

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 P.M., March 27, 2019
Wayzata City Hall**

1. CALL TO ORDER

Chair Thomas called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Bill Cook, Greenwood; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mike Molitor, Minnetrista; Chris Rich, Woodland; Nicole Stone, Minnetonka; and, Deborah Zorn, Shorewood. Also, present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

Members absent: Ann Hoelscher, Victoria; Dan Baasen, Wayzata; Ben Brandt, Mound; Mark Kroll, Orono; and Jake Walesch, Deephaven. Excelsior Vacant.

4. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Gilchrist administered the Oath of Office to the following Board member:

A) Oath of Office to Chris Rich (City of Woodland)

Chair Thomas stated that he has been told that there are people that would like to address the legislative update and noted that agenda item does not allow public comments. He suggested that people in attendance to address that item may make their comments during the public comment portions of the agenda.

6. APPROVAL OF MINUTES- 02/27/2019 LMCD Regular Board Meeting

MOTION: Molitor moved, Hughes seconded to approve the 02/27/2019 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Zorn moved, Cook seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (03/01/2019 – 03/15/2019) and (03/16/2019 – 03/31/2019); **7B)**

Resolution accepting Save the Lake Contributions (01/01/2019 - 02/26/2019); **7C**) January and February Financial Summary and Balance Sheets; **7D**) LMCIT Liability Coverage Waiver Form; and **7E**) Summary of Executive Director Review.

VOTE: Motion carried unanimously.

Chair Thomas noted that on March 12th he met with Schleuning to review her performance review. He noted that a multipage summary was prepared summarizing the input from the Board. He noted that goals for the upcoming year were agreed upon and are available to the Board.

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

Matt Johnson, 1432 Shoreline Drive in Wayzata, stated that he is a member of the Orono City Council but is not speaking for the city as a whole. He referenced item 12 on the agenda, the emergency powers, and stated that he has received some letters from the Mayor or Orono and Executive Director pertaining to the legislation. He encouraged the Board to support and encourage conversations related to items on the agenda. He noted that this issue arose quickly and questioned the appropriate way to address an item that arises quickly. He stated that this issue will be on the next agenda for the Orono City Council as well. He stated that the concern shared by the Executive Director in the report is the same concern that Orono has, in that the bodies were not made aware of the issue and were not allowed to comment. He asked why the letter did not request an extension of time on the request which would allow the Board, and the member cities, to provide comments. He stated that he has concerns with the position that the LMCD Board has taken in the letter and would like time to react. He commented that the cities are capable and can cooperate with the LMCD for situations above the ordinary high-water mark. He stated that the cities have jurisdiction on the properties, the capacity to enforce, and the ability through code to enforce. He rejected the idea of the LMCD making a position that would impact Orono, when the item did not have enough time to be considered by the LMCD Board.

Chair Thomas stated he would like to add items to the Chair Announcement. He referenced the donations to the Save the Lake fund that were made in memory of Thomas Bernard. He stated that in lieu of flowers, the family requested that memorials be made to the Save the Lake Fund at the LMCD. He recognized and thanked the family for the donations received as a result of that generosity.

9. PUBLIC PRESENTATIONS

A) Wayzata Sailing School Project and Access Update

Schleuning stated that the LMCD enjoys collaborating with different partners, which includes educational opportunities. She stated that the Wayzata Sailing School offers opportunities for public access for a diverse population and thought the information would be good to share.

Matt Thompson, Executive Director of Wayzata Sailing School, provided background information about the non-profit organization. He provided information about the brand and purpose of the program along with highlighting the different programs offered, which are categorized between racing, programs, and community

events. He reviewed the partners that the organization worked with the previous year through outreach, schools and camps, and community. He noted that Hennepin County has been a great partner in support with different funding grants. He stated that the Mike Plant Community Boat House is under construction and will be a new home for the organization. He displayed a sketch of the old property, noting that they worked hard over the last decade to create the new community building and reviewed a sketch of the new building. He hoped that the building could be used year-round, compared to the four to five months that the program was able to run in the old building. He provided input about the budget for the construction process and stated that they have raised most of the funds to complete the building this year. He stated that they have about \$800,000 left in fundraising needs and asked that the community think of them when making donations or contributions. He thanked the community and LMCD for their continued support.

Chair Thomas thanked them for the work they do for the Lake Minnetonka Community.

10. PUBLIC HEARING

There were no public hearings.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) Emergency Powers and Cost Recovery Code Amendment

Gilchrist stated that he was asked about this item previously, providing an example of the early thaw and how that did not align with the dates in the deicing regulations. He explained that the Code should recognize that there are circumstances that may arise that need action from the Executive Director yet would not necessarily require the full Board to be called in for an emergency meeting. He noted that a draft of the ordinance was reviewed at the January 9th worksession. He stated that the revised ordinance was included in the Board packet. He stated that the comments from the Board at the last review have also been incorporated into the draft ordinance.

Chair Thomas stated that the intention is that this code section would be used infrequently, and the Board would receive a report at the next Board meeting following an emergency decision. He explained that in order for the Board to meet there is a three-day notice period and therefore in an emergency situation it would not make sense to require a three-day notice.

Gilchrist stated that if there truly was an emergency situation that needs the attention of the Board, that could be called without the three-day notice. He explained that this policy is meant to address those situations that arise in between those levels and could be addressed by action of the Executive Director.

Molitor asked what would prohibit the Executive Director from taking the actions described without this ordinance.

Gilchrist explained that the ordinance would specifically clarify the authority for the Executive Director to act. He

used the example of the early thaw, which provides a March date. He noted that action was needed earlier than that date this year to protect public safety because of the earlier than normal warm weather.

Molitor asked when a Board report would be provided.

Gilchrist explained that a report would be provided anytime the Executive Director would be acting within the scope of flexibility. He explained that the report not only is intended to inform the Board but also is an opportunity for the Board to provide input about the decisions that are made. He stated that there is a component where the Executive Director is to check with legal counsel when possible, to ensure that another person is commenting before taking action. He stated that this ordinance has nothing to do with the legislative activity and has no impact on that issue as this deals with life safety on the lake and is not related to legislative policy.

MOTION: Zorn moved, Hughes seconded to approve code amendment clarifying the authorization for the Executive Director to take necessary actions during emergency situations and authorizing the recovery of costs.

VOTE: Motion carried unanimously.

MOTION: Zorn moved, Hughes seconded to adopt the resolution approving summary language of the ordinance for publication.

VOTE: Motion carried unanimously.

13. NEW BUSINESS

A) Libbs Lake Association AIS Funding Request

Chair Thomas stated that Libbs Lake has submitted a funding request this year for AIS funding. He noted that the previous year the Board contributed \$2,500.

Schleuning stated that for the last few years there has been some level of support for AIS within Libbs Lake. She explained that the lake association uses an integrated approach and provided additional details. She noted that the lake association has followed all the recommendations and requirements for the use of the funds in the past and has been effective in the use of past funding.

Cook asked if this was an anticipated expense in the 2019 budget.

Schleuning stated that there were some funds identified for this type of funding and confirmed that the request was previously funding through AIS or Save the Lake.

Chair Thomas stated that Minnetonka pays a large portion of the levy assessments of the cities that make up the LMCD. He explained that because the LMCD harvester has not been able to get into Libbs Lake, that was a reason that the request had been approved in the past.

Zorn asked if a hold should be made on this approval given that the LMCD has put a hold on its harvesting activities this year.

Chair Thomas stated that he also asked that question. He stated that the LMCD harvesting program had been put on pause because of several concerns that the organization is attempting to address. He stated that this request uses a third-party harvester. He stated that the lake association is not proposing to bring in a harvesting machine and explained that the lake association brings in divers to harvest the material, which is a different type of AIS harvesting.

Zorn stated that the Board needs to be in agreement in the case that other communities come back to ask the Board for the reason the request is supported or not supported.

Cook stated that there is a line item in the 2019 budget for grants, and if the Board is inclined to approve a request, that it would come from the Save the Lake fund.

Molitor stated that he would take the opposite view of Zorn in that if the LMCD is not harvesting on the other part of the lake, the Board could at least support this group of residents taking this action. He asked the amount the Board would support, noting that he would support \$3,000 as \$2,500 was contributed the previous year.

Klohs stated that this is a justifiable and worthwhile cause but not in the context of what the LMCD is doing this year. He stated that there are many people that do not agree with putting the harvesting on pause and if this is approved, that could bring forward many more funding requests from other bays.

Rich agreed with Molitor that this is aside from the harvesting of the LMCD and would look to support the continued action of the lake association as it has done in the past.

Cook stated that it seems that the LMCD stopped harvesting on the lake in response to complaints. He noted that this group of people want to complete this activity and are asking for assistance. He stated that if other groups decide that they want to do something similar, that is something the Board would consider case by case. He did not see this related to shutting down the harvesting program.

Klohs stated that there may not be funds to approve future requests if the RFP is approved.

Cook agreed that if funds are not available, the Board would simply need to explain that if another request were to come in.

Hughes stated that the LMCD is looking at its harvesting program and is not harvesting this year. He stated that the Board decided not to harvest this year and that needs to be the decision, whether it is by machine or people, and therefore would not support the request.

Stone stated that she does see the point of the Board members that have spoken against the request. She stated that she also lives in Minnetonka and that the end of the year party for the last day of school is at that beach and the kids will not swim if there are weeds. She stated that it is a small amount of money that has a large impact to those residents and those who use the beach. She acknowledged that approving this request could open to the door to

future requests from other resident groups.

MOTION: Molitor moved, Thomas seconded to approve the Libbs Lake Association funding request in the amount of \$3,000 from the Save the Lake fund to provide mechanical AIS removal from Lake Minnetonka.

Motion carried Ayes 5, Nays 3 (Zorn, Hughes, Klohs).

B) 2019 Alcoholic Beverage License Renewals

Schleuning presented the request for alcoholic beverage license renewals for 2019, noting that part of the review process includes a review from Hennepin County, State, training, and other conditions. She stated that the approval would be contingent upon the necessary completion of the background check, signed zoning certificates from municipalities with ports of call, inspections, and training. She stated that if the cities do not approve a port of call, that would become a license condition.

MOTION: Thomas moved, Rich seconded to approve the resolution approving specified liquor licenses for watercraft for hire on condition of satisfactory background investigations, receipts of signed zoning certificates from municipalities with ports of call, attendance at the annual training meeting, inspections, and other conditions as required.

VOTE: Motion carried unanimously.

C) Legislation Update

Chair Thomas asked Gilchrist to address a letter that was sent from the City of Orono that was most likely sent to all the members of the City Councils along with the County Commissioners. He stated that he met with his City Council to discuss the topic. He stated that there were untrue statements included in the letter from Orono.

Gilchrist stated that the question is regarding the authority of the Executive Director to respond to items. He noted that legislation was introduced to limit the current authority of the LMCD. He stated that the staff found out about the legislation after the first reading and the Board was not scheduled to meet for another few weeks. He stated that he consulted with the Executive Director and Board Officers to assist in drafting the letter of response. He noted that he helped the Executive Director draft the response letter and noted that she does have the authority to sign that letter of response to the legislature. He stated that the Executive Director has broad authority to act on behalf of the LMCD and does have the right to write a letter to the legislature on a proposed change to policy that has been on the books for many years. He stated that the Board Officers also have the authority to speak on behalf of the Board in favor of existing law. He stated that it is also important for the Board to support the Executive Director, especially in a situation where that authority has been called into question by other bodies.

Chair Thomas agreed that there needs to be transparency on both sides. He stated that the Board needs to respond to the Mayor of Orono in some fashion and send a copy to the members of the City Councils, County Commissioners, and other parties.

Gilchrist referenced the comment that was made that the LMCD believes that the cities do not have the capability to

manage on-land activities. He stated that was not the statement or intent of the comment in the letter regarding the 14 cities. He explained that the LMCD was created to establish unified regulations for the lake as a whole, rather than 14 different sets of rules to apply on the lake. He stated that certain activity that occurs above the ordinary high-water level, such as storage of watercraft, could impact density of the lake. He stated that the intent was that the LMCD should regulate activity that impacts the water or activity on the water. He stated that the letter states that the jurisdiction currently belongs to the LMCD and should remain with the LMCD.

Klohs stated that there has been reference that the letter came from the Mayor of Orono and/or his City Council and asked if Orono held a public meeting on the topic.

Chair Thomas was unsure. He noted that it was stated that the Mayor of Orono asked his City Administrator to send the letter to the other City Administrators, noting that the letter asks that the information be conveyed to the full Council.

Klohs proposed that the LMCD draft a letter that summarizes the statements of Gilchrist and send that letter to the applicable parties.

Chair Thomas stated that he has become increasingly concerned as he continues to receive questions. He stated that the Executive Director has done a great job and responded in the manner in which she should have, as Gilchrist and all four Officers were consulted. He noted that an email from the Executive Director and Chair Thomas was sent to the full Board about the bill and letter. He stated that the LMCD was informed of the bill on Thursday and on Friday the decision was made that Chair Thomas would testify on the topic.

Cook asked if the City Administrator for municipalities has similar authority as the LMCD Executive Director.

Chair Thomas stated that he does not want to debate Orono. He noted that Orono has sent out a letter criticizing the activity of the LMCD and Executive Director and calling for the resignation of the Executive Director and Board. He stated that needs to be responded to as the Executive Director did nothing wrong and responded in the appropriate manner with consultation of legal staff and the Board Officers.

Rich agreed that the Executive Director acted appropriately, and that time is of the essence on this topic. He commended Schleuning for stepping up and acting as the Executive Director on behalf of the Board. He stated that he would be open to discussion with Orono but believes that it is inappropriate that Orono has called out Schleuning in this manner.

Cook agreed with the comments made thus far. He stated that the Board should pass a motion in support of the action taken by Schleuning. He stated that the motion could then be shared. He stated that if letters are drafted back and forth, things can be taken out of context and that can continue the debate.

Klohs stated that Gilchrist represents many municipalities outside of the LMCD and asked what his recommendation would be.

Gilchrist stated that his natural reaction would be to communicate with a letter but noted that the decision would be of the Board. He stated that as a governmental entity the Board is subject to opinions on the job they are doing and

not everything can be responded to, agreeing that it can sometimes be counterproductive to respond. He stated that if the Board is comfortable that the Executive Director acted within her authority, it can be left at that. He stated that because there was a letter from Orono, he would suggest that some action be taken, whether that is through a motion of support to be shared or letter.

Klohs stated that he agrees that the intent of Orono was to create visibility and back and forth and the LMCD should not become involved in this since this is a non-issue and therefore, there is no basis for the comments made.

Chair Thomas stated that he would like the members of the Board to speak with their City Council to share the comments from the Board to provide clarity.

Schleunig stated that she appreciates the support. She agreed that the Board should keep it simple and move on. She stated that it would have been helpful to have input on the topic prior to the introduction of the bill. She believes that this is an item that could be incorporated into the Board's current engagement initiative and as we move forward in the next steps of reviewing code performance standards.

MOTION: Cook moved, Rich seconded that the Board of the Lake Minnetonka Conservation District (LMCD) supports the Executive Director for her work on the legislative efforts to date on SF1691 and HF1729. The Board has expressed to the Executive Director that she has the authority to do what was done and the Executive Director acted in a professional manner in support of the LMCD.

VOTE: Motion carried unanimously.

MOTION: Cook moved, Rich seconded to direct staff to circulate a copy of the motion to all City Managers and City Council members, the appropriate County Commissioners, and the legislative Committee.

VOTE: Motion carried unanimously.

Chair Thomas stated that a bill was submitted in both the Senate and House that states that the LMCD should not have authority over the ordinary high-water mark. He stated that he spoke in representation of the LMCD against the proposed bill and the Mayor of Spring Park who is also a marina owner spoke in favor of the proposed bill. He stated that the Mayor of Spring Park believed that the largest motivator on this topic for the LMCD was financial. Thomas explained that the LMCD receives \$7.50 per dry dock slip and the largest dry dock has about 120 boats. He stated that there are currently only four dry dock permit holders. He noted that the issue is not about funding and is about boat density and activity. He stated that the vote in the Senate passed in favor of the bill and therefore the bill will continue to move forward. He stated that the House bill has not come forward yet for testifying. He asked if the LMCD should continue to invest time on this topic.

Cook stated that it is his understanding that the Senate is putting this in the omnibus bill. He stated that if approved by the Finance Committee in the Senate, the bill will be combined in the omnibus bill. He noted that there is a similar process in the House. He stated that he would be supportive of trying to provide testimony on behalf of the LMCD whenever appropriate.

Rich stated that he received a call from Senator Osmek, and the bill has been included in the omnibus bill.

Chair Thomas noted that the legislature granted the LMCD's powers in 1967 and that power could be taken away in 2019. He believed that the LMCD should continue to explain their position.

Molitor stated that he also supports the LMCD continuing the stance that it has taken. He stated that the whole topic of transparency is laughable because the two legislative representatives represent the district that he lives in. He noted that the first time he heard about the bill was in the communication from the Executive Director. He stated that the legislative representatives that proposed the bill should have come to the LMCD. He believed that the activity of those two legislative representatives is despicable. He believed that the LMCD should continue to express their position on authority as this could create a huge issue with density on the lake that would not only impact those that live on the lake but those that enjoy the lake as well.

Stone stated that Senator Osmek has not returned her phone calls. She asked if Senator Osmek returned the call from Rich and what his reasoning was in proposing the bill.

Rich confirmed that he left a message for Senator Osmek and his call was returned. He stated that the conversation was relatively brief. He stated that the Board is a group of reasonable people that are open to dialogue and believed the LMCD should have been notified first.

Chair Thomas stated that Schleuning, Cook, Klohs, and Zorn attended the hearing at the Senate as well.

Zorn stated that if this density is allowed to increase on land, the neighborhoods where the commercial marinas exist could experience problems. She noted that the neighborhoods may not be in favor of the additional traffic that would be created from the additional density.

Chair Thomas stated that if the bill passes, the LMCD would not be allowed to permit dry dock storage. He noted that the cities could still manage that activity, it just is not the authority that was given to the LMCD to regulate the lake equally.

Klohs stated that the legislature established the LMCD in 1967 and there is a baseline reality that this is the most active and complicated lake in Minnesota and many of the member cities are very small. He stated that it is easy to state that the LMCD is water and the municipalities are land, but in this complicated lake it is not that simple as they interact. He stated that rather than talking to any of the staff or Board, the legislative representatives chose to attempt to sneak this legislation through. He believed that staff should stay involved and attempt to educate those involved.

Chair Thomas confirmed the consensus of the Board to support staff and the Board Officers and to continue to provide testimony in support of the LMCD's current legislative authority.

14. TREASURER REPORT

Cook reported that once the audit is received from 2018, the 2020 budget process will begin.

15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Ice and open water dangers. The Hennepin County Sheriff's Office is advising everyone to stay off the ice because it is not safe.
- The LMCD was awarded AIS funds, \$20,000 from Hennepin County, for the watercraft inspection program to help prevent the spread of AIS. The LMCD will continue to work with Three Rivers Park District on the program. They have incorporated other educational activities into the program such as boater safety and courtesy. Additional discussion about monitoring for AIS is in progress.

Cook asked if the LMA representative in the audience would be willing to work with the LMCD regarding AIS monitoring activities. Evanson indicated that he would and Schleuning agreed that would be beneficial.

- In follow up to questions that Board members and staff have received in regards to options to address problem vegetation growth, staff reached out to other agencies that have integrated vegetation management and/or harvesting programs to obtain cost estimates, along with reaching out to lake service providers for cost estimates to control AIS vegetation. Costs vary depending on types of vegetation harvested, availability of service provider, control method, offload locations, etc. She asked if the Board desires to allocate a level of funds for this type of harvesting if there are navigation or safety concerns. She suggested \$10,000. She also asked if the Board would like staff to spearhead the efforts since it can be time consuming, especially for separate parties. She noted that vegetative control would be site specific to determine the most critical areas and when the situation would be deemed as warranted. Schleuning stated that both the MN DNR APM and AIS would work with the LMCD to shorten processing times to address these types of issues.

Chair Thomas stated that he liked that the DNR would agree to help permit the activity. He noted that there is a budget for harvesting and perhaps it would be appropriate to allocate \$10,000 for harvesting in critical areas if that is deemed necessary. He asked if the decision could be made when the time comes.

Cook agreed that the decision could be made as the time comes. He would not support allocating funds now but believed that staff should spearhead the effort. He noted that staff can apply for the permit and the activity can be updated to the Board.

Molitor agreed with the comments of Cook.

Rich agreed that as long as the activity does not conflict with the intent of the harvesting motion that was passed, he would agree with activity as needed for navigation and safety.

The other members of the Board did not disagree with the comments and supported the action as described.

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: Cook reported that three proposals were received in response to the RFP. He stated that the group will review the RFPs and begin the evaluation and selection process.

Budget Workgroup: Cook had nothing further to report.

Recodification Workgroup: Gilchrist stated that he attempted to schedule a conference call with the Workgroup in attempt to develop a plan to get the information out for public comment. He stated that he will develop a list of options to solicit input from the Workgroup.

Save the Lake Committee: Chair Thomas reported that the group has not met since the last update.

Strategic Plan Subcommittee: Zorn reported that the group met and is in the process of moving forward.

17. ADJOURNMENT

MOTION: Cook moved, Molitor seconded to adjourn the meeting at 8:50 p.m.

VOTE: Motion carried unanimously.

Gregg Thomas, Chair

Ann Hoelscher, Secretary