

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., August 14, 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; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Chris Rich, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Andrea Rehm, Excelsior vacant.

Members absent: None.

4. APPROVAL OF AGENDA

Schleuning recommended changing the order of Items 11B and 11C.

MOTION: Klohs moved, Walesch seconded to approve the agenda as amended, making the change noted by Schleuning above.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 07/24/2019 LMCD Regular Board Meeting

MOTION: Baasen moved, Stone seconded to approve the 07/24/2019 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (9), Abstained (4), (Molitor, Zorn, Rich, and Kroll) Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Cook moved, Baasen seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (08/01/19 – 08/15/19); **7B)** July 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

There were no public hearings.

10. OTHER BUSINESS

There was no other business.

11. OLD BUSINESS

A) Wastewater Discharge Code Amendment

Walesch stated that a group met at a marina and boarded a few vessels with the intent of determining what could mechanically be done to prevent people from dumping waste into the water and in addition determine what enforcement could be done. He stated that on the larger boats there are devices/pumps that shoot the sewage into the water and there is no mechanical need for the pumps with the exception of discharging waste into the water. He stated that the pumps are easily removed and there is no use for the pumps, therefore the pumps could be removed to prevent discharge. He stated that there is a Y valve coming out of the tank that could also be secured to a closed position which would still allow the tank to be pumped from the marina. He stated that there was also discussion focused on enforcement, noting that the Sheriff is open to the idea but on the larger boats it could be difficult to locate the pumps and the Sheriff cannot always board a boat. He stated that a draft ordinance could state that it is illegal for an individual to launch a boat not in compliance with the ordinance, which would make it incumbent on the service providers to inform boat owners. He stated that he would want to ensure that there is buy in from the service provider community and noted that in early discussions there seems to be support from that group. He recognized that a large part of this would be public education. He stated that they are beginning discussions related to penalties and advised that should the Board wish to continue to move forward, additional work would be required.

Chair Thomas thanked Walesch for his work on this topic.

Baasen thanked Walesch for his effort thus far. He stated that if the Board is going to make a different law, there needs to be teeth to enforcement. He hoped that the Board could take a look at appropriate amounts for fines related to noncompliance and violations.

Walesch agreed. He noted that there could also be steps to violations, with penalties increasing for multiple violations.

Gilchrist stated that the Board can make a violation of code a misdemeanor offense, which could have a

penalty of \$1,000 and/or 90 days in jail. He stated that a petty misdemeanor could also be considered, which would have a lesser fine. He explained that the level of fine for misdemeanor offenses has been increased in steps over the years. He stated that if the Board wanted to, the mechanical component could perhaps be set at a petty misdemeanor with violations set as misdemeanor. He noted that he would want to speak more in detail with the prosecutor.

Walesch confirmed that the Board should have further discussion on the penalty. He agreed that a fine of \$100 to someone that owns a \$900,000 boat would not be much of a deterrent. He stated that perhaps alternative options could also be reviewed for repeat violators, noting that perhaps a boat could even temporarily be impounded.

Kroll stated that he agreed with the penalty amounts discussed but noted that it could be difficult to catch someone. He stated that he likes the idea of sealing the discharge component upon launch. He stated that the LMCD could purchase seals that could be used that you could see if they have been removed. He asked if the infraction would be upon the boat owner or marina owner.

Walesch explained that both parties could be liable. He explained that the intent would be to remove the pump from the boat, which would remove the capability of the boat owner to discharge into the lake. He explained that securing the Y valve would be a secondary measure to ensure compliance.

Kroll appreciated the clarification. He asked if the Board would have any limitations on enacting this ordinance with the changes to State law.

Chair Thomas commented that he did not believe that there is anything in the code that would currently require a non-boat owner to be accountable. He stated that if the Board did not have authority, there would always be an option to ask each of the cities to adopt the ordinance.

Walesch stated that once the boat is on the water, the Board would have authority, and is where enforcement could occur.

Gilchrist stated that they would want to ensure that the ordinance language is clear on the water activity, as that is where the jurisdiction of the Board would occur. He stated that there are a lot of good ideas, but he will need to research the topic further.

Rich stated that this is great information following what occurred on the 4th of July. He stated that perhaps public safety violations could be implemented as well. He stated that in terms of liability he was unsure how a penalty could be imposed on a marina owner. He noted that perhaps a marina owner would not be able to launch a boat that has the pump installed. He agreed that the penalty would need to be severe to deter this activity.

Chair Thomas stated that the two health departments involved with the 4th of July incident were not able to link the source of the illness. He stated that how the Board deals with these boat discharge system needs to be independent of the review of other possible sources of contamination for this incident.

Rich stated that he would support this type of ordinance and again noted that the penalty would need to be severe in order to prevent the activity.

Hughes stated that he would be in favor of supporting this type of activity but noted that perhaps a better option would be to look into State legislation that would require this on all boats and rivers.

Chair Thomas noted that there is a current State law.

Walesch confirmed that there are State and Federal laws that cover this topic and noted that what the LMCD would be proposing would be more restrictive than those existing laws. He noted that although the 4th of July incident cannot be tied to a specific source, the cause was human. He stated that Lake Minnetonka is one of the only lakes that is large enough to support boats with this type of equipment.

Chair Thomas stated that he would be hesitant to have a different set of rules for Lake Minnetonka compared to other nearby lakes and would be hesitant to be more restrictive than State or Federal law. He used an example of a previous lawsuit that the LMCD lost when it was more restrictive than State law.

Zorn asked for information on the cost or process involved in removing the equipment or securing the valve.

Walesch stated that he can provide that information at a future time. He noted that securing the valve would be a five minute or less process.

Brandt stated that if something is enacted of this nature there is the benefit of the seasons, which allows additional time for research. He questioned if perhaps securing the Y valve would be enough. He noted that there could be a serial number zip tie that would ensure that someone is not cutting the tie on the water and replacing with another zip tie.

Walesch stated that he would guess that about 95 percent of the boats that have these devices are out of compliance with what was discussed tonight.

Brandt commented that it would be helpful to have the support of the marina owners as they would be the ones doing the work on this issue. He would support placing the penalty on the boat owner rather than the marina.

Cook stated that he is going to support this activity as well. He stated that he would suggest a tiered penalty with different penalties for the service providers and the boat owners. He explained that he would not want to severely penalize the service provider if they are following the ordinance.

Baasen stated that in his opinion if an ordinance is going to be passed, it would be timely for the marina owners to be able to do the work in the fall when boats are being taken out rather than waiting until the spring to pass something when marinas are busy. He stated that there are State and Federal laws and the LMCD has the ability to establish ordinances as well. He believed that penalties should be limited to boat owners as

much as possible.

Chair Thomas stated that he received a contract for winter boat storage from his marina today, which included language about checking and cleaning for invasive species. He stated that perhaps marina owners could simply be asked to help enforce the current State law related to the Y valve.

Hoelscher stated that she is shocked that this is an issue as it seems unfathomable that anyone would dump waste into the water. She believed that it would be a small percentage of people that dump sewage into the water intentionally. She believed that education will be a key component. She stated that she would be concerned with requiring removal of the pump, as boats that came from out of state could be sold out of state where those pumps may be needed in the future. She stated that she would support enforcement of the State law and increasing penalty.

Stone agreed that it is unfathomable that someone would dump sewage into the water. She stated that perhaps there is a bigger picture on how this could be enforced, such as requiring the Y valve to be secured before tabs are received from the State. She stated that this would be a community effort of education that should include people servicing/winterizing boats.

Walesch stated that he believed most all of the boats that have these pumps are launched at a marina. He estimated that perhaps the cost to disconnect the pump and shut the valve would be \$100 and if someone was going to sell the boat it would be a similar cost to reattach.

Klohs stated that he looks forward to seeing the draft ordinance.

Kroll agreed that the onus should be on the boat owner but noted that there should be a little hook on the marina owners as that is the group that will enforce this issue. He stated that if the fee is \$1,000 to the boat owners, perhaps a fee to the group launching is \$50 or \$100.

Walesch stated that the marina owners have stated that it would be helpful for them to be linked to penalties as that will help them enforce this item with boat owners.

Rich stated that he fully supports this but would not support penalizing the marina owner, as that would be the group that would be helpful in enforcement of this issue.

Hughes stated that there are a lot of boat delivery people that bring the large boats out to a storage yard in the winter and launch them in the spring. He stated that language should also be addressed about people emptying port-a-potties overboard.

Zorn agreed that most of the onus should be placed on the boat owner. She stated that the boat is titled to the individual and therefore a marina cannot do work unless authorized.

Molitor agreed that the penalty should be placed on the owner. He stated that the marina owner will charge for the service and therefore this creates revenue for the marina and that would be the incentive for the

marina owner to ensure compliance. He noted that California has much stricter emissions requirements for vehicles and therefore this would be similar and would not cause a precedent for selling across state lines.

Chair Thomas recognized that there are no airtight ordinances. He stated that the LMCD can do the best it can to enforce but there will always be people that attempt to skirt the system.

Hennepin County Lieutenant Shane Magnuson stated that there were 28 officers, and additional volunteers, on the water on the 4th of July in attempt to prevent that type of situation but they are not able to prevent it. He agreed that this is a public health issue. He believed that this should be a misdemeanor offense as this impacts others on the water. He provided additional details on enforcement that is followed and how fines can be increased civilly for some instances through the State. He agreed that it would be helpful for the State to require the pumps to be removed but recognized that it would take a long time for that legislation to go through. He stated that removing the pump or disconnecting would not be a large issue, especially considering that some of these boats have \$1,000,000 values. He noted that the only two lakes that would have these kinds of boats would be Lake Minnetonka and Lake Superior. He stated that if Minnesota registration is required, that would be helpful to know what is on the boats as Coast Guard information is no longer shared. He stated that while marina owners on the lake are willing to help on this issue, it could be difficult to reach out to every boat delivery company. He agreed that education would be key.

Walesch stated that it was great to hear the information on potential civil penalties.

Chair Thomas summarized the consensus that something needs to be done differently, education of the public should be a strong element, and there should be partnership with the service providers. He stated that there would need to be further discussion on whether the focus should be on requiring State compliance or whether the ordinance should require the pumps be disable/removed. He stated that there is also not consensus on whether the onus should fall completely on the boat owners or both the boat owner and marina/launcher.

Walesch stated that he could bring back additional information/recommendation to the next meeting and if there is support at that time, he could work with Gilchrist on drafting a potential ordinance.

Klohs stated that perhaps Gilchrist should bring forward a draft ordinance in conjunction with the additional work Walesch will be doing that the Board could review.

Gilchrist stated that he would be happy to work with Walesch and could work on a draft that could come forward for the Board to focus on during the next discussion.

Rich stated that perhaps there be language that would make it illegal to willingly launch a boat with a functional pump and that is where the penalty would fall on the service provider.

Molitor stated that in the future when there are topics for discussion, that should be placed on a worksession agenda rather than a regular meeting agenda.

B) Communications and Public Engagement Professional Services Agreement

Hoelscher stated that at the last meeting the Board approved the selection of Goff and directed Schleuning to clarify the terms of the contract. She stated that a contract was included in the packet for review.

Chair Thomas stated that a revised Item 11C was included for the Board as well.

Rich asked for clarification on how billing would occur in relation to the identified deliverables in the contract. He stated that his interpretation is that 90 percent of the contract could be paid out without receiving the deliverables.

Schleuning reported that the identified deliverables would need to be provided before the consultant would be paid.

Rich asked how the time would be allocated towards the different deliverables, specifically the hourly assumption for each deliverable. He stated that he is concerned with how this would be vetted as this would be purchasing 128 hours to be split between three deliverables.

Chair Thomas agreed that the services provided have been scaled down from their original proposal in order to fit within the \$25,000 budget of the LMCD. He stated that there is no doubt that the LMCD will not get what was offered with the higher cost contract.

Rich stated that some of the deliverables are vague and he is worried about what will be gained in return for the \$25,000 investment. He asked if there has been discussion on what will be done with roughly 40 hours on each deliverable.

Zorn stated that she would agree with the comments from Rich. She stated that following the discussion at the last meeting, she was looking for more detail as to what would be provided and how the hours will be allocated.

Schleuning stated that some of the tasks are unknown until the consultant starts working with the LMCD to find out the desired needs. She stated that the LMCD will receive these deliverables regardless of the number of hours needed to be completed. She recognized that some of the items are about one third of what was included in the original contract because of the reduced cost. She stated that it would be hard to provide more detail for a communications strategy until the firm begins to work with the LMCD.

Chair Thomas agreed that this language is similar to other professional services contracts.

Zorn asked if there should be progress reports or milestones along the way, such as a monthly status update. She stated that if the consultant is going to report to the Board, would that be charged to the Board, similar to whether conversations with Schleuning would be charged hourly as well.

Hoelscher stated that it is part of the Board's job to report to the public on anything that is being done in terms of progress being made.

Klohs stated that \$195 per hour is the standard hourly government rate that the firm uses. He stated that the controlling factor is the deliverables. He recognized that this is a new relationship and if the firm wants to continue in the future, it will most likely spend more than ten hours per month to ensure that the work is done adequately. He stated that the controlling factor is the deliverables and not the ten hours per month or the hourly rate. He stated that if the deliverables are not provided, the consultant would not be paid.

Hoelscher stated that the interesting thing about the company is that they provide two services in one, noting that this was the only firm that could offer communications and legislative advocacy. She stated that the group also seemed vested in working with the LMCD. She stated that the group did their research on the LMCD and what the group is looking for, therefore she feels that the LMCD will receive good value from the firm. She noted that the firm also understands that the LMCD has a limited budget and was willing to work within that budget.

Rich stated that the language seems ambiguous and he would prefer to see more detailed language on the deliverables. He asked for clarification on the legislative deliverable.

Chair Thomas stated that this year the Board had its first opportunity to speak in front of the legislature. He noted that he did not have experience in doing so and the LMCD was unsure where to turn to receive assistance. He stated that this will provide details on how to convey what the LMCD is and what the group does.

Hoelscher stated that there is also additional legislative funding for invasive species. She stated that the idea is that the firm is at the legislature representing clients and could provide positive direction on where the LMCD could possibly seek out additional grant funds.

Schleuning stated that she spent over 60 hours of staff time on the legislative issue this past year trying to find out who the right people would be to reach out to and to form a strategy. She stated that having assistance on that matter would be very helpful.

Stone stated that when speaking at the legislature many of the representatives were unaware who the LMCD was and were referencing information from the 1960's.

Schleuning stated that additional funding resources would have long-term impacts on the betterment of the lake and finding different ways to provide that funding would be helpful.

Baasen stated that whether the Board realizes it or not, the LMCD has been under attack from people that have strong ties to the legislature. He stated that the LMCD and its staff were negatively attacked in the public arena and the organization needs help.

MOTION: Baasen moved, Hughes seconded to approve the terms of the communication and public

engagement services agreement with Goff Public and authorize the Chair and Executive Director to execute the agreement over the next 12 months.

VOTE: Ayes (12), Nays (1), (Rich) Motion carried.

Walesch left the meeting.

C) Commercial Marinas Code Amendment Regarding Legislation

Gilchrist stated that he mentioned a need to review the code to determine the changes that would be needed to come into compliance with the legislation that became effective August 1st. He explained that as of August 1st the LMCD would be prohibited from enforcing any regulations above the high-water mark in respect to commercial marinas. He stated that during his review the only section that jumped out at him as possibly needing amendment would be the off-lake storage facilities. He commented that a scope provision would also be appropriate to talk about the intent and how it applies or does not apply. He included a restatement of the enacted legislation and scope of the LMCD powers. He stated that this is not up for adoption tonight, but simply review. He stated that this in his opinion would be the minimum that would need to be done to update the code.

Chair Thomas asked if there would be a problem approving this action tonight, as this would accomplish the minimum needed to comply.

Gilchrist confirmed that could be adopted tonight, he was simply welcoming additional comments.

MOTION: Kroll moved, Baasen seconded to adopt the commercial marinas code amendment regarding legislation as presented.

Further discussion: Klohs referenced the new subsection seven, the last sentence beginning however, and asked for additional clarification.

Gilchrist provided additional input on special density. He stated that greater density allowance is being provided on the water in return for certain public amenities.

Klohs stated that he would guess that some other parties may disagree because of the link between land and water and asked how a disagreement would then be handled.

Chair Thomas stated that the LMCD is not saying that those public amenities would have to be provided, but in order to have a higher density on the water, some public amenities from the allowed list would need to be provided.

Hoelscher stated that watercraft density is listed under future agenda topics.

Klohs stated that LMCD and cities have always been able to work together and believes that the legislative changes have not helped to encourage those relationships.

Gilchrist stated that the sole purpose in looking above the water line would be for providing additional flexibility on the water. He stated that if special density is challenged, the Board could then review whether it wants to consider special density permits any longer.

Schleunig stated that people read the agendas and this item states this is a discussion. She suggested that action not be taken tonight for that reason.

Gilchrist stated that a motion could be made to table the action to the next meeting.

Molitor stated that language can always be interpreted in different ways. He asked what would happen if the Board did not do anything to the code.

Gilchrist stated that when the legislature acts to limit a group's authority, the code should be amended to match the updated authority to show the legislature that the group takes its duties seriously.

MOTION: Thomas moved; Kroll seconded to table this item to the next meeting.

VOTE: Motion carried unanimously.

D) Strategic Plan 2019-2020

Chair Thomas noted that the Board reviewed the Strategic Plan at the last meeting and thanked Zorn, Klohs and Hughes for their efforts. He asked if there are any additional questions. He stated that he would have two or three minor edits to the strategic initiatives and provided those to Zorn.

Zorn identified the next steps. She explained that there are some items included that are easy checklist items, while other items are longer items that will require additional action.

MOTION: Kroll moved, Cook seconded, to adopt the Strategic Plan.

VOTE: Motion carried unanimously.

12. NEW BUSINESS

There was no new business.

13. TREASURER REPORT

Cook provided a brief year to date report.

14. EXECUTIVE DIRECTOR UPDATE

A) Lake Minnetonka Vegetation and AIS Master Plan Progress

No comments.

Schleuning provided the following information:

- There is speculation that the sturgeon in the creek could possibly be the legendary Lou from Lake Minnetonka and there is a movement to have it returned to Lake Minnetonka. The MN DNR stated they plan to let it go downstream unless it is obstructed. Sturgeons eat zebra mussels. Videos and more information can be found on the Westonka Walleye Program Facebook page.
- Big Island Illness: Staff met with the Hennepin County Health Department and will bring additional information forward to the Board in the future about possible options to reduce the risks associated with mass gatherings.
- Towing Safety: There have been some bad incidents related to towing/tubing and therefore staff has helped to share educational information.
- Water levels are below the ordinary high-water mark.
- A company is in the MN CUP competition through the University of Minnesota for a new product to manage Eurasian watermilfoil. The company, Lake Tapps Capital, has an upgraded type of diver assisted suction harvesting equipment.
- Vegetation Interactive Web Reporting Tool: More people have been reporting vegetation conditions and she welcomed people to continue to report their concerns in the webmapping tool. A link is on the lmcd.org homepage.

15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: Cook had nothing further to report.

Budget Workgroup: No report.

Recodification Workgroup: Gilchrist reported that the draft code was put on the LMCD website in July, asking the public to offer comments. He stated that staff encouraged stakeholders to submit comments. He reported that no comments were received. He asked if the Board would like to do more public outreach before moving on to adoption.

Hoelscher stated that the Board has been working on this for a long time. She noted that marina owners were involved in the work group as well. She suggested that this item be placed on a future agenda.

Chair Thomas agreed. It was noted that both this item and the changes to the code related to commercial marinas could both come forward at the next Board meeting.

Save the Lake Committee: Baasen stated that the group has not met since the last update. He provided an update on year to date solicitations and encouraged people to continue to donate to Save the Lake.

Strategic Plan Subcommittee: No report.

16. ADJOURNMENT

Being there no further business, the meeting was adjourned at 9:04 p.m.

Gregg Thomas, Chair

Ann Hoelscher, Secretary