

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., December 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; Mike Kirkwood, Minnetrista; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Dennis Klohs, Minnetonka Beach; 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 Reardon, Office, and Finance Manager; Raina Arnston, Executive Assistant Code Enforcement and Operations; and Interim Executive Director Jim Brimeyer.

Members absent: Dan Baasen, Wayzata, and Kristi Conrad, Greenwood.

Persons in audience: Greg Steinhafel, Dennis Steinhafel, Lieutenant Richard Rehman, Jay Soule, Major Shane Magnuson.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

A) Director Evaluation Work Session January 10th

Chair Hoelscher commented that this item is scheduled for the next meeting date to review the performance of the Executive Director. She noted that she would be emailing three questions to each member of the Board to answer, and she would tabulate those results for discussion at the work session.

B) Other

Chair Hoelscher commented that Representative Andrew Myers recently attended a Board meeting and has since reached out to her stating that he would like to propose a Lake Minnetonka license plate in collaboration with the LMCD. She noted that a portion of the proceeds would be allocated to an LMCD fund to be used for boater safety.

6. APPROVAL OF MINUTES- 11/08/2023 LMCD Regular Board Meeting

MOTION: Kroll moved; Walesch seconded to approve the 11/08/2023 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

Tully provided clarification on Item 7D, noting that there were inconsistencies with the previous findings of fact within the packet and advised that those have been changed and updated to follow what was in the minutes related to dock width and setbacks.

MOTION: Walesch moved; Anderson seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (11/16/2023 – 11/30/2023); **7B)** Audit of Vouchers (12/01/2023 – 12/25/2023); **7C)** Resolution Accepting Save the Lake Contributions (10/03/2023 – 12/08/2023); **7D)** Norton Homes, LLC Variance Findings of Fact; **7E)** 2024 Contract for Professional Services – Video on Demand Services, Minute Taking Services, Producer Services, and Rental Agreement; and **7F)** 2024 Appointment of Legal Services, Auditing Services, Bank Depository, and Newspaper Designation.

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) WFH Code Amendment Public Hearing

Walesch provided a brief background related to watercraft for hire (WFH) and the intent of the updates to the Code. He stated that changes were made to address WFH that do not plan to serve alcohol, storage of WFH, and an ability for exemption for WFH with six passengers or less. He provided a brief overview of the proposed changes to the Code related to WFH. He stated that grammatical and formatting changes are still to be made.

Hoelscher thanked Walesch and the work group for the work that they have done on this topic.

Kirkwood referenced a previous discussion related to the challenge Water Patrol was having with people camping on the dock or within the County parking lots.

Walesch stated that would be more of a rental issue. He stated that the provision for WFH boats limits the time a boat can be at the dock for no more than two hours. He stated that the issue was more related to rental boats and that will be the next topic to tackle after the WFH is wrapped.

Newell stated that he has a 93-year-old boat that he has offered for charity use, explaining that he will offer a cruise on the lake as a live auction item and has been able to raise a few hundred thousand dollars for charities. He stated that he never has more than six people but his boat is 36 feet, and he does provide wine and cheese and crackers. He asked how this would impact that.

Walesch stated that would seem to be a private charter as it is not being paid for as a charter service and therefore this would not apply as it would be similar to just taking friends out on a boat.

Anderson stated that they discussed two staff provided training sessions, but that language seemed vague.

Walesch stated that typically they do not write the Code in a way that would limit the ability of the LMCD and therefore would prefer the language as written.

Hoelscher stated that the point is that there will be scheduled training courses and therefore an applicant cannot demand their own training session. She stated that applicants would need to apply by a certain date and then register and attend the training.

Newell commented that he was not aware that the LMCD was conducting training for charters and asked how that is done.

Walesch stated that there was training for the alcoholic beverage license and those not serving alcoholic beverages would also be required to attend the training.

Tully provided additional details on the training that has been conducted. He noted that inspections are also done at that time.

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

Hoelscher opened the public hearing at 7:23 p.m.

Jay Soule, Al and Alma's, thanked the LMCD for its work on this topic. He stated that over the past couple of years it seems that there have been difficulties in enforcement, specifically that the consequences were not strong enough. He asked if the work group considered potential consequences for those that continue to operate without licensure. He stated that perhaps if someone is noncompliant, there is a consequence that the party would not be eligible for a license for a period of time.

Hoelscher asked if there is anything in the Code addressing violations. It was mentioned that was not addressed.

Jabbour stated that they did discuss that but the people that operate without a license will continue to do so. He commented that the fines are not strong enough to push people into compliance. He stated that technically the boat would be out for the season as they would need to attend the training session before a license could

be issued. He asked if the ticket was given to the driver or the boat.

Lieutenant Rick Rehman replied that would be dependent on where the citation is issued. He stated that if the captain is the owner and operator, the ticket would go to that person. He stated that many times the owner would hire a younger captain and in that instance the ticket would be sent to the owner.

Hoelscher asked if the violation would go to the watercraft as that is meant to be licensed.

Langel replied that the ordinance issues the violation to the owner of the watercraft.

Walesch asked for the ability to deny or revoke a license the subsequent year if the criteria are not met. He stated that perhaps if a license is revoked, it could not be reissued for a certain length of time.

Langel stated that in this draft there is language that would allow revocation of a license. He stated that if there is a desire to deny an application based on past behavior, that language should be included as well.

Walesch commented that it would be nice to have the ability to not approve a license based on past behavior.

Langel stated that for tobacco and alcohol licensure there are criteria listed that a city could base its decision on to deny a license and that same type of thing could be done here.

Walesch stated that he would like to see that ability to not grant a license based on certain behaviors.

Hoelscher suggested using "may" choose to not issue a license.

Langel commented that would be fine. He noted that consideration would come before the Board with a staff recommendation and presentation of the facts and the decision would be the Board.

Kirkwood asked if the length of revocation would need to be specified.

Langel replied that typically a license is issued for a term and if revoked, that would be for the same term.

Jabbour commented that the issue is with the boats that are not complying and not applying for licenses.

Hoelscher recognized that separate issue but agreed that the provision being discussed should be included as discussed.

Nellis commented that if there was someone out of compliance that wants to be in compliance, he would not want to make it harder for that person.

Walesch stated that in this scenario someone did have a license and it was revoked for violation, therefore this would provide the ability to deny a future application.

Hoelscher referenced the second issue with someone operating a WFH without a license and the applicable penalty.

Soule commented that he would not want to make it harder for people to come into compliance. He stated that in his experience people are making the choice of asking for forgiveness rather than permission. He stated that people could have a very successful summer or two before they were caught for operating without a license. He stated that it does not seem that some people care if they are operating without a license.

Walesch commented that there is only so much that could be put into the Code, as someone operating without a license is already operating outside of the Code. He recognized that the LMCD is limited in what fines or punishments could be.

Soule commented that the operator has the biggest privilege in the ability to obtain the license to operate, therefore if that were in jeopardy that would seem to be the largest consequence.

Walesch asked if additional language could be put into the Code stating that if someone were caught operating WFH without a license, which could be a reason to deny a future application.

Langel confirmed that he could add that language.

Hoelscher stated that there was previous discussion as to how WFH boats are identified, noting that it is easy to identify large cruise boats and stickers are used for licensed boats. She asked if it would be helpful to have an easier identifier, such as a flag.

Shane Magnuson, Hennepin County Sheriff's Office, commented that visual identification is good. He stated that the problem is not the big charter boat companies, but those dumping their boats or jet skis for rentals. He stated that the bigger operations run a better overall system with required safety elements, while the smaller boats tend to have many more safety issues.

Newell asked the incident rate for this type of violation.

Magnuson commented that the number increases every year and those operating without a license are sneaky, coaching their customers to say that they are just friends of the captain if the boat is pulled over.

Jabbour commented that he is on the lake all the time and what is being talked about is different than what happens in the real world. He stated that there is a serious problem with boat rentals versus the traditional WFH issue. He stated that last season he sat at public launches and there were people coming from all over Minnesota, bringing their pontoon, and sitting in the parking lot to rent the boat, even camping in the parking lot. He stated that will require action from the cities as well because two thirds of that activity is occurring on the land. He asked how those people would even know about the LMCD, as this type of entity is rare and not all people are aware of the organization.

Hoelscher suggested focusing on the issue of WFH at this time, recognizing that the issue of boat rentals will

still need to be addressed.

Magnuson stated that in the instances that those boat rentals mentioned by Jabbour offer a driver, they do then become WFH. He agreed that it is a huge issue that they are attempting to tackle but must also be out on the water.

No additional comments were offered, and the public hearing was closed at 7:49 p.m.

MOTION: Hoelscher moved, Kroll seconded to approve the document as presented, with the changes as discussed, and set January 10, 2024 for formal adoption.

Further discussion: Kirkwood commented that he feels that penalties are being left undiscussed and would like to have some acknowledgement that will be discussed at some time.

Hoelscher stated that these target licensed WFH and reviewed the potential consequences that could arise as discussed. She noted that the issue of rentals and those operating outside of licensing will continue to be discussed by the work group.

VOTE: Motion carried unanimously.

Hoelscher thanked all that participated in this process and the members of the work group.

B) Braun Intertec Variance

Tully presented a variance request for the property at 2165 North Shore Drive on Crystal Bay in Orono. He provided the location of the property on the bay and provided background information. He stated that the applicant is proposing to extend the dock structure to a length of 200 feet with four BSU's for private use. He provided details of the proposed dock structure, noting that a minimum 20-foot setback would be maintained from both the northern and southern side site lines. He reviewed the proposed site plan and site characteristics. He stated that one comment was received from the DNR and one from the Minnehaha Creek Watershed District (MCWD), noting that both of those comments were provided to the Board prior to the meeting. He stated that one neighbor to the south reached out to staff with concern but has since rescinded that concern after receiving more information from staff. He stated that staff recommends approval of the variance subject to the additional conditions.

Walesch asked if the contours shown on the map are one-foot contours.

Tully provided more information on the contours shown on the map.

Walesch asked if variances are issued for docks longer than 200 feet.

Tully commented that if Code recommendations and public safety measures are met that could be done, but at some point, which becomes too long. He stated that the water depth is fairly consistent until the mouth.

Walesch noted the comments received from the DNR and MCWD and asked if the LMCD has anything to do with dredging.

Tully replied that the LMCD does not have that authority and that was clarified with those agencies.

Zorn referenced the slide with the water depths and asked if there is any overlay of the proposed dock on that map. She asked the distance from the shoreline to the mouth and whether there is concern with erosion.

Tully replied that staff did not take the exact measurement from the mouth to the dock. He stated that they do not currently have a concern with the location as it is one parcel, and the property owner owns the entirety of the cove. He clarified that the parcel is half of the cove, but the applicant also owns the adjacent property.

Hoelscher asked if there has been a request for a dock in this location in the past.

Tully replied that he could not find such a request, believing that is perhaps to water depth.

Klohs asked if the parcel had been recently subdivided.

Tully replied that it has not and to his knowledge this has been two parcels.

Kroll stated that the same property owner owns both parcels and asked why the application is just for one parcel.

Tully replied that would be a question for the applicant.

Kroll asked if there is a dock for the other parcel.

Tully commented that the other parcel has a dock on the main bay, whereas this would be the water access for this parcel.

Kroll stated that he is not opposed to the variance. He stated that there should be a geometrically sound way to measure shoreland in the future.

Jabbour asked if there is a dock on the northwestern side of the cove.

Tully confirmed that is a dock that has historically existed, but he did not find evidence that has been used for watercraft.

Jabbour commented that he personally docked there in the past and the lagoon is used by fisherman, therefore it is navigable. He believed that the parcels were acquired individually by the applicant as they became available.

Hoelscher opened the public hearing at 8:10 p.m.

Greg Steinhafel, applicant, stated that he and his wife own the majority of the property in what is often referred to as "grandpa bay." He stated that they purchased the property about 21 years ago and when that purchase occurred the property owner split that into two. He noted that there are four properties around the bay. He stated that they purchased their second parcel in 2010. He stated that their main residence is located near the dock that was pointed out. He stated that the dock has never had a boat and is just used for enjoyment of the lake to relax. He stated that the bay is very tiny and is navigable for about six weeks after ice out. He stated that after mid-June there is typically only canoe or kayak activity on the bay because of the high levels of silt and lower water levels. He stated that their intention is to reach navigable water and have a dock in a responsible manner that will not damage the vegetation. He stated that this proposed dock location would be least impactful. He stated that they will be looking to secure a dredging permit for navigation purposes. He stated that the 200-foot length would ensure they can go past the cattails and vegetation without impacting other boaters. He stated that currently they own all of the lakeshore around the bay and the one neighbor that could be impacted has docks on the main portion of the lake and therefore would not be.

Newell asked if the water depth would be better at 250 feet.

Steinhafel provided more specific details on the water depth in different areas. He noted that in the record low water level year, the entire surface of the bay was muck. He confirmed that length past 200 feet would not be helpful. He stated that if they were to dredge, they would attempt to go to the main mouth of the channel if allowed. He stated that once there is regular usage that will help to move silt as well. He noted that their plan would be to dispose of the silt on property that they own, providing that the soil passes the MPCA testing requirements.

Zorn asked how the resident would reach the docks.

Steinhafel commented that there is a home on the bluff on that parcel with a family living in it. He stated that there is a path around the shore that he would be able to utilize from his home to the proposed dock.

Zorn asked if the applicant is confident that the dredging would provide access for four slips.

Steinhafel believed that would be successful as there would be regular usage. He stated that the previous owners of the property had an old dock in disrepair but did not believe a typical boat was used.

No additional comments were offered, and the public hearing was closed at 8:23 p.m.

MOTION: Walesch moved, Klohs seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the variance application from Braun Intertec for the property located at 2165 North Shore Drive in Orono for final approval at the January 10, 2023 LMCD Board meeting.

Further discussion: Jabbour commented that the Board has found demonstrated hardship and that should be reflected in the findings of fact.

Walesch and Klohs accepted the amendment.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A) Save the Lake Update

Hoelscher stated that an updated solicitation letter was provided to the Board that should be sent out in the next week. She commented that it was determined that the solicitation within the winter rules brochure was not effective and therefore a direct mailing will be done in addition.

11. OLD BUSINESS

A) Buoy Workgroup Update

Jabbour stated that the issue of buoys has been a controversy for some time. He stated that the work group worked hard to find the facts and recognize that the authority for buoys is set by State statute to Hennepin County. He suggested that the Sheriff determine the placement and quality of the buoys and the LMCD can provide guidance. He stated that there are some buoys that have been placed at request of individuals over the years. He stated that the work group came to an agreement that there will be more aggressive buoy replacement and they will continue to work on other elements such as reflective tape. He stated that in the data collection process the Sheriff will identify the number of complaints received and will track buoy information. He stated that a thorough evaluation will be done on the placement of buoys. He stated that they also recommend removing the Code language related to a request for quiet water buoys, as that should fall to the Sheriff. He stated that the job of the work group has been completed and the Sheriff's Office will take over, noting that he will provide assistance in terms of the reflective tape. He stated that the lights on the buoys are an LMCD project and are installed by volunteers. He believed that was not sustainable and provided additional details. He stated that they would need to find a better way to connect the lights before replacing them and they would also have to consider whether those lights would meet the requirements of State law.

Hoelscher thanked Jabbour and the work group for the work that they did.

Anderson stated that his main issue is the lighting, noting that they should do it right or not do it at all. He stated that there is a budget to purchase a set number of lights each year and within three years all the lights should be replaced. He stated that people like lights, but no one wants to do the work.

Hoelscher agreed that it is important because people look for the lights and find them helpful. She stated that this is an element of boater safety, and it would seem that they should move full steam ahead, doing this well and right, whatever that may mean. She stated that if anyone on the Board would like to be involved, along with Anderson and staff, they should let staff know.

Anderson stated that in the discussions they have talked about perhaps utilizing a contractor for the lighting, if there are funds in the budget, and that will be discussed.

Hoelscher stated that they talked about contracting for services when appropriate and believed that would be worth looking into. She stated that the budget would support that and believed that the cities would support this type of expenditure.

Newell asked if boaters are using navigational software. He stated that if officers are placing the buoys and have the coordinates of the buoys, which could be shared with navigational software providers to provide accurate locations.

Jabbour commented that during the discussion it was mentioned that the County costs for acquiring and installing the buoys have increased by 40 percent. He stated that it was discussed that perhaps the person placing the buoys could place the lights at the same time.

12. NEW BUSINESS

A) Nominating Committee Appointments

Hoelscher stated that in the past they have stated that those on the Nominating Committee cannot be in the running for an officer position but noted that she does not feel strongly about that. She asked for volunteers for the committee.

Zorn, Stone, and Walesch volunteered.

Hoelscher stated that the group should hope to elect officers in February, with recommendations from the committee prepared for the second meeting in February.

B) 2024 Public Meeting Calendar

Hoelscher stated that the February 14th meeting will be canceled because of a conflict with the meeting room.

Jabbour commented that they have talked about not meeting just for the sake of meeting. He stated that perhaps the first meeting in January should be canceled.

Hoelscher stated that there are some items that have been discussed for January and therefore she would prefer to keep the meetings scheduled and will provide notice if a meeting is going to be canceled. She took a poll of those that would not be able to attend the first January meeting and directed staff to review the calendar to determine if that meeting could be canceled.

13. TREASURER REPORT

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

Anderson stated that he and Brimeyer have done some work on cost of employees for next year. He believed the organization is in great shape and provided a brief overview of the financial reports.

Newell asked for more details on the deferred revenue showing as \$49,000.

Anderson replied that he was unsure.

14. EXECUTIVE DIRECTOR UPDATE

Brimeyer commented that perhaps the solar lights become part of a capital budget, along with contracting for that service.

A) ARC Document Scanning & Data Request

Brimeyer reported that the document scanning is complete and provided details on that process. He also provided details on a data request that was received and has since been forwarded to legal counsel.

B) Termination of Alerus Bank Accounts

Brimeyer reported that the Alerus bank account has formally been terminated.

C) Brandography Proposal for ADA Compliance

Brimeyer stated that they have been discussing this issue and legal counsel stated that additional measures could be taken but would not have to be taken. He stated that after reaching out to city managers around the lake he was referred to the League of Minnesota Cities which provides the specifications for ADA compliance. He believed that the LMCD should purchase the software to complete the updates, noting that this could be reevaluated in the next budget process.

MOTION: Walesch moved, Stone seconded to approve the agreement with Brandography and authorize payment to accessible in the amount of \$490 per year to purchase software for the LMCD website to maintain compliance with ADA requirements.

Further discussion: Nellis asked if the software would provide an analysis of the compliance issues rather than remedying the issues.

Hoelscher stated that this is a software add-on that would solve the problem.

Brandt referenced an additional cost that would be necessary.

Nellis commented that he supports this but just wanted to ensure the motion was clear.

Brimeyer stated that the motion can be changed to remove the amounts and staff will determine the amount based on the budget.

Walesch suggested moving this forward with the understanding that the software would do the work and there would only be the one-time fee and software cost, and that there would not be an approval for a redesign of the website.

Hoelscher suggested authorizing a cost of up to \$1,000.

Walesch and Stone agreed to the amendment.

VOTE: Motion carried unanimously.

D) Staff Compensation

Brimeyer recapped that they moved from hourly to salary pay, the use of flex time, and listed the expectations for each position earlier this fall. He stated that he committed to completing performance evaluations for those positions using those expectations and to develop work programs. He stated that he is not a fan of once-a-year evaluations and prefers to meet monthly to keep the lines of communication open. He stated that he completed those evaluations and met with the Treasurer to discuss compensation. He noted that a memorandum was provided to the Board earlier this week, along with comparisons of staff compensation for lake communities. He noted that most cities are doing 3.5 to five percent increases, along with other wage increases in order to attract and retain employees. He stated that the three staff members have done a great job this past year with the huge changes that have occurred in terms of leadership and staffing and reviewed the potential increases proposed.

MOTION: Anderson moved; Kroll seconded to approve the employee compensation plan as presented.

VOTE: Motion carried unanimously.

Hoelscher thanked staff for their excellent work.

15. ADJOURNMENT

MOTION: Kroll moved; Walesch seconded to adjourn the meeting at 9:11 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary