

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, June 8, 2016
Wayzata City Hall

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

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

Absent: Jim Brimeyer, Interim Executive Director

4. APPROVAL OF AGENDA

MOTION: Jewett moved, Shuff seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Green stated that the 2016 LMCD Harvesting Program has commenced.

6. APPROVAL OF MINUTES- 5/11/16 LMCD Regular Board Meeting
5/25/16 LMCD Regular Board Meeting

MOTION: Thomas moved, Shuff seconded to approve the 5/11/16 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (12), Abstained (2, Hoelscher and Jewett); motion carried.

MOTION: Roy moved, Zorn seconded to approve the 5/25/16 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (12), Abstained (2, Hoelscher and Jewett); motion carried.

7. APPROVAL OF CONSENT AGENDA

Green amended item 7A, Audit of vouchers (6/1/16 - 6/15/16) to reflect the addition of check #20912 in the amount of \$355 to Westonka Public Schools for the Boater Safety Education Session room rental.

Shuff moved, Hughes seconded to approve the consent agenda as amended, making the change noted by Green above. Motion carried unanimously. Items so approved included: **7A)** Audit of vouchers (6/1/16 - 6/15/16); **7B)** Personnel assignments/compensation; consideration of Professional Service Agreement with Judd Harper and minute taking services; **7C)** Approval of draft mandatory Environmental Assessment Worksheet (EAW) for Howards Point Marina (directing staff to proceed with Minnesota Environmental Quality Board processing requirements).

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

There were no public comments.

9. PUBLIC HEARING

A) Lindbo Landing, New multiple dock license on Echo Bay to reconfigure storage (utilizing Qualified Commercial Marina Ordinance).

Herman directed the Board to the staff memo, dated 6/2/16, and provided the following overview of this agenda item via a PowerPoint presentation:

- Lindbo Landing is a legal, non-conforming facility with 265 feet of continuous 929.4' shoreline. They are currently approved for 42 boat storage units (BSU); 1:6' density.
- Proposed changes included: 1) increase dock length to 200' (QCM Ordinance); 2) convert 10 slides (BSUs 32 to 42) to 10 slips (BSUs 1-10); and 3) reconfigure BSUs 11-42 (uniform 32' length). This site would maintain conforming side setback requirements.
- Relevant LMCD Code Sections included an overview of the Qualified Commercial Marina, multiple dock license, and the dock use area (DUA) ordinances.
- Five comments submitted; four residential (one expressing concerns) with all acknowledging a well managed marina with professionally installed dock structures and one from the City of Tonka Bay who documented they did not have comments to offer.
- Approval recommended subject to strict conformance of dock construction/watercraft storage, watercraft within BSUs 26, 27, and 42 be fully contained, and slides be removed and no watercraft storage allowed along the shoreline.

Zorn questioned whether or not there would be any increase in parking. Herman stated that the applicant was not increasing the currently approved 42 BSUs but that 10 slides were being converted to 10 slips).

Green invited the applicant to address the Board.

Mr. Don Westman, owner of Lindbo Landing Marina stated that he and his wife have been in business for a long time and that he had worked closely with the LMCD in putting this plan together. The proposed application provided for a safer environment for his customers; including positioning the boats perpendicular to the waves.

Green opened the public hearing at 7:14 p.m.

Mr. John Senescall, 275 West Point Road in Tonka Bay, stated he has been a neighbor to Lindbo Landing Marina for 28 years and in that time he has seen two ownerships. Senescall stated that the Westmans have been outstanding neighbors and excellent marina operators. He wanted to impress upon the Board that the change in dock length to 200 ft. would impede his view of the Lake and he is not thrilled about it. With this new configuration, there will also be a boat traffic pattern change (bigger entrance swoop to their BSU). If there is a safety concern with Senescall's family from this new traffic pattern, he would expect this concern to be addressed with the LMCD and Lindbo Landing Marina. Lastly, he expressed an interest in the placement of a land marker to ensure consistent annual dock installation.

Mr. Blake Arnold, 230 West Point Drive in Tonka Bay, stated he has a boat docked at Lindbo Landing Marina and was happy with the way the Westman's manage the site. He believed the proposed configuration was better for the marina users and for the condition of the boats maintained there. Lastly, he stated the Westman's did a good job communicating this application process with the neighbors.

Green closed the public hearing at 7:19 p.m.

Jabbour questioned the setback requirement for canopies.

Herman confirmed the placement of the canopy was not dictating the setback requirement in this matter as the Code requires a 20' setback for structures extending from the shore 100 to 200 feet. This setback is required to be doubled when a multiple dock site is abutting a non-multiple dock site. To this end, any removal of the canopies would not have changed the required setback.

Jabbour stated he has removed sunken boats out of this area in recent years (created by larger wakes). To this end, he believed side opening BSUs are more vulnerable to wave action and that the reconfiguration of those BSUs would create a positive change in that regard.

Thomas referenced Senescall's comment relative to land markers for consistent dock installation. He questioned if this would be something the LMCD would require of should it be left to the property owners to resolve; acknowledging it could, at some point, be an enforcement issue for the LMCD.

MOTION: Roy moved, Thomas seconded to approve Lindbo Landing Marina, LLC 2016 Multiple Dock License subject to staff recommendations.

Herman requested clarification on the land marker discussion. It was the consensus of the Board to leave that matter to the property owners to address.

VOTE: Ayes (13), Abstained (1, Niccum); motion carried.

- B) Jerry Martin**, side setback and adjusted dock use area variance application at 10 Crabapple Lane on Gideon Bay.

Green stated the applicant has requested this agenda be tabled to the July 13th meeting.

MOTION: Thomas moved, Shuff seconded to table Item 9B to the July 13, 2016 Regular Board Meeting

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A) Adoption of draft LMCD Bylaws

Gilchrist directed the Board to both a red-lined and final draft version of the draft Bylaws as previously considered by the Board.

MOTION: Jabbour moved, Jewett seconded to approve the LMCD Bylaws as submitted.

VOTE: Motion carried unanimously.

- B) Request from City of Deephaven to remove restriction of power boats at approved District Mooring Areas (DMA).**

Herman directed the Board to the staff memo, dated 6/2/16, and provided the following overview of this agenda item via a PowerPoint presentation:

- Staff's review of the requested process and ultimate consideration by the City of Deephaven (City) Council. The City expressed an interest in allowing for watercraft (other than sail boats) within the DMAs. This would allow them to manage their respective buoy fields in an effort to accommodate their residents' needs. Additionally, they amended their Watercraft Space Ordinance to allow for all types of watercraft (at least 16 but not more than 25 feet in length).
- Background information included: 1) DMA licensed sites established by the LMCD in 1971, 2) four sites currently licensed, 3) an overview of a 1986 request by the City of Deephaven to increase the Carson's Bay mooring field, 4) the LMCD's request to phase out the use of power boats within the DMAs. This request resulted in a 1987 letter from the City of Deephaven to the LMCD offering a phased plan of action which was then added to the city's license since that date, and 5) the LMCD adopts DMA Permits Policy/Criteria in 1987 (overview provided).
- Staff sought Board direction and consideration of: 1) adopted DMA Policy and Criteria that outlined, amongst other conditions, sailboats only at DMA sites, 2) the level of interest and proposed process in reviewing and considering this request, 3) whether the Board would consider any conditions/restrictions such as size of boat/motor, maneuvering space, etc., and 4) would the Board charge a fee for an amendment to the license.
- Staff recommended a public hearing be considered if the Board moved for approval. Although the LMCD Code did not have a current application process defined for such a request, staff offered the

comparison of how this request may not have fit within a Reconfiguration or Minor Change application that would allow for the lack of a public hearing (substantial change in amount of Lake obstructed or occupied and type of watercraft stored).

- She entertained questions and comments from the Board.

Green requested clarification that the request at hand is for the City of Deephaven to place powerboats within their DMAs. Herman confirmed that was correct.

Jabbour stated he and Green viewed the DMAs from the water only to find many of the buoy fields were empty; hence the request from the city to meet demand. Additionally, they observed that many of the sail boats met the length requirements of the city's newly amended Watercraft Space Ordinance. To this end, he did not understand the need for a process to consider this request. He believed that was not the spirit of the Board's future direction and that the density of the bay traffic would be much greater should all the fields maintain sail boats that were traversing to a regatta every Thursday evening. He recommended the Board view Wayzata Yacht Club on Thursday evenings and witness the traffic at hand. Therefore, he believed the request would lessen the impact on the DMAs.

Green asked Gilchrist to advise the Board.

Gilchrist stated that because the restriction to not have power boats is placed on the license, the Executive Director does not have the authority to remove that condition. He concurred with staff that there is not a process established within the Code for this type of amendment. Therefore, the Board follows the same process offered: 1) an amended request to the LMCD, 2) Executive Director presents it to the Board, and 3) the Board acts. What staff is asking for is the Board's direction in a process to consider the request. This process could be as simple as the drafting of a resolution or the consideration of a public hearing as recommended by staff with subsequent resolution.

Jewett asked why there is not a minor change process for this type of request.

Gilchrist is offering that the process at hand is simpler than what is established for a minor change application process.

Prest requested clarification as to whether the Board could take action on the request at this meeting.

Gilchrist stated the Board could take action this evening. He stated it would be out of the ordinary for the Board to act without a resolution in front of them to consider based on the Board traditionally acting to direct council to draft a document for consideration at the next meeting.

Jabbour stated he is trying hard to get the Board away from the way they have performed business at the same time being honest, forward, and transparent. He provided examples of other city council meetings in which they vote to approve a resolution and not to draft a resolution. He was also trying to get the Board away from lengthy processes where the request meets the Code. He believed it was wrong to invite the public to a hearing in which the Board had no other authority but to approve a request based on meeting Code requirements. He

offered a comparison between holding a public information meeting vs. a public hearing. It was his opinion that the Board could pass a resolution at this meeting.

Klohs asked if the city had considered the LMCD's Municipal Planned Unit Development Dock License; offering examples of what would be available to them.

Jewett stated the city could not consider that process in the short term and had expressed an interest, in their own rights, to manage their own assets. He offered the city's ability to amend their own ordinance in one meeting which is now before the Board. He believed the LMCD has the opportunity to emulate the cities.

Thomas referred the Board to the approved LMCD District Mooring Area Permits Policy and Criteria within the packet. He stated a portion of this policy required DMAs to be within 200 feet of shore and that it be for sailboats with keels requiring the depth requested. He believed the LMCD was bound by that document unless changed.

Gilchrist stated there are two issues at hand: First, identifying the process (including whether there needs to be a hearing or not) and 2) acting on the 1987 DMA policy. This policy states only sailboats are allowed at DMAs. He stated the Board should, if inclined, first act on a policy. Second, in regards to Jabbour's interest in acting at this meeting, the Board could do so. As a general rule, he did not recommend such action based on other future applications that are more in depth whereby Findings of Fact and Order are needed. Legally, the LMCD could run into procedural due process issues in considering that option. Gilchrist recommended the Board provide him the opportunity to prepare a resolution on this matter for the Board's consideration at the next meeting.

Jewett clarified that of the four licensed DMAs on Lake Minnetonka, only one is specified as sailboats only. He believed that was providing an inconsistent message.

Hoelscher requested clarification as to the policy's requirement of 200' from shore and if there was a difference in how one moors a sailboat vs. a motorboat.

Jewett stated there is not a difference and that the city is merely asking to manage their assets.

Gilchrist reiterated that prior to the Board acting on the request, the policy needs to be suspended. He believed the policy deserved a more thorough review by the Board in the future.

Prest understood that the Board has to follow due process. However, he believed this matter was a no-brainer that the Board could address tonight.

MOTION: Prest moved, Jabbour seconded to suspend the LMCD's April 1, 1987 District Mooring Area Permits Policy and Criteria and amend the City of Deephaven's 2016 DMA License by removing the restriction of sailboats only.

Jabbour believed that the LMCD cannot create new DMAs; acknowledging the four currently licensed

sites were grandfathered in at the time the licenses were created.

Herman clarified that the LMCD does maintain a New Multiple Dock and DMA Application. However, it was her belief that the DMA portion of the application is to address individual moorings within the license and not the establishment of a field.

Jabbour would not recommend a Board vote on an application unless all the facts were before them. He did not foresee any additional information needed relative to this request.

Herman requested clarification as to whether the Board was going to charge a fee to amend the license. Herman was directed not to assess a fee.

VOTE: Ayes (13), Nays (1, Baasen); motion carried.

C) Approval of 2017 Budget

Hughes stated a Spring Park City Councilmember recommended the LMCD spend less money on the Watercraft Inspection Program and more on the Eurasian Watermilfoil (EWM) Harvesting Program.

MOTION: Roy moved, Jabbour seconded to approve the 2017 LMCD Budget.

VOTE: Ayes (13), Abstained (1, Klohs); motion carried.

D) Update from Executive Director Search Workgroup - Announcements update

Hughes stated the position announcement was distributed to various organizations and that a press release is currently being drafted.

A few Board member questions were fielded in which it was confirmed that Brimeyer had recommended the salary range be included in the position announcement and press release and that they would defer to Brimeyer as to the process in responding to current communication and the holding of the resumes.

11. UPDATE FROM STANDING LMCD COMMITTEES

Baasen offered that the Save the Lake Committee will hold a Watercraft Safety Education training session on Monday, June 13, 2016 at Mound Westonka High School. He stated that Jay Soule of AI & Alma's conducts the class with the assistance of other Lake Minnetonka stakeholders. He acknowledged the Lake Minnetonka Charter Boat Association for their assistance in annually installing the solar lights. Lastly, the next committee meeting is July 13, 2016. The committee will discuss whether or not there will be a banquet or fundraiser in the fall.

Green recommended all report any solar lights that may be out or missing. He proceeded to provide an update on the following: 1) the AIS Task Force did not meet this month, 2) the harvesting permit was obtained and the harvesters were launched on June 7, 2016 (outlining concerns relative to the safety of the pontoon), and 3) the

Watercraft Inspection Program was initiated on May 27th (Halstead, Wayzata, and Carson Bays). He stated it is unlikely the inspectors will be located at Cooks Bay this season.

12. INTERIM EXECUTIVE DIRECTOR UPDATE

In Brimeyer's absence, Herman reported on current Lake level; a Travel Channel filming that will take place on the Lake June 14th; and she directed the Board to an updated Special Event log within their handout folders.

13. OLD BUSINESS

Jabbour provided an update on the emergency responder's access ramp and acknowledged the leadership of the Sheriff's Department and the increasingly effective enforcement coverage of the Lake (eight minor consumptions and seven Boating While Intoxicated citations issued before June 1st.). He stated that public safety not only provides for a better quality of life it also enhances property values.

Baasen concurred that the Water Patrol is setting a serious tone for the 2016 boating season.

14. NEW BUSINESS

There was no new business.

15. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:18 p.m.

James Jay Green, Chair

Gregory J. Thomas, Secretary