

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS SPECIAL MEETING**

7:00 P.M., May 17, 2017
Mound Council Chambers

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; Ann Hoelscher, Victoria; Chris Jewett, Deephaven; Dan Baasen, Wayzata; Bill Cook, Greenwood; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; and, Gregg Prest, Excelsior. Also present: Vickie Schleuning, Executive Director; Emily Herman, Administrative Assistant; and Andrew Biggerstaff, LMCD Legal Counsel.

Members absent: Mike Molitor, Minnetrista; Sue Shuff, Minnetonka; Gregg Thomas, Tonka Bay; and Deborah Zorn, Shorewood.

The City of Orono did not have representation present.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no chair announcements.

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

There were no public comments.

7. PUBLIC HEARINGS

A) City of Wayzata, 2017 Commercial Dock License; off of Eastman Lane at the street access of Arlington Circle South, Wayzata, MN 5539 (Wayzata Bay)

Herman directed the Board to the staff memo, dated 5/17/17 and provided the following information by a PowerPoint presentation:

- An overview of the action presented to the Board for approval or denial for the City of Wayzata 2017 Commercial Dock License.

- A summary of the proposed dock includes: 1) It is located off of Eastman Lane at the street end access of Arlington Circle South; 2) There is 60 feet of lakeshore at this site; 3) The dock measures 279 square feet (43 feet long by five feet wide with an eight foot by 13-foot platform); 4) There are bench seats along the sides of the dock; 5) No boat storage units are requested; 6) The dock is intended to be easily accessible by users and will also be used for educational purposes.
- An overview of the code considerations for this request include: 1) The proposed dock meets the definition of a commercial dock license (Section 1.02, Subd. 8) and requires a license under Section 2.03, 2) The Board may also consider the review criteria (Section 2.03, Subd. 3), The proposed installation is 43 feet in length and meets the requirements for dock length, which is a maximum of 60 feet (Section 2.01, Subd. 2a), 4) The proposed installation meets the required setbacks of 10 feet next to multiple dock property and 20 feet next to a non-multiple dock property (Section 2.01, Subd. 2b), and, 5) The dock dimensions may exceed eight feet in either it length or width, but not both (Section 2.12, Subd. 12).
- Other review criteria to consider: 1) It is structurally safe for intended users, 2) Control of unauthorized transient would not create a volume of traffic on the lake (signage recommended), 3) Creation of nuisances are not anticipated, 4) No trash receptacles are being considered (carry in/carry out), 5) No sanitary restrooms will be provided, and 6) Parking is currently not provided at this location.
- The LMCD solicited review and comments from the Mn/DNR Hydrology and Fisheries Departments and Minnehaha Creek Watershed District. No comments were received from either agency. Additionally owners within a 350-foot radius of the proposed site received notice of this public hearing. As of May 9, 2017, one inquiry was received regarding concern for transient use and the recommendation that the dock could be used for sailing school and regatta viewing. The caller was informed no transient docking was proposed, helping alleviate this concern.
- Public hearing requirements and legal notification.
- Staff recommended the Board approve the City of Wayzata 2017 Commercial Dock License off of Arlington Circle South in Wayzata Bay subject to the following conditions: 1) The applicant post a sign at the end of the dock indicating no transient use, violators will be prosecuted, or other language as recommended by law enforcement personnel; 2) The applicant post a sign indicating maximum number of pedestrians allowed on the dock at one time; and 3) The applicant work with LMCD regarding corrective measures if problems of unintended use occur.

Green opened the public hearing at 7:11 p.m.

Rob Hunt, 130 Chicago Avenue North, Wayzata Sailing School Chair, inquired if the diagram of where the dock lands on shore is correct, as it lands in the middle of a sumac clump that he helped prune and preserve last year.

Mike Kelly, Wayzata City Engineer, commented they will work with the Wayzata Sailing School to define a precise location for the dock. Green confirmed this is okay as long as they work within the required setbacks.

No additional comments were offered and the public hearing was closed at 7:14 p.m.

Schleuning requested the City of Wayzata provide a copy of the updated site plan if changes are made.

MOTION: Baasen moved, Hughes seconded to approve the City of Wayzata 2017 Commercial Dock License for the placement of a seasonal pedestrian viewing dock at the Arlington Circle South street access.

VOTE: Motion carried unanimously.

B) The Museum of Lake Minnetonka, 2017 Commercial Dock License, Special Density, and Variance, 687 Excelsior Boulevard, Excelsior, MN 55331 (Excelsior Bay)

Schleuning directed the Board to the staff memo, dated 5/17/17 and provided the following information by a PowerPoint presentation:

- An overview of the action presented to the Board for approval or denial of commercial dock license, special density license, and variance for The Museum of Lake Minnetonka.
- A detailed overview of the background of this site. It was previously licensed under multiple dock license as part of the Bayview Event Center (Bayview) with 370 feet of shoreline. However, the license is no longer valid because Bayview is closed and no longer meets license conditions. Bayview's commercial dock and variance applications are scheduled for a public hearing on May 24, 2017 for 2 BSUs. The Museum applied for a separate new commercial dock and special density license.
- The Museum plans no changes to dock or use and indicates ownership of dock and access through easement rights across from Bayview's property. LMCD code allows for an applicant other than owner to apply for commercial dock and special density licenses. The applicant submitted a *Pier and Access Lease Agreement and Notice to Renew License*, indicating an agreement through March 16, 2025 and showing a 20-foot easement access to the lake.
- An overview of the variances, density and dock use area: 1) Length variance dated 3/19/96 will transfer to the applicant since length is specific to the Museum dock and to the Minnehaha; 2) Setbacks are met for Museum dock based on the overall Bayview site; 3) Previous site had a special density license and code requires it if density is greater than 1 boat storage unit (BSU) per 50 feet; and, 4) Variance from 3/22/95 is no longer applicable since the code regarding the dock width changed.
- An overview of the special density license requirements. The special density license allows up to one boat per 10 feet of shoreline (1:10 ft.) with conditions and the Museum is proposing 1:20 ft. based on access easement. The code required a minimum of 20 amenity points and the Museum is proposing 21 amenity points.
- A detailed overview of the Commercial Dock and Special Density review criteria. She noted they do not have separate parking requirements for the Museum because it is for berthing only.
- The LMCD solicited review and comments from Mn/DNR Hydrologist and Fisheries, Minnehaha Creek Watershed District, and the City of Excelsior. The City of Excelsior indicated parking is not required specific to Minnehaha due to berthing only and the conditions of the City's Conditional Use

Permit indicates exclusive mooring of this dock for Minnehaha. No other comments were received. Additionally, the LMCD submitted notification of the public hearing to residents within a 350 foot radius of the site. The Excelsior Chamber of Commerce communicated they strongly urged approval to keep the Minnehaha operating in Excelsior. No other comments were received.

- Public hearing requirements and legal notification.
- Questions to be considered by the Board include: 1) Compliance with current code; 2) Sufficient interest of applicant in dock/access to warrant granting licenses and variance; 3) Possible term limits and conditions; 4) Lake-wide impact; 5) How approval of this will affect other license applications for the site; 6) Parcel viewed as one site overall with continuous shoreline and two licensees, one being for a leasehold interest considered; 7) Reduction of 20 feet of shoreline from consideration of other docks on site; and 8) Continuation of any licenses or variances. It was further stated that the overall Bayview site would not be able to exceed the code requirements, which includes the Museum license if approved.
- Staff recommended issuance of commercial dock license and special density license for the Museum expiring 12/31/17 as presented. It meets current code based on leasehold interest, remains as part of the overall site/property for the purpose of compliance with the code, and allows flexibility if owner of property changes. The Board reserves the right to review license and conditions and failure to abide by any of the conditions in the Code may lead to revocation of the license, at the discretion of the Board.

Gabriel Jabbour commented staff did a good job summarizing the request working with them on the application.

Green opened the public hearing at 7:34 p.m. No additional comments were offered and the public hearing was closed at 7:35 p.m.

Baasen inquired if it is standard to have the license expire at the end of the year. Schleuning responded all licenses are renewable annually and this would be reviewed ongoing.

Klohs requested confirmation that access easement agreement expires 2025 and this application is renewed annually. Schleuning confirmed this.

Klohs inquired why the Museum and Bayview are not working together and if the decision tonight will have any effect on Bayview's application review at the next Board meeting. Schleuning responded the Bayview application clearly excludes the Minnehaha and she is not sure if they plan to honor any contracts or agreements with the Museum. Bayview property owners have been notified throughout the process, but have not provided any comments or opposition to the Museum's application.

Biggerstaff commented upon review of the application, they cannot offer a legal opinion on the enforceability of a private lease between private property owners. The applicant has provided some evidence they have interest to the property. In reviewing the Minnehaha's property interest, the code allows for a license application to be presented by someone other than the fee owner. This decision could affect Bayview's

application as a benefit to the property. Schleuning commented it is viewed as a full site so it would not be allowed to have additional BSUs than allowed by code in the future, but the amenities would apply.

Klohs inquired if Bayview, as a single owner; could have eight BSUs instead of seven when the easement expires. Biggerstaff advised when the easement expires; the property interest that gave the Minnehaha the ability to apply for the licenses would be gone. At that point, a license would be inappropriate since they could not explain their relationship with the property owner.

Klohs inquired if Bayview has a specific conflict with the City, could that affect what is being presented. Jewett commented it is irrelevant regarding this license application.

Jabbour, speaking on behalf of himself, stated the United States Government assisted in The Lake Minnetonka Museum in acquiring this. Bayview has a financial benefit for the Museum to disappear. The previous owner did not take control of the property and he received major tax benefits. The rights go from an easement on the land to dissect the land and any future owner who may want to build on it does not want to dissect the land. Further, he stated that the Board is only looking at the riparian rights. There are other land rights such as 25 parking spaces across the street and the loss of Bayview's liquor licenses due to a limited number that can be issued by the city. Lastly, he stated the Board is going to have a bigger problem; that he owns the rights to the property next door (to the north) and that he made major concessions that were specifically done for circumstances that previously existed.

Klohs commented they should not worry about land-based issues related to the City. In the past, they have had similar situations, and when Bayview presents their application next week, they could get intertwined in conflict going forward.

Hoelscher commented she supports docking the Minnehaha, but wants to make sure they are not giving any more legal rights to the Museum than they already have. They need to make sure their findings do not supersede the lease and grant validity to it. Biggerstaff commented it is a good idea to include a finding that shows if the lease is found invalid, the license terminates or it requires Board review.

Hoelscher inquired what the rush is to decide on this application tonight if Bayview is coming in next week, or if something temporary could be done. Jabbour responded the boat was supposed to be in the water on May 6th and it is part of an event in Excelsior on May 20th. They are requesting a license and vote on the findings because it is not something they can just take in and out of the water easily.

Neil Weber, with The Lake Minnetonka Museum Board of Directors, commented if they cannot get the boat in the water in the next few days, they will lose Memorial Day weekend. When the boat goes in, it will take several days to make sure it is operating correctly and crews need to be trained.

MOTION: Jewett moved, Cook seconded to approve draft Findings of Fact and Order approving The Lake Minnetonka Museum 2017 Commercial Dock License, Special Density License, and variance, 687 Excelsior Boulevard, Excelsior, Minnesota.

Klohs inquired if they could include a condition that if the lease is deemed invalid, the Board could revisit it. Biggerstaff suggested it state, "at such time when the lease is no longer valid".

Jabbour, for the record, stated the following in case the matter ever goes to Court:

- The Lake Minnetonka Museum is on the second owner of the property going to the third;
- The owners have never not accepted the lease;
- The lease was renewed once with a present owner;
- The LMCD advertised the public hearing and gave notification to the neighboring owners, including him, and not one person objected to this request as of this date.

Hoelscher inquired about the Waiver of Claims and Early Start Agreement. Schleuning stated it is not needed since they are voting to approve the application.

VOTE: Motion carried unanimously.

8. ADJOURNMENT

There being no further business, the meeting was adjourned at 7:52 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary