

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., August 23, 2017
Wayzata City Hall

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Jay Green, Mound; Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Sue Shuff, Minnetonka; and, Deborah Zorn, Shorewood.

Also present: Vickie Schleuning, Executive Director; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Dan Baasen, Wayzata; Fred Meyer, Woodland; Chris Jewett, Deephaven; and, Gregg Prest, Excelsior

4. APPROVAL OF AGENDA

MOTION: Shuff moved, Hughes seconded to approve the agenda.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Green requested Members who second motions wait for him to ask for a second so that staff can record it appropriately.

6. APPROVAL OF MINUTES- 8/9/17 LMCD Regular Board Meeting

MOTION: Thomas moved, Shuff seconded to approve the 8/9/17 LMCD Regular Board Meeting minutes.

VOTE: Ayes (7), Abstained (3, Green, Hoelscher, and Zorn); motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Zorn moved, Hoelscher seconded to approve the consent agenda as submitted. Items so approved included: **7A)** Audit of Vouchers (08/16/2017-08/31/2017); **7B)** July Financial Summary and Balance Sheet; and, **7C)** Resolution accepting Save the Lake Contributions (7/5/17 – 8/11/17).

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) Non-Intoxicating Liquor License with Sunday Sale Application for Wayzata Bay Charters

Schleuning directed the Board to the staff memo, dated August 23, 2017, and provided the following information:

- An overview of the action presented to the Board; berthing location is 500NNL LLC in Excelsior, and ports of call include 500NNL LLC, City of Excelsior Municipal Docks, and City of Wayzata Municipal Docks.
- This application is for charter boats *Her Excellency*, which accommodates 115 passengers, and *Elixir*, which accommodates 60 passengers. The boats operate seven days a week from May 1 through October 31 between 9:00 a.m. and midnight.
- Staff recommends approval of the application request and reimbursement of any investigation deposit as appropriate, with conditions outlined in the motion.
- An overview on the background of the owner.
- After public notification in the official newspaper, no public comments have been received to date on this application.

Member Molitor inquired if these were the two boats that were part of Bayview Event Center.

Schleuning confirmed these two boats were formerly owned by Bayview Event Center.

Shuff inquired if they have received the zoning certificates from the Cities.

Schleuning responded they received the certificate from Wayzata with approval, and she anticipates the certificate from Excelsior will be received soon. The Hennepin County Sheriff's department is processing the investigation.

Thomas inquired if the intent is to board passengers at City of Excelsior Municipal Docks and 500NNL.

Schleuning confirmed boarding was requested for these locations.

Thomas commented he thought the former Bayview parking facilities had been leased to Maynard's, and inquired where people will park.

Schleuning explained only part of the parking lot was leased to Maynard's and the Wayzata Bay Charter representative was available to provide more details.

Mark Pete, President of Wayzata Bay Charters, commented they have a shared lease arrangement with Maynard's with the eastern lot next to McDonalds.

Kroll thanked Mr. Pete for buying the boats and wished him well on his business venture.

Green opened the public hearing at 7:11 p.m. No one wished to speak at the public hearing.

Green closed the public hearing at 7:12 p.m.

MOTION: Kroll moved, Zorn seconded to approve Wayzata Bay Charters, Inc. 2017 On-Sale Intoxicating Liquor License with Sunday Sale with use of the following authorized ports of call: 1) 500NNL LLC; 2) City of Excelsior municipal dock; and, 3) City of Wayzata municipal dock on the condition of an acceptable background investigation by HCSO and approval from the respective city for the port of call; and authorize any reimbursement of the investigative fee as appropriate.

VOTE: Motion carried unanimously.

B) Variance for Dock Length and Adjusted Dock Use Area for 4726 Carlow Road, Mound

Schleuning directed the Board to the staff memo, dated August 23, 2017, and provided the following information via a PowerPoint presentation:

- An overview of the action presented to the Board; staff recommends approval based on code analysis and conditions identified in the proposed Findings of Fact and Order.
- An overview of the background of this application; the dock length will extend over the emergent vegetation to open water to the channel between Seton and Black Lakes in City of Mound; shoreline measurement excludes the City of Mound 929.4 feet OHW; proposed dock extends over portion of City property typically submerged under water; and the City of Mound provided a letter supporting the variance based on exclusion of city 929.4 shoreline.
- Recent activity includes variances granted for dock length and adjusted dock use areas for similar reasons for 4730 Carlow Road in 2006 and 4644 Carlow Road in 2014, with the intent to provide reasonable access to the lake.
- An overview of the of the variance request: 1) Dock length of 296 feet greater than the 100 feet of dock length allowed by LMCD regulations (total dock length of 396 feet); 2) Two boat storage units (BSUs) and two watercraft; 3) Boat slip sizes of 12.5 feet wide by 32 feet long; 4) Distances from adjacent property docks are 30 feet and 59 feet; 5) Applicant's property has approximately 160 feet of 929.4 feet OHW shoreline; 6) Consists of only one parcel, PID 19-117-23-23-0147.
- An overview of the variance standards.
- An overview of the existing property lines and proposed site plan.
- Relevant code sections and considerations: 1) Watercraft density (Section 2.02, subd.1): requires density of one boat per 50 feet of shoreline. Proposal is for one boat per 80 feet of shoreline. 2) Side setbacks (Section 2.02, subd. 2b): requires setback distances of 20 feet for docks greater than 100 feet in length. Proposal is for setbacks of 30 feet and 59 feet to docks for adjacent properties approved through previous LMCD variances; 3) Adjusted dock use area: Board adjusted dock use area for property when granted previous variances for dock lengths and authorized dock use area; 4) Provisions for length variance (Section 1.07, subd. 3): provides for dock length variances in a five-foot water depth; 5) Conditions and reasonable use: Strict application of 100-foot limitation would prohibit

the Applicant from using the Lake. The conditions were not created by the Applicant and the request is not based solely on economic conditions; 6) LMCD Board authority: practical difficulties exist and could justify the granting of a dock length variance.

- The LMCD solicited review and comments from local government agencies. The City of Mound submitted a letter of general support.
- Public hearing requirements and legal notifications.
- An overview of suggested standard provisions to include in variances, as supported by the LMCD attorney.
 - A summary of the conditions include:
 - dock structure and watercraft storage constructed and maintained in strict conformance with dock plan;
 - all watercraft stored at Subject Property owned and registered to residents of property; up to two watercraft stored at dock, with boat slips sizes of 12.5 feet wide by 32 feet in length; watercraft not extend beyond length of boat slip. For purposes of Order, length overall means horizontal length from foremost to aftermost point of watercraft, including all attached equipment in its normal operating position.
 - Subject Property not eligible for extension in low water conditions beyond 396 foot length approved by this variance;
 - variance rendered null and void in event Subject Property subdivided; variance grants no vested rights to use of Lake; and
 - subject to regulation by LMCD to assure reasonable and equitable Lake access to public.
 - Suggested standardized language to replace duplicate versions include:
 - any structures placed as part of this variance shall be maintained in good condition and shall promptly be removed, together with any watercraft stored on them,
 - if this variance is ever revoked by action of the Board or if it rendered null and void; this variance shall be rendered null and void in event the Subject Property is subdivided.
 - If the Subject Property is combined with another property, the applicant shall request a review of the variance by the LMCD Executive Director to determine if a new or amended variance is required; if the Executive Director determines that a new or amended variance is required, the applicant shall submit an application for the variance to the LMCD within forty five (45) days of the determination or bring the Subject Property into conformance with the LMCD Code without reliance on this variance within the same period;
 - variance grants no vested rights to the use of the Lake.
 - use of the Lake shall at all times remain subject to regulation by the LMCD to assure the public of reasonable and equitable access to the Lake;
 - utilization of the Lake pursuant to this variance constitutes, and shall be deemed, acceptance of, and agreement to, the terms and conditions of this variance without exception, qualification, or reservation.

Hoelscher inquired if the property at 4644 Carlow had any lake frontage.

Schleuning responded the site plans indicate they have some shoreline. Also, Mound has a multiple dock license and wanted to make sure this variance being considered would not impact their overall watercraft numbers.

Klohs inquired about the type of dock construction and if it is similar to the docks to the east and west.

Jill Marie Cassada, applicant representative, commented the docks are not seasonal and will not be taken out over the winter. The docks to the west and east are also in all year round.

Klohs inquired if they had ever considered combining all three docks.

Ms. Cassada commented it was discussed with the City.

Schleuning commented in one of the previous variance applications, the property owner (estate of Cynthia Lilligren, 4726 Carlow) was part of that application, but then decided not to install a dock. Therefore the adjacent property owner continued with a separate variance application that was eventually approved by the Board. This item was discussed as part of this variance application process, but the applicants preferred to have their own dock. The dock is not considered a permanent structure since machine-driven pilings are not being proposed, but the intent is to leave it in place year-round.

Klohs stated there is not definition in the code relating to year-round docks that are not considered permanent. These docks are permanent, but they are not a permanent structure. He suggested it be looked at further in the code.

Thomas referred to the suggested standard provisions to include in variances provided by the City Attorney. He inquired if the third bullet point replaces another point, and if the other three are new.

Gilchrist responded he was asked to look at a draft since staff wished to have some standard language and provisions moving forward. He thought it would be beneficial to develop some standard conditions that would apply. The intent was that the additional conditions would replace some version presented in the draft memo.

Shuff stated some of the conditions are recorded with the title. She inquired if they could also reference previous discussions regarding, if the property were sold, it would either have to be reviewed or the conditions would need to be articulated to the new owners.

Gilchrist responded the recording of a variance document is intended to put future purchasers on notice of it. They would not want to require someone to go back through this process just because the property was sold. One of the suggested standard provisions for variances states if the property is subdivided or the boundaries are changing, it could change the circumstances under which the variance was granted. If properties are merged or expanded, they do not want to void the variance. Rather, the applicant could request a review of the variance because the property may have come into compliance.

Schleuning commented that one of the reasons to provide some standardization and explanations is so new

property owners may be made aware of the variance conditions when they purchase properties so they can proactively meet the conditions.

Thomas inquired why a canopy was not allowed with the 2014 order for Bernhard Wessendorf.

Schleuning responded that based on information in the file and the site plans, the dock extended into the adjacent property's dock use area. The Board wanted to ensure the adjacent property owner would have reasonable lake access and visibility if that dock variance was approved.

Green opened the public hearing at 7:39 p.m. No person wished to speak at the public hearing.

Green closed the public hearing at 7:40 p.m.

Molitor commented there needs to be clarification regarding permanent structures and structures that really are permanent. He suggested it be part of a future agenda item for discussion.

Green explained that permanency of a dock is not a reason to come to the Board per the code.

Gilchrist stated the permanency addressed in the code has to do with pilings and structure, but does not call out docks that are in year-round. He will look into it further and report back to the Board.

Schleuning commented for a permanent dock with machine driven pilings, there is more concern about damage that might occur to the lake. When an application is received, it is distributed to other agencies as part of a 10-day review process. She also noted that applicants are advised that a de-icing permit cannot be obtained according to the current code.

Klohs explained the dock with this application is not a permanent dock because it can be removed efficiently at any time.

MOTION: Thomas moved, Cook seconded to approve the Variance for dock length and adjusted dock use area for 4726 Carlow Road with the attached Findings of Fact and Order as presented, with the added conditions provided in the presentation.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

There was no other business.

11. UPDATE FROM STANDING LMCD COMMITTEES

Aquatic Invasive Species Committee/Taskforce: Green reported Wright County recently passed an ordinance for Lake Sylvia, Lake Pleasant, and Lake John, ordering that all water related equipment must go through mandatory inspections before entering the lake. There is a public hearing taking place, and it will be interesting to hear the

results. An inspection site is going to be constructed in Annandale.

Green reported that the boat cleaning station at the Spring Park access was on the news and it will be interesting to see how many people use it. Hughes advised there will also be a station at North Arm. He noted that these units are going to be computerized and they will be able to track how much it is actually used. It is solar powered and they are anticipating about \$2.00 a month for electricity use.

Green reported since the Starry Trek event took place about a month ago, Grand Lake and Lake Minnewaska have been added to the list of lakes that have Starry Stonewart.

Green commented he was at Gull Lake this weekend and the DNR came and sampled his boat. He stated it was good to see them actively inspecting and he looks forward to hearing the results.

Budget Workgroup: none.

Recodification Workgroup: Gilchrist reported a permanent dock is defined as a dock that is not a seasonal dock. A seasonal dock is defined as any dock which is so designed and constructed that it may be removed from the lake on a seasonal basis. All components such as supports, decking, and footings must be capable of removal by manual means without the use of power equipment, machine, or tools other than handheld power tools. There is nothing in either definition that speaks to "must" be removed.

Gilchrist reported the Recodification Workgroup had a discussion on the authorized dock use area and restricted watercraft density. The group confirmed that one phone call a month should be sufficient rather than every other week.

Save the Lake Committee: none.

Strategic Plan Subcommittee: none.

12. EXECUTIVE DIRECTOR UPDATE

Schleuning reported they recently sent out a 2017 mid-year update to all the Cities. Staff is in the process of setting up systems and processes to more easily send out updates. She reported they learned that one of the plants that looked suspicious at the Starry Trek is likely a rare native plant species, and they will post a description on the website. It was sent to New York for genetic testing.

Schleuning reported they had the first round of interviews and narrowed it down to five applicants. Interviews will take place again next Thursday from 8:30 a.m. to 4:00 p.m., and the panel will also include representatives from outside agencies. She requested a couple more Board members be part of the panel as well.

Zorn inquired if the mid-year update was sent out to City Council members.

Schleuning responded it was sent to Mayors, Administrators, and Clerks. She thanked Zorn, Thomas, and Hoelscher for their work in helping to put the update together.

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 7:54 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary