ice is out.

7. APPROVAL OF MINUTES- 01/24/2024 LMCD Regular Board Meeting

MOTION: Zorn moved; Brandt seconded to approve the 01/24/2024 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

8. APPROVAL OF CONSENT AGENDA

MOTION: Stone moved; Kirkwood seconded to approve the consent agenda as presented. Items so approved included: **8A)** Audit of Vouchers (02/01/2024 – 02/15/2024) & (02/16/2024 – 02/29/2024).

VOTE: Motion carried unanimously.

Chair Hoelscher called a five-minute recess to fix the technical difficulties at 7:10 p.m.

Chair Hoelscher called the meeting back to order at 7:15 p.m.

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

Eric Evenson, Lake Minnetonka Association (LMA) Director, provided a brief update on recent and upcoming activities of LMA. He commented on the short duration of the winter and anticipated early spring, noting that will most likely bring a lot of weeds. He stated that a Bay Captain is needed for Phelps Bay and encouraged interested residents to reach out to him. He referenced the topic of electric shock drowning noting that he has researched the topic and is concerned. He stated that LMA will be releasing an article in its newsletter and would like to work with LMCD to continue to spread the message of concern.

Hoelscher agreed that is a big topic that the Board has also received a presentation on in the past as well.

Kroll commented that he works in electrical safety and shares those concerns. He suggested that perhaps a working group is created to potentially develop an ordinance.

10. PRESENTATIONS

A) New Board Informational Session by Attorney Joe Langel

Langel provided information on the Public Data Practices Act, which the Board is subject to, noting that emails are subject to that Act. He strongly encouraged the Board to use their assigned LMCD email account for

LMCD business to prevent their personal emails from being subject to the Act. He noted that if a Board member is texting information on their phone related to LMCD business, text messages would also be subject to that Act and reiterated that all LMCD business should be done through the LMCD assigned email addresses. He also provided information on the Data Retention Act.

Langel provided a training to the Board on Open Meeting Law and other applicable policies.

Jabbour asked for more details on the length of time related to data retention and whether that tracks after someone is off the Board.

Langel replied that there are different timeframes for different types of data, noting that he can provide more specific information to be distributed. He confirmed that the data would still need to be retained for the required period after someone leaves the Board.

Jabbour commented that sometimes it is painfully obvious that someone has made up their mind prior to the meeting and spoke of the importance of being open to the input from the applicant and members of the public. He also asked for details on liability and when someone would go beyond the coverage of LMCD insurance.

Langel commented that the first comment/question would be addressed under the Code of Conduct, noting that the Board should remain open to the comments of others. He stated that LMCD is pretty broad in terms of the coverage, noting that someone would need to step pretty far out of bounds to not be covered. He stated that if someone committed a criminal act, or has a severe abuse of power, coverage could be withheld.

Kirkwood asked the length of time someone would be covered by the insurance after leaving the Board.

Langel commented that any action completed as a Board member would remain covered.

Malo referenced the email retention comments. He asked if his folders could be cleaned up because the email would be retained on the server.

Langel commented that emails should be sent to staff prior to deletion.

Reardon commented that emails that the Board would like to delete should be sent to her and she can determine whether it would need to be saved.

Brandt noted that members could create a folder titled trash/delete and move emails to that folder to cleanup their inbox.

Klohs recognized that these rules apply to all public entities (LMCD, City Council, School District). He recognized that some conversations can go back and forth between the LMCD "hat" and a personal "hat", asking how they would track going back and forth.

Langel recognized that is a bit of a grey area. He commented that while someone could share their opinion,

as their personal opinion, he would be hesitant of that. He noted that they recently had a data request for all LMCD public data with no data or subject range and provided details on that process.

11. PUBLIC HEARING

A) Variance – 2721 Tyrone Lane, Owen Sweeney

Tully presented a variance request for the property at 2721 Tyrone Lane. He stated that the site currently does not have a dock structure and has 210 feet of OHW shoreline. The variance request was submitted in an effort to resolve the issue of conflicting dock use areas, water depth, and emergency vegetation due to abnormal site conditions. He reviewed the standard LMCD Code allowances and noted that the applicant proposed to install a dock structure that would extend out into the lake approximately 415 feet to reach navigable waters. He reviewed the proposal from the applicant which would include a width of 3.5 feet and include three BSUs. He reviewed the proposed site plan and the stated hardships for the property related to conflicting dock use areas, water depth and emergent vegetation. He reviewed precedents that exist in that area related to dock length variances. He reviewed the comments received from other public agencies, as well as two comments from neighbors and one comment from a neighboring townhome HOA. He stated that staff recommends approval subject to the conditions within the packet.

Zorn recognized the original comments from the City of Mound shared in its letter and the staff comment that those concerns were resolved through clarification of information. She asked if the City had any additional comments.

Tully replied that he met with City staff from Mound, and they did not have any additional concerns.

Hoelscher noted that there are other docks on the lake that are around 400 feet. She commented that generally 100 feet is allowed for dock length unless there are difficult circumstances. She asked if there is a length that is too much for a residential property.

Tully replied that there has not been such a maximum for residential properties, noting that it has been more defined by the ability to reach navigable water.

Jabbour asked if staff considers whether someone is trying to reach riparian water versus trying to get additional docks. He asked if the length of the dock is also considered in terms of navigation and whether that would be hazardous versus going over marshland. He stated that he would not want to provide the impression that there is a magic number, as 20 feet could block a channel.

Tully provided additional details on the staff consideration that is given in those situations, as well as what would be acceptable and not be acceptable.

Nellis asked for more information on the white lines shown in the marsh.

Tully replied that could be snowmobile tracks, but was unsure.

Brandt asked if there is not enough navigable water to place one boat in the southeast corner.

Tully replied that staff can only work with the information provided and the request before the Board. He stated that the HOA to the south was granted six BSUs, but there has not been talk of locating on those docks as of yet.

Brandt asked if the LMCD would allow for a length variance for multiple BSUs or only one BSU.

Tully replied that it depends on what has been asked for. He stated that the applicant does have enough shoreline to support three BSUs. He stated that if the Board deems that ask to be too much, it could reduce the allowed number of BSUs.

Brandt asked if the dock would remove any cattails.

Tully replied that the dock would act as a boardwalk and therefore would not impact the vegetation.

Malo asked if the dock would be covered in the summer when the cattails grow.

Tully commented that could happen as cattails do grow up around other docks. He stated that his concern would be more in winter to ensure there is something reflective to alert snowmobiles.

Hoelscher opened the public hearing at 8:00 p.m.

Owen Sweeny, applicant, introduced himself noting that his family has lived at the property since 2020. He stated that he reached out to the City of Mound and LMCD shortly after buying the property in attempt to have a dock. He stated that he partook in a site meeting with LMCD staff, the City of Mound, and the Watershed District to discuss options for the site. He stated that he then completed a wetland delineation and wetland assessment, as well as completed a native vegetation assessment of the property. He stated that using all that input from his consultants and the public agencies, he created this proposal as he believes that this will be the least impactful and most ecologically sound option. He referenced the three hardships of his property and believed that this variance request is reasonable.

Kirkwood asked if the applicant currently owns three 40-foot boats.

Sweeny commented that he does not currently own three boats at this time. He stated that in his discussions with staff he was told that he should request what he would ultimately want to prevent a situation where he would need to come back in the future. He confirmed that he would only have his own personal watercrafts at the dock.

Nellis clarified that the request BSUs are 30-foot, not 40-foot.

John Smithe, 4046 Willshire Boulevard, noted that the presentation mentioned many docks of similar length

but noted that this is unique as the dock would run parallel to all the properties which would impact the character of what other people would see. He stated that the townhomes are opposing the request because this will change the character of the wetlands. He commented that there is wildlife that use the wetland and the association as concern that the dock will impact the character of the area.

Robert Sandum, 4842 Wilshire Boulevard, commented that the biggest problem of the dock is that it parallels the shoreline. He stated that perhaps the shoreline could be dredged on the subject property to fit a dock. He believed that would better fit the character.

Smithe commented that there is also concern that the three slips would be used for rentals.

Dave Aul, 4838 Wilshire Boulevard, commented that he will most likely be the closest to the dock. He stated that he purchased his property because they have a backyard with no one back there and they can enjoy the wildlife. He stated that the last two years have been dry with low water, which has caused them to pull their boats out in August. He was unsure how the boats from the association area could get past 30-foot boats. He noted that the area marked on the map at Seton is actually the channel that opens to Seton. He asked the Board to deny the request as he did not believe it to be feasible. He also believed that there would be rentals occurring, but acknowledged that he did know that for a fact.

Dan Pagel, 4843 Wilshire Boulevard, stated that he supports citizens having access to the lake. He stated that he works for a marina but believes the lake should be for its citizens. He stated that he is not against the request as the applicant does have the right for three slips based off his shoreline. He commented that there would be 175 feet for navigation with the applicant's dock as proposed which should be sufficient. He noted that area is shallow and asked if there are any plans to dredge that area in the future. He commented that there is not a lot of traffic and noise in that area because of the shallow water, so he did not believe that would become a concern that other residents before him have mentioned. He asked how the slip length is determined, noting that a 30-foot boat in four feet of water would be an issue. He commented that people that live on the lake should have access to the lake. He stated that vegetation will grow around the dock and therefore it will not be a visual eyesore to others.

Aul stated that five or six years ago he reached out to a dock company to ask if a 12-foot section of dock could be installed. He was told that could not be done as the barge could not get through the shallow water. He stated that he purchased a lift and was told the only way a company could come to assist is during the winter.

Pagel asked if there are any plans to expand the area through dredging.

Hoelscher commented that is not the decision of the LMCD and is not before them at this time, noting that would fall to the Watershed District.

No additional comments were offered, and the public hearing was closed at 8:20 p.m.

Kroll asked the definition of shoreline. He noted that in this instance the applicant is roughly 400 feet from

larger open water and asked if the applicant can be deemed to be on the boundary of the lake. He asked the amount of wetland that exists before it is deemed that someone is not on the lake.

Tully replied that through surveys and wetland delineation it was determined that the applicant has 210 feet of OHW shoreline.

Kroll asked if there is precedent for people going long distances through wetlands to reach open water.

Tully replied that there is precedent and provided those examples.

Jabbour commented that it is important to understand that the applicant has the constitutional right to navigable water. He stated that dredging would be a maximum impact compared to this minimal impact proposed by the applicant. He stated that a 30-foot slip could only accommodate a 26-foot boat. He commented that this plan will have minimal impact to the site. He stated that this is not a dock of convenience but a dock that is a right of the property owner.

MOTION: Jabbour moved, Klohs seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Owen Sweeny for the property located at 2721 Tyrone Lane in Mound for final approval at the March 13, 2024 LMCD Board meeting.

Further discussion: Zorn stated that while she understands the precedent that has been set, she asked if those docks are in similar proximity with a narrow channel.

Tully replied that most channels around the lake would have similar circumstances.

Zorn recognized that the Code allows for three slips, but perhaps that number could be reduced. She stated that the boardwalk is a great option for minimal impact. She stated that perhaps the number of slips is lessened to one or two. She stated that she likes the boardwalk and would support something under three BSUs, with a statement that it could be revisited in the future if desired by the applicant.

Tully commented that the request is based off the ask of the applicant and what is allowed by Code, but the Board could reduce the number of BSUs if desired.

Hoelscher stated that she does agree that the applicant and all property owners have a right to access the lake. She asked if there is room for a slip at the multiple dock that exists, recognizing that was not asked for.

Tully replied that for any agreement of that nature to take place, the applicant and HOA would need to come to an agreement to request a new multiple dock license. He stated that while technically the multiple dock could have had a higher density, he was unsure if a higher density would be allowed at this time and that ask has not been made. He did not believe there was room in that area.

Klohs commented that this option would also be the only option that avoids dredging.

Thompson commented that it seems that many of the questions of navigation occur when docks are perpendicular to shore. He asked if there had been an alternate configuration for the BSUs which would be parallel to the shore.

Tully replied that type of configuration was not reviewed by staff.

Nellis stated that it appears there is more than enough room for navigation as proposed and three slips seems reasonable. He noted that with three BSUs the property owner could have a regular boat, fishing boat and a jet ski.

Kirkwood asked for more information on dredging in general on the lake.

Jabbour commented that there is a profound difference between dredging and maintenance dredging. He stated that it has to be demonstrated that there are no other options, noting that this is a good option. He believed that forcing people to dredge should be avoided at all costs. He stated that the applicant could rent if he desired. He clarified that the applicant could have three boats for himself or two boats for anyone.

Malo requested to amend the motion to limit to two BSUs.

Jabbour declined the friendly amendment.

VOTE: Motion carried 11 - 2 (Malo and Zorn opposed).

12. OTHER BUSINESS

There was no other business.

13. OLD BUSINESS

A) WFH Workgroup Update Regarding Rentals

Jabbour stated that the group continues to meet and is making progress. He provided a brief update.

B) Other

Jabbour commented that he received a copy of a report completed by the University on behalf of Hennepin County related to a propeller and how that could push weeds away. He stated that the study was done in a vacuum. He stated that he sent information to the University AIS and the scheduled webinar on the topic has since been canceled. He stated that the issue is a big issue and is a dangerous issue noting that there have most likely been many deaths due to this issue that have not been ruled correctly. He believed that multiple dock licenses should require the electric work to be permitted through the state rather than the city. He commented that there are people that use the access that would be at risk for shock.

Hoelscher referenced the earlier comment of Kroll that perhaps a work group should further discuss that topic.

14. NEW BUSINESS

A) Grant Request for 2024 AIS Pre-Treatment Survey on Stubbs Bay

Tully presented a grant request to support funding of an initial pre-treatment survey on Stubbs Bay for 2024.

Brandt commented that he did review the request and also spoke with Evenson directly. He stated that this would be a two-year project, completing the survey in 2024 and providing treatment in 2025 if the survey is favorable. He recommended approval based on consistency of previous requests. He stated that based on the findings of the survey, the group could review a grant request for treatment in 2025.

MOTION: Kroll moved, Newell seconded to approve the LMCD AIS Project Funding Application for 2024 on Stubbs Bay and order staff to pay the requested survey costs of \$2,170.

VOTE: Motion carried unanimously.

15. TREASURER REPORT

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

Stone had no further comments.

16. EXECUTIVE DIRECTOR UPDATE

Tully stated that he and Brandt met today with Harrison Homeowners Association to discuss bowfishing for carp. He stated that they will continue to discuss that topic.

17. ADJOURNMENT

MOTION: Jabbour moved, Newell seconded to adjourn the meeting at 8:47 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary