

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

6:00 P.M., January 25, 2017  
Wayzata City Hall

**1. CALL TO ORDER**

Chair Green called the meeting to order at 6:00 p.m.

**2. ROLL CALL**

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

**Members absent:** Bill Cook, Greenwood; Jim Doak, Woodland

**3. APPROVAL OF MINUTES- 01/11/17 LMCD Regular Board Meeting**

Green stated staff had requested the approval of the 1/11/17 minutes be tabled to the 2/8/17 Regular Board Meeting to review and accommodate edits if needed.

**4. APPROVAL OF AGENDA**

The agenda was approved as submitted.

**5. CHAIR ANNOUNCEMENTS**

Green welcomed David Rahn to the LMCD Board of Directors. Gilchrist administered the Oath of Office and Mr. Rahn was seated as the representative for the City of Orono.

**6. APPROVAL OF CONSENT AGENDA**

Rahn requested item 7C, "Brown's Bay Marina (Site 2), Approval of Findings of Fact and Order Approving 2017 New Multiple Dock License and Repealing Approved Variance," be removed from the consent agenda for comments.

Green stated the public hearing portion in considering this application was closed at the January 11<sup>th</sup> Regular Board Meeting. He deferred to Gilchrist for further counsel. Gilchrist stated the Chair and Board have the discretion to remove such an agenda item for further comments. Green solicited the Board and the agenda item was removed.

**MOTION:** The consent agenda was approved as amended, removing item 7C. Items so approved included: **7A)** Audit of Vouchers (1/16/17 – 1/31/17); **7B)** Approval of 2017 LMCD Meeting Calendar; **7D)** 2017 Pay Equity Report; and **7E)** Appointment of Nominating Committee.

**VOTE:** Motion carried unanimously.

Green turned to Rahn for comments relative to 7C.

Rahn expressed the following concerns:

- The ability for a multiple dock license to “dedicate” shoreline.
- His belief that the licensing of Brown’s Bay Marina (Sites 1 and 2) maintained a disconnect as Brown’s Bay Marina was not operating as Marina 1 and Marina 2 and that they were playing both sides of the table.
- The difference in northerly extended side setbacks offered within the proposed 2017 Multiple Dock License application for Brown’s Bay Marina (Site 2) vs. the currently approved license for Howard’s Point Marina.
- The ability for the currently approved legal, non-conforming site to expand and his belief that it was better to have docks shorter and spread along the shore than going out into the Lake.
- He questioned what occurred that allowed this marina to utilize the Qualified Commercial Marina (QCM) ordinance.

Zorn stated the QCM ordinance was adopted a few years back and what the applicant is proposing is allowed within Code.

Baasen provided a historical overview of the use of the licensed site.

**MOTION:** Prest moved, Shuff seconded to approve Brown’s Bay Marina (Site 2) Findings of Fact and Order Approving 2017 New Multiple Dock License and Repealing Approved Variance.

**VOTE:** Ayes (9), Nays (3, Jewett, Niccum, and Rahn); motion carried.

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

Mr. Matt Johnson, 1432 Shoreline Drive in Orono stated that although everyone has the right intentions in mind when applying the LMCD Code, he believed there was a need to have fact-based instructions to alleviate inconsistent use of the ordinances.

**8. OTHER BUSINESS**

**A) Consideration of AIS funding request from Libbs Lake Property Owners Association (POA)**

Shuff provided an overview of the POA itself and their request for funding to assist in hiring a contractor to harvest Libbs Lake (based on the LMCD not being able to fit the harvester through that channel nor having a public access within). Green stated that last year the LMCD approved \$2,500 with conditions; one of which was to harvest only common areas of the Lake.

The following comments were offered by the Board for future consideration of this request: 1) whether the POA has considered a Lake Improvement District (Shuff to inquire), 2) the possibility of the LMCD purchasing a smaller harvester, 3) the need to research the AIS Budget, 4) a report from the POA on other funding sources,

5) a report on last year's harvesting statistics and their project management process, and 6) what the POA's option A and B would be in soliciting funding.

**B) Request from Howard's Point Marina for discussion of side setbacks**

Schleuning directed the Board to a letter, dated 1/3/17, received from Mr. Rich Baker, owner of Howard's Point Marina, Inc., (5400 Howard's Point Road, Shorewood). Within this letter, Baker outlined his recently approved 2017 multiple dock license (September 2016) that provided, per LMCD Code, double side setbacks on the northern extended side property line. He cited a safety concern relative to the narrow dimensions of the recently approved launch ramp and solicited the Board's input in filing for a variance to receive single vs. double northerly extended side setbacks. Schleuning solicited the Board's comments, as well as their consideration of a possible code amendment, that would alleviate the consideration of a variance.

Niccum had stated he was present at the September meeting and expressed safety concerns at that time. He supported an amendment to the Code and offered that time is of the essence as the dock structure is permanent.

Some members of the Board continued to question how this matter is different than what was approved at Brown's Bay Marina (Site 2); reiterating the need to provide consistency in exercising the code. It was a consensus of the Board that staff bring back a draft ordinance amendment for consideration at their February 8<sup>th</sup> meeting.

**C) Update from LMCD Attorney regarding Fourth Wednesday of each meeting agenda process and options**

Gilchrist provided an overview of the 2016 LMCD Regular Board meeting structure. Gilchrist strongly counseled the Board not to approve applications before them that required Findings of Fact and Order (Findings) without first reviewing a draft of the Findings. He provided an overview of documented court cases of other agencies; taking into consideration the Court's review of cases via legislative (policy/code/legal body) and quasi-judicial (matters held to a higher standard; application of law). With that said, he did offer the option for the Board to have draft proposed Findings prepared in advance for those that are non-controversial.

There was a consensus of the Board to direct staff to restructure the 2017 Regular Board meetings agenda to provide for non-action/non-televvised agenda items from 6:00 p.m. to 7:00 p.m. and action/televvised agenda items starting at 7:00 p.m. on the second and fourth Wednesday of each month. Schleuning confirmed the Board agreed with the estimated increase in contracting needs to accommodate the fourth Wednesday meeting of the month (producer, cable production, and minute taking).

**D) Discussion regarding LMCD approval process for licensing, variance and other actions**

Gilchrist stated discussion of both agenda item 8C and 8D were reviewed as one under item 8C. The Board concurred with this assessment.

**E) Strategic Plan Discussion**

Schleuning directed the Board to her staff memo, dated 1/25/17, and respective attachments. She provided an overview of the information via a PowerPoint presentation. In providing the Board with a series of questions, there was a consensus amongst the Board directing staff to provide the following for action at their February 8<sup>th</sup> meeting:

- The draft Strategic Plan that includes the amended four strategic priorities, desired outcomes, and values; and
- The continued Strategic Plan Subcommittee established in 2016 (Board Members Hughes, Klohs, Shuff, and Zorn).

**F) Review of draft Ordinance Amendment regarding the reconfiguration of non-conforming multiple dock structures (Code Section 2.015, "Reconfiguration of Non-Conforming Structures)**

Schleuning directed the Board to her staff memo, dated 1/25/17 and draft ordinance amendment. Gilchrist provided an overview of the draft amendment with Schleuning providing diagrams via a PowerPoint presentation.

The consensus of the Board was for staff to further consider the length of a slide in the total linear feet measurement where there is a conversion of slides to slips. They directed staff to further revise the draft ordinance for consideration at their February 8<sup>th</sup> meeting.

**G) Review of Draft Policy regarding farewell recognition of Board Members**

Schleuning directed the Board to her staff memo, dated 1/25/17 with a draft policy. The consensus of the Board was to direct staff to bring the draft policy as presented for consideration at their February 8<sup>th</sup> meeting.

**H) Update regarding re-codification process (Standing Item)**

Gilchrist provided a brief overview of a draft outline of the proposed recodified code of ordinances. He further stated he is at a point where feedback would be helpful prior to finalizing the outline.

The Board had a lengthy discussion as to: 1) who should provide feedback to Gilchrist, 2) whether the 2016 Recodification Workgroup should continue or be amended, 3) the funding for this project, and 4) the recommendation to further consider commercial and environmental aspects into the code. It was the consensus of the Board that the 2016 Recodification Workgroup should remain as established (Board Members Niccum, Hughes, Hoelscher, and Klohs, as well as stakeholder Jabbour) to provide Gilchrist detailed direction in the recodification process.

Zorn left at 9:00 pm.

Prest left at 9:04 p.m.

Hoelscher asked the Board to communicate to Schleuning their interest in either serving as a Board officer in

2017 or who they would like to see serve as an officer.

Jewett questioned whether: 1) LMCD Prosecuting Attorney Tallen would be addressing the Board for a 2016 update and 2) if the LMCD could perform a Request for Proposal (RFP) for the 2018 prosecuting attorney appointment. The consensus of the Board was to direct staff to schedule consideration of an RFP in July.

## 9. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:10 p.m.

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James Jay Green, Chair

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Gregory J. Thomas, Secretary