

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., October 12, 2016
Wayzata City Hall

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Jay Green, Mound; Chris Jewett, Deephaven; Gregg Thomas, Tonka Bay; Dan Baasen, Wayzata; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Gabriel Jabbour, Orono; Dennis Klohs, Minnetonka Beach; Bret Niccum, Minnetrista; Gregg Prest, Excelsior; Rob Roy, Greenwood; and, Sue Shuff, Minnetonka. Also present: Vickie Schleuning, Executive Director; Emily Herman, Administrative Assistant; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Fred Meyer, Woodland and Deborah Zorn, Shorewood;

4. APPROVAL OF AGENDA

MOTION: Jewett moved, Roy seconded to approve the agenda.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no chair announcements.

6. APPROVAL OF MINUTES- 9/14/16 LMCD Regular Board Meeting
9/28/16 LMCD Regular Board Meeting

MOTION: Shuff moved, Niccum seconded to approve the 9/14/16 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (10), Abstained (2, Jewett and Thomas); motion carried.

MOTION: Jewett moved, Shuff seconded to approve the 9/28/16 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (10), Abstained (2, Roy and Thomas); motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Roy moved, Niccum seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (10/1/16 – 10/15/16); **7B)** August financial summary and balance

sheet; **7C**) 5th Street Ventures, approval of draft Record of Decision and LMCD Resolution 151 ordering a negative declaration on the need for an Environmental Impact Statement (EIS) for the Mandatory Environmental Assessment Worksheet (EAW) document; and **7D**) Approval of draft letter to be forwarded to LMCD Member Cities regarding Board appointments for 2017.

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

There were no public hearings.

10. OTHER BUSINESS

- A)** Review and consideration of draft mandatory Environmental Assessment Worksheet (EAW)
- City of Excelsior Proposed Multiple Dock and Municipal Planned Unit Development
 - Browns Bay Marina (Site 2) Proposed Multiple Dock

Schleuning advised in response to comments from city representatives, they will begin to provide more information regarding upcoming projects. She provided an overview of the purpose, requirements, and process of an EAW via a PowerPoint presentation.

Jabbour requested clarification on whether an EAW is optional or mandatory. Schleuning stated it is mandated by the State under certain conditions.

Herman continued with the PowerPoint presentation by providing a detailed overview of the City of Excelsior's current license and what they are proposing to apply for.

Jabbour inquired if the currently approved District Mooring Area license located within the waters of the proposed project has dedicated shoreline that is also being considered in their proposed project. Herman stated that would be a matter for the Board to consider- Schleuning advised the applicant does have extra shoreline available that can be dedicated to the proposed project.

Green invited Kristi Luger, Excelsior City Manager to address the Board.

Luger stated the demand for more docks in Excelsior is high and they have been reluctant to add dock space along the Commons in an effort to protect the shoreline. The ordinance that now allows municipal docks to go up to 200 feet appears to be the solution. She requested feedback from the Board on the proposed project to determine if it is worth the risk of ordering dock materials ahead of final approval in January.

Hoelscher inquired about the transient pier. Luger replied it will be for public use and will be metered.

Jabbour commented he is in favor of clustering docks and the application meets the intent of the ordinance; recognizing they are protecting the shoreline and offering public access to the Lake. He is supportive provided nothing negative comes from the EAW. Klohs concurred.

Prest encouraged the LMCD to look upon the proposed project favorable and that the City of Excelsior move forward in ordering materials for the project. He believed this was a matter that the LMCD should expect to approve and take action on.

Thomas, in general, concurred with Prest's comments. However, he did not believe the Board should encourage the City of Excelsior to order materials because they do not know what the results of the EAW will be. Green concurred; recognizing the Board believes the City is in the right direction but that something could come up that was not perceived.

Luger understood Thomas and Green's comments. It was her hope that she could receive the Board's feedback on the proposed project so that if the EAW receives a negative declaration, they would not be returning to the Board with an application that would not be supportive.

Klohs believed, based on the Board's history and EAW's in other locations, there is nothing he could see that would trigger an Environmental Impact Statement (EIS).

Herman proceeded, via the PowerPoint presentation, to provide an overview of the Brown's Bay Marina (Site 2) proposed project. In closing, staff recommended the Board approve the independently drafted EAWs for both Brown's Bay Marina (Site 2) and the City of Excelsior's PUD.

Green requested staff confirm the approval is strictly for submittal of the draft EAW and not on specific, proposed applications. Herman confirmed that is correct.

Jabbour questioned if an EAW was needed if there is an increase of 20,000 square feet and not for a 20,000 square foot minimum. Herman stated she will look into the regulations and report back to the Board.

Jabbour inquired if there were any variances associated with Brown's Bay Marina (Site 2) proposed project. Herman commented there are no applications before the Board, only approval of draft EAW's. When the application does come before the Board, the applicant hopes the variance will be offered as repealed by the Board based on a proposed reconfiguration being in conformance.

Jabbour commented the Board should address the process of approving an EAW that requires a variance. The applicant may go through the EAW process only to be denied a needed variance at the end of the process.

Herman offered that when a draft EAW is considered, a proposed application may be attached but would not be acted on until after the EAW process is complete.

Klohs believed the applicant provided a draft EAW and then staff reviewed it; allowing the applicant to be invested in the process. Herman stated staff agreed with that concept, but a process has yet to be created. Klohs believed staff should simply direct the applicant to the Environmental Quality Board website.

Schleuning stated there has been internal discussion on ways to get the process streamlined and more efficient. It will change in the future, but due to the urgent need of these applications, they were completed by staff.

Jabbour commented staff will soon be overwhelmed with applicants that will now be required to provide an EAW and it is important to get the process figured out. He requested clarification regarding the square footage regulation that triggers an EAW.

Herman read a portion of the State standards regarding a draft EAW, Section 4410.4300, subd. 25:
"Construction or expansion of a marina or harbor that results in a 20,000 or more square foot total or a 20,000 or more square foot increase of water surface area..."

Gilchrist stated he did not have the statute in front of him; however, he believed an expansion or a total of 20,000 square feet required an EAW. He concurred with the discussion in streamlining the process and that, per staff, that matter is being addressed. Additionally, he reiterated staff's comments that the Board cannot make a decision on an application until an EAW is complete.

Green stated both projects are major expansions, but it is unclear what constitutes a minor change that would potentially trigger an EAW.

Schleuning stated she appreciates the Board's comments and will consider them as they work through updating and clarifying this process.

MOTION: Prest moved, Jabbour seconded to approve the draft EAWs for the City of Excelsior and Brown's Bay Marina (Site 2).

VOTE: Motion carried unanimously.

B) Code amendment options regarding Section 2.015, "Reconfiguration of Non-Conforming Structures"

Schleuning directed the Board to the staff memo, dated October 12, 2016 and attached proposed Ordinance No. 230. She provided the following overview:

- The purpose of the amendment is for non-conforming structures to allow minor reconfiguration to the slip areas under the minor change application section; Chapter II, Section 2.015, subdivision 4.
- The added language addresses the issue of an owner replacing the dock fingers between slips with dolphin poles to accommodate the trend toward docking wider watercraft under the minor configuration criteria.
- Staff recommends approval of the ordinance amendment.

Klohs pointed out this solves a short-term problem, but the issue of replacing square footage with lineal footage

within the ordinance still needs to be addressed. He suggested this be done along with this proposed amendment.

MOTION: Jabbour moved, Klohs seconded to adopt Ordinance No. 230 amending the Lake Minnetonka Conservation District Code of Ordinances regarding minor changes to nonconforming structures.

Green asked if the Board needed to provide a summary for publication. Gilchrist suggested the Board act on the ordinance amendment and then publish a summary of it that includes the actual language of the changes. The Legislative Findings help to put the ordinance in context.

Hoelscher asked if it would be possible to draft an envelope ordinance with language that states this code provision supersedes any conflicting requirements elsewhere in the code. Gilchrist commented he would not recommend this because it could inadvertently create holes in significant portions of the code and leave staff in a difficult position of trying to administer the Code. He believed that drafting an envelope ordinance is significant enough to allow staff the opportunity to provide significant thought in the currently adopted codes so not to punch holes in them.

Baasen requested clarification of the motion; recognizing that he supported Gilchrist's comments.

Schleuning stated that the motion would be to adopt draft Ordinance No. 230, amending Chapter II, Section 2.015, subdivision 4 regarding minor reconfiguration of non-conforming structures.

VOTE: Ayes (11), Nays (1, Baasen); motion carried.

Klohs requested Gilchrist draft an amendment to address the issue of replacing square footage with lineal footage and present it to the Board at the next meeting. Schleuning recommended the Board provide clarity relative to questions outlined for consideration within her staff memo. Klohs believed those are good questions that could be considered by Gilchrist when drafting the ordinance. Gilchrist stated he will do his best to capture the Board's direction.

Gilchrist recommended the Board move to approve a summary resolution relative to the publication of Ordinance No. 230.

MOTION: Thomas moved, Roy seconded to direct staff to publish a summary of Ordinance No. 230 offered by Gilchrist.

VOTE: Motion carried unanimously.

C) Review draft amendment to the LMCD Investment Policy per Board direction – to be emailed

Schleuning directed the Board to the staff memo, dated 10/12/16 and requested feedback on the amendment language.

Green inquired if there is oversight of the Executive Director's authority. Schleuning commented the Finance Committee was removed, but a Treasurer would provide some oversight.

Thomas commented when funds are put into a CD it requires two signatures and it would not be possible for the Executive Director or Treasurer to purchase or sell anything on their own. Schleuning advised the investments are low risk.

Schleuning stated the comments provided by the Board will be considered and this document will be revised and brought back for final approval at a future meeting.

Thomas inquired about the requirement of the Treasurer securing a bond. Jewett stated he has been bonded by the League of Cities.

11. UPDATE FROM STANDING LMCD COMMITTEES

Baasen offered there will be a Boater Safety Class on October 20th at Westonka High School and that the Save the Lake Committee will meet on November 9th at 7:30 a.m.

Green is scheduling an AIS Task Force meeting for October 14th at 8:30 a.m. He attended the AIS Summit in St. Cloud with Jabbour and Schleuning. He stated there was a lot of criticism with the Minnesota Department of Natural Resources and State efforts regarding invasive species, yet a representative from Canada stated she looked to Minnesota as the leader in this area.

Schleuning stated it was good to see some of the results of pilot programs that were started a couple of years ago at this year's AIS Summit. She observed there are more people involved now than in the past, believed the LMCD could consider further involvement in some areas, and recognized the importance of a comprehensive plan. She appreciated the opportunity to attend.

Jabbour stated they are trying to get the AIS in the focus of the whole country for research purposes.

12. EXECUTIVE DIRECTOR UPDATE

Schleuning directed the Board to two staff memos, dated 10/12/16, that provided clarification from Gilchrist on: 1) the Open Meeting Law, 2) work groups vs. established formal committees, and 3) the suspension of policy vs. code.

A) Review and input regarding LMCD Facebook Page

Schleuning announced there is now a LMCD Facebook page. It is currently set up in a way to push information and does not allow people to comment publicly. They are checking with the attorney on how to address potential inappropriate posts. Jewett commented they need to make sure no one is posting on the LMCD website page and suggested it only be used as a way to push information.

Green stated the LMCD needs to push out information instead of relying on other organizations to get the information to the public.

Prest stated at the last meeting the Interim Executive Director suggested the LMCD may have taken illegal action at the June meeting. Based on the suspension of policy versus code, it is his understanding that the Board did not do anything illegal at that meeting.

Schleuning stated press releases were sent out about the water safety classes and chimp mail was sent out to previous attendees.

B) Input regarding continuing the contract with TimeSaver (minute taking)

Schleuning requested feedback regarding the minutes taken by TimeSaver. Thomas commented he is unsure how much editing is done by the Executive Director and Administrative Assistant, but agrees the minutes are good.

Schleuning stated it has saved staff time and they are happy with the service.

Prest stated that he did not see minutes reflect the topic of suspension of policy versus code nor was it followed-up on. He suggested things that need to be followed-up on should be called out in the minutes.

Thomas stated the minutes come to the Board in draft form and the Board then approves them. This allows the Board the opportunity to make changes and additions to them because errors and oversights will happen.

Green commented this meeting is video recorded and transcribed, but the other meeting is audio only. Herman pointed out that TimeSaver is only transcribing for the first meeting of the month. Green further commented he has watched the meeting and noticed they do not use the microphones as well as they should.

Hoelscher requested the meeting minutes be available earlier.

MOTION: Prest moved, Thomas seconded to approve the extension of the contract with TimeSaver through 2016.

VOTE: Motion carried unanimously.

13. OLD BUSINESS

There was no old business.

14. NEW BUSINESS

There was no new business

15. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:30 p.m.

James Jay Green, Chair

Gregory J. Thomas, Secretary