

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., November 8, 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; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Mark Kroll, Excelsior; Ryan Nellis, Tonka Bay; 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: Dan Baasen, Wayzata; Mike Kirkwood, Minnetrista, Dennis Klohs, Minnetonka Beach

Persons in Audience: Tom Dennison, Allison Adducci, Laurie Anderson, Peter Hitch, Jeff Parkhill, and Lt. Richard Rehman.

4. APPROVAL OF AGENDA

MOTION: Anderson moved; Walesch seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 10/25/2023 LMCD Regular Board Meeting

MOTION: Kroll moved; Newell seconded to approve the 10/25/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (8), Abstained (3), (Nellis, Stone, Zorn). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Walesch moved; Stone seconded to approve the consent agenda as presented. Items approved included: **7A)** Audit of Vouchers (11/01/2023 – 11/15/2023); **7B)** Wayzata Panoway Length Denial Findings of Fact; and **7C)** Approval of MDL for Panoway.

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. PUBLIC HEARING

A) Norton Homes, LLC

Tully provided the site location of the property on Forest Lake in the City of Orono and explained that the current dock does not meet the standard LMCD Code requirement although it has existed for many years with some reconfiguration. He stated that the current dock structure is approximately 80 feet in length and encroaches over the south side site line. He stated that the applicant is asking for a side setback reduction due to conflicting dock use areas. He stated that the applicant has about 90 feet of shoreline for the one parcel and the variance was submitted in an effort to resolve the conflicting dock use area located at the site due to abnormal site conditions. He noted that neighboring properties in the area are also out of LMCD compliance. He reviewed the details of the proposal which would extend the dock to a length of 75 feet with walkways of five feet in width. The applicant proposes one BSU with up to three additional watercrafts. He noted that the applicant would maintain a minimum five-foot setback from the northern side site line at the dock structure and a minimum five-foot setback from the southern side site line at the end of the dock structure. He displayed an overlay showing the conflicting dock use areas for the properties in this area. He stated that the LMCD did not receive any comments from public agencies but received two public comments in opposition to the requests which were provided to the Board. He highlighted some other considerations, noting that this proposal is fully within the applicant's dock use area and staff recommends approval subject to the proposed conditions.

Hoelscher asked if the neighbors to the north or south provided input.

Tully replied that staff has not heard directly from those neighbors via written comments.

Walesch asked where the additional BSUs would be stored.

Tully provided details, noting that the watercraft would be fully behind that main BSU. He stated that the fishing boat would be proposed for the southern side of the U. He stated that the applicant would need to provide the actual locations for the watercraft on the site plan.

Anderson commented and received confirmation that the watercraft would be stored per Code.

Jabbour referenced the dock use area for the properties in this area, noting that there was a problem in the way the lots were platted.

Zorn referenced the dock use areas to the south and asked if those properties are all out of compliance.

Tully replied that this is a common issue on bays. He noted that this area in particular is problematic but would not want to comment on other properties without having that information in front of him.

Kroll commented that this is a unique situation in that none of these lot lines, for the bottom three lots, are perpendicular to the shoreline. He stated that it appears that there has been an informal agreement that people are putting their docks perpendicular rather than following the shoreline.

Tully commented that it would be a dangerous path to follow that precedent and not follow Code.

Hoelscher disagreed as the LMCD encourages property owners to work together to find a solution if everyone agrees.

Walesch noted that Tully is talking about the applicant while Kroll commented on other properties. He agreed that if neighbors can work something out that is great, but the Board needs to consider this request.

Hoelscher invited the applicant to address the Board; the applicant declined.

Hoelscher opened the public hearing at 7:19 p.m.

Ken and Lorrie Anderson, properties on the north side, commented that they are concerned with the five-foot setback and would like the LMCD to deny the request. The residents expressed concern with the length of the canopy noting that their home is close to the lake and the visual from their home would be impacted. It was noted that the subject property is currently listed for sale and is not occupied or in use. The residents commented that they have 110 feet of shoreline and do not want encroachment.

Nellis asked if there has ever been a canopy on the subject property and it was confirmed that there has not been, therefore any type of canopy would be new. He asked if the Andersons had a canopy.

Mrs. Anderson confirmed that they do have a canopy on their dock that lifts off for their own dock.

Jabbour commented that the applicant would not be using their entire envelope.

Mrs. Anderson commented that she would prefer a larger setback and are opposed to the variance.

Tom Dennison, 4175 Forest Lake Drive, commented that Forest Lake is a small bay that has become a mecha with over 100 boats on the bay on a weekend. He commented that the channel is very interesting that comes into the bay, and it is not designed for large boats. He wondered if the owner realized the difficulty a large boat would have in getting in and out through the channel. He noted that under high water conditions a large boat cannot pass through the channel because of the bridge deck.

Allison Adducci, 1005 Linden Lane, commented that her property is to the south and she would be opposed to the request. She commented that the sight line from their deck would be impacted by the canopy and boat.

No additional comments were offered, and the public hearing was closed at 7:30 p.m.

Kroll commented that if the dock were moved to the north to the five-foot setback, it would block that neighbor's view but if moved to the south that would cross onto the lot line and block the view as well. He stated that as much as he appreciates the recommendation from staff, he is unsure this would be the best compromise.

Walesch stated that this is a typical variance request. He stated that the Board is charged with ensuring people can reasonably use their property and converging lot lines is a common occurrence. He noted that the issue limits dock use areas. He stated that the Board does not consider views from shore or from a home because property rights cannot be restricted due to the orientation of a home and how people look onto the water. He stated that the request does have five-foot setbacks, which is a reduction, but believes that to be reasonable because of the converging lot lines and reasonable way to use the property. He stated that he does support the recommendation of staff.

Mrs. Anderson asked if the variance was approved and the property is sold, would the variance remain in place. She asked if there is a height limit for a canopy.

Walesch confirmed that the variance would be recorded with the property. He stated that the request would be limited to what is requested tonight but was unsure there is a height limit. He commented that he was unsure that a boat that large could get through the channel per the comments of another resident, and therefore perhaps the person that purchases the property will choose to have a smaller boat.

Mrs. Anderson commented that typically there would be a 20-foot setback and this would reduce the setbacks to five feet.

Kroll commented that there are restrictions on a canopy and asked for clarification.

Tully commented that when they look at canopies or boat houses with closed walls there would be a 20-foot setback.

Walesch asked if the applicant is proposing full canopy on both sides.

Tully replied that there is no proposal for a canopy.

Walesch asked whether a canopy would be allowed.

Tully replied that a canopy would be allowed and provided additional regulations that would apply to a canopy. He confirmed that there are different regulations for canopies with closed walls. He stated that if the canopy were only on the top, standard setbacks would apply.

Hoelscher stated that variances are considered to allow use of the land and variances are not allowed for a

certain type of boat, or multiple boats. She asked if a boat could be allowed with a straight dock without the slip without a variance.

Tully replied that under normal circumstances the dock could be extended to 90 feet, but this proposal would limit that length to 75 feet. He stated that at 90 feet standard setbacks could not be met. He stated that there could also be a water depth issue.

Hoelscher asked if a 75-foot dock in the center could meet setbacks.

Tully was unsure.

Jabbour commented that there is a restriction on the size of the boat at 75 feet per State law. He stated that common sense does not have to prevail, the law has to prevail. He warned the Board not to design things for the applicant as the applicant could request a lot line extension which would cause everyone's dock to move. He stated that it is the obligation of the Board to give this person the right to access water. He stated that the roof and peak of the canopy is the most intrusive part of a canopy, but the Board has not right to talk about that.

Anderson stated that Tully has been working on this for two months but after a review of a few minutes, Kroll disagrees with that assessment. He stated that the applicants produced a different proposal which was then adjusted to provide a setback of five feet on each side. He agreed with Jabbour that the applicant could extend out to 90 feet if desired. He noted a similar request that was approved in September with zero lot lines.

Zorn commented that a width of five feet is generous and every foot counts in this type of request.

Tully stated that he cannot comment on why that was chosen, but it was part of the request, and it does not seem crazy as the length is being limited. He stated that a width of 3.5 could be approved which would provide three additional feet for setbacks.

Zorn stated that when there is a tight envelope, she likes to see applications that are aware of that and request minimums in terms of length and width. She asked the options that have been explored thus far.

Tully stated that when staff receives an application, it is important that staff do not design the dock for them. He stated that staff can advise via the Code. He stated that in this case the dock cannot extend as far as it typically could. He stated that five-foot setbacks seem reasonable, given the zero-foot setbacks that were approved in September.

Conrad asked where the dock is for the property to the north, as it seems that dock is very close to the converging lot line.

Tully stated that the way the property is set up, staff felt that having a five-foot setback on either side and limiting the dock length would be less impactful to the neighboring properties. He confirmed that the property to the north has a large dock use area but did not have an aerial view showing the dock location for that

property.

MOTION: Walesch moved, Jabbour seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Norton Homes, LLC for the property located at 4215 Forest Lake Drive in Orono for final approval at the December 13, 2023 LMCD Board meeting.

Further discussion: Conrad asked if the canopy would be included in the approval.

Tully replied that a canopy would be implied as allowed. It was clarified that the canopy would be ten feet from the property line.

Zorn requested to make an amendment to adjust the width of the dock to 3.5 feet.

Walesch asked what would be accomplished by doing that as it would not change the location of the canopy, which seemed to be the concern.

Zorn noted that could be a factor in how large the canopy could be.

Walesch stated that he would prefer a condition that the canopy could not be closer than ten feet to the property line and that it be accessed from the south.

Zorn agreed.

Anderson commented that the dock will most likely be 3.5 feet wide as that is the standard dock.

Walesch stated that if not know as that is not what has been requested.

Anderson commented that a requirement of 10 feet from the property line would not allow the placement on a 3.5-foot dock. He clarified that he did not see that the request was for a five-foot dock.

Walesch clarified again that he did not accept the request to change the width of the dock but would instead place a condition requiring a canopy to be no closer than ten feet to the property line.

Jabbour and Zorn agreed with the amendment proposed by Walesch.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A) Gift to LMCD

Brimeyer commented on the equipment that has been available for use in the conference room, which is a

generous donation that should be acknowledged.

MOTION: Anderson moved; Kroll seconded to accept the gift of the audio-visual equipment in the conference room.

VOTE: Motion carried unanimously. (Jabbour abstained)

Hoelscher thanked Jabbour for the equipment, noting that it has been used many times and has been very helpful.

11. OLD BUSINESS

A) WFH Workgroup Update

Walesch commented that some possible language has been drafted beginning to make a redline version. He stated that the intention is to have a final draft to come before the Board for review in the coming weeks and if there is agreement, which could then move forward to a public hearing.

B) Buoy Workgroup Update

Jabbour commented that there has been one meeting at one of his marinas because that is where the buoys are. He stated that it was a productive meeting to share information. He stated that everyone agreed that placement of buoys should be left to the Sheriff as stated per State Statute. He stated that the quality of the buoys is his main issue. He stated that he believes the buoy program is a good program but has suffered because of misallocation of funds.

Anderson reviewed a 1996 U.S. Coast Guard specification for marine aids on navigation.

Jabbour reviewed photos of buoys that were in the lake, showing the poor condition. He showed a photo of the buoys that will be used again next year, noting that you cannot see the green channel marking buoys in the dark with a light shining.

Anderson noted that the green buoys look new but do not light at night.

Jabbour commented that the buoys marked for destruction have been hit by boats. He stated that people are commenting that the buoys are the worst they have ever been.

Hoelscher agreed that this was the purpose of the workgroup and asked the group to develop a solution or plan to present to the Board.

Jabbour commented that the State Statute dictates that any marking below water has to reflect 80 percent of that showing above the water. He noted that one out of 99 buoys would meet that standard. He stated that it is the ability of Hennepin County to manage these buoys.

Anderson asked if the workgroup is going to figure this out or whether Hoelscher, Brimeyer and Tony will be working this out.

Hoelscher stated that she spoke with Tony before the workgroup was created and does not intend to be involved, although could help if needed.

Brimeyer commented that after the workgroup meeting, Tony had a conversation with Hoelscher and Brimeyer as Tony wanted to explain what they did. He stated that he and Brimeyer have not met again with County staff. He confirmed that the workgroup has been tasked with this issue.

12. NEW BUSINESS

There was no new business.

13. TREASURER REPORT

Anderson provided a review of the balance sheet.

Brimeyer provided additional input on the intention between the different accounts and then completed comparisons in December and January. He stated that the delay was to ensure that all payments have cleared through that account before transferring the remaining funds.

Hoelscher asked Anderson to continue to collaborate with staff on this issue.

14. EXECUTIVE DIRECTOR UPDATE

Brimeyer commented that the newsletter has been published and mailed to lakeshore owners.

Hoelscher stated that they are in the process of revising the winter rules brochure to update that before distribution. She commented that the winter rules are not mailed but are instead distributed in other ways. She noted that waterproof paper copies are also left at launches. She stated that QR codes have also been placed at launches for people to access that information and asked if there is a preference for one over the other.

Nellis commented that he would favor using both formats and commended staff for their efforts.

Tully commented that new boxes were created last year, and it has been successful.

Hoelscher confirmed that they would continue to use both formats.

A) Member Appointments, Officers

Brimeyer commented that members are appointed, or reappointed, by their respective cities. He then confirmed the timeline for appointing officers, confirmed that occurs after the new members join the Board.

Hoelscher confirmed the consensus of the Board to have information on the nominating process available at the next meeting with members to be appointed to the Nominating Committee at that meeting. She reminded the Board that those participating on that committee are not eligible for an officer position.

B) Goff Public 2024 Agreement

Brimeyer stated that the 2024 proposal was received from Goff for \$40,000, which is the amount budgeted for 2024 as well. He stated that he will sign the agreement to proceed. He stated that he received a call from an entity stating that the LMCD website is not ADA compliant. He stated that staff will be speaking with the consultant to determine what would be needed to become fully compliant. He stated that it was estimated that the website is currently about 94 percent compliant, therefore he did not think it would be a high charge. He stated that he would plan to bring forward a proposal for the Board to consider.

Hoelscher stated that she would like legal counsel's opinion on the requirements as the Board reviews that potential proposal.

Jabbour commented that the whole community was threatened to be sued because the signage was not 61 inches from the ground. He stated that there is an agency in place by the Governor to aid on this topic and commented that he could provide that contact information.

Walesch thanked staff for the great work they continue to do with the various issues.

15. ADJOURNMENT

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

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary