

## LAKE MINNETONKA CONSERVATION DISTRICT

### BOARD OF DIRECTORS

6:30 P.M., February 9, 2022

Virtual Meeting

Due to COVID-19 Guidelines, pursuant to a statement issued by the presiding officer (Board Chair) under Minnesota Statutes, section 13D.021, the meeting was conducted remotely through electronic means using Zoom. The LMCD's usual meeting room was not open or available to the public or the Directors.

### WORK SESSION

6:30 p.m. to 7:00 p.m.

**Members Present:** Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Mark Chase, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Matt Cook, Environmental Administrative Technician.

**Members Absent:** None.

### Persons in Audience:

Jim Adams, Jeremy Barnhart, John Bendt, Eric Evenson, Bill Heney, Jeff Hornig, Andrew Krenzer, Dave Lawrance, Maggie Lunetta, Mike McCary, Mary O'Connor, Mark Peet, Jay Soule, Peter Thiss, Suzy Thiss, Joe Thull, LaWayne Yaeger.

The following username were present, but the user did not identify themselves: (651) 485-3576, Big Island, Big Island resident, iPhoneCLO, johnr, Lady of the Lake.

#### 1. **Update Regarding Boat Generated Wake Study Report Conducted by U of M St. Anthony Falls Laboratory**

Thomas stated that he would like the Board to discuss the process going forward regarding the wake study, noting that the report of the study was sent to the Board prior to the meeting. He reviewed the different options the Board could choose to take and recognized there may be some options he has not considered.

Hoelscher commented that this seems like something the Board should accept, although was not sure in what manner. She believed that input should be obtained from the different stakeholders on the lake to do something that makes sense for everyone.

Cook agreed that this is an ordinance issue and part of that process should include a review of the ordinance. He agreed with Hoelscher on having a public process.

Baasen agreed that the Board has been waiting for this study and has supported the study, therefore it is time for the Board to review what the study says and how that relates to the best interest of the lake. He believed that the Board should gather its thoughts first before moving to a

public meeting for input. He stated that a steering group be created to provide a recommendation to the full Board.

Thomas stated that the issue could be pushed to the Operations Committee rather than creating another group. He asked if Baasen believes a draft ordinance should be crafted prior to public involvement.

Baasen clarified that he believes the Board should develop its position before involving the public and then the ordinance would evolve in due process.

Brandt agreed that it would be too early to draft an ordinance, or official position. He commented that he is curious as to whether there will be a statewide approach by the DNR. He recognized that this is a polarizing issue on the lake and people will look to the LMCD for a response or position. He stated that the LMCD should be prepared to open a forum to allow comments from all sides.

Kirkwood urged the Board to do something and did not want to create the image that the LMCD is avoiding. He stated that a task force be created involving members of the Board and other lake stakeholders.

Anderson stated that there was a previous suggestion that the LMCD wait and go with the legislation that is developed. He recognized that may take some time. He did not believe there was urgency and believed that the LMCD should wait for the position of the legislature.

Klohs stated that the LMCD has been waiting for this study for two years and therefore it would not make sense to do nothing at this time. He stated that people want to be heard and the LMCD should begin, even with an interim step. He stated that even the wakeboard industry recognizes that the present ordinances are not enough. He commented that the legislature may never act. He recognized that it may be a bumpy road, but people want to be heard and perhaps a few listening sessions would be the place to start.

Kroll commented that this is not a major issue for Excelsior, therefore he will not provide comments.

Newell stated that this is a hot topic issue and perhaps some of the fire can be taken out of it by looking at the wave and wave energy, removing the type of boat. He did not believe 150 feet was accurate with all the different boat types on the lake. He believed that the Board should look at this and believed it can be done in a general way.

Stone acknowledged the statements that this cannot continue to be pushed down the road but struggles with the fact that she does not feel like she learned much from this phase of the study. She did not feel like enough information was provided to effectively review the ordinance. She recognized that people are looking for the LMCD to provide an opinion and therefore supported creation of a smaller group involving stakeholders to develop that opinion.

Walesch stated that the second phase of the study is going to happen and believed that would be

important and would bring additional stakeholder groups into the conversation. He did not think there would be anything wrong with listening but believed that the Board should be aware of what that is going to involve. He believed the study was well done but the results were not surprising. He did not think the comparisons that were done were very accurate to what is occurring on the lake. He noted that these are the types of comments they would receive in a listening session. He believed that more information relevant to Lake Minnetonka would be helpful, as well as waiting to see what happens at the legislature.

Zorn commented that she believes that something needs to be done, even if that is just listening sessions. She did not want the LMCD to be left scrambling when something eventually moves forward.

Chase agreed with Stone and Walesch, noting that he wished the study provided more insight and more relevant comparisons. He believed the Board should wait for further study or become more involved in that study. He stated that this is not an isolated issue to Lake Minnetonka and would be curious to see if there is a statewide approach.

Anderson referenced one of the boats chosen for the study, which is a competition ski boat with no wake and was unsure why that boat was chosen.

Thomas stated that for at least a year the Board has stated that they would be waiting for the study to do something. He stated that the study is now out. He recognized that there will be a phase two and the State will do something, but the Board has an obligation to take a hard look at this. He stated that there will never be perfect information to decide they are 100 percent sure is correct. He believed that most of the Board supported doing something, which would include other stakeholders. He proposed that he work with Schleuning and Zorn to develop better structure as to how that could be done. He stated that he likes the idea of a smaller group working on this and bringing it back to the full Board.

Anderson commented that this study is clearly not applicable to Lake Minnetonka because of the boats used. He asked that the bigger boats be included and that the wake boats not be targeted and soloed out.

Newell agreed with Thomas. He commented that this is not about the boat, but the wave, wave energy and proximity to shoreline. He believed that the focus should remain on boating activity and proximity to shoreline and not personalized to the type of boat.

Thomas recognized that this will be a divisive issue but did not believe the Board should shy away from it.

There being no further business, the work session was adjourned at 7:00 p.m.

## **FORMAL MEETING**

7:00 p.m.

**1. CALL TO ORDER**

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

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**Members present:** Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Mark Chase, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Matt Cook, Environmental Administrative Technician.

**Members absent:** None.

**Persons in Audience:**

Jim Adams, Jeremy Barnhart, John Bendt, Eric Evenson, Bill Heney, Jeff Hornig, Andrew Krenzer, Dave Lawrance, Maggie Lunetta, Mike McCary, Mary O'Connor, Mark Peet, Jay Soule, Peter Thiss, Suzy Thiss, Joe Thiss, LaWayne Yaeger, John Reimann.

The following username were present, but the user did not identify themselves: (651) 485-3576, Big Island, Big Island resident, iPhoneCLO, johnr, Lady of the Lake.

**4. APPROVAL OF AGENDA**

**MOTION:** Walesch moved, Stone seconded to approve the agenda as submitted.

**VOTE: A roll call vote was performed:**

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried unanimously.

## 5. CHAIR ANNOUNCEMENTS

- A) Oath of Office to Mark Chase (City of Spring Park), Ben Brandt (City of Mound), Dennis Klohs (City of Minnetonka Beach), Nicole Stone (City of Minnetonka), Jake Walesch (City of Deephaven)

Gilchrist administered the Oath of Office to Chase, Brandt, Klohs, Stone and Walesch.

## 6. APPROVAL OF MINUTES- 01/12/2022 LMCD Regular Board Meeting

**MOTION:** Stone moved; Zorn seconded to approve the 01/12/2022 LMCD Regular Board Meeting minutes as submitted.

**VOTE: A roll call vote was performed:**

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried unanimously.

## 7. APPROVAL OF CONSENT AGENDA

Thomas asked if a decision would need to be made as to the liability waiver or whether that could be approved as part of the Consent Agenda.

Anderson commented that he would like to discuss the item.

Gilchrist provided a brief explanation stating the League requires everyone they insure to confirm that they do not want to waive the tort liability statutes. He commented that he is not aware of any organization that does not follow that decision.

**MOTION:** Walesch moved, Anderson seconded to approve the consent agenda as presented. Items

so approved included: **7A)** Audit of Vouchers (01/16/2022 – 01/31/2022) and (02/01/2022 – 02/15/2022); and **7B)** LMCIT Liability Waiver Form.

**VOTE: A roll call vote was performed:**

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried unanimously.

**8. CONTRIBUTION RECOGNITION**

Baasen commented that this has been a quiet period and reported that Save the Lake will meet on February 22<sup>nd</sup> to formulate its procedures for 2022.

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

Richie Anderson, addressed the Board as a resident, stating that he was approached by a resident wanting assistance with their request for a qualified commercial marina. He stated that there was discussion at the Board meeting that a qualified yacht club application should have been submitted. He noted that the city of Spring Park has carved that area out with C-4 zoning. He stated that the applicant received incorrect information and therefore submitted the wrong application, which closed her business. He stated that the applicant would like to go to a qualified yacht club which would also be supported by Spring Park and allow her to operate her business.

**10. PUBLIC HEARING**

**A)** Public Hearing for Municipal Dock Request for Massasoit Avenue, Big Island, City of Orono

M. Cook presented an application from the City of Orono for a municipal dock license for Massasoit Avenue on Big Island. He stated that this license would allow one BSU, while the previous application requested up to two BSUs. He reviewed the proposed site plan and aerial overlay which highlights the location of the proposed dock. He provided information on applicable Code requirements and relevant

Code sections, also providing input from staff on those elements. He stated that required agencies were notified and no comments were received. He stated that several inquiries have been received from the public and all emails received from the public have been forwarded to the Board. He stated that staff recommends approval subject to the conditions noted in the staff report.

Kirkwood stated that he would like to hear the intention and purpose of the city as to why a dock is being requested in this location.

Thomas opened the public hearing at 7:23 p.m.

Jeremy Barnhart, Community Development Director for the City of Orono, stated that the City has several interior properties on Big Island that do not have access to the lake. He stated that the City was approached in getting access to those inland properties and the Council established a licensure program. He explained that inland properties would be able to apply for a spot at a city owned and maintained dock. He noted that this would become a part of the City's transportation network on Big Island. He stated that this would be an option for inland properties that cannot obtain a dock.

Thomas referenced the waste disposal and sanitary facility requirements of the LMCD. He asked how that would be addressed.

Barnhart commented that if an inland property has a cabin or similar structure, it is required to possess those types of facilities. He stated that if the property has no structures of that nature, there would not be a requirement for sanitation on that vacant lot.

Thomas asked if the slip would be rented to an unimproved lot holder.

Barnhart stated that would not necessarily make that site ineligible but noted that would be part of the review for the license request.

Schleuning stated that the LMCD reviews riparian rights for a site and that the site does not have to have a structure attached.

Thomas stated that he would then think the Board should not consider the regulations related to sanitation.

Klohs asked who owned the previous dock that has been removed.

M. Cook replied that he was under the impression that was for a nearby lakeshore lot.

Barnhart replied that the City believes that was owned by the property to the south, 450 Big Island. He stated that property had encroached into the adjacent right-of-way over the years. He stated that the city never provided permission for a private improvement in public right-of-way.

Klohs asked the number of public right-of-way locations the city has on the island and whether this is a test case.

Barnhart believed there were seven right-of-way locations that touch the water on the island. He commented that this is the first case and is a learning experience.

Kirkwood asked if this would be a private dock owned by the city that would not have public access.

Barnhart stated that this would be a private dock owned by the City and storage of one BSU would be licensed to one inland property owner. He explained that it is intended to provide access to an inland lot. He confirmed that there could be additional applications in the future. He recognized the challenges of setbacks in narrow right-of-way locations and therefore was unsure of the number of additional applications that would come forward.

Kirkwood asked if there would be signage on the dock indicating the limited use.

Barnhart replied that the staff report suggested signage to help people understand where parking can occur along with the public/private nature.

Newell asked if there are seven lots that do not have access.

Barnhart clarified that the city has seven points of right-of-way that could potentially be used to provide access to the fourteen interior lots that do not currently have access. He recognized that at least seven lots would not be able to receive licensure.

Newell asked how those with inland lots access their lots currently.

Barnhart commented that some of the residents have agreements with neighbors. He stated that this resident anchored offshore and waded in.

Newell stated that he supports this request to provide access to those without access.

Walesch stated that most of his questions have been answered as to how the dock would be used. He recognized that a municipal dock requires a public hearing. He noted that this is a conforming application and therefore did not believe it could be denied.

Schleuning commented that the Board would have to have just cause to do so.

Walesch recognized that some people will like this concept, such as those that will be using the dock, while others, such as neighbors, may not.

Schleuning commented that there were land-based concerns raised by residents that the applicant will need to address, as that is not something the LMCD has jurisdiction over. She stated that the city is very open in ensuring all land-based concerns are addressed.

Gilchrist commented that the Board could add conditions to the license if desired.



Chase asked if the license could be issued to a different inland property owner than the one specified in the application.

Barnhart replied that they anticipate an annual review of a license. He stated that one application has been received and therefore they are working on that license. He anticipated that a similar process would be followed the following year. He commented that the benefit of a license would be that it could be removed if the user is not acting appropriately.

Mary O'Connor, Brooklyn Center resident and owner of 420 Big Island, stated that the review criteria states that the public must be served, and public access must not be restricted. She stated that this is a public road and asked if this would obstruct the other members of the public from using the road.

M. Cook replied that there would still be access to the street end. He noted that similar municipal docks have been installed at a street end and that does not eclipse other use of the street end.

O'Connor asked how someone would get on the public road if a dock were installed.

Barnhart stated that it is his understanding that the shoreline is rocky and overgrown with trees. He stated that they would not propose to remove lakeshore vegetation or lakebed improvements, other than what is needed to provide access to the dock. He commented that they are not restricting what people have access to now and the entire right-of-way can still be used.

O'Connor asked if the public would be able to use the dock.

Barnhart commented that the dock would be licensed to one individual.

Suzy Thiss, 270 Big Island, thanked staff for sending out an email on this topic. She asked if the LMCD allows docks for inland property use. She noted that many properties exist that do not have lake access and asked if people could request access on public land.

Thomas stated that there are many municipal docks on the lake available for the general public. He stated that most cities offer access first to residents of their city and do not specify riparian or inland lots. He noted that this is a common practice, and the spaces can even be rented to non-residents.

Suzy replied that it seems weird that someone who purchased an inland lot could request a private dock to be installed at the expense of taxpayers. She commented that the Power Squadron is adjacent to this area that would have available dock space. She stated that residents could also rent space from a neighbor. She believed that there were other options available for inland property owners. She also provided input on a fire that occurred, noting that if a neighbor did not have a hose, the fire would have spread throughout the island.

John Reimann, 440 Big Island, stated that the resident dock that was shown on the aerial that has been removed was his dock. He confirmed that he owns the lot to the south. He stated that his cabin was built in 1909 and he has owned his property since 2013. He stated that there is a severe bank which caused the dock placement. He noted that the previous property owner had their dock in that

location, which is why they also did. He stated that inland property owners willingly purchased their property aware that there is not access. He stated that the resident that submitted the license application has unimproved property and no sanitation. He stated that he lives on his property five days per week. He appreciated the involvement of the LMCD and its dedication to the lake. He acknowledged that the City does have every right to do what it pleases with the right-of-way it possesses on the island. He stated that it does not make sense for someone to purchase a lot without access and then request the city to provide access. He commented that he believes this would set a terrible precedent. He recognized that this is not the fault or problem of the LMCD, as the City oversees the land matters. He referenced large parcels which could subdivide to provide additional access. He provided distances to wider right-of-way locations that are closer to the license applicant that would also have less impact on existing residents. He asked for information on the safety of a three-foot dock, as the city has chosen that width to meet the setbacks. He asked if there are deeper, more appropriate locations that would cause less disruption. He believed the city should come back with a workable and expandable solution.

Thomas confirmed that the LMCD does not have jurisdiction on land, therefore those issues would need to be addressed with the City of Orono. He stated that the LMCD must consider the application before it.

Jeff and Olivia Horning, 450 Big Island, commented that the spirit of the island is really special. He stated that this dock is something that will ruin that because someone who has not taken the time to invest in lakeshore property is cutting corners to have lake access. He stated that he and his wife have worked with Orono and the LMCD for years and respects whatever decision is made. He thanked the Board for the work it does. He asked for clarification on enforcement and who would enforce the rules of the dock.

M. Cook commented that if there is a nuisance violation on the dock, the LMCD would have authority whereas land activity would fall to the City.

Schleuning stated that if there were noise issues on the lake, a resident would call 911 and Water Patrol would address the concern. She stated that the City would be required to meet all requirements of the license, should it be issued by the LMCD. She stated that the LMCD can also be involved in ordinance violations. She recognized that lake issues sometimes require multiple partners.

Jim Adams, Crystal resident and owners of 390 and 400 Big Island, commented that this is the first opportunity he has had to speak on this concept. He echoed the challenges that have been expressed by previous speakers. He stated that there is challenging topography for some lakeshore property owners. He believed there are issues on Big Island that would make this type of approach difficult to enact. He commented that he would like Orono to consider the access for the one inland property owner that is 1,200 feet away from the proposed dock location. He stated that people on the island do not live there full time and therefore it is difficult to gather people together for a solution. He believed that this solution overcomplicates the situation. He noted that there have been piecemeal solutions in the past that attempted to provide access. He commented that there is a public street adjacent to the inland property owner and that property owner attempted to work with Three Rivers Park District to secure access but was unable to do so. He cautioned the city as to how it will use taxpayer money. He

believed that this is a bigger issue and if Orono is serious about making things easier, there would be an opportunity for representatives from LMCD, Orono, Three Rivers Park, and the County to determine if access could be provided through Three Rivers Park District. He asked for an opportunity to go back and have those conversations to determine if there could be a solution that would not displace someone else. He commented that putting the access of another property owner below that of an inland property owner is a mistake.

No additional comments were offered, and the public hearing was closed at 8:07 p.m.

Walesch asked staff to review the requirements for a municipal dock to have restroom facilities.

M. Cook reviewed those requirements, noting that staff provided a comment that the applicant has a requirement for sanitary facilities. He noted that the city would have the opportunity to assign the license as it sees fit and control what they see fit for sanitary facilities. He stated that some other municipal docks are more commercial in nature rather than residential.

Schleuning stated that she is curious as to what is done for sanitation services currently. She noted that in some cases a toilet facility is needed, but for outlet purposes where people are coming from their property, sanitation services may not be required. She stated that she would be curious as to what is happening now, as she would not want pollution of the water.

Barnhart commented that he is unsure of what people currently do when they do not have improvements on their parcel.

Schleuning stated that could be a condition added stating that there must be a plan for sanitation and trash disposal.

Zorn commented that she understands that the City has riparian rights it can exercise. She stated that the jurisdiction of the LMCD is on the water, and she would like the city to go back and work with the residents. She stated that the docks vary, and it does not feel like Orono has done anything to communicate and be transparent with other property owners.

Anderson asked if the City of Wayzata dock on a street end has the same requirements for sanitation. He also asked if the LMCD has any jurisdiction over the city.

M. Cook replied that the Arlington Circle dock has a public port-a-potty that is available for use and no overnight boat storage is allowed.

Schleuning replied that restrooms could also be accessed in the downtown area. She clarified that that dock is an observation dock and no boat storage is allowed.

Anderson stated that there were comments made that a spot could be rented from a neighbor but noted that is illegal in Orono. He stated that statement was also made that there is no structure on the property that would be licensed for the dock spot but noted that a dock is not allowed for unimproved properties without a structure. He stated that there are City docks within Orono, which creates

precedent. He stated that he and Schleuning met on the site to measure water depth. He asked the length of the dock that could be allowed for this site.

Schleuning stated that the dock can go out to a water depth of four feet, but no more than sixty feet in length.

Anderson commented that Orono has proposed a 20-foot dock and asked if Orono could have a 40-foot dock.

Schleuning commented that a variance would be needed to have a 40-foot dock if water depths exceed four feet.

Anderson commented that Orono has downgraded its request to a 20-foot dock for one BSU. He agreed that Orono should have reached out to residents to obtain more input but recognized the LMCD cannot regulate what the city does. He stated that this dock is legal and conforming and to require sanitation would be overstepping the bounds of the LMCD.

Newell commented that there is a capacitance of six or seven home sites that could potentially bring forward similar proposals and asked if this would be opening a can of worms. He stated that this proposal seems fine, but it also opens a lot of issues that would be problematic going forward.

Walesch commented that he feels for the residents on the lake as it appears the city process was not adequate in the minds of the lakeshore owners. He stated that this is a conforming dock and therefore he does not see a way that the LMCD could not approve the request.

**MOTION:** Walesch moved, Baasen seconded to direct staff and LMCD legal counsel to draft Findings of Fact and Order approving the City of Orono 2022 Municipal Dock License Application for the sites located at the Massasoit Avenue Street end on Big Island in the City of Orono as presented for consideration at the February 23, 2022 Board meeting.

Further discussion: Gilchrist referenced the comment as to what may come next with the other fire lanes and right-of-way locations but urged the Board to only act on the application before it and not what may or may not come.

**VOTE: A roll call vote was performed:**

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	aye
Kroll	aye

Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	nay

Motion carried.

Schleuning commented that nothing would prevent Orono from meeting with its residents on this matter and noted that a representative from LMCD would be available to join the discussions.

## 11. OTHER BUSINESS

There was no other business.

## 12. OLD BUSINESS

There was no old business.

## 12. NEW BUSINESS

### A) Watercraft for Hire Application, Andrew Krenzer of Tonka Tours, LLC

Schleuning presented an application for watercraft for hire, noting the main element is that the proposed berthing location would be at a residential dock rather than commercial berthing. She stated that a liquor license has not been requested at this time. She noted that watercraft for hire certificates are approved administratively but this was referred to the Board as staff anticipated denial because the request does not meet LMCD Code. She reviewed the general application details and relative sections of the LMCD Code. She reviewed some key considerations for the Board in its discussion.

Newell commented that he would like input from Stone on this. He stated that he boats in this area frequently and it is pretty tight.

Stone stated that she has not received any feedback from residents outside of the applicant. She stated that she has had a lot of discussion with the applicant about how he intends to operate. She referenced a previous discussion which the applicant participated in, and it was agreed that there would not be parking on the residential property. She recognized that the Code states that commercial berthing is required but stated that he has not found available space. She did not believe that this would generate more activity than the resident would typically have. She noted that customers would be picked up at the Wayzata dock.

Newell asked the availability at the Wayzata dock.

Schleuning stated that the neighbors have not been publicly noticed for this. She stated that there may be more traffic for this use and other things to consider. She noted that the Board would need to

consider the general Code regulation and not just this one instance. She stated that there are concerns with how many places use the port of calls and noted that staff would have continued discussions about capacity for those port of calls.

Thomas noted that the applicant would need to request authorization from Wayzata to use the port of call.

Schleuning stated that the port of call review would be part of the application process.

Stone asked if the applicant is requesting a change in the Code. She stated that she believed the request was specific to his request.

Schleuning replied that the applicant does not agree with the interpretation of the Code.

Baasen stated that he is aware that in the last boat use year, there were a number of incidents that caused alarm to the City of Wayzata and were communicated to the LMCD. He noted that a number of independent charters were using the Wayzata docks without port of call authority. He commented that based on those comments from Wayzata, he was unsure the city would be receptive to use the dock as a port of call for an independent charter.

Walesch stated that the Board discussed this in the summer of 2021 and at that time the Board decided it did not want to change the Code because of possible disturbance to neighbors and deliveries to boats. He realized that this may be a good operator, but he agrees with the interpretation of the Code by staff. He noted that there was a robust discussion on the Code regarding this issue in 2021 and the Board decided not to make changes.

Anderson agreed with the comments of Walesch.

Gilchrist encouraged the Board to allow the applicant to speak prior to making a motion.

Anderson noted that there are four charter boat operators on the call that should also be allowed to speak if the applicant is allowed to speak.

Thomas invited the applicant to speak.

Andrew Krenzer, applicant, thanked the Board for allowing him to speak. He commented that there is a distinct difference between those that are operating illegal charters with no intention of meeting requirements of the Code (Captains license, commercial watercraft insurance, inspections, etc.) and the request that he is making. He noted that he is not seeking any change in the Code. He stated that he has a unique situation regarding the definition that there is not a specific requirement for the watercraft to be stored overnight at a commercial use. He stated that berthing locations, docks, and moorings are identified. He stated that he has no desire to engage in commercial activity at his residential dock. He stated that he has made several inquiries to locations certified as commercial use dock but there has been no availability, no response, or a response that charter/service boats are not allowed. He stated that the Code cannot be interpreted to require overnight storage at commercial slips

when none are available. He stated that he does possess all the other requirements and qualifications but has been unable to fulfil a commercial storage location.

Jay Soule, Al, and Alma's, stated that if the Board has questions about the history of the ordinance, he could provide background. He stated that he has no problem with more charter boats coming online if they meet the application requirements.

Walesch asked for clarification from the applicant on their interpretation of the Code as to whether overnight storage at a commercial dock is required.

Krenzer replied that in article seven, commercial berthing is not required. He noted that staff provided him with a different section of the Code that states, "with a commercial or other revenue producing business enterprise" and asked if that would include residents that rent a dock slip out to another person. He stated that it is not specifically noted within the section that outlines the requirements for watercraft from hire. He stated that his 2021 application was deemed incomplete by citing that other section of the Code. He stated that he is not asking the Code to be revised to open a can of worms. He explained that he has been unable to fulfill a different section of the Code in his request. He stated that there is nothing in the Code that can be interpreted to require overnight berthing in a commercial dock when there are none available.

Thomas stated that the discussion hinges on what the Code says and how it is interpreted and asked legal counsel for input.

Gilchrist stated that in his time the language has been interpreted as indicated by staff in that a commercial enterprise is not allowed at a residential dock. He stated that if the Board wanted to allow this, a Code change would need to occur to make that clear and it would need to be specified that watercraft for hire do not need to be stored at a commercial dock. He disagreed with the idea that just because a spot cannot be found, the regulation cannot be enforced.

Anderson referenced the statement made by the applicant that people rent out space at their docks and asked if that would be considered commercial revenue or business enterprise. He stated that anyone renting dock space should request a commercial dock license.

Schleuning stated that has not been considered a business enterprise.

Gilchrist stated that he is unsure about renting out spots on private docks as he has not reviewed that. He stated that traditionally the Board has not applied commercial docks in that situation.

Krenzer stated that he was just pointing out that there could be different interpretations but would like to stay on topic with his submitted application. He differentiated the vast difference of those operating illegally without meeting the other requirements of the LMCD, to his request where he has fulfilled all those requirements except for commercial berthing. He stated that he is a passionate believer in safe watercraft operation and reviewed his appropriate licensure. He stated that his intent would be to bring people in small groups out on the lake in a safe manner. He referenced section six of the Code which would allow the Director and Board to consider factors appropriate and relevant to a particular situation,

which is why he wanted to bring this to the Board. He stated that he is a good steward of the lake and is attempting to go about this in the proper manner. He asked that the Board acknowledge his case.

Thomas agreed that the Board is aware of the difference between Krenzer and the illegal operators.

Newell stated that he would support this request as the applicant has good credentials and has done the things the Board has asked in charter boat operations. He stated that the resident owns the property and if there are no complaints, the LMCD should not prevent him from trying to commercialize this. He stated that if this is approved, the challenge will be obtaining the port of call with Wayzata.

**MOTION:** Newell moved, Kroll seconded to direct staff and legal counsel to prepare findings of fact and order to approve the application on condition of satisfaction of requirements other than commercial berthing (inspections, insurance, equipment, etc.) and bring back to the Board on February 23, 2022.

Further discussion: Walesch stated this his opinion is that if this were going to be approved a variance or Code change would be needed.

Anderson stated that legal counsel mentioned the history of the LMCD to not allow residential berthing. He noted that the applicant never came to him for a dock slip.

Baasen commented that this has become very personal. He stated that he has no debate on the quality of the applicant, but this could open a can of worms. He stated that this would create precedent for additional requests.

**VOTE: A roll call vote was performed:**

Anderson	nay
Baasen	nay
Brandt	nay
Chase	nay
Cook	nay
Hoelscher	nay
Kirkwood	nay
Klohs	abstain
Kroll	aye
Newell	nay
Stone	aye
Thomas	nay
Walesch	nay
Zorn	nay

Motion failed.

**MOTION:** Baasen moved, Anderson seconded to direct LMCD legal counsel to draft Findings of Fact



and order to deny the application on basis of proposed berthing location not being a commercial site and bring back to the Board on February 23, 2022.

**VOTE: A roll call vote was performed:**

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	abstain
Kroll	nay
Newell	aye
Stone	nay
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried.

**B) Boater Safety Education Legislation Draft Letter**

Hoelscher stated that many entities around the lake have gotten together to persuade the DNR to adopt a comprehensive boater education program. She stated that the LMCD has been asked to write a letter of support, noting that a draft letter was provided by the Communications Committee. She welcomed feedback, noting that if supported by the Board they would like to provide the letter of support.

Thomas commented that he thinks the draft letter is well done.

Walesch agreed that the letter looks great, and he would support providing the letter of support.

Kroll echoed the comments.

Brandt agreed it is well written and he is supportive of providing a letter of support, noting that this is good timing as 2021 was one of the deadliest seasons on the lake.

Newell stated that he totally supports the letter. He asked if the operator would receive a certificate that would be verifiable.

Hoelscher stated that at this point they are not to that degree of specificity. She stated that the LMCD can support the program and let the entities work out the details.

Baasen stated that he also likes the letter and believes the second paragraph is a great addition. He asked if the letter distribution should also include the DNR and Governor, along with the applicable legislators.

Hoelscher agreed that the letter should be sent to the appropriate legislative representatives and committee chairs.

Schleuning asked if the comments from Brandt should be added about the deadliness of the 2021 boating season.

Hoelscher stated that she would prefer to leave the letter as drafted.

Thomas asked for a roll call of the Board to support the draft letter and distribution of the letter.

**VOTE: A roll call vote was performed:**

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried unanimously.

**C) Nomination & Election of 2022 LMCD Board Officers**

Thomas stated that the Nominating Committee developed a slate of candidates.

Zorn stated that a memorandum from the committee was included in the Board packet and summarized that memo and the process the committee followed to make its recommendation. She stated that the committee recommends continuing the current slate of officers. She also reviewed the other comments and recommendations from the committee.

Thomas thanked the members of the committee for their dedicated time. He welcomed any other nominations for positions.

There were no other nominations.

**MOTION:** Kirkwood moved; Brandt seconded to accept the slate of officers as recommended by the Nominating Committee.

**VOTE: A roll call vote was performed:**

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	aye

Motion carried unanimously.

#### **D) Designation of Committee Members**

Thomas noted that this is the time of year to reconstitute the five standing committees. Board members were asked to express their interest to continue in their current role or advise of the desire for a new assignment. He noted that staff will be developing a list of committees and their members, which will be voted on at an upcoming meeting. He stated that following that, each committee would need to appoint a Chair and Secretary for the next year.

#### **E) Board Self-Evaluation**

Thomas stated that the survey responses were provided in the Board packet. He stated that ten responses were received. He highlighted some of the comments received as to what the Board could do better. He asked if the Board liked this process better than the last and received confirmation from the Board on a preference for the new format. He stated that an evaluation of the Executive Director was also completed; and those results will be reviewed in a closed session at an upcoming meeting.

### **14. TREASURER REPORT**

Anderson provided a brief update, noting that he completed a final P&L statement which is close to the audit results which were just completed.

## 15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Introduced the new Administrative Coordinator, Maisyn Prueter, who joined the LMCD one week ago
- Updates were made to the wakes and lakes safety page
- Staff is moving forward on some of the initiatives
- She recognized all the good work of the Board that was reflected in the self-evaluations
- M. Cook's last day will be February 23<sup>rd</sup>. Appreciation was expressed for all his contributions

Baasen thanked M. Cook for all the work he has done, noting that he has done a great job as an ambassador for the LMCD.

Kroll echoed those comments.

M. Cook thanked the Board, noting that this has been a tremendous experience.

## 16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt reported that the group will meet on Friday noting that Eric Evanson from LMA will be attending to discuss partnership opportunities. He stated that a representative from the University of Minnesota will also attend to provide input on his experience with carp. Three additional AIS management applications have been received that will be reviewed and forwarded to the Board if approved at the committee level.

Communications: Hoelscher welcomed any members that would like to join the committee. The group will next meeting on February 17<sup>th</sup> at 9 a.m.

Finance: Anderson reported that the committee met about one week ago and noted that he will bring forward information to the next meeting.

Nominating Committee: This should be removed from the list.

Operations: Thomas stated that the next meeting is scheduled for February 15<sup>th</sup>.

Save the Lake: Baasen reported that the group will meet on February 22<sup>nd</sup> and will focus on continued commitment to safety on the lake, partnerships with other service partners on the lake, and amendment of the solicitation process.

## 17. ADJOURNMENT

**MOTION:** Baasen moved, Kirkwood seconded to adjourn the meeting at 9:37 p.m.

**VOTE:** A roll call vote was performed:

Anderson	aye
Baasen	aye
Brandt	aye
Chase	aye
Cook	aye
Hoelscher	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	absent

Motion carried unanimously.

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Gregg Thomas, Chair

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Dan Baasen, Secretary