



## CITY COUNCIL REGULAR MEETING AGENDA

JULY 26, 2022 – 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. APPROVAL OF AGENDA
4. CONSENT AGENDA<sup>1</sup>
  - A. City Council Work Session Minutes from June 14, 2022
  - B. City Council Regular Meeting Minutes from July 12, 2022
5. MATTERS FROM THE FLOOR<sup>2</sup> (*maximum time of five minutes per person*)
6. SPECIAL BUSINESS
  - A. LMCD Budget Presentation – Vicki Schleuning & Gregg Thomas
7. PUBLIC HEARING
  - A. None
8. OLD BUSINESS
  - A. Resolution 22-29: Approving 40 Interlachen Variance Request
  - B. Channel Stabilization Discussion & Action
9. NEW BUSINESS
  - A. Reschedule August 9, 2022 City Council Work Session & Regular Meeting to August 16, 2022
10. MATTERS FROM THE FLOOR<sup>2</sup> (*maximum time of five minutes per person*)
11. REPORTS
  - A. Administrator's Report
  - B. Contract Staff Report(s)
  - C. Jeff Anderson: Finance, Fire Lanes and Public Access, Technology
  - D. Kristin Viger: Parks and Docks, Sanitation and Recycling
  - E. Kelly Wischmeier: Building Inspection, Municipal Buildings and Grounds
  - F. Tim Connelly: EFD, Commercial Marinas, LMCD
  - G. Adam Jennings: SLMPD, Administration, Public Works, Employee Advisory Board
12. ADJOURNMENT

All matters listed within the Consent Agenda are considered to be routine items to be enacted upon by one City Council motion. Items on the Consent Agenda are reviewed in total by the City Council and may be approved through one motion with no further discussion by the Council. Any item may be removed by any Council Member, staff member or person from the public for separate consideration.

<sup>2</sup>For individuals who wish to address the Council on subjects which are not a part of the meeting agenda. Typically, the Council will not take action on items presented at this time but will refer them to staff for review, action and/or recommendation for future Council action.

## ITEM NO. 4A

### DRAFT MINUTES TONKA BAY CITY COUNCIL WORK SESSION JUNE 14, 2022

#### 1. **CALL TO ORDER**

The work session was called to order at 6:00 pm.

#### 2. **ROLL CALL**

Members present: Mayor Jennings and Councilmember Anderson, Connelly, Viger and Wischmeier. Also present were City Administrator Tolsma, City Attorney Hill, City Planner Howe and City Engineer Gadbois.

#### 3. **DISCUSSION TOPICS**

##### Pleasant Avenue / Birch Bluff Road Speed Reduction Discussion

Council continued the discussion of speed reduction measures for Pleasant Avenue and Birch Bluff Road, outlining the pros and cons of re-installing the temporary speed bumps again this year. It was decided to take the remaining speed bumps strategically place them on each road where the Public Works Department sees fit.

##### Lot Hardcover Discussion

The City Council expressed interest in looking at ways to increase flexibility when dealing with hardcover, specifically on residential lots. Due to the City's current standard of 25 percent, we receive a high number of variance requests to exceed the limit when doing new construction or a remodel. Mayor Jennings proposed updating the non-conforming lots to a higher standard, along the lines of the old standard, which was either 35 percent or 40 percent. The few conforming lots would remain at 25 percent. Councilmember Anderson asked what would define a non-conforming lot. City Administrator Tolsma replied, primarily lot size. Councilmember Viger asked how the DNR fits into the decision making. City Administrator Tolsma stated that we would have to present a case to them for an exception to justify changing the percentage of hardcover. Councilmember Viger said she understands raising the percentage on non-conforming lots; however, she would still like to see a stormwater management plan be put into place. City Engineer Gadbois said a standard can set for building projects that potential builders can reference. Using the different cities comparison chart, different options of what exemptions could possibly exist with the new policy were discussed. Viger stated that if exemption were to be created, she believes the existing 25 percent hardcover rule should stay in effect. Mayor Jennings proposed taking pervious pavers options out of the equation, make decks an exemption and then do a sliding scale. He went on to state the next steps would be develop a sliding scale, adopt a deck policy and if they reduce where they are at now but still over 25 percent, it will require a stormwater management plan at engineering's discretion. Viger suggested that, like Deephaven, every five years the stormwater maintenance plan or raingarden would have to be inspected by the city and the cost would be

assessed to the property. City Engineer Gadbois stated that is the purpose of the stormwater maintenance agreement and easement, giving the city the right at any time to do an inspection. Mayor Jennings said that might be introduce a level of complexity and oversight that could become an issue, as we are not in the business of policing. Councilmember Viger would still like to see how Deephaven handles it.

#### Short-term Rental Discussion

City Administrator Tolsma asked what the original intention was of the short-term rental ordinance and should the City place a limit on the number of nights per month or year that a property can be rented out for short term rental purposes. Additionally, although properties that are homestead can technically have a primary resident that is someone other the primary residents as traditionally understood, should this language be modified to make the requirement more limited in terms of who can or cannot be the primary resident. Mayor Jennings stated the way he recollected the conversation around it was a significant number of residents leave in the winter so then the conversation started to center around free property rights. The thought was that if they homestead their property, then in theory those individuals would live there six months and a day, they way property taxes are looked at. Then it would give them the ability to rent it the other six months of the year. Councilmember Wischmeier stated she prefers to utilize the Airbnb ability instead of hotels so being that we are a lake community where residents tend to leave in the winter so is the issue that it may become a party house. She said she has neighbors that are permanent residents who have parties and are loud at night and they are not renting out their house. Mayor Jennings stated at that point it becomes a police matter and if you have three violations in a year, you lose your license. Councilmember Connelly stated that they have ran several Airbnb's over the years and their experience has been overall very positive. Mayor Jennings stated it comes down to the homestead issue and the loophole that exists. Councilmember Viger suggested looking into where their utility bill is sent. City Attorney Hill stated he has not seen that in many short-term rental agreements. Mayor Jennings said that it basically comes down to if they have documented violations, they lose their short-term rental privileges.

#### Miscellaneous

- a. North Manitou Fire Lane Signage Request  
Not discussed.

#### **4. ADJOURNMENT**

**There being no further business, Council moved on to the City Council meeting.**

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Adam Jennings, Mayor

Attest:

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Rachel Myskevitz, City Clerk

## ITEM NO. 4B

### DRAFT MINUTES TONKA BAY CITY COUNCIL REGULAR MEETING JULY 12, 2022

1. **CALL TO ORDER**

The regular semi-monthly meeting of the Tonka Bay City Council was called to order at 7:00pm.

2. **ROLL CALL**

Members present: Mayor Jennings, Councilmembers Anderson, Connelly and Wischmeier. Also present were City Clerk Rachel Myskevitz, City Engineer Adam Gadbois and City Attorney Jason Hill.

3. **APPROVAL OF AGENDA**

**Anderson moved to approve the agenda. Connelly seconded the motion. Ayes: Anderson, Connelly, Wischmeier, Jennings. Motion carried.**

4. **CONSENT AGENDA**

**A. City Council Work Session Minutes from May 24, 2022**

**~~B. City Council Work Session Minutes from Jun 14, 2022~~**

**C. City Council Regular Meeting Minutes from June 28, 2022**

**Anderson moved to approve the consent agenda, removing Item 4B. Connelly seconded the motion. Ayes: Anderson, Connelly, Wischmeier, Jennings. Motion carried.**

5. **MATTERS FROM THE FLOOR**

Dennis Hayes of 4420 Manitou Road spoke regarding his late penalty fees that occurred on February 2, 2022 in the amount of \$32.60 and on May 2, 2022 in the amount of \$31.79. These occurred because the due date of the first landed on the weekend and his auto pay on PSN was not recognized until the following business day. Council authorized the reimbursement for the total penalty of \$64.39.

6. **SPECIAL BUSINESS**

None.

7. **PUBLIC HEARINGS**

None.

8. **OLD BUSINESS**

A. Resolution 22-26: Approving 90 Waseca Variance & Conditional Use Permit Requests

**Anderson moved to approve Resolution 22-26, Approving a Conditional Use Permit and Variance at 90 Waseca Avenue. Connelly seconded the motion. Ayes: Anderson, Connelly, Wischmeier, Jennings. Motion carried.**

B. 40 Interlachen Lane Variance Request

City Engineer Gadbois said they did receive the stormwater management plan. Upon review, the plans looked good. The next step is the completing the stormwater maintenance agreement, which is a standard agreement that accompanies all stormwater management plans in the city.

**Anderson moved to approve the variance requests at 40 Interlachen Lane. Connelly seconded the motion. Ayes: Anderson, Connelly, Wischmeier, Jennings. Motion carried.**

**9. NEW BUSINESS**

A. Resolution 22-27: Approving Sewer Lining Plans & Specs, Authorizing Solicitation of Quotes

**Anderson moved to approve Resolution 22-27, Approving Sewer Lining Plans & Specs, Authorizing Solicitation of Quotes. Connelly seconded the motion. Ayes: Anderson, Connelly, Wischmeier, Jennings. Motion carried.**

B. Resolution 22-28: Appointing Election Judges for the August 9, 2022 Primary Election and the November 8, 2022 General Election

**Anderson moved to approve Resolution 22-28, Appointing Election Judges for the August 9, 2022 Primary Election and the November 8, 2022 General Election. Connelly seconded the motion. Ayes: Anderson, Connelly, Wischmeier, Jennings. Motion carried.**

**10. MATTERS FROM THE FLOOR**

**11. REPORTS**

A. Administrator's Report

No report.

B. Contract Staff Report(s)

City Engineer Gadbois gave an update on the Manitou Park parking lot striping and that fencing has been delayed for the ballfield due to supply issues.

C. Jeff Anderson – Finance, Fire Lanes and Public Access, Technology  
No report.

D. Kristin Viger – Parks and Docks, Sanitation and Recycling  
Absent – No report

E. Kelly Wischmeier – Building Inspection, Municipal Building and Grounds  
No report.

F. Tim Connelly – EFD, Commercial Marinas, LMCD  
Councilmember Connelly gave a update on the next LMCD meeting.

G. Adam Jennings – SLMPD, Administration, Public Works, Employee Advisory Board  
No report.

**12. ADJOURNMENT**

**There being no further business, Anderson moved to adjourn the meeting at 7:21 pm. Connelly seconded the motion. Ayes: Viger, LaBelle, Connelly, Anderson, Jennings. Motion carried.**

\_\_\_\_\_  
Adam Jennings, Mayor

Attest:

\_\_\_\_\_  
Rachel Myskevitz, Deputy City Clerk



# LAKE MINNETONKA CONSERVATION DISTRICT

5341 MAYWOOD ROAD, SUITE 200 • MOUND, MINNESOTA 55364 • TELEPHONE 952/745-0789 • FAX 952/745-9085

**DATE:** June 30, 2022  
**TO:** LMCD Member City Mayors, Managers, Administrators, & Clerks  
**FROM:** Gregg Thomas, LMCD Chair

*LMCD Finance Committee Members:* Rich Anderson, Treasurer; and Board Directors Bill Cook, Denny Newell, and Nicole Stone

*Board Directors:* Ann Hoelscher, Ben Brandt, Dan Baasen, Gary Hughes, Mike Kirkwood, Dennis Klohs, Mark Kroll, Jake Walesch, and Deborah Zorn

**THROUGH:** Vickie Schleuning,  Executive Director

**SUBJECT:** Preliminary 2023 LMCD Budget

A copy of the preliminary 2023 Lake Minnetonka Conservation District (LMCD) Budget is enclosed. By State statute, the allocation of levy to the 14 member cities is based on their percentage of the total net tax capacity, with no city paying greater than 20% of the overall levy.

The LMCD Board reviewed the budget, resulting in projected expenses and revenues for 2023. A total decrease in the General Budget of \$21,190 is anticipated this year. The city levy amount is less than the maximum levy allowed by state law. Each city's percentage of levy increase varies in relation to taxable market values (as required by statute). Because some cities experience greater yearly gains in Total Taxable Market Value, the distribution of levy also changes.

A chart is included that shows the historical LMCD budget and city levy amounts from 2009 to Preliminary 2023 Budget. This chart indicates changes over the years to the LMCD budget and city levy. The following is a highlight of the Preliminary 2023 LMCD Budget.

## Budget Highlights

- **Municipal Levy.** Decrease of \$45,000 in municipal levy with the continuation of last year's reduction of the AIS levy of \$75,000 for budget year 2022 is due to elimination of the AIS Vegetation Harvesting Program and its associated cost even while redirecting some of those eliminated funds to encourage lakeshore owners to establish bay-wide funded AIS vegetation management program.
- **Reserve Funds.** Use of \$125,000 of reserve funds to the 2023 municipal levy reduction to start the process of reducing our reserve fund balance down to within our Auditor's recommended range of 30-50% of annual expenses. LMCD Goal is 35%.

## Revenues

Overall increase in revenues in the following areas:

- **Continue High Target for Save the Lake Fund.** Maintain current levels target for contributions for value added activities through the Save the Lake Fund for specific initiatives.
- **Court Fines.** Due to anticipated continued high traffic and use of the lake, it is projected workload and associated enforcement actions will continue at the previous year's levels.

#### Expenses

Overall increase in expenses in the following areas:

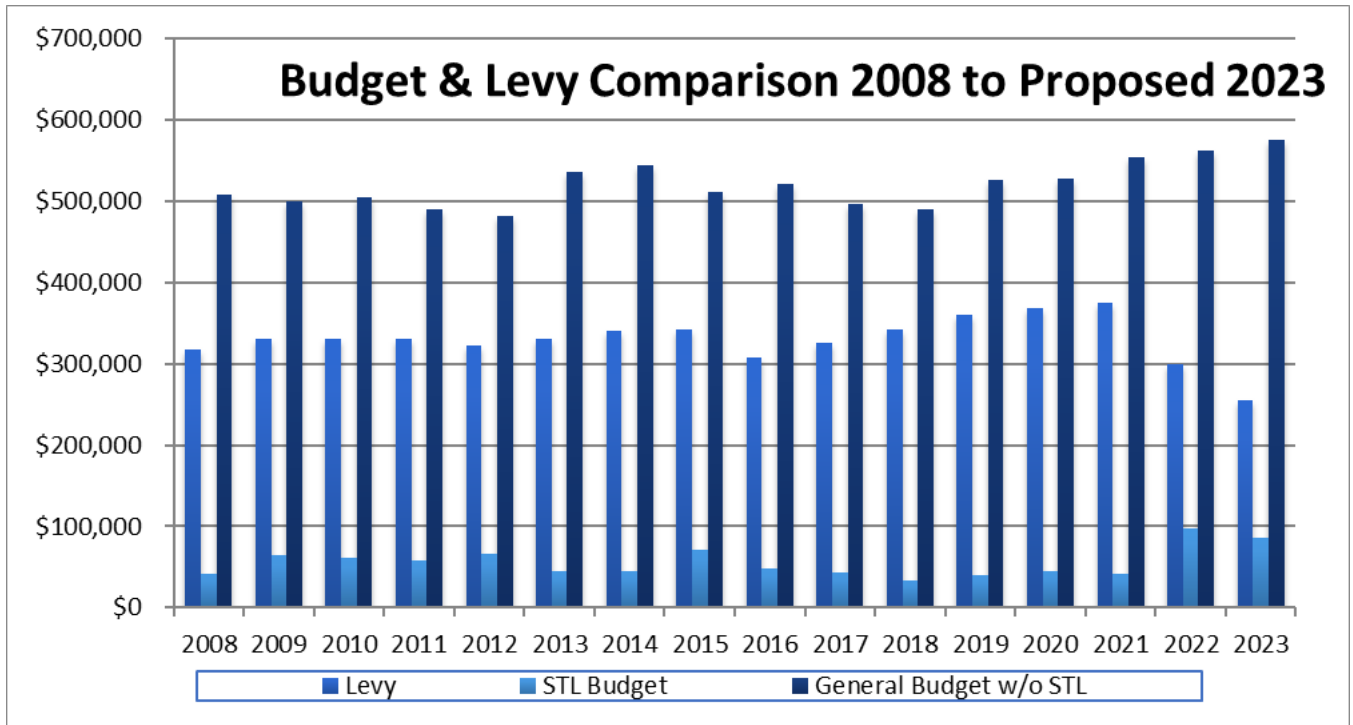
- **AIS Management.** No change for management of AIS activities.
- **Personnel Expenses.** Increase to reflect shift in certain staffing changes, benefits, etc.

Please contact Executive Director Vickie Schleuning or your member city representative if you have questions.

#### **ATTACHMENTS**

- I. Budget and Levy Comparison 2008 Through 2023
- II. 2023 All Funds Budget Summary
- III. City Levy Share

**I. Budget and Levy Comparison 2008 Through Preliminary 2023**



**II. 2023 All Funds Budget Summary**

**LMCD 2023 Budget Adopted 06/22/2022**

	2021 Actual	2022 Budget	2023 Budget
<b>General Fund Revenues</b>			
1 Admin Municipal Dues	\$ 286,500	\$ 300,000	\$ 255,000
2 AIS Municipal Dues	\$ 75,000	\$ -	\$ -
3 Grants and rebates	\$ (26,000)	\$ -	\$ -
4 Interest and other	\$ 7,819	\$ 5,700	\$ 8,790
5 Licenses and Permits	\$ 120,175	\$ 122,000	\$ 127,000
6 Court Fines	\$ 60,248	\$ 45,000	\$ 60,000
8 Transfers In	\$ -	\$ 100,000	\$ 125,000
<b>Total Revenues</b>	<b>\$ 523,742</b>	<b>\$ 572,700</b>	<b>\$ 575,790</b>
<b>General Fund Expenses</b>			
9 General and Admin	\$ 9,990	\$ 10,640	\$ 12,840
10 Personnel Expenses	\$ 283,529	\$ 306,770	\$ 315,000
11 Office and Supplies	\$ 45,290	\$ 51,550	\$ 53,125
12 Legal	\$ -	\$ 66,500	\$ 63,075
Public Info and Other	\$ 7,910	\$ -	\$ -
Civil	\$ 26,180	\$ -	\$ -
Prosecution	\$ 29,636	\$ -	\$ -
13 Professional Services	\$ 26,558	\$ 22,250	\$ 23,500
14 Communications	\$ 11,250	\$ 25,000	\$ 20,000
15 AIS Prevention Program	\$ 54,972	\$ 80,000	\$ 80,000
16 Equipment, Supplies	\$ 403	\$ 750	\$ 750
17 Safety (Education and Solar Lights)	\$ 4,925	\$ -	\$ 7,500
<b>Total Expenses</b>	<b>\$ 490,653</b>	<b>\$ 552,820</b>	<b>\$ 575,790</b>
<b>General Fund - Net Income (Total Rev - Total Exp)</b>	<b>\$ 33,089</b>	<b>\$ 19,880</b>	
<b>Save the Lake Revenues</b>			
Interest and other	\$ 392	\$ 750	\$ 750
Donations	\$ 118,996	\$ 120,250	\$ 43,050
<b>Total Revenues</b>	<b>\$ 119,388</b>	<b>\$ 121,000</b>	<b>\$ 43,800</b>
Use of Reserves			\$ 42,000
<b>Save the Lake Expenses</b>			
Operating Expenses	\$ 170	\$ 2,000	\$ 1,800
Public Service	\$ 88,704	\$ 84,000	\$ 84,000

## Budget Notes

This Budget presentation is a presentation of each first level budget line item for each fund. Further definition of the contents of each line item and its specific fund breakdown historical data are available on the 2021 All Funds Breakdown prepared in our Audit Process and the Income & Expense Statements.

### Line Item Commentary

1	Admin Municipal Dues includes the total dues assessed to the 14 Member Communities to fund the LMCD operations. A 15% decrease is proposed for 2023 from the 2022 budget levels. These funds are intended to be used for administering activities to protect the lake and all those who use it.
2	AIS Municipal Dues included the total dues assessed to the 14 Member Communities to fund the Harvesting portion of the LMCD operations and AIS programs. As harvesting has ceased and the equipment has been sold, budgeting for AIS prevention is reduced to a single line item in the budget in future budgets.
3	Grants item are the grants received by the LMCD to support its operations. Grants receipts have been sporadic and have been received and passed through to providers. No grants are budgeted in 2022 and 2023. Grants received will be shown in actual expense line items in previous years
4	Interest and other income has been relatively consistent and small due to the recent period of low interest rates. Higher interest rates and larger account balances will increase these amounts slightly.
5	Income from Licenses and Permits is anticipated to increase slightly.
6	Court Fines vary significantly over the years as they result from behavior patterns on the lake and enforcement patterns.
8	Transfers show the amount planned to be transferred into or out of the Reserve Funds, the Equipment Replacement Fund or the Save the Lake Fund to provide additional funds for large single event items for which those funds were established.
10	Personnel Services includes all personnel costs.
11	Office and Supplies includes the rent, office supplies for all of the programs.
12	Legal includes both the administrative and prosecution fees. Legal fees are anticipated to decline subject to fewer applications, familiarity of new staff with the legal issues surrounding its work, ordinance amendments, and conclusion of the recodification process in 2019.
13	Professional Services primarily includes the cost of producing and broadcasting the Board Meeting, Audit fees, and IT consulting fees.
15	AIS Prevention Program includes activities to protect the lake from detrimental species.
17	STL Programs fund the ongoing Solar Light and Boater Safety Training Classes as well as other lake protection and safety programs as identified by the LMCD.
	Donations represent the donations received from LMCD's Save the Lake Program. The amount of these funds also varies with both the effort LMCD places on this program and the economic environment around the lake.

**III. 2023 City Levy Share**



**LAKE MINNETONKA CONSERVATION DISTRICT  
 2023 BUDGET AND LEVY  
 (Adopted 06/22/2022)**

City	2010 U.S. Census Population Data	2021 Estimated Market Value	2021 Net Tax Capacity	% of Total Net Tax Capacity (Note 1)	Share of Admin. Levy in 2023	Share of AIS Levy in 2023	Share of Total Levy in 2023	Share of Total Levy in 2022	Change in Total Levy from 2022	% Change from 2021
DEEPHAVEN	3,642	\$ 1,524,784,200	\$ 17,557,085	5.1%	\$17,201	\$0	<b>\$17,201</b>	\$20,032	-\$2,831	-14.13%
EXCELSIOR	2,188	\$ 641,983,400	\$ 8,101,932	2.4%	\$7,938	\$0	<b>\$7,938</b>	\$9,330	-\$1,392	-14.92%
GREENWOOD	688	\$ 416,064,400	\$ 4,929,888	1.4%	\$4,830	\$0	<b>\$4,830</b>	\$5,781	-\$951	-16.46%
MINNETONKA	49,734	\$ 11,180,147,900	\$ 135,765,737	39.5%	\$51,000	\$0	<b>\$51,000</b>	\$60,000	-\$9,000	-15.00%
MTKA BEACH	539	\$ 404,225,200	\$ 4,805,707	1.4%	\$4,708	\$0	<b>\$4,708</b>	\$5,700	-\$992	-17.40%
MINNETRISTA	6,384	\$ 2,117,710,100	\$ 22,805,357	6.6%	\$22,343	\$0	<b>\$22,343</b>	\$25,530	-\$3,187	-12.48%
MOUND	9,052	\$ 1,623,162,300	\$ 17,173,702	5.0%	\$16,825	\$0	<b>\$16,825</b>	\$20,012	-\$3,187	-15.92%
ORONO	7,437	\$ 3,603,991,600	\$ 41,646,156	12.1%	\$40,802	\$0	<b>\$40,802</b>	\$48,073	-\$7,271	-15.13%
SHOREWOOD	7,307	\$ 2,042,143,800	\$ 22,722,516	6.6%	\$22,262	\$0	<b>\$22,262</b>	\$26,258	-\$3,996	-15.22%
SPRING PARK	1,669	\$ 344,503,700	\$ 4,128,644	1.2%	\$4,045	\$0	<b>\$4,045</b>	\$4,926	-\$881	-17.88%
TONKA BAY	1,475	\$ 689,825,200	\$ 7,955,917	2.3%	\$7,795	\$0	<b>\$7,795</b>	\$8,979	-\$1,185	-13.19%
VICTORIA	7,345	\$ 1,966,991,600	\$ 20,686,056	6.0%	\$20,267	\$0	<b>\$20,267</b>	\$23,162	-\$2,895	-12.50%
WAYZATA	3,688	\$ 2,433,175,900	\$ 31,560,700	9.2%	\$30,921	\$0	<b>\$30,921</b>	\$37,380	-\$6,460	-17.28%
WOODLAND	437	\$ 350,815,800	\$ 4,149,172	1.2%	\$4,065	\$0	<b>\$4,065</b>	\$4,837	-\$772	-15.96%
	101,585	\$ 29,339,525,100	\$ 343,988,569	100.0%	\$255,000	\$0	<b>\$255,000</b>	\$300,000	-\$45,000	-15.00%

Maximum Levy Per MN statute 103B.635 (Total Taxable Market Value \* 0.00242%):

**\$710,017**

(Note 1) Per MN statute 103B.631, no city may pay more than 20% of the total levy. The City of Minnetonka would pay a constant 20% of any amounts to be levied.

Remaining cities factor for determining levy amounts is computed as: (City Net Tax Capacity / ( Total Net Tax Capacity - Minnetonka Net Tax Capacity )) \* 80%

Total Net Tax Capacity	343,988,569
less Minnetonka Net Tax Capacity	(135,765,737)
Net Tax Capacity for remaining 13 cities	208,222,832

**RESOLUTION NO. 22-29**

**A RESOLUTION APPROVING A VARIANCE FOR  
AN IMPERVIOUS COVER AMOUNT OF 30.60 PERCENT  
AT 40 INTERLACHEN LANE  
PID: 2111723130004**

WHEREAS, the City of Tonka Bay is a municipal corporation, organized and existing under the laws of the State of Minnesota; and

WHEREAS, the City Council of the City of Tonka Bay ("City") has adopted zoning regulations in the Tonka Bay City Code ("City Code") to promote orderly development and utilization of land within the City; and

WHEREAS, MICHAEL AND ANNE SAMPLE ("Applicants") applied for a variance at 40 Interlachen Lane, which is legally described as follows; and

*Lot 15 and E 30 feet of Lot 16, Tonka Bay, Hennepin County, Minnesota* ("Property")

WHEREAS, the Property is located within the R-1A zoning district within the Shoreland Overlay District and the requested impervious cover amount is 30.60 percent, which is greater than the 25 percent limitation per Section 1070.11, subd. 1. a. of the City Code; and

WHEREAS, Brandy Howe, City Planner, and Adam Gadbois, City Engineer, issued a report dated May 24, 2022, analyzing the request and the Comprehensive Plan and City Code, and made a recommendation to the City Council; and

WHEREAS, the City Council held a public hearing and considered the request on May 24, 2022; and

WHEREAS, the City Council, following the public hearing and deliberation on the requests, tabled the agenda item with the direction that the Applicants provide a stormwater management plan for the site; and

WHEREAS, in accordance with Minnesota Statutes, section 15.99, subd. 3(f), the City, by and through the City Attorney, extended the time limitation for the City to take action upon the requested variance by 60 days by providing written notice to the Applicants, with the notice stating the reason for the extension and its anticipated length; and

WHEREAS, on July 11, 2022, the Applicants provided said stormwater management plan for the site, which has been reviewed and approved by the City Engineer; and

WHEREAS, the item was placed on the July 12, 2022, meeting agenda for consideration by the City Council; and

WHEREAS, the City Council, in consideration of the above-described request, makes the following findings of fact:

1. The Applicants have submitted a stormwater management plan that is adequately located and sized to treat the stormwater generated from the

excessive amount of impervious cover to reduce the effective cover amount to 25 percent.

2. The requested variance will not:
  - a. Impair an adequate supply of light and air to adjacent property.
  - b. Unreasonably increase the congestion in the public street.
  - c. Increase the danger of fire or endanger the public safety.
  - d. Unreasonably diminish or impair established property values within the neighborhood, or in any way be contrary to the intent of this City Code.
  - e. Violate the intent and purpose of the Comprehensive Plan.
  - f. Violate any of the terms or conditions of Section 1004.02, subd. 4 of the City Code.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Tonka Bay hereby approve the following request as shown on the Plans provided by the Applicants:

*A variance for an impervious cover amount of 30.60 percent at 40 Interlachen Lane*

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Applicants must meet the following conditions related to approval of the requests:

1. Construction shall occur in substantial conformance with the plans presented at the May 24, 2022, City Council meeting.
2. The Applicants shall enter into a stormwater facilities maintenance agreement with the City in a form approved by the City.
3. The Applicants must obtain all other permits as may be required.
4. The Applicants shall comply with all applicable federal, state, and local laws, rules, and ordinances.
5. The Applicants must adhere to and remain in compliance with the requirements of this Resolution, applicable performance standards, and such other requirements as may apply.
6. All conditions of the requests must be complied with, shall run with the land, and shall not in any way be affected by the subsequent sale, lease, or other change from current ownership of the Property.
7. This Resolution is subject to the condition that all representations, written and oral, made by the Applicants and their agents and representatives to the City contained in and concerning the Applicants' application for the requests must have been true, complete, and accurate at the time they were made, and that they remain true and accurate for the duration of the variance.
8. By undertaking the activities approved by the requests, the Applicants agree to all conditions.
9. Failure to comply with any conditions of this Resolution may result in its revocation.

PASSED AT A REGULAR MEETING of the Tonka Bay City Council this 26<sup>th</sup> day of July 2022.

Motion introduced by \_\_\_\_\_ and seconded by \_\_\_\_\_.

Roll call vote:

Ayes –

Nays –

Absent –

\_\_\_\_\_  
Adam Jennings, Mayor

ATTEST:

\_\_\_\_\_  
Rachel Myskevitz, City Clerk



## MEMO

To Mayor and City Council  
From Dan Tolsma, City Administrator  
Date June 28, 2022  
Re Channel Stabilization

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### Background

At the work session on May 24<sup>th</sup>, 2022 the Council held a discussion regarding the potential to improve the riprap along the channel that runs adjacent to 135 Crabapple Lane and 255 Woodpecker Ridge Road. The majority consensus of that discussion was that the Council did not feel that there was an obligation for the City to make such improvements.

Then in early June the City received a letter from the legal representation for the property owner of 135 Crabapple Lane requesting the City to take action to improve the riprap (see attached).

### Attachments

Letter dated June 10, 2022 from Larkin Hoffman Attorney Megan Rogers, Representing 135 Crabapple Lane

### Council Action Requested

*Option 1:* Motion to forego making channel improvements and to direct Tonka Bay City Attorney Jason Hill to respond to the letter from Attorney Megan Rogers explaining the position of the City regarding this issue.

*Option 2:* Motion to direct staff to solicit proposals to make improvements along the channel-adjacent properties.

*Option 3:* Table the discussion for a future meeting if the Council feels that more information is needed.



**Larkin Hoffman**

8300 Norman Center Drive  
Suite 1000  
Minneapolis, MN 55437-1060

**General:** 952-835-3800

**Fax:** 952-896-3333

**Web:** [www.larkinhoffman.com](http://www.larkinhoffman.com)

June 10, 2022

Dan Tolsma, City Administrator  
City of Tonka Bay  
4901 Manitou Road  
Tonka Bay, MN 55331

**BY EMAIL AND U.S. MAIL**  
[dtolsma@cityoftonkabay.net](mailto:dtolsma@cityoftonkabay.net)

Re: Ongoing damage to 135 Crabapple Lane

Dear City Administrator Tolsma:

This law firm represents Beth Hustad regarding shoreland erosion related to the expansion of the Tonka Bay public docks (the “Project”) and the associated impacts to her shoreline at her home located at 135 Crabapple Lane (the “Property”). As a result of Tonka Bay’s (the “City”) operation of the public docks in the lagoon, the Property has been subject to excessive erosion impacts. These problems will only be exacerbated by the dock expansion, which will result in nearly double the previously permitted number of boats renting space at the City’s docks.

As you are aware, Ms. Hustad has sought the cooperation and assistance of the City in her efforts to resolve this problem. Despite conversations with multiple City administrators, City engineers, and City attorneys spanning two years, coupled with assurances that Ms. Hustad’s Property would be protected in conjunction with the Project, the City has taken no action to correct the mounting impacts of this Project. The City commenced the Project, yet failed to repair the existing erosion caused by the City docks. This will only result in further damage to the Property and the City has an obligation to take immediate action to correct and improve the channel servicing the Project.

*Project History*

The City approved expansion of its municipal docks in 2021. The original plans (Exhibit A) included restoration of shoreline along the channel, in an acknowledgement that the City dock traffic has caused erosion damage to the Property. The City Council specifically set aside and budgeted funds for the channel reconstruction as part of the Project. Ms. Hustad worked collaboratively with former City Engineer Nick Priesler and former City Administrator Kathy Laur to address the erosion caused by City dock traffic and mitigate future damage from the Project.

Ms. Hustad has undertaken significant shoreland restoration along the lake side of her Property as well as along the channel. Several years ago, Ms. Hustad had no choice but to install pounded rock along a portion of the channel when her yard began caving in. The shoreland restoration and stabilization process she has used along the Property has been successful despite increasing traffic on the Lake. Ms. Hustad requested that the City’s channel restoration follow this successful stabilization model to match her existing rip-rap and agreed to provide easements to

the City for to perform this work. However, when the City Council authorized the Project with dollars budgeted for channel restoration but no plan for stabilization of the channel properties, she retained legal counsel.

May 10, 2022 City Council Workshop

Based on the discussion at the May 10, 2022 Council workshop, there appears to be some level of Council consensus that some action must be taken to protect the properties along the channel and potentially reduce dock impacts to the properties on the lagoon. The City has identified at least three alternatives: 1) utilize a special assessment process to cover payment for shoreline improvements for the channel and lagoon properties; 2) enter into a cost sharing agreement with the channel property owners and perhaps others on the lagoon; and 3) utilize the remaining budget for the project to pay for restoration and protection of the two channel properties.

Ms. Hustad strongly encourages the City to pursue option three. Options one and two ignore the limitations of the City's authority to assess improvements and the basic realities of the impacts of this Project. Councilmembers have expressed concern that City-funded channel improvements would set a precedent requiring the City to remediate any alleged harm from the docks or that channel improvements for these property owners would require the City to fund similar improvements for all channel properties throughout the City. But this concern is unfounded. Every boat accessing the docks must use the channel thereby intensifying the impacts to Ms. Hustad's shoreline. The Property is uniquely impacted by the City's decision to expand the docks and for that reason, the City has a special duty to make the promised improvements to the Hustad Property.

The City Lacks Authority to Issue a Special Assessment for The Channel Reconstruction

If the City sought to specially assess the Property for the channel stabilization and repairs, it would fail to meet the special benefit test. Under Minnesota law, a special assessment must confer a "special benefit" on the property to be assessed, and the amount of the special assessment may not exceed the special benefit conferred on the property. "Special benefit" is defined as an immediate increase in the property's market value resulting from the project. In other words, the City must establish that the assessed property increases in value by at least as much as the assessment sum. An assessment that exceeds the amount of the specific benefit conferred will be set aside by the district court and deemed an unconstitutional taking, subjecting the City to liability for violating both the Minnesota Constitution and the Fifth and Fourteen Amendments to the United States Constitution.

The Project was solely initiated by the City. At its July 14, 2020 Council meeting the City Council directed the City engineer to prepare a proposal to expand the existing municipal docks. The staff report suggests that dock expansion was driven by a long waitlist for boat slips and increasing demand based on the approval of a multifamily housing complex at the nearby shopping center site. Neither of these stated Project "purposes", long resident waitlists or expanded demand for boat slips, support the levying of a special assessment against the Property. Further, the Project will not result in an increase in the market value of the Property (i.e., a "special benefit"). To the extent that there are any benefits from the Project, they are "general" in nature and not special to the Property.

Dan Tolsma, City Administrator

June 10, 2022

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Ms. Hustad did not want or request the Project and Ms. Hustad is in no way benefited by the Project. The costs associated with the Project should not be borne by her, but rather, should be assessed only to those who sought the improvements, in this case the City. Ms. Hustad strongly objects to any special assessment and will contest it if levied. Any cost sharing approach would fail for similar reasons; however, Ms. Hustad will gladly grant the City construction easement rights to the Property for the purpose of completing and maintaining the work.


*Damage from City Constructed Improvements Constitute a Taking Under Minnesota Law*

If the City takes no action and allows its Project to chip away at the Property, Ms. Hustad has valid takings claim pursuant to the Minnesota and United States Constitutions. A “taking” occurs when government action results in a physical appropriation or occupation of property. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *Spaeth v. City of Plymouth*, 344 N.W.2d 815, 821 (Minn. 1984); *Nelson v. Wilson*, 58 N.W.2d 330, 333 (Minn. 1953). Property impacts attributable to government action gives rise to the level of a physical taking. *Nelson* at 335.

Ms. Hustad’s property will be measurably diminished because of the City’s Project and increased traffic through the channel, traffic that is solely related to the public docks. Whether the City intended to take Ms. Hustad’s property is irrelevant. Damage attributable to city-constructed improvements constitutes a taking, regardless of whether the city intended to take the property. *Nolan and Nolan v. City of Eagan*, 673 N.W.2d 487 (Minn. App. 2003) pet. for rev. denied, (Minn. Mar. 16, 2004). Accordingly, failure to stabilize and repair the channel would constitute a taking and require the costs associated with the damage caused by the Project to be borne by Ms. Hustad, rather than the public.

Ms. Hustad would prefer that the City complete the shoreline mitigation that it originally agreed to implement when it initiated the conversation around expansion of the municipal docks. However, if the City is unwilling to participate in such efforts, Ms. Hustad will be forced to protect her legal rights. The Project has commenced and the existing damage to the channel walls are being exacerbated by the City marina traffic. On behalf of Ms. Hustad, I encourage the City to repair the damage caused by the marina traffic in a timely manner and Ms. Hustad will cooperate accordingly.

Sincerely,

  
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cc: Beth Hustad  
Jason Hill, City Attorney