

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., December 14, 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; Debra Zorn, Shorewood; Gregg Thomas, Tonka Bay; Dan Baasen, Wayzata; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Gregg Prest, Excelsior; Rob Roy, Greenwood; and, Sue Shuff, Minnetonka. Also present: Vickie Schleuning, Executive Director; Emily Herman, Administrative Assistant; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Gabriel Jabbour, Orono; Chris Jewett, Deephaven; and Bret Niccum, Minnetrista

4. APPROVAL OF AGENDA

MOTION: Roy moved, Zorn seconded to approve the agenda.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no chair announcements.

6. APPROVAL OF MINUTES- 11/09/16 LMCD Regular Board Meeting

MOTION: Prest moved, Shuff seconded to approve the 11/09/16 LMCD Regular Board Meeting minutes.

VOTE: Ayes (10), Abstained (1, Zorn); motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Thomas moved, Hughes seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (11/16/16 – 11/30/16) and (12/1/16-12/15/16); **7B)** October and November financial summary and balance sheets; **7C)** Jacob Bolinger, draft Findings of Fact and Order denying watercraft storage density variance to dock or moor two restricted watercraft at 3116 Westedge Boulevard on Halstead Bay; **7D)** Approval of Appointments for 2017 (Legal Services/Auditor/Official Newspaper/ Bank Depository): Civil Attorney, Kennedy & Graven, Chartered; Prosecuting Attorney, Tallen & Baertschi; Auditor, Abdo, Eick and Meyer (for 2016 Audit); Official Newspaper, Lakeshore Weekly News; and Banking Depository, Alerus Bank; and, **7E)** Updated LMCD Investment Policy.

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) 5th Street Ventures, LLC, new multiple dock license application to maintain the existing 13 boat storage units (BSU) and to add an additional BSUs utilizing the Qualified Commercial Marina ordinance, located within Seton Lake at 4681 Shoreline Drive in Spring Park (continued from the 11/9/16 LMCD Regular Board Meeting)

Green stated at the last meeting they received a lot of public comments regarding this application and the Board directed staff to gather additional information. He advised he will not reopen the public hearing for public comment.

Schleuning directed the Board to the staff memo, dated 12/14/16, and the Response Summary for the November 9, 2016 public hearing comments. She provided the following information via a PowerPoint presentation:

- An overview on the background of this application and the existing site plan;
- A second revised site plan, additional public comments, and a Response Summary from the November 9, 2016 Public Hearing included in the meeting packet.
- The applicant agrees to address nuisance and quality of life issues, lighting concerns, crime prevention measures, installation of a seasonal portable restroom, and transient dock issues.
- The definition of a bog versus a wetland and the rules for moving it. The bog/wetland dislodged in 2014 and Hennepin County was responsible to move it to a place where it will connect and not cause any navigational hazards. The agencies agree it is in an appropriate location.
- The Watershed District provides standards for dredging based on a General Permit through the MN DNR. When a permit is applied for, the impact is evaluated as it can potentially provide significant damage to lake.
- Hazardous buoys are under the purview of Hennepin County Environmental Services. The LMCD determines minimum wake zones.
- An overview on the differences between the original proposal and the revised proposal. The revised proposal, dated 12/14/16, includes: 17 additional BSUs (total of 30 vs. 41), documented distances across the channel expanded to 152 feet and 163 feet, and conforming setbacks. The proposed density ratio is 1:47.
- An overview on the environmental impact of the area. A sediment study and wetland delineation study are recommended for this area.
- An overview on navigation and safety through the channel. LMCD Code regarding setbacks establishes standards to address encroachments and proper navigation areas. The physical characteristics of the site and application of the recommended side setback seems reasonable and legal. The revised site plan increases distance from channel and results in reduction of

BSUs. Staff recommends continued use of BSU #14 (previously #13) since there are no documented problems.

- An overview of LMCD Code requirements and other factors: 1) approval of BSUs adjacent to bog/wetland contingent on results of lake sediment study and wetlands delineation study; 2) meet side setbacks (Section 2.01 Subd. 2(b)); 3) continue existing license condition regarding watercraft length overall to an additional four feet beyond BSU length; 4) restrict transient slips and Ports of Call (Section 2.03 Subd. 3(a)(4)); 5) property managed and watercraft operated in a manner that prevents damage to wetland, removal of emergent vegetation, or dredging (Section 2.03 Subd. 3a.(c), Section 2.03 Subd. 3(a)(7)); 6) lighting in compliance with submitted lighting plan approved by LMCD staff (Section 2.03 Subd. L2); 7) no temporary low water variances granted during period when lake level falls below elevation 928.0 National Geodetic Vertical Datum; 8) adequate sanitation and parking facilities provided onsite (Section 2.03 Subd. 3(a)(e)); 9) dock structures constructed and maintained in strict compliance with the approved site plan; 10) property maintained and operated in compliance with all other provisions of LMCD Code, and other applicable regulations, ordinances and State law; 11) Board may reconsider the permit granted in the event it determines that there may be additional adverse impact to the cattails or the wetland ecology of the area due to the use of watercraft at the facility; 12) removal of existing license condition finding that requires watercraft to use the south channel, except in emergencies; 13) removal of existing license condition regarding approval of BSU 14 (formerly BSU 13) is subject to annual review by the Hennepin County Sheriff's Office Water patrol.

Green inquired about the Wetland Delineation and Lake Sediment Studies. Schleuning commented based on conversations with the Minnesota Department of Natural Resources and Watershed District, the LMCD is recommending the studies. The applicant would need to hire someone and submit the results.

In response to Klohs, Schleuning clarified the setbacks and placements of the docks.

Hughes commented transient dock use at that site is not a good idea and should be limited to emergencies. Schleuning commented the code would allow transient slips, but would add to the traffic in the area by their nature of operation.

Klohs requested a summary statement regarding safety. Schleuning stated it is already a busy channel and the addition of these slips may not be adding significantly to the hazards and traffic in the area.

Klohs inquired if the application could be tabled until the results of the recommended studies are available. Gilchrist stated a final decision needs to be made within a cumulative 120 days outside of the EAW, or it will be automatically approved, unless the applicant agrees to an extension.

Thomas inquired when construction would begin if the application were approved contingent on the completion of the studies. Schleuning stated construction could start on the internal slips, but BSUs 26 through 30 would have to wait until the studies were completed.

Klohs pointed out the applicant has more than adequate lakeshore and meets all the required setbacks.

Green stated proposed dock structure keeps the prop wash and dredging in the same area it is today.

Hughes inquired if a condition could be added that all the boats be stored with the bow going in so that the props are at the back of the channel. Gilchrist stated reasonable restrictions and conditions can be added to the license.

Shuff inquired about documented safety issues. Schleuning stated they requested a report of incidents for the last few years. Based on the reports from Orono Police Department and the Hennepin County Water Patrol, there were a few incidents in the area, but not necessarily associated with 5th Street Ventures.

Mr. Butenhoff, owner of 5th Street Ventures, LLC provided the following comments in response to questions from Board members: 1) he would pursue the recommended studies and if it came back there would not be a negative impact, he would install proposed BSUs 26 through 30; 2) he is not interested in installing transients slips in this location; and, 3) he supports boats parked bow in/propellers out.

Klohs inquired who determines whether there would be a negative impact on the wetland based on the study. Gilchrist commented it is up to the LMCD to determine the impact. Green suggested holding off on the studies until they know how to interpret it.

Thomas suggested the results of the studies be forwarded to Minnehaha Creek Watershed District (MCWD) and Minnesota Department of Natural Resources (DNR) to get feedback and recommendations. Green agreed, but stated other factors may change while waiting for the results.

Klohs suggested they deny the application and request the applicant submit more information regarding the wetland impacts. Gilchrist stated they could deny it, or they could approve it with a condition of approval on the additional slips requiring the studies be completed and accepted.

Hoelscher stated the applicant was willing to take on the risk and the Board should grant the application with the condition that the he undertake the studies and hold off on BSUs 26 through 30. This allows the applicant to proceed with part of the requested dock area. The results of the studies can be determined with the recommendations of the other agencies suggested.

Gilchrist stated it would be difficult to hold the wetland area to a standard of no impact. He would refer to it as a Board determination of unreasonable impact as determined by the DNR and MCWD. Green stated he would prefer to address it as a separate application.

Hughes requested to add conditions regarding a non-transient dock and requiring the boats to park bow in first. Thomas pointed out the recommendations already include restrictions on transient traffic.

Baasen requested confirmation if public comments would be re-solicited. Green confirmed they would not.

MOTION: Hoelscher moved, Prest seconded to approve the new multiple dock license application for 5th Street Ventures, LLC, located at 4681, 4665, and 4695 Shoreline Drive, Spring Park, with the following two conditions: 1) Applicant completes and provides to the LMCD a lake sediment and wetland delineation study for BSUs 26-30; and 2) Applicant agrees boats will dock bow in first.

MOTION TO AMEND: Thomas moved, Baasen seconded, to amend the original motion directing Gilchrist to draft Findings of Fact and Order for approval of 5th Street Ventures LLC 2017 Multiple Dock License subject to: 1) the original motion and 2) recommended conditions outlined on page two of the memo dated December 14, 2016 under LMCD Considerations, item Nos. 1 (a through n) and 2; acknowledging that staff recommendation 1c) BSU numbers are amended to 26-30.

Gilchrist recommended staff prepare the findings and bring this item back for formal adoption at a future meeting. Prest believed staff has provided all the necessary recommended approval conditions, with the addition of two additional conditions (wetland delineation study and docking the watercraft bow first). He suggested the Board act tonight so the applicant can get started on construction. Gilchrist stated, that in talking with Schleuning, it is his understand that the Board has typically moved to direct attorney to draft Findings of Fact and Order (Findings) at the following meeting for approval (requiring no discussion at that time). He recognized that Prest had expressed similar interest for a different action at a prior meeting and that if it is the Board's will, they could approve the action prior to consideration of draft Findings. He was comfortable with action tonight; however, he would strongly suggest the Board direct staff to draft Findings for review prior to approval for variances and/or denials.

Prest inquired as to the 60-day Rule timeframe, in which Schleuning believed the Board had through January. Prest, then asked the applicant whether moving draft Findings for approval in January would affect proposed construction. Mr. Buttenhoff stated if it is delayed any longer, they will not be ready in time for the 2017 season. Prest solicited Thomas' intention as to whether his amended motion was to approve this evening or delay for Board review of the Findings. Thomas stated his motion did not address the timetable in approving the Findings.

Gilchrist recommended Thomas' motion encapsulate the interest in whether or not the Findings be brought back to the Board or approved this evening. Thomas stated action should be taken at this meeting.

Discussion was held at the Board level on the wetland delineation study and the inability to install BSUs 26-30 this season. Clarification was also provided that the wetland and sediment study would only be for BSUs 26-30 and not the entire site. Buttenhoff stated prior studies were done on the originally installed docks which, to his knowledge, did not document concerns.

Members of the audience spoke in protest in not accepting further public comment. Green stated that the public hearing for this application was held on December 14th in which comments were solicited; with that portion of the public hearing closed.

Green deferred to Gilchrist. Gilchrist recommended that the Board take action on the Motion to Amend and

then, at that point, if the Board would like to solicit further comments they may but are not required to do so.

VOTE ON Ayes (10), Nays (1, Green); motion carried.
MOTION TO
AMEND:

Green invited the public to address the Board on comments not previously heard.

Mr. Robert Carlson, 2350 Driftwood Lane in Mound, expressed concerns with the discrepancies in documented water levels, that the petition signed by 350 people state it is an unsafe idea, and he recommended amending the motion to require a neutral party obtain the professional to do the wetland delineation and sediment study.

Mr. Richard Wigner, 2332 Driftwood Lane in Mound, concurred with Carlson and added that the residential meeting with the applicant was not as amicable as presented at this meeting. He found it interesting that the plans continue to change.

Ms. Angie Perry, 2308 Driftwood Lane in Mound, inquired if a dock is allowed on 100 feet of protected wetland that is owned. Green stated yes.

Mr. Bill Little, 2415 Bantas Point Lane, Wayzata proposed an independent study be done as well as an evaluation of the area on the eastern shallow end as he believed damage to the Lake bottom already exists.

Mr. Bruce Nusbaum, 3480 North Shore Drive in Orono, requested the marina have adequate trash receptacles.

Mr. Richie Anderson, owner of three Lake Minnetonka marinas, stated having a marina perform wetland delineation is unheard of. If they want to dredge the area, they will request a permit. That is not a part of the LMCD's jurisdiction. The floating docks will not affect the bottom of the lake; acknowledging the fisherman already boat in the area of concern. Bow in parking is dangerous and some boats have entry through the back of the boat.

Mr. Scott Gaylord, 2352 Driftwood Lane in Mound, stated this area is very shallow and by backing in a boat, prop dredging is taking place, which is a felony. He believed his comment made at the November public hearing relative to a boat density study was taken out of context. There are other docks in the area and the channel is not wide. The area is heavily traveled and people will pull out recklessly into traffic. There is no study done on how busy the channel is during the peak of summer.

Klohs asked the applicant if it was okay for the LMCD to order the wetland delineation and sediment studies (providing for the applicant's criteria) for reimbursement back to the LMCD so that it shows it is being done fairly. Mr. Buttenhoff agreed. Mr. Baasen commented the LMCD is going to use the DNR and Watershed District to interpret the study and Thomas commented it will create more work for staff.

Hoelscher and Shuff believed a credible entity can do the study.

On Hoelscher's behalf, Prest clarified, as second motioner, conditions for the approval of 5th Street Ventures, LLC 2017 Multiple Dock License.

- a) Continue the existing license condition regarding overall length of the watercraft stored at the site.
- b) Approval of BSUs 26-30 is contingent on results of a lake sediment and wetland studies that will be reviewed by the MN DNR and Minnehaha Creek Watershed District for interpretation prior to LMCD acceptance and dock installation.
- c) Applicant must meet side setbacks as prescribed in approved site plan, dated 12/14/16.
- d) The property must be managed and watercraft operated in a manner that prevents damage to the wetland, removal of emergent vegetation, or dredging.
- e) Transient slips and Port of Call are restricted to avoid creating undue traffic and potential navigational hazards in the Channel.
- f) Signs must be installed to inform the public that there is no unauthorized dock use and/or no trespassing. Signs must be located on the dock entrance and on the lakeside areas of the dock in the language determined enforceable by the applicable law enforcement agency.
- g) The lighting must be in compliance with a submitted lighting plan approved by the LMCD staff. The lighting plan must provide safe lighting of the dock and minimize nuisances to adjacent properties.
- h) No temporary low water variances shall be granted during the period when the Lake level falls below elevation 928.0 National Geodetic Vertical Datum.
- i) Adequate sanitation and parking facilities will be provided onsite.
- j) Dock structures shall be constructed and maintained in strict compliance with the current Site Plan.
- k) The property must be maintained and operated in compliance with all other provisions of this Code, and other applicable regulations, ordinances and state law.
- l) The Board may reconsider the permit granted hereby in the event it determines that there may be additional adverse impact to the cattails or the wetland ecology of the area due to the use of watercraft at this Subject Facility.
- m) Remove existing license condition requiring watercraft to use the south channel except in emergencies.

- n) Removal existing license condition regarding approval of BSU 13 (proposed BSU 14) is subject to annual review by the Hennepin County Sheriff's Office Water Patrol.
- o) Watercraft must dock bow in at all BSUs

VOTE ON ORIGINAL MOTION (AS AMENDED): Ayes (10), Nays (2, Green and Zorn); motion carried.

10. OTHER BUSINESS

- A) EAW Records of Decision and Resolution, ordering a negative declaration, with conditions, on the need for an Environmental Impact Statement (EIS) for Mandatory Environmental Assessment Worksheet (EAW) documents.
 - City of Excelsior Record of Decision and Resolution 152
 - Brown's Bay Marina (Site 2) Record of Decision and Resolution 153

Herman directed the Board to a staff memo, dated 12/14/2016, and provided the following information:

- The City of Excelsior is proposing to utilize the Municipal PUD Multiple Dock License to expand three piers out to 200 feet for additional watercraft storage and congregating the transient storage at an existing pier.
- Browns Bay Marina (Site 2) is proposing to utilize-the Qualified Commercial Marina ordinance to reconstruct and reconfigure the existing licensed site out to 200 feet from shore with conforming side setbacks.
- An overview of similar EAW comments from six agencies for both EAWs provided in the meeting packet.
- Brown's Bay Marina (Site 2) would need to confirm the proposed project would not interfere with the existence of an 18-inch ductile pipe Forcemain Interceptor located near Lake bottom of the site.
- Staff recommends independent approval of both draft Records of Decision and Resolutions declaring a negative need for an EIS base on adherence to Guidance actions outlined within each draft EAW.

MOTION: Prest moved, Roy seconded to adopt Excelsior Record of Decision and Resolution 152 Ordering a negative declaration on the need for an Environmental Impact Statement for the City of Excelsior EAW.

VOTE: Motion carried unanimously.

MOTION: Thomas moved, Shuff seconded to adopt Browns Bay Marina (Site 2) Record of Decision and Resolution 153 ordering a negative declaration on the need for an Environmental Impact Statement for Brown's Bay Marina (Site 2) EAW.

VOTE: Motion carried unanimously.

A) Ordinance Amendment, consideration of approving draft amendment regarding the reconfiguration of non-conforming multiple dock licenses

Gilchrist directed the Board to the staff memo dated December 14, 2016 and attached proposed Ordinance amendment. He provided the following overview:

- The purpose of the amendment is to give owners the ability to reconfigure their nonconforming structures by eliminating the public hearing process, removing the separate procedures for qualifying and non-qualifying operations, focuses on linear footage instead of square footage, removes watercraft length limitation, and removes the abandonment provision by allowing owners to retain the original perimeter and linear footage of the structure
- The Executive Director can allow a change without a public hearing or the issuance of a new dock license. The Executive Director may continue to refer a minor change application to the Board for a final decision and must refer any application they propose to deny.
- On page 2 of the Ordinance, first full paragraph it should read, "...the Executive Director may approve the application without a public hearing..."
- On page 7 of the Ordinance, Subd. 9, the last sentence should read, "If the Board approves the application..."

Klohs inquired if all the information needed for the public is in this area of the Ordinance so they are not caught by something in another section. Gilchrist stated it is heading that way and the latest adopted Ordinance would maintain control. The goal of the recodification is to have everything grouped together.

Baasen stated the recodification is meant to keep things clear and simple and in the original Code, entities were separated for a reason. Gilchrist clarified the consolidation of entities is only in the section regarding the reconfiguration of nonconforming structures.

Schleuning commented there are nuances that need to be looked at. Baasen stated he would not want owners to lose flexibility and requested more time to look through the proposed changes.

Zorn suggested they have an overview of the recodification timeline to see where this fits in the overall scheme. Gilchrist stated this is outside of the recodification process and an attempt to clean sections up. He has begun working on a document that shows which similar sections of the Code should be brought together and would like the work group to look at it and then bring it before the Board before any changes are made.

Prest stated the recodification document is going to read like an ordinance and there needs to be another layer for people to read that summarizes the Code more clearly. He referred to examples provided and stated he hopes it is written like option No. 1. Gilchrist confirmed it is drafted like option No. 1.

Thomas referred to Article I, Subd.1 of the Ordinance, where it reads, “but the Board determines it is not necessary, and can result in unreasonable hardships” and inquired if they were comfortable with the use of the words “unreasonable hardships”. Gilchrist stated it is existing language, not new language that has been added, and unreasonable hardships are no longer used for a variance.

Zorn left the meeting at 9:15 p.m.

Klohs stated the recodification process is going to take a long time. He inquired if this document is a reasonable example of what the recodification document could look like and if it could be refined for use ahead of the completed recodification. Gilchrist confirmed it was written this way intentionally as an example. The Board can move this document forward for use ahead of recodification completion.

Baasen requested time to read the document to make sure it is heading in the right direction. Green suggested comments about the document be directed to Schleuning or Gilchrist before the January meeting where it can be read again. Schleuning asked if diagrams are helpful in the document and requested that Board Members compare the diagrams to make sure they are clear. Some language needs to be modified to make sure it is not creating any unintentional restrictions.

Gilchrist encouraged Board members to speak up if there is an Ordinance that he has written that they are not comfortable with.

Thomas inquired what would happen if an applicant wanted the same BSUs and the same perimeter, but wanted longer fingers within that perimeter. Klohs stated they cannot go over the maximum linear footage.

B) LMCD Board Meetings Contracts/Agreements

- City of Wayzata, agreements for use of Community Room and Video Production Studio
- Lake Minnetonka Communications Commission, agreement for Video on Demand Streaming Services
- Producer Agreement, Mark Hodges
- TimeSaver Off Site Secretarial, Inc.

Schleuning commented Producer Daphne Oaky is retiring and thanked for all her years of dedication and service. The recommended new Producer, Mark Hodges, would be starting in January. Staff also recommended moving forward with the minute-taking service. Over time some standard legal language and conditions will be incorporated into documents similar to the updated Producer Agreement.

MOTION: Roy moved, Shuff seconded to accept LMCD Board Meeting Contracts/Agreements as presented.

VOTE: Motion carried unanimously.

C) Discussion Regarding Appointment of Nominating Committee for 2017 LMCD Board Officers

Schleuning stated the Board member terms run through January and inquired if and when a nominating committee should be set up.

Green commented there are seven Board members whose terms are up in January, but are aware of two not coming back. Schleuning stated she has not received any official notifications. Prest suggested the creation of a nominating committee be put on hold until the new Board is in place. Green said it would need to happen at the first meeting in January.

MOTION: Baasen moved, Roy seconded to appoint a nominating committee at the first meeting in January with recommendations presented at the first meeting in February.

VOTE: Motion carried unanimously.

11. UPDATE FROM STANDING LMCD COMMITTEES

Baasen stated staff sent out the Save the Lake donation solicitation letters and that the Committee will be meeting again in January. He encouraged Board members to donate to Save the Lake.

Green provided an update on aquatic invasive species (AIS): 1) the 2016 Watercraft Inspection Report is included in the packet for approval. The LMCD received \$9,100 off inspection costs from Hennepin County with the final cost at \$12,000, 2) he attended a meeting in Carver County to provide some guidance with their AIS program, 3) he and Schleuning attended a meeting led by the DNR for a pilot program that allows lake service providers to take boats off the lake to be cleaned without inspection if returned back to Lake Minnetonka and 4) the DNR conducts check stations for AIS and is in court with one.

MOTION: Prest moved, Roy, seconded to accept the 2016 Watercraft Inspection Report.

VOTE: Motion carried unanimously.

12. EXECUTIVE DIRECTOR UPDATE

Schleuning reported on the following items: First, regarding a prior meeting question asked about shoreline calculations for mooring, she stated the Code does not document shoreline calculations for licensed moorings; however, moorings can be converted into slips under certain conditions. Second, the attorney Gilchrist has looked at the Facebook page and suggested a couple of minor changes. Third, staff has drafted a social media policy and a photo release form. Also, in addition to the letters, staff sent out a Save the Lake donation email and seemed to result in some donations as indicated with the timing of PayPal payments.

13. OLD BUSINESS

There was no old business.

14. NEW BUSINESS

Klohs inquired if Save the Lake and Environmental should be formalized within the Strategic Plan when it is approved next year.

Meyer commented he will be gone for the next three months.

15. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:36 p.m.

/s/ James Jay Green, Chair

/s/ Gregory J. Thomas, Secretary