

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., February 7, 2018
Mound Council Chambers

WORK SESSION

6:00 p.m. to 7:00 p.m.

A closed session was held to conduct the performance evaluation of the executive director pursuant to Minn. Stat. § 13d.05, Subd. 3(a).

Members present: Jay Green, Mound; Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Jake Walesch, Deephaven; Dennis Klohs, Minnetonka Beach; Chris Rich, Woodland; Mark Kroll, Orono; Mike Molitor, Minnetrista; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel.

Members absent: Bill Cook, Greenwood; Excelsior member (to take Oath at formal meeting).

The Work Session adjourned at 7:00 p.m.

FORMAL BOARD AGENDA

7:00 p.m. to Adjournment

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; Dan Baasen, Wayzata; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Gregg Prest, Excelsior; Andrew Punch, Excelsior; Chris Rich, Woodland; Sue Shuff, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Matthew Cook, Environmental Administrative Technician.

Members absent: Ann Hoelscher, Victoria; and, Bill Cook, Greenwood.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

- Administer Oath of Office to Andrew Punch – New LMCD Board Member (City of Excelsior)
- Administer Oath of Office to Jay Green – LMCD Board Member (City of Mound)
- Administer Oath of Office to Mark Kroll – LMCD Board Member (City of Orono)
- Administer Oath of Office to Gary Hughes – LMCD Board Member (City of Spring Park)
- Administer Oath of Office to Gregg Thomas – LMCD Board Member (City of Tonka Bay)
- Administer Oath of Office to Dan Baasen – LMCD Board Member (City of Wayzata)

Gilchrist administered the Oath of Office to new LMCD Board member Andrew Punch, and returning members Jay Green, Mark Kroll, Gary Hughes, Gregg Thomas, and Dan Baasen.

Punch introduced himself and stated he is from the City of Excelsior where he served on the Park and Recreation Board.

6. APPROVAL OF MINUTES- 01/24/18 LMCD Regular Board Meeting

Thomas referred to page 12 of the minutes and noted he made the motion, not Prest.

MOTION: Shuff moved, Zorn seconded to approve the 01/24/18 LMCD Regular Board Meeting minutes as amended.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

Molitor requested item 7(B) be removed from the Consent Agenda for further discussion.

MOTION: Molitor moved, Zorn seconded to approve the consent agenda as amended. Items so approved included: **7A)** Audit of Vouchers (02/01/2018 - 2/15/2018).

Item **7B)** 500 NNL, LLC, 2018 New Multiple Dock License, Special Density License, and Variance Applications; 687 Excelsior Boulevard, Excelsior, Mn 55331 (Excelsior Bay) was removed from the Consent Agenda.

VOTE: Motion carried unanimously.

B) 500 NNL, LLC, 2018 New Multiple Dock License, Special Density License, and Variance Applications; 687 Excelsior Boulevard, Excelsior, Mn 55331 (Excelsior Bay)

Molitor explained when the application for this item was considered, it was requested that the Museum submit their approval in writing. This letter is included in the packet; however, they expressed some concern regarding the addition of slips to the shared dock. It appears to still be an outstanding issue and given that the amenity points come from a large portion of the site, this issue should be addressed prior to approval of the license. If this is approved as is, the Museum will have no leverage regarding the dock slips because the stated motion is approving

the entire application.

Schleuning noted staff did contact Mr. Lambert for further clarification when the letter was received. He indicated they did not oppose the formal Board adoptions but wanted to let the LMCD know they would be working with the Applicant directly to resolve any concern.

Gilchrist commented the request to have a letter was to confirm in writing that the Museum was in agreement with the proposed plan. They clarified that they were fine with the Board approval and will work this out as part of their contractual negotiations with the lease. From a legal perspective, the Board has what they can reasonably expect to get from a third party in this type of situation.

Zorn inquired if the letter has been shared with the Applicant.

Schleuning stated it had been shared and discussed by both parties.

Bob Sarna, Operating Officer from 500NNL, stated he spoke with the President of the Museum. He indicated the only concern was related to how many fingers they were putting off the dock and whether there would be enough clearance on the other side of the dock where they park the Museum. They have a good working relationship and will continue to work with them as well as the City of Excelsior to see how they can give more public access to the docks. They do not want the Museum to go away because it gives them good amenity points and will benefit the marina. In the future, he may request approval from the Board for a different plan if necessary to make it right for everyone.

Zorn inquired if the six slips outlined in the letter are remaining as they are on the current site plan.

Mr. Sarna explained the Museum staff has seen the whole plan and the plan exists as proposed. There are six slips coming off the side of the pier that the Museum is located and on the other side the current proposal is to change the three existing slips to additional fingers coming off the docks.

MOTION: Thomas moved, Klohs seconded to approve the application for 500 NNL, LLC, 2018 New Multiple Dock License, Special Density License, and Variance Applications; 687 Excelsior Boulevard, Excelsior, MN 55331 (Excelsior Bay).

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) City of Mound, 2018 New Multiple Dock License Application (Lost Lake Transient/Overnight); Mound, MN 55364 (Cooks Bay) – Continued

Schleuning noted this is a continuation of a public hearing. She directed the Board to the staff memo, dated February 7, 2018, and provided the following information:

- An overview of the action presented to the Board; the application request is due to a change in classification which requires a public hearing and Board approval.
- A summary of the application request:
 - The change affects a portion of the site's BSU's from transient to overnight storage with no changes to dock structures.
 - Current Conditions: 24 BSUs total for transient use
 - Proposed Conditions: 24 BSUs total – 14 for transient use and 10 for overnight storage
 - Flexibility for administrative approval to use overnight storages BSUs for transient use if needed in the future.
 - The site is conforming.
- An overview of the existing property lines and proposed site plan.
- A rendering of the proposed and existing licenses in the area:
 - Proposed License include 14 transient BSUs and 10 overnight BSUs.
 - Existing adjacent license includes 37 overnight BSUs, but is not part of this application.
- An overview of the background and site conditions associated with the site:
 - A multiple dock facility with 16 BSUs was issued in 1997.
 - It was licensed for multiple dock facilities in 2004 and dredged for multiple dock storage.
 - An adjacent licensed site was approved for 37 overnight BSUs in 2005.
 - Currently two City licenses in Lost Lake area include 37 overnight storage and 24 transient use.
 - 1,500 feet of shoreline; 24 BSUs; 1:63 density
 - Side setbacks are approximately 25 feet
 - 26-36 foot BSU length
- An overview of relevant code sections. These include Code Section 2.03, subd. 7, requires a new multiple dock license application when any change in slip size, ownership, width, height, or location of a structure or classification. Code Section 2.03, subd. 15, states the transient use of docks or specified portions thereof may be authorized by the Board for commercial docks. Such docks or portions thereof may be used only for transient uses of the commercial establishment and no watercraft shall be permitted to remain overnight. Code Section 2.01, subd. 1 prohibits a person from using any area of the lake outside the authorized dock use are for docking and storage of watercraft. These three sides are further defined by dock length and side setback limitations.
- An overview of the multiple dock criteria.
- The LMCD solicited review and comments from local government agencies. Comments were received from the public regarding boat traffic and potential environmental concerns.
- Public hearing requirements and legal notifications.
- An overview of comments and considerations to be addressed:
 - History – there was significant review regarding potential impacts during the dredging process; the site use also appears to be less than originally anticipated.
 - Site Status – it is a conforming site and the amenity points are not required.
 - Boat Traffic and Pollution:

- The MN Department of Natural Resources (DNR) and Minnehaha Creek Watershed District (MCWD) concluded it would be difficult to assess the specific change to water quality based on changes to use or boat traffic.
- They will continue to explore opportunities and projects regarding natural resources and stormwater runoff.
- The water quality rating (Lake Grade) in Cooks Bay, as determined by the MCWD, has improved from a historic rating of B to an A in 2016.
- At capacity, transient boat slips typically have higher boat traffic than overnight storage slips. Short term storage allows multiple boats to access slips throughout the day compared to a single owner making occasional trips.
- The most recent boat density study in November 2005 by the DNR indicated the average number of boats during peak times on weekend/holidays declined from 1984 to 2004.
- Safety/Boat Wakes – a condition was added to the revised Findings to review the number and location of buoys, enforcement, etc., to assess speed and wakes in the area.
- Aquatic Vegetation – no information was found to determine if increased boat traffic in Lost Lake will unreasonably create an increase in aquatic vegetation in Cooks Bay.
- Location of Overnight Storage BSUs – the proposed 10 overnight storage BSUs to be located closest to the existing overnight storage units will: 1) promote compatibility of uses; 2) provide security; 3) provide convenient access to the public amenity pathways and gathering spaces; and, 4) provide more direct access to the channel.
- Staff recommends they prepare Findings of Fact and Order with the following revised conditions: 1) An updated site plan with transient/overnight labeling in key; 2) Remove the condition allowing administrative action for flexible reclassification of five of ten overnight BSUs from overnight storage to transient use; 3) Add a condition to assess no wake/slow buoys plan in the spring; and, 4) Add a condition regarding Board review if wetland or ecological impacts are indicated.
- From information gathered, there is not sufficient evidence to deny the application due to potential detrimental impact to lake beauty, water quality, or ecology.

In response to a question from Hughes, Schleuning explained the applicant had requested they have flexibility to work with staff for an administrative approval on the types of BSUs, but it has since been removed from the revised findings based on feedback from the Board at the prior meeting.

Klohs referred to one of the proposed conditions, and inquired who would determine if there was any ecological impact. He suggested it be clarified so there is no confusion.

Schleuning responded it would come from the watershed district or the DNR.

Gilchrist pointed out the wording indicates the Board makes the determination based on the information it receives. It does not put a duty on the Board to go out and observe the area.

Klohs noted it has already been documented that the neighborhood believes there is an impact and the Board is choosing to move forward with the process. A clarification would simplify potential conflict in the future.

Gilchrist stated it would difficult to word it to include specific agencies. This is an attempt to remain aware of the issue, but also show there is nothing to indicate it will change. If something does come up, it will be up to the Executive Director to bring it before the Board for review.

Green noted something could change with the environment that has nothing to do with the site. Changing the BSUs from transient storage to overnight storage is not going to negatively affect the water quality.

Gilchrist noted it is a valid point and they could delete the condition.

Klohs stated they should delete the condition because they deal with environmental issues in many other areas of the lake and should not burden an individual application with it.

Molitor commented they should be cognizant of the public comments in the packet as well as the ones offered during the public hearing. They need to include a clause that acknowledges the publics concern and shows it will be addressed if it becomes an issue. The condition leaves it up to the Board whether or not to address it.

Green stated the Board always has the ability to look at these situations whether or not it is addressed in the findings and he does not think they are ignoring the public input by removing the condition.

Klohs commented it seems they are setting a precedent that is a disadvantage to the Board.

Gilchrist noted he does not recall a similar condition in other orders. While it is an attempt to address the stated concerns, it would be unusual to have it as a condition.

Catherine Pausche, Director of Finance and Administrative Services with the City of Mound, commented they want to be good stewards of the lake. Last year was the first year they did mechanical harvesting around the 37 slips and they are open to continuing it to the opening of the bridge, along with considering the no-wake buoys. Cooks Bay and Lost Lake both serve as the face of the City and they will maintain it and not let it deteriorate. She stated if the condition is not standard, she would ask for it not to be included. They are thrilled that Cooks Bay was upgraded, and they want to be known as a destination on the lake.

Green opened the public hearing at 7:45 p.m.

No comments were received and Green closed the public hearing at 7:46 p.m.

In response to a comment by Green, Schleuning stated she has noticed that some applications on sites located in environmentally sensitive areas have had conditions similar to the conditions associated with this application. Sometimes items are included in documents as a reminder of and to note concerns, even if they are already enforceable by code.

Walesch inquired if they would have the right to reconsider the license granted if they determine there may be additional adverse impacts.

Schleunig confirmed that licenses are renewed every year. However, if there is a problem or concern, it can be addressed at any time and not just during the licensing period. If something was creating detrimental consequences, the Executive Director can and would bring it to the Board for consideration.

Shuff agreed with Molitor that the condition shows respect for the people that have expressed concern with the ecology.

Zorn noted she agrees with staff's recommendation to include the condition. It shows it is a new era in recognizing the resident's public comments as well as making sure the message is on the forefront.

Green stated the applicant also has rights and they have to balance the needs of it all.

MOTION: Zorn moved, Shuff seconded to direct staff to approve the Findings of Fact and Order approving the City of Mound 2018 multiple dock license application for Lost Lake – Transient Site in Mound as presented, including the conditions recommended by staff.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A) Nomination and Election of 2018 LMCD Board Officers

Zorn reported the Nominating Committee called for nominations in early January 2018, interviewed the nominees and had a follow up meeting with them. The process is new this year, and they feel good about the improvements.

Baasen reported there were six applicants, and after conducting interviews, the Nominating Committee recommends the following slate of officers:

- Chair – Jay Green
- Vice Chair – Gregg Thomas
- Secretary – Ann Hoelscher
- Treasurer – Bill Cook

Baasen read the following recommendation requested as a result of the concerns received by the Nominating Committee: "The Nominating Committee wants to suggest to the Board to provide for a means of regular meetings of the officers as a group open to all and scheduled to promote better communications between the elected officers and provide additional support to the Executive Director." He stated everyone they interviewed indicated they would like to do more and therefore, this was something they suggested.

Green thanked the Nominating Committee for their work and agreed with the suggestion of getting the officers together more often and delegating more responsibilities. He was grateful for the confidence that was placed in his service.

Baasen pointed out the recommendation was not intended to be a criticism of past years, but is offered as a

suggestion moving forward as a way to improve as an entity.

Green agreed and stated it is good to have a group to focus and bring clarity. He inquired if there were any other nominations. No other nominations were offered.

MOTION: Baasen moved, Rich seconded to accept the slate of officers as presented by the Nominating Committee.

VOTE: Motion carried unanimously.

11. UPDATE FROM STANDING LMCD COMMITTEES

Aquatic Invasive Species Committee/Taskforce: None.

Budget Workgroup: Schleuning noted an email will go out tomorrow regarding scheduling a meeting. Green invited others to be involved.

Communications Workgroup: Thomas noted the group will meet tomorrow at 8:30 a.m. at the LMCD office and invited others to join them.

Nominating Committee: Green thanked the Nominating Committee for their work.

Recodification Workgroup: Gilchrist announced the initial draft of the code was sent to the Workgroup and to Schleuning. He spoke of the challenges of how each item is talked about and stated Schleuning will go through it to see if the permitting section makes sense. After the revisions are made, it will be reviewed by the Board and others for additional comments.

Klohs commented the code will now be organized in a similar way as City zoning ordinances. It is a major accomplishment and he acknowledged Gilchrist, Schleuning and LMCD staff for their work.

Kroll suggested the numbers not be spelled out as words but be displayed as an actual number.

Gilchrist stated from a code writing perspective, numbers under nine were spelled out and 10 or more are displayed as numbers. It can be changed based on the preference of the Board.

Green noted this can be addressed later and they should first focus on the content.

Save the Lake Committee: None.

Strategic Plan Subcommittee: Schleuning noted the fourth quarter dashboard is available on the website. The subcommittee can reconvene to address some of the comments provided.

12. EXECUTIVE DIRECTOR UPDATE

Schleuning directed the Board to the LMCD Special Events Participation Checklist provided in their folders. It provides uniformity when Board members go to events and can be added to if needed. She requested the Board provide her with additional suggestions of items that would be useful for educational or promotional purposes. She then requested the Board look over the committees and workgroups list for accuracy and to see how they would like to participate in 2018.

Thomas noted that Baasen had volunteered for the Communications Workgroup and requested his name be added.

Hughes suggested they include the electric shock drowning information under items to include on the Special Events Checklist.

Walesch inquired if there was information on each committee and workgroup regarding how often they meet and what the commitment entails.

Schleuning noted it will be included in the new Board of Directors handbook, which should be available in about a week.

Green suggested they approve the committee assignments as a function as the Board at the next meeting.

Schleuning requested the Board email her what committee or workgroup they would like to be a part of and it will be included at the next meeting.

Kroll noted he would be willing to help out with the topic of electric shock drowning.

Zorn stated a brochure has already been created and this is what Hughes suggested to include as part of the Special Events Checklist.

Thomas commented they have included this at the Tonka Bay event and it is very popular brochure.

Schleuning noted they are also looking to update the information on the website so input is appreciated.

Baasen encouraged the new Board members to consider Save the Lake Committee. It is not a closed group, they are an active committee and the Board is very dependent on the success of the funding. It is not about giving money but is about getting people to contribute.

Green noted they need a representative from Three Rivers on the AIS Task Force. It should consist of representatives from the LMA, watershed, DNR, University of Minnesota, Three Rivers, and LMCD.

Schleuning reported the City of Excelsior is currently doing the expansion of their docks, Libbs Lake is doing an entire replacement, and several residential permanent docks are being installed. They are sending out deicing letters and finishing up inspections. Progress with the IT project is being made, receiving options for internet service, and quotes for software packages. She noted the agenda for the February 28 meeting appears full and they hope to

have some AIS results available for the next Work Session.

Green inquired when the Sheriff's office will give their annual report.

Schleuning responded she provided them with dates and times and is waiting to hear back from them. Additional follow up will be conducted.

13. OLD BUSINESS

None.

14. NEW BUSINESS

None.

15. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:15 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary