

LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 P.M., June 28, 2017
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; Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Dan Baasen, Wayzata; Bill Cook, Greenwood; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Fred Meyer, Woodland; Mike Molitor, Minnetrista; Sue Shuff, Minnetonka; and, Deborah Zorn, Shorewood. Also present: Vickie Schleuning, Executive Director; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Chris Jewett, Deephaven; and Gregg Prest, Excelsior.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS- None.

6. APPROVAL OF MINUTES- 6/14/17 LMCD Regular Board Meeting

Green referred to page 4, and pointed out under Roll Call the minutes reflect Baasen arriving at 7:40 p.m. and under Approval of Agenda, it reflects Baasen seconded the approval. Baasen stated he was there. These statements appear to be conflicting, and Schleuning stated she will address it.

Thomas referred to page 6, second bullet point, and requested clarification regarding the north side site line for Bayview versus south side site line for Tonka Bay Sales Site 1.

MOTION: Shuff moved, Meyer seconded to approve the 6/14/17 LMCD Regular Board Meeting minutes.

VOTE: Ayes (11), Abstained (1, Zorn); motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Thomas moved, Zorn seconded to approve the consent agenda as submitted. Items so approved included: **7A**) Audit of Vouchers (6/16/17 - 6/30/17).

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

A) 500NNLL LLC (Former Bayview Event Center site), Multiple Dock, Special Density, and Variance applications

Schleuning directed the Board to the staff memo, dated June 14, 2017, and provided the following information via a PowerPoint presentation:

- An overview of the action presented to the Board; staff recommends approval of 500NNL, LLC multiple dock license; special density license; and variances for dock length, north side site line and south side site line; and to direct staff to prepare Findings of Fact and Order for approval at the July 12, 2017 Board meeting.
- An overview of the existing property lines and proposed site plan.
- An overview of recent activity: The Museum of Lake Minnetonka (Museum) obtained Commercial Dock and Special Density licenses on May 14, 2017. On June 14, 2017, since Bayview closed and no longer met the requirements of license, it obtained a Commercial Dock license for storage of two watercraft. This property also has a new owner as of June 27, 2017 and a new license application is being considered.
- An overview of the site conditions associated with the current application: 370 feet of shoreline; 1:10 density, with 30 transient and 7 overnight BSUs; Variance for length for dock with Museum; Variance for adjusted dock use area for south side site line (adjacent to Maynard's Restaurant) with a 30 degree deflection; Variance for dock use area previously approved as part of the license depicting current north side site line (adjacent to Tonka Bay Sales Site 1); other dock length grandfathered beyond 100 feet; and, Museum license conditions (Commercial Dock and Special Density) and special density amenities applicable to overall site.
- Significant chronological Board actions included:
 - March 22, 1995: Variance and Special Density license. This allowed for 420 feet of shoreline, 42 BSUs (40 transient/2 overnight), and a dock width of 8 feet.
 - March 13, 1996: Variance for length. This allowed for a permanent dock (storing BSUs T28, T29, T30, and O37), 8-foot-wide dock for handicap accessibility, and a 60-foot extension for 100-foot pier with 16 foot by 18 foot platform to accommodate the Museum.
 - 2002: Special Density license. This minor change reduced BSU density from 40 to 37, referenced grandfathered dock exceeding 100 feet, included amenities, and reflected a transfer of 50 feet of shoreline to Tonka Bay Sales Site 1.
 - December 10, 2003: Special Density license. This allowed for expansion of BSUs 1-8, which did not exceed beyond 100 feet.
 - June 25, 2003: Variance for dock use area. This adjusted the dock use area for the southern extended side site line with the 30 degree deflection, and the approved site plan indicates the dock use area with north border angled to dolphin poles.
- The Museum's 2017 license approvals include:
 - 2017 Commercial Dock and Special Density licenses.

- Bayview Event Center had a previously approved dock length and width variance, which transferred with the Museum. There is an easement and agreement with the Museum that allows access rights to and ownership of the dock, which goes through March 16, 2025.
- The Museum has existed in this location since 1995, there are no proposed changes to the dock structure, and it is considered part of the entire site for code purposes.
- An overview of relevant code sections, also included in the meeting packet. These include: Section 2.03, Subd. 7, Section 2.01, Subd. 1, Section 2.05, Subd. 2, number of BSUs outside of authorized dock use area for length restrictions, and proposed amenities. Additional review criteria is required for Code Section 2.10, Subd. 2(b), and Section 1.07, Subd. 2. License and Variance requests meet conditions of Code for a Multiple Dock license (Section 2.03, Subd. 3), Special Density license (Section 2.05, Subd. 4) and Variance (Section 1.07).
- An overview of the Special Density License requirements.
- Code requires a minimum of 20 amenity points, and the Applicant is proposing the following 21 points:
 - Group A – Public Access (10 points). Public access since 30 of 37 docks on property are for transient use, mainly for the local restaurant.
 - Group B – Environmental Protection (5 points). Rip Rap provided for shoreline protection.
 - Group C – Public Service (3 points each). MTM Minnehaha is docked at the property and the Applicant will distribute Boater Safety Literature.
 - Other Facilities – The Museum offers 21 amenity points that also apply to the property where not duplicated.
- An overview of the Multiple Dock and Special Density license review criteria.
- The LMCD solicited review and comments from local government agencies. Comments received from the City of Excelsior are included in the meeting packet. Public comments expressed concern regarding parking and coordination with City Master Plan, and if the application included adding more boat slips. Parking will be made available and the new owner has been in contact with the City about future plans.
- Public hearing requirements and legal notifications.

Klohs inquired about the proposed use for office space. Schleuning stated the applicant wants to begin the remodel, be in the building by December, and then determine what to do with the restaurant portion of the site. She confirmed the transient slips would be open to the public, along with parking, with no restrictions. She stated the applicant is in attendance and can share more details.

Bob Sarna, Operating Officer of 500NNL, commented their intention for this space is office use. They are a financial services company that has grown to a staff of about 50 employees. There will be 25 to 30 employees on site and they intend to take most of the Bayview main building and convert it into office space. They may rent out up to 1,400 square feet to another tenant on the third floor. The City would like a restaurant, but they have not determined that yet. They are currently listening to different offers regarding the two boats on the site. They plan to replace the windows that face the lake and the rest of the building will be gutted and remodeled.

Green inquired if there were any concerns regarding the use of the dock and getting over to Maynard's Restaurant. Mr. Sarna stated there is a bridge in between their facility and the restaurant and he is discussing leasing the docks and parking to them. They do not intend to use the transient docks for the general public's

use and for liability concerns, will gate it off if they do not reach an agreement with Maynard's.

Klohs stated they cannot count amenity points for the transient docks if they are gated off, and requested that be clarified. Mr. Sarna stated the transient docks are in addition to what is actually needed since the Museum has enough amenity points.

Kroll inquired what type of investment they do. Mr. Sarna stated they do low correlation investments to stocks and bonds.

Mr. Sarna commented it has been a joy to work with Schleuning. He inquired why the decision would be delayed to July 12. He would like Maynard's to be able to use the boat slips for the Fourth of July weekend and they have provided all the facts to the Board. Green advised it gives the attorney time to prepare the Findings of Fact and Order for approval. Gilchrist stated applicants previously had to wait four weeks, but now it is two.

Mr. Sarna stated they would need to gate off the docks before Fourth of July weekend if that is the case.

Green opened the public hearing at 7:35 p.m.

Peter Johnson, representing Maynard's Restaurant (property to the south), commented he supports the application and they have reached an agreement regarding the common dividing line between the dock use areas. He noted that the deflection point is where the common property boundary crosses the shoreline, and that point moves as the shoreline recedes. They have asked a surveyor to identify the point drawn on the survey and define that point as the deflection point. Both parties have agreed to this.

Aaron Bean, Greenwood Marina, 21945 Minnetonka Boulevard, inquired what the facility will be used for if a restaurant does not go in. Mr. Sarna responded he does not know at this point. They are open to options and have a few choices: 1) Keep the slips transient as they are today; 2) Keep them for public use and open the small restaurant; 3) Turn it into a marina and have the building become a clubhouse for the marina; or 4) Gut the building and turn it into office space. They want to work with the City and the public to determine the best choices.

Green closed the public hearing at 7:39 p.m.

Kroll inquired why they are delaying Maynard's use of the dock for two weeks. Schleuning commented that since she received several inquiries about this site, she was not sure if new information would arise as part of the public hearing process. However, she stated that she did not hear anything that has not been anticipated or already received comments about. Gilchrist commented generally it is preferred by the Board to have the findings before them when they take action. However, in this particular case, with Schleuning's thorough presentation and the draft findings included in the meeting packet, and if the Board agreed, they could authorize the Chair and Secretary to sign it when it is in final form.

Green stated he has read through the draft Findings of Fact and Order and pointed out under item No. 11, a date needs to be filled in.

Klohs stated the applicant did an excellent job with the survey and that should give the Board comfort moving forward. It has everything included to make a decision.

Green referred to the draft Findings of Fact and Order, item. No. 8, and inquired if the referenced variance dated 01/09/2002 was for Tonka Bay Sales Site 1. Schleuning confirmed this and stated she included it so it could be easily referenced. She stated she will clarify the wording where it is referenced in the document.

Baasen expressed concerns of approving a license with conditions of a sublease with Maynard's for the docks without having an agreement in place.

Green responded it is not in their jurisdiction to tell people where they can go once they are off the transient docks.

Molitor stated the whole point of having transient docks is to service the site, but it is servicing another site. He is hesitant to approve something that has been in existence for a long time that will now service another site. The transient slips also service the restaurant, but there is no lease agreement and he does not understand why they would approve it.

Thomas pointed out the Applicant does not have anything to lease to Maynard's today because the multiple dock license has not yet been approved. There is nothing in their code that says a person cannot have a multiple dock license for a transient dock that services a property next store. Molitor stated it has to service something.

Schleuning commented there are transient docks that are not dedicated to one particular place and some service sites across the street. There are some in Excelsior and Spring Park that do not service just one area. She is not aware of anything in the code that requires it to service just that site. The code addresses public access and the ability to have amenities and benefit the public.

Green inquired if there was a distinction in the code that addresses a municipal site with transient dock versus a commercial site and if they are both considered a special density license. Schleuning stated she would have to research that further.

Gilchrist commented the Board does not usually get involved in the terms and conditions of a lease agreement. If the Board is comfortable, they could modify the terminology to reflect the slips are going to either be leased by the neighboring property or gated off.

Hoelscher inquired when the application would need to be renewed. Green advised it will expire at the end of December 2017. Schleuning stated if an application is requested to be renewed without change, it is often approved administratively and without a public hearing.

Shuff stated she does not feel pressure to get this completed tonight. The ownership transfer just happened yesterday and there are still questions that need to be resolved. Kroll stated he respectfully disagreed with Shuff, and commented it is a waste of resources not to let Maynard's use the docks.

Molitor inquired if the Board will review this site again if they decide to put in a restaurant. Schleuning responded only if they change their license classification or the dock structure. A restaurant would be considered an amenity partly since it had restroom facilities.

Gilchrist commented they could include a provision that reflected if the circumstances on the property change, then the Board would review it.

Thomas inquired how a change in the use of the property would affect how they look at the application. Gilchrist commented it would be whether the Board thinks that a potential change would change the use of the docks. It may not be an issue, but if there are potential concerns, it allows them to review the license and make sure no negative impact will occur. Green agreed.

Molitor added given the Applicants uncertainty of the location, it is good to include this condition.

Hughes stated if the Board approves it and the Applicant does get an agreement with Maynard's, it would be their liability.

Klohs stated whatever the Applicant decides as a use for that part of the building is on the land and they will have to go through the City. If the dock structures are not changed, it is not their business. Green stated it is also about changes to the traffic pattern associated with the dock. Cook suggested they require the renewal before the Board until the use is finalized instead of an administrative renewal.

Klohs pointed out whatever they decide to do will be significantly less extensive than what has been there for the past 30 years.

MOTION: Zorn moved, Klohs seconded to direct LMCD legal counsel to draft Findings of Fact and Order approving 500NNL, LLC 2017 Multiple Dock, Special Density, and Variance Applications including those associated with The Museum of Lake Minnetonka (Museum) commercial dock license for the property located at 687 Excelsior Boulevard in Excelsior as the draft conditions presented, subject to the following: 1) Regarding the transient slips, an agreement must be in place within 30 days with Maynard's and effective through October 31, 2017; 2) The Board will review this license again in spring 2018; and, 3) The Board authorizes the Chair and Secretary will sign off on the final approval of Findings of Fact and Order for this application.

Green inquired why she recommended the application end on October 31, 2017. Zorn responded because it is the same date the other two boats are approved through, all activity on those docks would cease at the same time. Green commented that date is when the license for the two boats is terminated, not the use of the docks.

MOTION TO AMEND: Green moved, Molitor seconded to have the license be effective through December 31, 2017.

Hoelscher inquired what would happen if the owner is unable to enter into an agreement with Maynard's in the next 30 days. Thomas stated the Applicant hopes to lease the docks to Maynard's or they will gate them off, and suggested it be included in the conditions. Molitor explained the October 31, 2017 deadline was given so the boats would not stay in the water all year. Green stated the restriction was placed on the previous owner and does not apply to this owner.

VOTE ON Motion carried unanimously.
MOTION
TO AMEND:

MOTION Thomas moved, Kroll seconded to have the Applicant either provide an agreement with
TO Maynard's regarding the transient slips, or restrict access to the docks within 30 days.
AMEND:

VOTE ON: Ayes (11), Nays (1, Molitor); motion carried.
MOTION
TO AMEND:

Gilchrist summarized the original motion includes approval of the Findings of Fact and Order as prepared with a December 31, 2017 expiration date and review by the Board in 2018, and an agreement regarding transient slips with Maynard's or restriction of access within 30 days. He advised if the Board approves this, he will make minor changes and it will be signed by the Chair.

Molitor inquired about access to public restrooms. Schleuning stated they will have access to Maynard's, but if it is gated off, they will not need them.

VOTE ON Ayes (11), Nays (1, Molitor); motion carried.
ORIGINAL
MOTION (AS
AMENDED):

10. OTHER BUSINESS

A) Proposed ordinance amendment regarding alcohol possession and consumption (underage drinking), consideration of approval

Gilchrist reported due to concerns raised by the Board regarding the draft social host amendment, he decided to take a different approach. It focuses on operators of watercraft who allow or fail to take reasonable steps to prevent underage possession or consumption of alcohol. He also suggested they add language regarding underage drinking in fish houses. He recommended the following additions to the code:

Subd. 8. Watercraft Operator. It is unlawful for the operator of a watercraft to allow, or fail to take reasonable steps to prevent, the possession or consumption of any alcoholic beverage by an underage person on the watercraft if the operator knows, or reasonably should know, that the underage person possesses or is consuming any alcoholic

beverage. This prohibition does not apply to situations in which an underage person is lawfully in possession of alcoholic beverages during the course and scope of employment.

Subd. 9. Fish Houses. It is unlawful for the owner of a fish house to allow, or fail to take reasonable steps to prevent, the possession or consumption of any alcoholic beverage by an underage person in the fish house if the owner knows, or reasonably should know, that the underage person possesses or is consuming any alcoholic beverage.

Green commented the Legislature changed the definition of fish houses in the past session. Based on this, he suggested in the definition of fish houses in the draft ordinance the words “while taking fish by angling” be removed. Also, in the proposed Subd. 9 Fish Houses, he suggested they remove the word “owner” and replace it with “license holder”. Gilchrist agreed.

Meyer inquired about portable fish houses. Green advised the new regulations stated they cannot be on the lake at night and the owner can never be more than 200 feet away. Gilchrist stated by defining fish houses and tying it to the licensed owner, it will only cover fish houses that need to be licensed, and portable structures would not trigger this ordinance.

Hoelscher stated the immunity provision is not included in this draft. Gilchrist commented by moving this directly to what is happening on the watercraft versus a social gathering, the likelihood of needing immunity seemed less significant.

Kroll referred to the definition of Alcoholic Beverage, and suggested it state “0.5%” instead of “one-half of one percent.” After Board discussion, Gilchrist agreed to include the number in parenthesis after the spelled-out number, “one-half of one percent (0.5%)”, and will include this in the list of consistencies for the recodification process.

MOTION: Thomas moved, Kroll seconded to approve an Ordinance amending the LMCD Code of Ordinances regarding alcohol possession and consumption, with the following amendments: 1) Deleting “while taking fish by angling” under the definition of Fish Houses; 2) include number consistency as discussed; and, 3) Subd. 9 will removed the word “owner” and replace it with “license holder.”

Hoelscher commented she supports this ordinance and inquired when it is effective and enforceable. They need to do a good job notifying people of the change. Schleuning advised it will be publicized in the paper mid July, before it becomes effective. It will not be effective before the Fourth of July weekend. Gilchrist stated if it is adopted he can provide some summary language for publication that the Board can approve.

In response to a question from Shuff, Gilchrist stated both Steve Tallen and the Sheriff’s Department have reviewed this draft ordinance and did not have any further changes.

VOTE: Motion carried unanimously.

B) Strategic Business Plan, consideration of approval

Schleuning reported the Strategic Planning Committee has been working to develop a Business plan. After

receiving feedback from Board members and the Water Patrol, they have come up with a 2017-2018 LMCD Strategic Business Plan. She highlighted the Strategic Plan Priorities and Desired Outcomes of the plan. Regarding Lake Protection and Regulatory Compliance, in an effort to reduce underage drinking incidents and prevent health and safety consequences, they will conduct four underage drinking saturations. They will also increase their public safety announcements to make sure people understand regulations and why they exist.

Schleuning provided the following citation statistics provided by the Water Patrol:

- BWI arrests: 33 in 2015, 54 in 2016, and 5 so far in 2017
- Minor Consumption: 23 in 2015, 100 in 2016, and 40 so far in 2017
- Littering: 3 in 2015, 1 in 2016, and 8 so far in 2017
- Quiet Waters: 8 in 2015, 17 in 2016, and 3 so far in 2017

Thomas inquired what underage drinking saturation is. Schleuning explained it is when they focus efforts to enforce underage drinking for a certain amount of time.

Thomas inquired about updating the LMCD By-Laws in 2018 and agreed it would be good to look at periodically. Zorn stated she understood there were certain changes made recently, but was unclear when they were reviewed comprehensively.

Kroll inquired if there were any statistics regarding the noise ordinance. Schleuning responded she did not have those statistics at this time, but will look into it.

Shuff requested Board meeting civility be moved down so that it does not stand out, and inquired what the consequences were for incivility. She would like to see the wording be gentler and she likes the previous wording of "effectiveness of a respectful Board and staff relations." Schleuning responded the wording could be different. Baasen disagreed and commented to soften it down would be disrespectful to the rest of the Board since this had been a larger discussion in the past.

MOTION: Klohs moved, Baasen seconded to adopt the 2017-2018 Strategic Business Plan

VOTE: Motion carried unanimously.

Schleuning commented it may be appropriate to have a work group for the self-evaluation process. More discussion would occur in the future.

10. OTHER BUSINESS

- A) Draft ordinance amendment regarding alcohol possession and consumption (underage drinking), consideration of approval (*Continued from previous agenda item 10A*)

Gilchrist read a Resolution that provided for the summary language in reference to Agenda item No. 10(A) similar to the following: *The Board of Directors of the Lake Minnetonka Conservation District adopted the above referenced ordinance to address underage drinking on Lake Minnetonka. The ordinance clarifies the applicable definitions, makes the prohibitions related to inducing purchase, procurement, possession,*

and consumption of alcoholic beverages more consistent with state law and adds prohibitions related to the owner or operator of a watercraft, or the license holder of a fish house, allowing an underage person to possess or consume an alcoholic beverage in a watercraft or fish house. A copy of the full ordinance is available on the LMCD website and may be obtained by contacting the LMCD office.

MOTION: Molitor moved, Shuff seconded to approve the Summary Publication for the Ordinance amendment regarding alcohol possession and consumption.

Thomas inquired if it would appropriate to add "violation of this Ordinance would be a misdemeanor." Gilchrist stated all violations are generally misdemeanors and providing that information within this ordinance could create confusion for those reviewing other Code Sections.

VOTE: Motion carried unanimously.

11. UPDATE FROM STANDING LMCD COMMITTEES

Aquatic Invasive Species Committee/Taskforce: Green reported the Harvesters are in the water. Schleuning stated there are a lot of weeds this year. Permits were obtained for both Curly-leaf pondweed and Eurasian watermilfoil this year. Information is being posted on the website and social media showing where the harvesters have been and the tentative schedule. Staff is also working with the DNR in trying to keep track of vegetation trends in the bays.

Budget Workgroup: Director Prest met with staff to review the benefits package and structure. It will move forward when they learn from SWWC what the actual numbers will be.

Recodification Workgroup: Gilchrist reported work continues on the commercial section and will take a while to get through.

Save the Lake Committee: Baasen reported on the following: 1) They had approximately 40 people attend the Boater Safety Class. He thanked Dan Gustafson, LMCD Board Members Cook, Meyer, and Hoelscher, and LMCD staff for their help. It will be the only class this spring. He thanked Jay Soule for teaching the class. 2) The solicitation letter is out and they are starting to see results. 3) He has materials available that Board members can bring to their local festivals. 4) The next meeting is on July 11 at 5:00 p.m. at Minnetonka Civic Center.

Strategic Plan Subcommittee: none.

12. EXECUTIVE DIRECTOR UPDATE

Schleuning reported there is a June through August Lake Minnetonka special events list, and an updated operations calendar included in the meeting packet. They also have new Hennepin County and Watershed District maps available. The 2017 Summer Rules brochure have been shared with the Water Patrol, the Watershed District, cities, Three Rivers Park District, cities, added to drop boxes available at some lake accesses, and other parties.

Baasen inquired about the level of the lake. Klohs reported it is at 929.2 and they are letting out 75 cubic feet per

second.

Green inquired if they could help with anything during this time when they are short staffed. Schleuning stated there is a harvesting employee that will help out, but will think about items.

13. OLD BUSINESS

There was no old business

14. NEW BUSINESS

15. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:56 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary