

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS SPECIAL MEETING
Change in Start Time of Regular Board Meeting Work Session
7:00 P.M., May 24, 2017
Wayzata City Hall**

WORK SESSION

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

Members present: Jay Green, Mound; Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Chris Jewett, Deephaven; Dan Baasen, Wayzata; Bill Cook, Greenwood; Gary Hughes, Spring Park; Fred Meyer, Woodland; Mike Molitor, Minnetrista; Gregg Prest, Excelsior; and, Sue Shuff, Minnetonka. Also present: Vickie Schleuning, Executive Director; Emily Herman, Administrative Technician; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Dennis Klohs, Minnetonka Beach and Deborah Zorn, Shorewood. The City of Orono did not have representation present.

1. Communication Updates – Save the Lake Solicitation Letter, 2017 Summer Rules

Schleuning directed the Board to a draft copy of the Save the Lake Solicitation Letter and 2017 Summer Rules pamphlet within their handout folders. She provided an overview of the Summer Rules brochure by pointing out how the pamphlet is a summary of the most common items, organized by subject, whether the rules are state or LMCD regulated, that a variety of stakeholders provided their review and input, and that it will be printed soon, and funds were budgeted. Hughes recommended paddleboards be referenced on page 3.

2. It was the consensus of the Board to amend the Work Session agenda to receive an update regarding the hiring of seasonal staff members for the Eurasian Watermilfoil (EWM) Harvesting Program.

Schleuning had reported that the LMCD is having difficulty recruiting seasonal employees for the EWM Harvesting Program. She considered a variety of options through the following communication avenues:

- Contracting with Sentence to Serve. This option was not the best option since they may not be able to work a full season;
- Contacted the Three Rivers Park District (TRPD) to request excess applicants sent to the LMCD's direction;
- Held discussion with some Board members on setting up a Board harvesting timeslot schedule; and
- Consideration of college intern merit systems.

The Board discussed raising the salary up to \$15 per hour and whether the number of harvesting hours should be cut back. They directed Schleuning to take steps to provide a program.

**Formal Board Agenda
7:00 p.m. to Adjournment**

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; Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Chris Jewett, Deephaven; Dan Baasen, Wayzata; Bill Cook, Greenwood; Gary Hughes, Spring Park; Fred Meyer, Woodland; Mike Molitor, Minnetrista; Gregg Prest, Excelsior; and, Sue Shuff, Minnetonka. Also present: Vickie Schleuning, Executive Director; Emily Herman, Administrative Technician; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Chris Jewett, Deephaven; Dennis Klohs, Minnetonka Beach, and Deborah Zorn, Shorewood. The City of Orono did not have representation present.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no chair announcements.

6. APPROVAL OF MINUTES- 5/10/17 LMCD Regular Board Meeting

MOTION: Thomas moved, Shuff seconded to approve the 5/10/17 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Thomas moved, Meyer seconded to approve the consent agenda as submitted. Items so approved included: **7A)** Audit of Vouchers (5/11/17; 5/16/17 – 5/31/17); **7B)** April Finance Summary and Balance Sheet; and, **7C)** Resolution Accepting Save the Lake Contributions (4/14/14 - 5/16/17).

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

- Bayview Event Center – Commercial Dock and Variance application, 687 Excelsior Boulevard, Excelsior (Excelsior Bay)

Schleuning directed the Board to the staff memo, dated 5/24/17, and provided the following information via a PowerPoint presentation:

- An overview of the action presented to the Board; directing the attorney to draft Findings of Fact and Order for approval or denial of the Bayview Event Center (Bayview) Commercial Dock and Variance for consideration at the June 14, 2017 meeting; or, directing staff to research additional information and prepare Findings of Fact and Order.
- In light of recently submitted documentation pertaining to this application, staff recommends the Board allow additional time for review of the documentation. Staff will present additional research and findings to the Board at the June 14, 2017 meeting.
- An overview on historical licensing on this site. It was a previously licensed multiple dock site with 37 boat storage units (BSU) on 370 feet of shoreline.
 - 1995, variance and special density was approved for 420 feet of shoreline and 42 BSUs.
 - 1996, variance for length and width was approved for a permanent dock to construct a 60-foot extension to a 100-foot pier with a 16 foot by 8-foot platform to accommodate the Steamboat Minnehaha.
 - 2000, special density license was approved and referenced grandfathered dock exceeding 100 feet.
 - 2003, special density license was approved for the expansion of length for BSUs 1-8.
 - 2003, a variance for dock use area was approved to adjust the dock use area to the southern extended side site line, converging property lines had a 30-degree deflection, and the approved site plan indicated dock use area with north border angled to dolphin poles.
 - 2017, museum license approvals included a commercial dock and special density license of 1:20 feet. The approval was based on uncontested dock ownership through 20-foot easement rights across Bayview Event Center's property via a *Pier and Access Lease Agreement and Notice to Renew Lease* valid through March 2025. This is considered part of the overall site as part of a leasehold interest. It was based on the dock use area presented as the whole Bayview site.
- An overview of the proposed site plan and license request that is based on a transitional state and includes the following:
 - Commercial dock license: maintain existing structures, dock two watercraft, place three gates along the dock entrances of the site, place chains along the transient BSUs to

- prohibit unauthorized transient use. Applicant stated they will work with Museum to provide access and secure storage for berthing of Steamboat Minnehaha.
- Variance (adjusted dock use area): new to this license, but to continue previously licensed variance from 2003. It addresses the setback encroachments of a 30-degree deflection to the southern extended side of the property line.
- An overview of the commercial dock review criteria. A license is required and the Board may impose conditions or consider criteria (Section 2.03, Subd. 3).
- The LMCD solicited review and comments from local government agencies. No comments were received. One letter was received from Attorney Peter Johnson dated 9/29/16, and provided in the Board's handout folder. Additionally, several documents were submitted through today to staff for review.
- Public hearing requirements and legal notifications.

Jewett arrived at the meeting at 7:18 p.m.

Green clarified there is a variance to the south, but nothing to the north. Schleuning stated that the variance does not specifically address the north side, but it was indicated on the site plan. It specifically states the southern variance. However, in documents with properties to the north, there is a variance and staff was advised an agreement regarding its use. The dotted property line on the north side has been part of an approved site plan for several years.

Hoelscher inquired if the dock was permanent and the condition of it. Schleuning confirmed the dock is permanent and the property owner is responsible for maintaining it.

Hoelscher inquired about the licensed charter boats that will not be in operation this year. Schleuning confirmed the applicant specifically stated they would like the license to extend through the end of the year for the sale of the two commercial boats that are there now.

Molitor inquired why the letter in the Board packet is dated September 29, 2016. He noted it was not addressed to the LMCD. Schleuning commented there have been extenuating circumstances for this property. Green pointed out the LMCD was copied on the letter.

Prest requested Schleuning highlight the tax forfeited land and how it overlays this property. Schleuning pointed it out on the map and stated they need to look at the area more thoroughly.

Thomas inquired if the June 14 meeting would be a continued public meeting. Gilchrist advised it is up to the Board to make that decision. Schleuning suggested they continue the public meeting to allow additional comments on any new information.

Hoelscher inquired about what happens to the boats that are located on the site if they do not act on this license request tonight. Schleuning pointed out that Bayview had a license for 2017 that became invalid, and they acted promptly when they were contacted by the LMCD to obtain a new license. She does not believe it was Bayview's intent to not get a license. It is appropriate to have the boats there while the Board proceeds,

and if cooperation does not continue, enforcement options exist.

Prest commented cooperation and communication seem to be lacking. These issues have been ongoing since last fall. He would like to see more timely communication and cooperation from Bayview to make things happen.

Peter Snyder, representative for Bayview and the property owners, commented Bayview intends to be attentive to this matter. The former license that was granted under the existing circumstances would still be continuing had the sale of Bayview not fallen through due to extenuating circumstances. When it fell through, they were alerted by LMCD staff of changes, and were prompt with communication and supplying the needed information.

Prest commented there has been a problem since December and there still seems to be uncertainty about what is required. Mr. Snyder stated under the renewal that had been granted, it covered everything needed. When the sale fell through a month and a half ago, they were put on notice that none of the uses they previously had used would qualify. There was a previous license granted for 2017 and nothing had changed nor was it going to change because the new owners were going to continue to operate it as it had been.

Prest inquired if Mr. Snyder was aware of the difficulty in finding a new location for the Minnehaha. Mr. Snyder confirmed he is aware of some of the issues. He has been communicating with their counsel and addressing some of the concerns while Bayview is closed. Yesterday, the property went under contract to be sold. They are requesting action to maintain what has been approved for the last 17 years, except there would be no transient usage and only two boats will remain there for sale. When the temporary license expires next year, there would be opportunity to review all the uses for the property and docks after the new owner expresses his intent for that area. The current property owners are stuck because without the license, they cannot store the boats there, and there is a new property owner coming in. They will maintain the docks, and the intention of the gates would be for safety and to prevent unlicensed activity.

Prest stated he felt like the Board was a pawn. They were trying to work with them regarding the Minnehaha, but were told to go talk with the City of Excelsior. Mr. Snyder commented there were conversations around demolishing the property. This created serious concerns with people walking on the property during demolition and issues under this proposed plan.

Jewett inquired if the Minnehaha has access today. Mr. Snyder responded there is no gate or fence prohibiting access. They are not going to have the boat in this week due to other considerations regarding fueling locations, a side agreement related to parking, and questions about who was going to be picking up at the Bayview location. The Minnehaha problems of launching are not due to the access to the actual dock.

Hoelscher inquired if the license goes with the property or the applicant. Schleuning responded a new owner would be required to get a new license because they are not transferrable. However, because the Minnehaha is leasehold, it applies to both the property and the Bayview applicant. Mr. Snyder pointed out if the property is sold in the near future, the new owner would be required to apply for a new license and the entire property and dock use could be evaluated. That is why they are requesting a temporary license to maintain what has

been done in the past until the sale takes place.

Green inquired if the issues addressed in the letter have been addressed with the abutting marina. Mr. Snyder stated they responded via a written letter. The issues with sight lines have been around for 17 years and had been agreed upon with the property to the north and Bayview as it relates to that area.

Jewett inquired when staff received that letter. Schleuning confirmed they received it today. Jewett stated the variance to the north has a zero-side setback and the property to the south should be similar. The information included with the letter shows documentation that clears it up, but it is an incomplete application. Schleuning stated they need to review the history of the properties to determine if there is grandfathering or other legal parameter.

Prest inquired about the closing on the property. Mr. Snyder responded they expect to close in 45 to 60 days if there are no issues.

Schleuning inquired if the applicant could add their request for a variance to the north. Gilchrist confirmed they could, but recommended the applicant make the request in writing rather than the Board adding it. Green advised they would also need definitive documentation on where the boundary line is.

Molitor inquired how a variance request can be imposed on the residents to the north if they are not making an application. Jewett explained he is requesting the applicant request a zero setback variance on the lot line to the north.

Green opened the public hearing at 7:55 p.m.

Gabriel Jabbour, 985 Tonkawa Road in Orono, commented he has control of the tax forfeited land through an easement and it is acknowledged by the State. He does not take this issue lightly and there is nothing in the ordinance that talks about the number of boats or dock structure. Regarding the variance, when the board decided the line goes parallel to shore, it was not needed. He presented a letter from a Mr. Bob Ziton that asked the surveyor to amend his survey, under which the variance was applied for, to show the new line. The old application with the line parallel to shore is flawed. Both properties have a zero setback on the new line. He feels that the record is flawed, it needs to be done right, and he feels that Bayview needs a variance.

Mr. Jabbour commented he received an email from Jim Lambert of Minnehaha that revealed he is unable to reach an agreement with Bayview that shows they could have the boat there. The City of Excelsior will not issue a demolition permit until they have a replacement building proposed and approved. If it does not launch tomorrow morning, there will be a barge on the ramp for 50 days and will not be able to launch. He requested the hearing be continued to the June meeting.

Mr. Peter Johnson, legal counsel to Tonka Bay Marina, reported they have objected to the application as submitted because the north line is not depicted consistent with the line that has been established in the Tonka Bay Marina application. Mr. Ziton and Mr. Jabbour have an oral agreement and have modified the details as needed. They received a copy of a letter from Mr. Ziton that stated he will agree to the line

placement in Tonka Bay Marina's current application if they agree to place an aesthetically pleasing boat in slip No. 24, and Mr. Jabbour agreed to this condition. They are not trying to interfere, but would like to help counsel document what the status quo is in writing. The public should also know why they are doing a zero setback from the common line and if it requires a variance. The application shows they want a zero lot line on the north, but they are not intending to use it for anything in the license year. They object to the application as submitted because the applicant has not addressed their concerns about the location of the line, or the conditions for which a zero setback is appropriate. Tonka Bay Marina hopes a variance application is submitted and granted under the appropriate conditions.

Mr. Johnson explained the history of the property lines with Bayview Event Center and pointed it out on a rendering. Bayview owned all of the property down to the southern extent of the property now owned by Mr. Jabbour. The predecessors to Bayview conveyed a dock use and pedestrian easement that encumbered all of the lakeshore that was on the old railroad corridor, plus a small triangular piece that was the end of the Bayview's main parcel. At that time, Bayview had a dock use area that protruded into Lake Minnetonka. When they lost the rail corridor parcel, and a mortgage foreclosure on their main parcel, the easement that Mr. Jabbour now benefits from had not been consented to by the mortgage lender that had that mortgage. When the foreclosure occurred, it wiped out the dock easement on the small rectangular parcel. The consequence of that was they lost property and it reoriented their dock use area line. Mr. Jabbour already owned the property they had their dock use area on and had all the dock use rights with the remainder of the shoreline. Mr. Jabbour negotiated with Mr. Ziton, defined a new joint line, and got a variance to have a dock slip in the last area between his dock and the site line.

Mr. Johnson commented the easement rights held by Mr. Jabbour are not tied to any other particular piece of property. The docking easement and pedestrian easement can be transferred independently and can be a free-standing parcel. If that happens, the dock rights would have to be determined as an independent parcel.

Schleuning stated they received a copy of the lease that Bayview has for the whole Hennepin County Railroad Authority area. She inquired if there were two different actions given by Hennepin County Rail Authority for the same piece of property. Mr. Johnson stated he felt the pedestrian access is nonexclusive and the easement holder has the right to construct a dock on the shoreline.

Mr. Jabbour commented the Bayview building sits outside the property line on the rail authority's property. They are being charged \$8,000 a year to keep the building there. It is not unusual for the rail authority to charge a lot of money for the encroachments on their property. He has a permanent perpetual easement, and he is going to reconfigure the marina and reapply for a single license for this parcel.

Mr. Snyder explained there are a lot of secondary issues, but Bayview has had it this way for 17 years without objection. They are seeking a scaled back, temporary license, for the storage of two boats until they are sold. They will provide any information requested by the Board, the dock use area has been defined without a variance for 17 years, and a lot of concerns could be addressed with the new owners of the property.

Green closed the public hearing at 8:23 p.m.

Jewett commented he believes the application is incomplete because of the lack of a variance to the north and recommends denial or continuance of the application. They also need to get the Minnehaha in the water because the barge waiting for repairs needs to get fixed.

Hoelscher agreed the variance is an issue. There is nothing in the ordinance that talks about boats. It is a temporary license granting, and is unsure if there are provisions for it in the code. She does not feel they can ask them to meet all the requirements by adding the variance request and then not meet the amenities and BSU requirements. They need to be creative in working with the applicant and clear up the legal issues with the license going forward.

Prest stated they lost their license in November and still have their boats there. They are requesting another license and have not been helpful with the Minnehaha. He feels that the Board is bending the rules to accommodate a special circumstance.

Gilchrist agreed with staff's direction to continue this request at the next meeting. There was a lot of additional information that was recently submitted and needs to be reviewed. He agrees the northern line needs to get cleaned up, but it is up to the Board whether to clean it up now or as part of the new owner's application. These things can get detailed and confusing and the effort that staff has made on it has been great, but more needs to be done. Green agreed the public hearing should be continued.

Jewett inquired about the timeline related to reviewing this application. Schleuning advised they received the new application on May 1, so there is time.

MOTION: Prest moved, Jewett seconded to continue this public hearing to the June 14, 2017 LMCD Board meeting.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

There was no other business.

11. UPDATE FROM STANDING LMCD COMMITTEES

Aquatic Invasive Species Committee/Taskforce: Green offered they are struggling to find harvesting employees and after discussion with the Board, he advised they will offer more money. The hours are four, ten hour days a week. Schleuning stated she will also look at alternative options and will not move forward with associated contracts until employees are secured.

Budget Workgroup: Schleuning offered the budget letter was mailed to cities. She met with Victoria, and there are scheduled meetings to present to the Cities of Spring Park and Tonka Bay. The budget meeting with the cities will be June 1.

Recodification Workgroup: Gilchrist stated he was out of town, and no new work has been completed. He will provide an update in a couple of weeks.

Save the Lake Committee: Baasen offered the Boater Safety Class will be held on June 19th. The session will be held for youths (ages 12 to 17) and adults.

Strategic Plan Subcommittee: Schleuning advised they have received Board comments and they have been distributed to the committee members. They will bring it back to the Board for review

12. EXECUTIVE DIRECTOR UPDATE

Schleuning directed to Board to the list of special events in their meeting packet. These include sailboat racing, fishing, swim portion of the Triathlon on June 17, Bass Fishing Tournament on June 19, July 17, August 14, and September 11. Green pointed out the Renegade Fishing Tournament will take place on Medicine Lake.

Jewett inquired about special event permits and when other summer events will be added to the list. Schleuning stated she usually provides the list of current events, but could add others. The Water Patrol adds events on an ongoing basis. Green confirmed it is common practice to require approval from the City before the Sheriff issues a special event permit.

Schleuning advised she will send out the report regarding water levels. Green stated it is at 929.67, which is a little above normal and the dam is wide open. Jewett commented their dock is underwater.

13. OLD BUSINESS

There was no old business

14. NEW BUSINESS

There was no new business.

15. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:37 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary