

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., September 26, 2018
Wayzata City Hall

WORK SESSION

6:06 p.m. to 6:38 p.m.

Members present: Jay Green, Mound; Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Andrew Punch, Excelsior; Chris Rich, Woodland; Mark Kroll, Orono; and, Deborah Zorn, Shorewood.

Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

Members absent: Mike Molitor, Minnetrista; Jake Walesch, Deephaven; and Sue Shuff, Minnetonka.

1. Board Self-Evaluation Process Discussion

Zorn invited the Board to provide feedback on the example self-evaluation forms included in the meeting packet.

Green asked if Zorn recommended a particular example of those included in the packet.

Zorn said that she recommended the first example, titled "Board of Directors' Assessment." She noted that wording of the "Considerations" in the assessment would need to be altered to better match the LMCD's status as public agency.

Schleuning said that the aforementioned example was a good balance between thoroughness and brevity.

Hoelscher said that the recommended example seemed too long. She suggested that the questions be focused and trimmed before the Board utilizes the assessment.

Thomas noted that the recommended example was one of the shortest of the examples included in the packet.

Zorn noted that the "Considerations" represented groups of questions that match the subdivisions of the LMCD's Strategic Plan.

Zorn said that she would incorporate the Board's feedback into a revised version of the recommended example, which she would bring back to a future meeting for further consideration.

Punch said that Consideration 28 would be moot as the LMCD does not need to fill out a "990" tax form.

Thomas said that Consideration 10 is not a requirement of membership on the LMCD Board of Directors. He suggested that perhaps some metric for assisting in fundraising could replace the Consideration. Chair Green thanked Zorn for providing the information.

2. Bylaws Review

Hoelscher said that the bylaws of the LMCD lay out a minimum term length of three years for all Board members.

Green noted that the statute that established the LMCD has been changed such that cities are not required to appoint a representative for three years at a time.

Gilchrist stated that the law states three years for terms, however, cities can change their appointments within that time period.

Hoelscher said that the bylaws state that the Treasurer of the Board must be bonded.

B. Cook said that he could look into what the requirement is regarding a bond for the Treasurer.

B. Cook noted that the bylaws ought to be updated to include language regarding the mechanism by which the Executive Director may take actions with the Board's authority to address an emergency prior to calling an emergency meeting. He suggested that the Board review the Executive Director's actions in an emergency at a later meeting to either affirm or denounce.

B. Cook added that the term "Civil Attorney" is used in one portion of the bylaws, but is not defined anywhere.

Schleuning asked legal counsel if the matter of emergency authority ought to be addressed and updated in both the Code and the bylaws.

Gilchrist confirmed that a change to both the Code and bylaws would be best.

Green stated that the Board would revisit the bylaws after preliminary edits have been made.

There being no further business to conduct, Zorn moved, B. Cook seconded to adjourn. Motion passed unanimously.

REGULAR SESSION 7:00 p.m.

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; Bill Cook, Greenwood; Dan Baasen, Wayzata; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Andrew Punch, Excelsior; Chris Rich, Woodland; Mark Kroll, Orono; Deborah Zorn, Shorewood; Jake Walesch, Deephaven. (Walesch arrived shortly after roll call.)

Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

Members absent: Mike Molitor, Minnetrista; and Sue Shuff, Minnetonka.

4. APPROVAL OF AGENDA

MOTION: Thomas moved, Zorn seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 09/12/2018 LMCD Regular Board Meeting

Green referenced the section regarding the recodification and noted that Kroll was a member of the audience at the last meeting and not participating as part of the Board.

MOTION: Zorn moved, Rich seconded to approve the 09/12/2018 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Thomas moved, B. Cook seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers 0(9/16/2018 – 09/30/2018).

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) 500NNL, LLC, New Multiple Dock License, Special Density, and Variance Applications to Reconfigure the Docks Under the Qualified Commercial Marina Criteria, located at 687 Excelsior Boulevard in Excelsior on Excelsior Bay

Schleuning directed the Board to the staff memo, dated 09/26/2018 and stated that the applicant submitted an application for the consideration of a new multiple dock license and variances for the dock use area (southern side site line, northern side site line, and northern side setback) for 500NNL LLC. She summarized the application request which includes:

- Request Qualified Commercial Marina – maintain 37 BSUs; special density license not required; allows 200-foot length into lake from 929.4 OHW, therefore existing length variance not required; use remains as an office building with a commercial marina for overnight storage including charter boats and Museum of Lake Minnetonka (“Minnehaha”)
- Maintain current variances – establishes side site lines; zero setback for north side; legal and site plan descriptions
- Integrate Museum of Lake Minnetonka’s commercial dock license into site license, while maintaining leasehold rights
- Reconfigure dock structures – generally within perimeter of existing dock use area; more uniform design; eliminate side opening slips to the south adjacent to Maynards Restaurant
- Maintain 37 BSUs
- Upgrade dock structures – watercraft stored within structured BSUs
- Update utilities

Schleuning displayed the current site plan for the property, highlighting the differences between phases one and two. She stated that although the updates in phase two have not yet been completed, phase two has been approved. She reviewed background information on the property and the licenses that have previously been approved by the Board. She reviewed the current site conditions and compared that to the proposed conditions for the property. She highlighted relevant Code sections that would apply to the request. She summarized the multiple dock review criteria and the variance criteria. She stated that there were no public agency comments received and advised of one comment of support from the marina owner to the north that was received. She reviewed some of the other considerations including the perception of high boat traffic in Excelsior Bay, navigability of surrounding waters, and site uniformity and upgrades.

Schleuning stated that based off the Code and application, pending any information received as part of the public hearing discussion, staff would recommend that the Board direct legal counsel to prepare Findings of Fact and Order to approve multiple dock license for a Qualified Commercial Marina with overnight storage, and variances for north side site line, zero setback on north side site line, and south side site line. If there are items that need to be reviewed further, it will be brought back and presented to the Board for final approval on October 10, 2018, with the following conditions:

- Allow time frame extension for installation if not feasible due to weather or other approved extenuating circumstance.
- Provide adequate sanitation facilities and parking for persons using the multiple dock facility.
- Meet the minimum requirements of the Qualified Commercial Marina
- License not transferable.
- Provide lighting plan for approval by the LMCD staff. The lighting plan must provide safe lighting of the dock and minimize nuisances to adjacent properties.
- Length overall of watercraft no longer than four feet beyond the boat storage units, with following exception; boat storage units 20 and 21 (along the northern side site line) and 19 and 37, the watercraft must fit within the boat storage units, so the total distance of structures and watercraft do not exceed 200 feet into the lake from the 929.4 feet OHW or extend into navigation pathways.
- The Board has previously granted a Commercial Dock and Special Density License to the Museum, which owns a leasehold interest in the subject property. The Museum's Commercial Dock License will discontinue and be incorporated into the site license, with the understanding that the Museum continues to have a leasehold interest until it is no longer valid.
- Property maintained and operated in compliance with all other provisions of this Code, and other applicable regulations, ordinances and State law.
- Dock structures constructed in compliance with the approved Site Plan and maintained in clean, safe condition.
- Applicant must submit an as-built survey after the reconfiguration indicating all required measurements including the 929.4 OHW NGVD, dock structures, setbacks, length, etc.
- Property maintained in a clean, safe and sound condition.

Schleuning reviewed the notification of the public hearing that was provided.

Zorn asked the width of the docking for where there Minnehaha is stored and whether that width changes between phases one and two.

Schleuning provided details on the width.

Thomas asked for the meaning of the stars on the phase one/two plans, it was confirmed that the stars are the highlighted slips that would have restrictions on the length of watercraft stored. He stated that the report states that phase two was approved in 2017 but not completed and asked if the Board has already approved phase two.

Schleuning confirmed that the Board approved phase two in September 2017. She stated that at that time the property owner stated that the plan was to review the configuration to determine if additional improvements would be needed. She explained that the applicant has chosen not to move forward with the approved phase two and has instead proposed these changes being considered for approval by the Board tonight.

Hoelscher asked if there was a page missing from the packet information.

Schleuning replied that missing sheet was just the proposed plan without the overlay that identifies the

changes.

Thomas stated that the Board received a letter of support from the neighbor to the north, Tonka Bay Sales, and asked if the neighbor to the south has provided input.

Schleuning stated that a she spoke with the neighbor to the south and the main concern is making sure that the navigation area is maintained as much as possible and stated he did not have any objections at this time.

Green invited the applicant to address the Board.

Bob Sarna, 500NNL LLC, commented that he provided the overlay to compare the existing structures to the proposed changes. He stated that the goal is to maintain 37 slips but to also accommodate the cruise boats and Minnehaha. He stated that he spoke with the neighbor to the north and that he did not mind the zero setback. He stated that this layout would provide the maximum use of the slips. He stated that the eight-foot-wide slip for the Minnehaha is to provide navigation into the slip in the manner which it does. He stated that on the south setback line, the patrons at Maynards have run into the boats or docks along that line and noted that this design would provide more uniformity and would provide more protection to the boats at those slips on the south side.

Green asked if the cruise ships would embark and disembark from those slips.

Sarna stated that the cruise ships would load staff and food service at the docks, but the majority of the patrons would load from the Excelsior slips.

Green opened the public hearing at 7:40 p.m. No comments were offered, and the public hearing was closed at 7:40 p.m.

Zorn thanked Sarna for continuing to accommodate the Minnehaha and the charter boats.

Klohs stated that this is an obvious design upgrade and is far superior to what has been there.

MOTION: Punch moved, Kroll seconded to approve the Findings of Fact and Order approving 500NNL, LLC. 2018 Multiple Dock License and Variance applications for the property located at 687 Excelsior Boulevard in Excelsior as presented and authorize the Chair and Secretary to execute the Findings of Fact and Order once the LMCD legal counsel finalizes the language.

VOTE: Motion carried unanimously.

Schleuning stated that staff will work with the applicant regarding the deicing operation and logistics of installation.

Sarna provided additional details on the proposed timeline and process for installation.

B) Channel Town Association, New Multiple Dock License and Variance Applications to Store Six Watercraft, located at PID 24-117-24-22-0012 on Bartlett Boulevard in Mound on Lost Lake/Cooks Bay

Matt Cook directed the Board to the staff memo, dated 09/26/2018 and asked that the Board consider a new Multiple Dock License application and variances for dock use area/side setbacks. He stated that the site has been in existence for many years and there are no structural changes proposed, noting that this would provide a license that allows for the storage of six watercraft and formalize dock use area and setbacks. He displayed the site plan, which overlays the proposed information included in this request. He provided background information on the property, noting that the site has been in existence since 1969 and is not currently licensed. He explained that without the license the applicant would be allowed to rotate the use of four BSUs on the site. He explained that the variance would clarify the side site lines, noting that the shoreline bends sharply, creating conflicting side site lines with the adjacent property (City of Mound). He reviewed the proposed conditions:

- 353 feet of shoreline – seawall along the majority of shoreline
- 6 BSUs with maximum dimensions of 10 feet by 26 feet – eliminating watercraft storage on east side of dock
- 1:58 Density (BSUs:Shoreline)

Matt Cook summarized the Multiple Dock review criteria for the request and highlighted the relevant Code sections. He also reviewed the details of the proposed variance on the east and the variance options for the west side of the property. He stated that staff has not received any comments from public agencies but stated that a letter was received from a group of property owners. He stated that the same group of property owners submitted a similar letter in January 2018 in relation to the Lost Lake Harbor request, citing concerns with increased boat traffic. He reviewed other items the Board should consider including the perception of high boat traffic in Lost Lake Channel/Cooks Bay, navigability of surrounding waters, and a potential of increased vegetation. He stated that staff recommends approval of the Multiple Dock License with the following conditions, noting that conditions A and B would be contingent on the option the Board approves:

- BSU on west side cannot extend further than 10' past the seawall (width of proposed BSU) and must be placed as far north as possible.
- Board can relocate BSU on west side (on channel) to NW corner of site if the presence of BSU in the channel is deemed that it may hinder navigation.
- Dock and watercraft cannot extend further than 32'1" into the water (on the north side).

Matt Cook stated that staff also recommends approval of the variance for east side site line, which begins at the wooden border and extends into the lake. He referenced the western side site line and reviewed the two options and recommended conditions:

- Option A – No variance for west side site line: west side site line extends from southern property line; relies upon MDL condition 1A to prevent encroachment into channel.
- Option B – Variance for west side site line: west side site line is the western property line; requires zero-foot setback.

Matt Cook stated that staff recommends that the Board direct staff to prepare Findings of Fact and Order to approve Multiple Dock License and variance to establish dock use area, which would be presented to the

Board for final approval on October 10, 2018. He reviewed the notification that was provided of the public hearing tonight.

Green asked if there are currently six boats stored at this site.

Matt Cook replied that he has not seen that number of boats at the site but acknowledged that it may have occurred in the past.

Zorn referenced the site map and asked for clarification about the blue dots. It was confirmed that those are water depth marks. She asked if there are currently dock sections in this area or whether the boats are tied to the posts.

Matt Cook stated that currently there is one boat tied to a dock at the north corner and the other boats tie to the seawall.

Zorn received confirmation that currently boats dock on both sides of the dock and confirmed that is not proposed as part of this request.

Matt Cook confirmed that the east side depth is not optimal and therefore storage on that side would be eliminated.

Rich asked if there have been any complaints from channel traffic regarding the docking on the channel side.

Matt Cook replied that staff has not received any complaints.

Rich asked if the boat on the channel could instead be on the angled part to the north.

Matt Cook confirmed that has been considered and is included as one of the options for the Board to consider.

Thomas asked for information on the logic of why the side site lines do not go north of the east/west property line.

Matt Cook explained that the proposed site line would allow for more reasonable use because of the OHW mark and the adjacent property line.

Kroll suggested more uniformity in the referenced of 32'1" and suggested that be 32.1 feet.

B. Cook asked for clarification on the easterly site line and how establishing that site line would prevent docking on the east side of the dock.

Matt Cook provided further clarification that the side site line did not extend straight into the lake. Also, the water depth and vegetation would be problematic.

Green invited the applicant to address the Board.

David Boyd, President of Channel Town Association, stated that he is present to address any questions. He stated that the townhomes were built in 1969 and have six units. He stated that currently there are five boats and noted that in some years there have been six boats. He stated that they learned this year that the property is out of compliance with watercraft storage, unknown to them previously. He stated that after speaking with staff they have submitted this application to become compliant as they were unaware that the activity had been out of compliance. He stated that they do not have a problem moving the boat parked in the channel to the northern corner if desired. He noted that they have not had any problems with docking in that area over the years.

Green asked if the boats are driving through the lily pads in the channel area.

Boyd stated that there has not been an issue. He noted that sometimes a boat has to wait for another boat to go under the bridge because of the narrow width of the bridge passage but advised that still does not cause problems for the boat. He stated that they would prefer to move the boat to the corner position, as there is enough space for parking in that area.

Rich stated that he prefers to not have boats parked in the channel and therefore agrees with parking on the corner position.

Green opened the public hearing at 8:18 p.m.

Amy Fritzke, 5470 Bartlett, stated that she thinks the boat on the channel has been beneficial. She stated that people do not go through the channel quickly because of the docked boat and two boats can still pass by each other even with the docked boat. She stated that there are six units in the association that have been in existence since 1969. She stated that the seawall was approved by the watershed. She stated that each townhome has its own property identification number, in addition to the association area, and therefore each home should have its own ability to dock.

Matt Cook replied that even though there are six independent parcels, the location of the shoreline all falls under one property ownership.

Amy Fritzke stated that it would be difficult to determine which homes are allowed boat storage if only four boats are allowed for the six homes.

Matt Cook stated that if the license is approved, then six boats would be allowed.

Amy Fritzke stated that perhaps this should have been grandfathered in as the townhomes were existence prior to the LMCD regulation.

Gilchrist replied that docks are not grandfathered in. He noted that the Code does allow for some prior activity

to occur but noted that water rights are not the same as property rights regarding nonconforming uses. He stated that the Board may consider the fact that the property has existed since 1969, but it is not a legal requirement.

Denise Bonnema, 5513 Bartlett Boulevard, stated that originally, she was afraid that there would be more boat traffic as there is already a lot of traffic in that area. She stated that if docking the boat in the channel deters higher speeds, she would then be in favor of keeping a boat docked in that location in attempt to keep speeds low in that area. She stated that she does not oppose this request as it would not add additional boats and would simply provide one spot for each of the six homes.

Kroll stated that the Board is well aware of the vandalism and lawlessness of some boaters. He stated that there is an ordinance in place which regulates music sound and recommended that the resident call the police if there are issues with loud music.

Schleuning recommended that the resident call staff to discuss the topic further.

Tom Brenner, 5456 Bartlett, clarified that if they could leave the west boat in the channel, that would be the preference. He agreed that creates a situation where people slow down in that area of the channel and still allows two boats to pass by each other while the boat is docked. He stated that six boats are all they are asking for which would allow each property owner to have their boat docked. He explained that each property owner purchased their home with the assumption that they had the right to dock on the water.

No additional comments were offered, and the public hearing was closed at 8:27 p.m.

Klohs agreed that if a boat is docked in the channel that would perhaps assist in controlling boat speeds in the channel.

Zorn stated that she can see both sides of using the channel or not using the channel for docking. She stated that changing the position further to the northern corner would deter boats from going into the lily pad area, while it appears that docking in the channel location may deter boaters from higher speeds.

Green stated that there is adequate room for boats to navigate through the channel without going into the lily pad areas.

Klohs stated that speed is an issue and having the boat docked in that location will keep speeds lower, and therefore, it could be safer to keep the boat in that location.

Rich asked if there are slow buoys in that area. He stated that he is struggling with allowing docking in the channel, noting that perhaps at night the area is not lit, and someone could run into the boat. He was unsure that it would slow people down if it is not in their path.

The comment was made that there are lights along the seawall.

MOTION: Thomas moved, Klohs seconded to approve the Findings of Fact and Order approving the Channel Town Association Multiple Dock License and Variance Applications as presented and to authorize the Chair and Secretary to execute the Findings of Fact and Order once the LMCD legal counsel finalizes the language, selecting Option A with the boat in the channel.

Further discussion: Walesch asked if there is an option to approve Option A and preserve the right to require that the boat be moved to the corner if issues arise.

Gilchrist stated that was not presented as an option but that could be added in as a finding. He noted that the Board has followed a similar path on other requests.

Rich asked if approving this would set a precedent for allowing boats to dock in channels.

Green noted that there are many channels where docking already occurs. There are many variables to consider.

Schleuning stated that the ability to change the location of the channel docking location is included as condition F in the proposed language.

VOTE: Ayes (11), Nays (1, Zorn), Motion Carried.

10. OTHER BUSINESS

There was no other business.

11. OLD BUSINESS

There was no old business.

12. NEW BUSINESS

A) Draft Letter to LMCD Member Cities Regarding Board Appointments 2019

Green referenced the attendance noting that there are 17 meetings but two of the cities list a higher number of meetings attended, at 21 meetings.

Schleuning stated that she will update that change. She highlighted another change to the term ending section to include Baasen as a term ending 2021. She anticipated that the letter would be sent later in September or could be sent in October if the Board would like to see the letter again.

Green confirmed that staff could make the directed changes and the Board would not need to see the letter again.

Baasen noted that there is a reference of October 22, 2018 through August 22, 2018 and suggested that the first

date be changed to October 22, 2017.

13. TREASURER REPORT

B. Cook had nothing further to add.

14. EXECUTIVE DIRECTOR UPDATE

Schleuning reviewed the draft fall Save the Lake Letter: She welcomed input from the Board. She noted the addition of an option for a boat bag with donations of \$100.

Hoelscher stated that the commemorative items have been a huge hit. She asked staff to ensure that all the commemorative items include LMCD.org. She noted that would provide a way for the person to contact the Board.

Baasen noted that the information is provided on all items with the exception of the keychain because of limited space on the item. He stated that overall the initiative has been well worth the efforts this year, noting that members have attended community events. He reminded the Board of another upcoming event that the LMCD/Save the Lake will have a booth.

Schleuning stated that it will be another busy winter with reconfigurations and repairs. She noted that there is an upcoming application for the City of Excelsior that relates to deicing for storage of cruise boats. She stated that the District received an offer of a donation of a fishing boat from a resident's estate. She noted that while the District does not have need for that type of boat at this time, she was thankful for the offer.

15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Committee/Taskforce: Green reported that the next meeting will be on October 19th.

Schleuning stated that the focus of that meeting will be more on action planning, along with the agency updates.

Budget Workgroup: B. Cook had nothing to report.

Recodification Workgroup: Gilchrist reported that he sent out the "homework" as discussed previously. He noted that it was a bit difficult to determine exact divisions of the information. He stated that he is waiting for the feedback from the Board, with the deadline of October 15th. He stated that this will be a great step forward to have the Board reviewing the information. He noted that the members of the Board are not limited to the section they were sent and are welcome to provide comments on additional sections as well. He noted that once he receives all comments he can provide an updated draft.

Save the Lake Committee: Baasen reported that the group met the previous evening and discussed the incentives for the 50th anniversary. He noted that there is an inventory of items that could be distributed for different level donations. He stated that he would like permission from the Board to send the Save the Lake letter in October. He noted that there was one boating safety session and stated that in future years they would like to have two sessions,

one on each end of the lake area. He stated that the Committee felt that a special thank you should be added to the letter thanking supporters for their support over the past 50 years, rather than just the past year. He stated that the next meeting will be held on November 13th.

Strategic Plan Subcommittee: Schleuning had nothing further to report.

Communications Work Group: Hoelscher stated that at the last meeting this group was established, and the group met today. She stated that the purpose of the group will be to assist the Board in communicating with the public. She noted that the next meeting will be held on October 24th and welcomed any additional members that would like to participate.

16. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:55 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary