

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., October 11, 2017
Wayzata City Hall

WORK SESSION

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

Members present: Jay Green, Mound; Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Gregg Prest, Excelsior; and Sue Shuff, Minnetonka. Also present: Vickie Schleuning, Executive Director; Matthew Cook, Environmental Administrative Technician; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Dan Baasen, Wayzata; Chris Jewett, Deephaven; Deborah Zorn, Shorewood; and Fred Meyer, Woodland.

Thomas moved, Cook seconded to amend the Work Session agenda to discuss the Recodification Project Update second. All agreed.

1. Implementation of Reconfiguration of Nonconforming Structures Ordinance Amendment

Schleuning provided an overview of how staff will process applications for Reconfiguration of Nonconforming Structures under the new amended ordinance.

Schleuning noted that the application packet will be updated for future use, similar to the de-icing application materials that were updated for the 2017-2018 season.

Schleuning displayed a template spreadsheet that staff developed to assess whether or not incoming applications met the stipulations outlined in the amended ordinance. She noted that, after further refining the table, staff hoped to provide a digital copy of the template to applicants so that they could enter in their own site information, saving staff time and providing a more user-friendly product.

Klohs underscored how helpful the spreadsheet tool could be for applicants. He suggested that staff present the tool to Minnetonka Beach City Council later this winter. Klohs noted that other cities may be interested as well.

Regarding the measurement of shoreline, Kroll noted that the increment of measure – a foot versus an inch, for example – alters the final measurement of distance along a curved line, such as a property's shoreline. He asked if the LMCD had a standard increment of measure for determining shoreline.

Schleuning noted that the LMCD considers the contour line for the elevation of 929.4ft above sea level to be the "shoreline" as defined by the LMCD code.

Gilchrist added that the measurement of 929.4 is something that is established outside of the purview of the LMCD.

Molitor mentioned that columns or formulas could be colored-coded or locked to prevent changes for the original specifications. Hughes agreed that if the LMCD were to provide a digital copy of the aforementioned

spreadsheet to applicants, that staff should “lock” cells containing algorithms to prevent tampering or accidental changes. Schleuning and other agreed that would be a good idea and would be reviewed.

2. Recodification Project Review

Gilchrist distributed a memorandum summarizing five policy considerations that arose out of discussion with the Board work group for the LMCD’s Recodification Project.

Gilchrist stated that the first item for consideration was the proposed requirement that applications for licenses, permits, variances, etc. be submitted on forms approved by the Board.

Gilchrist noted that the second item for consideration was the proposed language that would allow the Board to adopt a fee schedule (by resolution) and require an applicant to escrow funds with the LMCD to pay for the cost of processing and acting on applications.

Klohs stated that the escrow was a good idea and seemed necessary.

Gilchrist stated that the third item was the proposed inclusion of language that authorizes Hennepin County Sheriff deputies to enforce LMCD Code and authorizes the Board, LMCD Executive Director, and LMCD Attorney to issue written notifications of violations, stop work orders, corrective orders and other routine enforcement actions. He underscored that the decision to take civil action still rests with the Board.

Gilchrist stated that the fourth item was the proposed inclusion of language that attempts to capture the Board’s ability to exercise discretion in interpreting the Code.

Kroll noted that if the Board were to utilize the “discretion” clause poorly, the Board may establish a bad precedent for future legal situations.

Shuff asked if more specificity could be added to further define the term “unique” to prevent loose interpretation of the “discretion” clause.

Gilchrist concurred that criteria for what constitutes a “unique” situation could be developed.

Prest expressed his concern with the potential for the clause in question to undermine the Code.

Cook underscored that he was not supportive of the “discretion” clause being included. He explained that the variance process already provides the Board with a vehicle to exercise discretion in a structured manner.

Klohs noted that the variation in how the “discretion” clause might be interpreted by future iterations of the Board was worrisome.

Hoelscher stated that the Board already exercises a certain level of discretion. She noted that the wording of the clause was vague, and seemed like it would be difficult to enforce.

Gilchrist stated that he merely hoped to capture the Board's right to exercise discretion, not provide a loophole to avoid the Code. He asked if the Board wanted him to further refine the "discretion" clause or abandon it.

Hughes stated that he was not interested in spending more money on developing the idea at the moment. He added that he did not necessarily want to abandon the concept forever, either. Hughes suggested that the proposed "discretion" clause be archived.

MOTION: Klohs motioned, Cook seconded to adjourn.

VOTE: Motion carried unanimously.

FORMAL BOARD AGENDA

7:00 p.m. to Adjournment

1. CALL TO ORDER

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; Bill Cook, Greenwood; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Gregg Prest, Excelsior; Sue Shuff, Minnetonka; and, Deborah Zorn, Shorewood. Also present: Vickie Schleuning, Executive Director; Matthew Cook, Environmental Administrative Technician; and Troy Gilchrist, LMCD Legal Counsel.

Members absent: Dan Baasen, Wayzata; and, Fred Meyer, Woodland.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair Announcements.

6. APPROVAL OF MINUTES- 9/27/17 LMCD Regular Board Meeting

MOTION: Hughes moved, Shuff seconded to approve the 9/27/17 LMCD Regular Board Meeting minutes.

VOTE: Ayes (9), Abstained (3, Thomas, Jewett, and Zorn); motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Kroll moved, Cook seconded to approve the consent agenda as submitted. Items so approved included: **7A)** Audit of Vouchers (10/01/2017-10/16/2017; and, **7B)** September Financial Summary and Balance Sheet.

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

None.

10. OTHER BUSINESS

None.

11. UPDATE FROM STANDING LMCD COMMITTEES

Aquatic Invasive Species Committee/Taskforce: Green reported he attended the State AIS Advisory Committee meeting. Douglas County is installing an unmanned decontamination station so people can wash their boats with a pressurized, hot water. It is funded with County money that comes from the State for AIS. There is a similar station at Pike Lake in Duluth and it had 800 uses in the first month.

Green reported Dr. McCartney at University of Minnesota has been doing research on the origin of zebra mussels. He determined that the zebra mussels found in Lake Winnie and Cass Lake came from Gull Lake. He was surprised because everyone thought they came from Mille Lacs Lake. Lake Garfield in Hubbard County was found to have 3 veligers in it and it is the first lake in the County it was found.

Thomas inquired about the size of veligers and numbers.

Green explained they drive around the lake, take water samples and send them off to be analyzed. Lake Hubbard is a 1,000-acre lake and they are trying to determine where on the lake the three zebra mussels came from. On Lake Minnetonka, in the summer when the veligers are high, they typically find five veligers per liter concentration in certain areas.

Kroll inquired if there was a critical mass for reproduction. Green stated if the population gets too high, it crashes.

He noted that the concentration grows when it is warmer.

Green reported the Wright County Inspection Station was approved by the DNR for mandatory inspections for Lake Sylvia, Pleasant Lake, or Lake John. It is not a DNR program, and it will only be in place through the end of October. The DNR has expressed concern with what data is being collected.

Green commented his term on the State Committee expires at the end of the year. He represents the fishing industry on the Committee and he cannot reapply. There are nine positions opening up, and he encouraged Board members to check into the positions if interested. There are nine meetings a year and they meet in St. Cloud. He is unsure if he would qualify for one of the other eight positions that were opening up, but Lake Minnetonka needs to be represented.

Green stated he noticed flowering rush has really spread. He plans to go out on the lake to determine where it is. It is hard to get rid of, but they may need to deal with it. It has to be treated underwater, and if a single piece is broken off, it could reproduce.

Green inquired if they have heard from the watershed regarding this year's grant money. Schleuning responded she has not heard anything further regarding Watershed grant money.

Green announced the next AIS meeting will be Friday, October 20 at 8:30 a.m. at the LMCD Office in Mound.

Budget Workgroup: Jewett reported the Budget Workgroup consists of Green, Hughes, Schleuning, and himself, and they will set up their next meeting today. They plan to review what has been completed, what is projected, and how much money is available.

Recodification Workgroup: Gilchrist commented there is one more item they did not get to discuss in the work session prior to the meeting. He referred to zoning ordinances and inquired if it makes sense to have "all measured distances be expressed in feet and shall be within one-tenth of a foot." It allows for some flexibility.

Klohs stated that one-tenth of a foot seems too little and maybe should be closer to one foot.

Hoelscher stated that is why she thinks the measurement should not be included.

Gilchrist commented he took it out of the revised draft and he inquired if the Board thought it should be left in the code.

Klohs stated they do have accurate surveys attached to every application and variance to the nearest one-hundredth. He inquired if they need to have something in the code that states adjacent property owners cannot complain if it is within one foot. People have argued about inches before, and it does not seem fair to make someone move their dock if it is off by three inches.

Gilchrist commented they have to be careful not to make the gap too great.

Zorn commented she would support something within a one-foot distance so there is something documented. She asked Schleuning what distance would make sense for enforcement.

Schleuning commented the actual measurement would have a different meaning depending on the situation such as dock lengths, setbacks, variances, etc.

Kroll commented it is unusual to have a standard without a precision requirement. If someone is concerned with one-tenth of a foot for a 100-foot dock, they could allow one-tenth of a foot or 1 percent, or whichever is greater. One-tenth of a foot is easy to measure and would be easy to apply.

Hughes inquired if they measure from the current water line or the 929.4 point, and where do they measure from if the water levels go up or down.

Klohs responded it would be on the survey.

Schleuning commented the language appears to show that a person has to measure somewhat accurately. It does not seem to say this is what will be done with the measurement.

Gilchrist responded it is saying if it is 10 feet, and you are within one-tenth either way, it is deemed compliant. There are a number of different measurements from large to small and dropping in a standard may not make sense. He requested direction from the Board on whether it is worthwhile to have a standard or not worry about one.

Molitor commented the language is determining how they measure, not how they enforce. Having the measurement standard is good, and what they do with it is at the Board's discretion.

Green inquired if it can be applied to non-scientific measurements.

Molitor commented that is the different between precision and accuracy.

Schleuning stated it makes sense to have some type of standard, but it needs more thought to consider how it applies to different situations.

Hoelscher commented if it is good language, it should not be this hard to decide. If they are having trouble as a group trying to determine what this should mean, it will not work when people try to interpret it and apply it. She supports more thought on it, but not including it yet since they do not seem to know what they want at this point.

Gilchrist agreed to not include it at this time and discuss it further with Schleuning.

The Board agreed.

Save the Lake Committee: Thomas reported Save the Lake Committee meeting was rescheduled for Tuesday, October 17. The final draft of the solicitation letter is included in the meeting packet. They plan to distribute this along with a report that will go out to approximately 4,600 households in the Lake Minnetonka area and previous

contributors. They hope to generate significant additional money and they will save on postage by sending it out with the newsletter.

Strategic Plan Subcommittee: Zorn reported she and Schleuning are working on a second draft based on feedback from the Board and it will be available for discussion at the next Board meeting.

12. EXECUTIVE DIRECTOR UPDATE

A) LMCD Organizational Review, Program Analysis, and Project Status

Schleuning provided an overview of the past year that included the following timeline of the basic operational requirements.

ORGANIZATIONAL ASSESSMENT			
3 months	6 months	9 months	1 year
<ul style="list-style-type: none"> • Learning/Assessment • Finances • Operations • Ongoing significant projects 	<ul style="list-style-type: none"> • Operations • Business needs (IT/IS, record retention, legal, systems) • Communications • Customers education • Customer Inquiries • Strategic Plan 	<ul style="list-style-type: none"> • Strategic Business Plan • Building internal framework of business systems and processes • Recodification • Triage of functions • Application reviews 	<ul style="list-style-type: none"> • Building external business processes • Fostering relationships with agencies and stakeholders • Customer engagement • Acquired program data for analysis
2.6 FTE of 3.6 FTE	2.6 FTE of 3.6 FTE	1.6 FTE of 3.6 FTE	2.6 FTE of 3.6 FTE

She reported the LMCD consists of the following four perspectives:

- Financial: In-depth analysis, financial workgroup, auditor, historical review and projections, alignment with Strategic Plan, and balanced budget.
- Customer Perspective: Learn what is valued, obtain feedback, education, engagement, recodification, and streamlining processes.
- Operations Perspective: Reviewed systems and processes, assessed historical and current workload, IT/IS analysis, legal parameters and documentation, business needs, and triaged activities.
- Employees/Learning Perspective: Determines organizational needs based on historical data and potential anomaly of current workload experience of increased demand, necessary to prepare operation framework for onboarding new staff, extra work from current staff to address workload, training of staff, and research of ideas and implementation of changes.

Schleuning then provided an overview of the organization charts and what is budgeted for each position. She highlighted the activities and compared them to previous years. The applications for licenses, permits and variances are time sensitive. In 2017, they have had 27 year to date compared to 16 in 2016. There have been some ordinance amendments and nonconforming dock reconfigurations that may have contributed to this increase. She reported there have been 59 complaints so far in 2017 compared to 17 in 2016, and they have developed a tracking system for complaints. Some complaints may carry over into 2018 as they continue discussion and follow up on

them.

Schleuning highlighted the following key things they have learned and observed over the past year:

- High productivity with relatively small budget
- Organizational staffing needs based on historical workload, increases this past year
- Board knowledge, skills, and abilities (KSA) significant factor in effectiveness
- Opportunities for performance based programs
- Impact of the Lake reaches far beyond the shorelines of the communities
- Capitalize on customer/stakeholder passion

Schleuning reported they have observed the following trends from customers:

- Lake safety and nuisance, winter and summer
- AIS
- Property sales and transitions
- Encroachments – public and private
- Boat density in small areas, channels, and parts of the Lake
- High degree of cooperation, but varying expectations regarding complaints, licenses, etc.

She reported on the following items they will continue to work on moving forward:

- Implementation of the Strategic Plan
- Gather and/or compile information regarding infrastructure and business needs
- Continue to evaluate programs and performance
- Review costs, options and priorities with the Financial Workgroup
- Bring financial recommendations to the Board
- Enhance customer service levels regarding processing times, education, engagement, and processes
- Expand on internal business framework/operations
- Continue to research ways to capitalize on resources through partnerships

Schleuning stated it has been a good year and she hopes that Members whose term is up will consider reapplying. There is a lot more to do and they have good momentum.

Green commented she has accomplished a lot in the one year she has been here.

Thomas commented this is a great report and appreciates that she was talking about conceptual things rather than only the actual concrete things that have been accomplished. This is what they were looking for when they hired her as Executive Director.

Zorn thanked Schleuning for the recap of the past year, the way she articulated how she has navigated the LMCD through challenging staffing issues, and her ability to step back, make an analysis and move the organization forward. She stated they need to make sure to complete a 12-month review for Schleuning because it is well overdue.

Schleuning commented they are also preparing to hire the additional part time position. The delay was to ensure

they understood the business needs in order to hire for the right position.

13. OLD BUSINESS

A) Prosecution Service RFP Consideration

Schleuning referred to the memo provided on page 17 of the meeting packet and stated there have been a lot of changes over the past year so would like Board feedback regarding the timing.

Thomas summarized he understands that the Board expressed a desire to send out an RFP for a Civil Attorney as well as a Prosecutorial Attorney and he would support doing so in 2018. Given where they are with staffing, there is no crucial reason to push it right now.

Green stated the Board requested to go through the RFP process for a Civil Attorney, but an RFP for the prosecuting attorney is not something that needs to be done right now.

Jewett commented this is more about the future and how they can get into a process with doing RFPs, so they do not need to be done every year.

The Board agreed to postpone the RFP process until 2018 for the prosecuting attorney.

Green stated when they did the RFP with the Civil Attorney, they had been with the same attorney since the beginning of the agency. There is nothing wrong with that, but it was worth exploring.

Kroll asked Gilchrist how long he has worked with the LMCD Board.

Gilchrist responded he has been there about three years.

Green clarified the firm Gilchrist works for has been working with the LMCD from the beginning.

Thomas stated they went through an RFP process when Gilchrist's predecessor retired. They received competitive bids from several firms and ended up staying with the same firm.

Green commented they received great feedback from the process and learned a lot.

Schleuning agreed it is a good business practice to review contracts and services, and wanted to bring it up in a formal setting since the Board had expressed a desire to pursue this RFP this year.

14. NEW BUSINESS

A) Draft Letter to LMCD Member Cities Regarding Board Appointments 2018

Schleuning referred to the memo provided on page 18 of the meeting packet. She stated she understands it is a lot

of work to be on a Board, but it would be great to have everyone back. She expressed she also understands if they cannot do to other responsibilities.

Cook inquired if they had considered extending some of the terms so that they do not run the risk of a complete Board turnover.

Green commented the statute states the appointments are for three-year terms, but the Cities do not always follow that. They have tried to get Cities to stagger them so they do not run into this problem.

Jewett commented the City of Deephaven says the term is up every year and it has been a struggle. For the most part, if Members have wanted to stay, the Cities have allowed it. A few years ago, the appointments were staggered fairly well, but a lot of Cities have since gone back to appointing people every year.

MOTION: Thomas moved, Kroll seconded to authorize staff to send a letter to member Cities regarding the LMCD Board appointments for 2018.

VOTE: Motion carried unanimously.

B) Nominating Committee Timeframe

Schleuning referred to the memo provided on page 21 of the meeting packet. She reported timing is important to this process and they need to make sure there is more time available to communicate. They need to consider the time frame needed to establish a Nominating Committee and complete the nomination process to elect Board officers. She suggested they begin to think about people who would be interested in serving on the Nominating Committee.

Green inquired if anyone would be interested in serving on the Nominating Committee.

Zorn volunteered to be on the Nominating Committee.

Schleuning stated she will send out a memo to communicate this item to Members who are not in attendance. Those interested in serving on the Nominating Committee should contact her.

C) Review of De-icing Program for Winter 2017/2018

Schleuning referred to the memo provided on page 24 of the meeting packet. She reported they have had inquiries about the de-icing operations, regulations, and licenses. Last year with the mild weather, the code requirements referencing March were applied in February in order to address hazards associated with all of the ice dams. At that time, they had to make a quick decision about how it would need to be implemented.

Schleuning asked if the Board would be comfortable with a similar approach if the weather creates similar conditions this winter season. She also inquired if the Board would want to review any de-icing regulations as it relates to granting new de-icing licenses, but advised they should not base one year of mild weather on doing so.

Green commented they cannot control Mother Nature. He inquired if the language in the code provides for flexibility when Mother Nature does not cooperate with the dates. He suggested they tweak the dates to accommodate for this without creating legal issues.

Jewett agreed and suggested they review it to make sure there is flexibility. When the ice starts to come in, they do not have three days to schedule a meeting and act. They only have three hours to make a decision and it is vital to the stakeholders that the Board has the ability to act. He commented Excelsior was unable to put in their new docks and inquired how long they have a permit to install them.

Schleuning responded she will have to review the variance language with the application and will also talk with the attorney to see if there is something in the code that would specifically address it. She stated there were a lot of people that were not able to finish work over the winter and they had dock installers falling through the ice while trying to finish up projects. These are the types of things that have to be considered. This is where the use of discretion and reasonableness comes into play because not everything can be black and white with code enforcement.

Thomas commented that Schleuning did the right thing last year. He inquired if they need to include language in the code that the Executive Director has the discretion to save lives and valuable property.

Gilchrist responded he does think the code should be amended so that it is clearer and the language supports these types of emergency actions if this were to happen again. Even though the language of the code did not have the flexibility built in, they made the decision to act in favor of protecting life and property. It would be a minor amendment, but would give the Executive Director coverage that she has that authority.

Cook suggested the Board just grant her the authority.

Kroll agreed with Cook.

Thomas commented if they amend the code and use the word discretion, it may still require the Board to meet, and they would not have time to do so in a similar situation. He suggested Gilchrist come up with language that grants the Executive Director the authority to act.

Hughes reminded the Board of the discretion they had to go through several years ago for the high water that should not have taken as long as it did.

Molitor inquired if the issue was related to the dates written in to the ordinance and if it would make sense to reconstruct the ordinance to not be date specific, and base it on some other factor. He suggested they base it on ice thickness instead.

Jewett commented the thickness of ice varies too much and varies in areas of the lake.

Gilchrist stated seasonal road restrictions are no longer date specific and have been eliminated by MnDOT because the weather has been so unpredictable. MnDOT now makes the call based on frost depth in the different areas

when the restrictions apply. He will talk with Schleuning to determine if there is a reasonable standard to incorporate instead of it being date specific. A hard date with flexibility given to the Executive Director can work for now.

Molitor suggested they take the dates out and leave it up to the Executive Director to make the call based on conditions, similar to what MnDOT is doing.

Gilchrist stated there would have to be some standard.

Jewett stated MnDOT has the staff to manage it where the LMCD does not. He is concerned with the burden they put on staff when they ask them to do new things. People are typically off the ice well before the dates that are in the code.

Green stated it will still need to be site specific.

Schleuning commented wind makes a difference as well.

Hughes stated the key word is safety and if something needs to happen quickly, they should be able to do it.

Schleuning commented that it may be good to apply emergency actions in the code in general. There are some provisions that could possibly be used in State law.

Gilchrist responded other than addressing the low and high-water conditions, he does not recall a provision in the code that addresses an emergency situation. They could write something in that gives the Executive Director the authority to act in the event of an emergency situation.

Schleuning stated they will start reformatting other license applications similar to the de-icing applications and requested the Board provide feedback.

15. ADJOURNMENT

MOTION: Kroll motioned, Shuff seconded, to adjourn the meeting.

VOTE: Motion carried unanimously.

There being no further business, the meeting was adjourned at 8:22 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary