

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., January 24, 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. OATH OF OFFICE

Langel administered the Oath of Office to Brian Malo of Greenwood.

Malo introduced himself to the Board.

4. ROLL CALL

Members present: Ann Hoelscher, Victoria; Jake Walesch, Deephaven; Rich Anderson, Orono; Mike Kirkwood, Minnetrista; Brian Malo, Greenwood; 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 Reardan, Office, and Finance Manager; Raina Gabler, Executive Assistant Code Enforcement and Operations; and Interim Executive Director Jim Brimeyer.

Members absent: Dan Baasen, Wayzata.

Persons in Audience: David Aul, Steve Tallen, Lt. Richard Rehman, Sgt. Richard Waldon, Sgt. Troy Kostohryz, Major Shane Magnuson, Representative Patty Acomb.

5. APPROVAL OF AGENDA

MOTION: Hoelscher moved, Walesch seconded to amend the agenda to remove Item 13B at the request of the applicant.

VOTE: Motion carried unanimously.

6. CHAIR ANNOUNCEMENTS

Chair Hoelscher congratulated Arnston who was married over the weekend.

A) Rep Patty Acomb

Kirkwood introduced Representative Patty Acomb.

Patty Acomb introduced herself noting that she represents House District 45B. She stated that she is in her fifth year in the House and previously served on the Minnetonka City Council. She stated that her background

and education are in natural resources and therefore the lake is of particular interest to her. She also reviewed related entities and agencies on which she has served, noting her current committee assignments. She stated that the legislature will go back into session on February 12th and highlighted some of the items that will be discussed. She believed that this session would be quieter and not quite as ambitious as the previous session. She recognized that safety is a concern for the lake and welcomed any other input the Board may have.

Hoelscher appreciated the desire to keep lines of communication open should issues arise on either end.

Jabbour thanked Acomb for her work during the last session, recognizing that there was a phenomenal amount of work accomplished. He commented on the work they did relating to an operator permit and expressed appreciation to those on the legislature that were involved. He thanked Acomb for the amount of funding that LCCMR has provided to the hydro dam and AIS center. He stated that there is a bill that will be considered related to shrink-wrap which is important and urged Acomb to support that bill. He also expressed concern with how the County is spending the AIS funding that is intended to be allocated to different entities, including the LMCD.

Anderson commented that the LMCD is composed of 14 communities, ten of which are the richest cities in Minnesota. He stated that those cities contribute heavily to the Hennepin County tax base, but they struggle to keep Water Patrol Deputies on the lake and even contribute funding from the LMCD and donations from residents.

Acomb thanked Anderson for his input and stated that she would be happy to speak further on that topic. She stated that unfortunately the Hennepin County Commissioner representing District 6 has resigned and therefore that may be an opportunity to ask questions of those running in the special election.

B) February Meetings

Hoelscher stated that the first meeting in February has been canceled.

C) Prosecuting Attorney Update

Steve Tallen introduced himself to those that may not know him, reviewing his career experience and his role for the LMCD.

Jabbour stated that he is grateful for the services that Tallen provides in general. He stated that when a case is referred to Tallen, staff has already spent an exhaustive amount of time trying to resolve the issue. He referenced a case that has been going on for over five years with a lot of staff time, noting that an individual passed away and therefore the case was ended. He asked if the ordinance language making issues criminal offenses is the best way to go about those things, in his legal opinion. He stated that if a person does not stop the offending behavior and drags that on, they can make money off that if it is a commercial operation. He stated that in his opinion once things are passed to Tallen, there should be no more negotiations. He stated

that people that abide by the law complain that they need to follow the rules, while others do not. He asked if a variance could be issued to break the ordinance.

Tallen replied that a variance cannot be issued that breaks ordinance. He stated that the criminal process is cheap to start with, as he would simply generate a complaint. He noted that the majority of people will call him to ask how it could be resolved. He acknowledged the ultimate desire is for compliance. He stated that is a quick response. He stated that the civil process is expensive up front, providing details on that process. He stated that the good thing about the civil process is that a judge could issue an order to mandate that something must be addressed within 30 days, or the person would face jail time, which is not the same in a criminal case. He explained more of the criminal process, noting that the courts are still backed up from COVID and often people request a number of continuances for different reasons. He stated that perhaps he and Langel should have further discussion whether there should be pursuit of civil resolution when it is clear that the criminal case will be delayed significantly. He stated that while there may be a higher cost to the civil process, there may also be a more likely resolution.

Anderson referenced the proposed line-item budget of \$30,000 for prosecution legal fees, noting that sometimes the fees exceed that amount. He asked how fees recovered through the legal process are allocated, whether those come back to the LMCD or go to Hennepin County.

Tallen explained that anything that violates the LMCD ordinance on the lake should be written as an LMCD ordinance violation rather than a State law violation. He provided historical and current practice for how fine revenue is allocated.

Anderson asked how the fine revenue was allocated in this report.

Tallen noted that at least half of that revenue was a result of BWI offenses.

Kroll stated that he appreciated the civil option as Brimeyer recently suggested an administrative fine process and asked if that would be an option or whether the civil suggestion would involve the court.

Tallen stated that he would suggest the issuance of a civil complaint and court process and following the legal process in that manner.

Kroll stated that perhaps they should have a workgroup to take a further dive into that potential.

Kirkwood asked how people are made aware of the resolution of these cases.

Tallen commented that his office provides a monthly report to the Sheriff's Office and to staff.

Kirkwood asked if there would be benefit in making that public.

Tallen commented that he would discourage that as it would be seen as public shaming, even though the records are public.

Newell commented that the Board ultimately decided not to move forward with administrative fines and asked if Tallen had a legal opinion on that potential process.

Hoelscher stated that the Board discussed that at length and did not believe this was the appropriate time to rehash that. She noted that Newell could speak separately to Tallen to gain his opinion. She thanked Tallen for his continued work and appreciated the concept of Tallen working more closely with Langel.

7. APPROVAL OF MINUTES- 12/13/2023 LMCD Regular Board Meeting

MOTION: Kroll moved; Kirkwood seconded to approve the 12/13/2023 LMCD Regular Board Meeting minutes as submitted.

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

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Kroll moved; Zorn seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (01/01/2024 – 01/15/2024) & (01/16/2024 – 01/31/2024); **7B)** Resolution #260 Accepting Save the Lake Contributions (01/08/2024 – 01/17/2024); **7C)** Braun Intertec Findings of Fact; and **7D)** Watercraft for Hire Changes to Code.

VOTE: Motion carried unanimously.

Hoelscher asked and received confirmation that the Code changes would be published in summary format.

Jabbour noted that the court system will also need to receive updated information on the Code.

Hoelscher stated that a notice should also be published on the website and should be provided to Goff in order to develop any public education items.

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

There were no public comments.

10. PUBLIC HEARING

There were no public hearings.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) Report from Nominating Committee

Zorn provided an overview of the nominating process which was implemented in 2016. She stated that a recommendation was provided for Officers within the packet, although a nomination would be needed from the floor for the Vice Chair position. She thanked Walesch for serving with her on the Committee and acknowledged that he would soon be leaving the Board. She recognized that Anderson had been a great contribution in his role as Treasurer and has positioned Stone well to take over that position.

Hoelscher recognized that a nomination is needed for Vice Chair and welcomed any other nominations the Board may have.

Anderson stated that self-nominations had to be submitted by January 12th. He stated that he submitted a letter on January 11th to be considered as Treasurer. He stated that on January 16th he pulled the request for Treasurer. He noted that Stone self-nominated for the position of Vice Chair and therefore he believes that Treasurer should be the open nomination.

Hoelscher stated that it is her understanding that Stone stated that she would be open to any position.

Zorn confirmed that. She stated that one of the interview questions was whether the candidate is willing to serve in any Officer position.

Hoelscher again welcomed any nominations for any of the positions.

Kroll nominated Brandt for Vice Chair.

Hoelscher asked if there were any other nominations for any position.

Walesch nominated Zorn for Vice Chair.

Anderson nominated Jabbour for Vice Chair and Newell for Treasurer.

Hoelscher stated that they would first vote on the positions of Chair and Secretary as recommended by the Nominating Committee with herself to continue as Chair and Kirkwood to continue as Secretary.

All voted in favor and Hoelscher was appointed as Chair and Kirkwood was appointed as Secretary.

Hoelscher noted three nominations for Vice Chair.

Jabbour rejected the nomination for Vice Chair.

Brandt rejected the nomination for Vice Chair.

Zorn accepted the nomination for Vice Chair.

All voted in favor and Zorn was appointed as Vice Chair.

Hoelscher noted two nominations for Treasurer.

Newell accepted the nomination for Treasurer.

Stone accepted the nomination for Treasurer.

Newell and Stone both provided comments on why they would like to serve as Treasurer.

With a vote of 2 (For Newell) – 11 (For Stone), Stone was appointed as Treasurer.

Hoelscher thanked those that previously served, that will continue to serve and that will begin to serve as Officers.

B) Rental Boats (Memo from WFH Chair provided before the meeting)

Walesch stated that the watercraft for hire updates were adopted tonight, and the group will now focus on rental boats, providing an anticipated timeline for that review. He confirmed that the same committee members will continue to work on this.

Hoelscher noted that if additional members were interested in joining the discussion, they could reach out to Walesch.

13. NEW BUSINESS

A) Consulting Agreement with HueLife

Brimeyer stated that the Board completed a survey the previous February which was part of the process to delay the Executive Director search. He stated that it has now been one year and there had been discussion about completing an evaluation, along with a suggested staff team building. He stated that if approved tonight, the survey would be provided to the Board in the next week or two which would need to be completed by February 23rd. He stated that depending on the results they will determine whether a follow-up session would be needed. He stated that it would be proposed to hold a session on March 27th prior to the Board meeting for a Board retreat. He reviewed the proposed cost.

Hoelscher noted the previous discussion and desire for continued evaluation of both the Board and staff to ensure desired performance levels are being met and noted that this would accomplish that goal. She stated

that this would also assist in creating a process to be followed each year.

Kirkwood asked if it would be recommended that the same profile should be completed for the Board as was done with staff.

Brimeyer replied that the Board is too big to receive value on that type of assessment.

Hoelscher stated that the intent for the evaluation would be to review the work that has been done in the past year to determine whether or not the Board is continuing to work towards what had been agreed upon in the previous strategic planning sessions.

MOTION: Anderson moved, Jabbour seconded to adopt the consulting agreement with HueLife and recommended timetable, with the exception of the Board review/retreat, which would deduct \$3,000 from the cost.

Further discussion: Jabbour commented that he believes that in the past there was less evaluation and more direction. He stated that some of the Board members were legitimized through that process. He commented that the Board is doing well, and he would like to continue on that path rather than potentially derailing.

Walesch asked and received confirmation that the Board survey and report of those results would still be provided, simply removing the retreat.

Nellis commented that he does not feel that he knows enough about the Board retreat and would prefer not to make that decision tonight.

Hoelscher stated that the action tonight could authorize the survey and results and then the Board could have additional discussion as to whether a retreat is necessary.

Brimeyer confirmed that could be an option as the results of the study could determine whether or not a retreat would be desired.

VOTE: Motion carried unanimously.

~~B) Minnesota Powerboat Championships Presentation~~

Item removed.

14. TREASURER REPORT

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

Anderson had no report.

15. EXECUTIVE DIRECTOR UPDATE

A) LMCD Annual Calendar 2024

Brimeyer stated that he collaborated with staff to update the annual calendar. He stated that he recently received notification from Mound for a polar plunge event and asked if Hoelscher and the Mound representative would be able to attend this Saturday.

Hoelscher commented that she would be unable to attend.

Brandt volunteered to attend and participate in the event.

16. CLOSED SESSION

Langel reported that the Board is going to enter into closed session for the purpose of evaluating the performance of Interim Executive Director pursuant to Minn. Stat. Sec. 13.D.05 Subd. 3(a).

The Board adjourned the regular meeting to closed session at 8:15 p.m.

The Board responded to two questions concerning Interim Executive Director Brimeyer: (1) What does the LMCD Executive Director do well? (2) What could the Executive Director do better?

Members of the Board noted that Mr. Brimeyer is an efficient and productive Executive Director who mentors staff and encourages their professional development in a manner that benefits the organization. Mr. Brimeyer has improved office organization as well as LMCD's relationship with outside entities. The Board looks to Mr. Brimeyer to continue consulting the Code for direction and then using Board members and staff as resources to fulfill his responsibilities in an effective manner. Overall, the Board is very pleased with Mr. Brimeyer's performance and his efforts to improve LMCD.

The Board returned to open session at 8:50 p.m.

16. ADJOURNMENT

MOTION: Walesch moved; Second seconded to adjourn the meeting at 8:50 p.m.

VOTE: Motion carried unanimously.

Ann Hoelscher, Chair

Michael Kirkwood, Secretary