

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., January 8, 2020
Wayzata City Hall

WORK SESSION

6:00 p.m.

Members present: Rich Anderson, Orono; Dan Baasen, Wayzata; Ben Brandt, Mound; Bill Cook, Greenwood; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Gregg Thomas, Tonka Bay; and Deborah Zorn, Shorewood.

Members absent: Nicole Stone, Minnetonka; Jake Walesch, Deephaven; Vacant, Minnetrista.

Present in Audience: Howard Root, Steven and Sunhi Schussler, and others that may not have signed the attendance sheet.

1. Residential Permanent Dock Regulations & Discussion

Schleuning provided a presentation about residential permanent dock regulations.

She noted that winter is a busy time for the installation of permanent docks because thick ice is needed to support equipment.

She defined the term residential permanent dock and showed an example photo.

She described how a permanent dock permit application is reviewed and processed.

Hughes commented that some docks are left in all year and are in bad condition.

Thomas noted that leaving a seasonal dock in all year round does not make it a permanent dock.

Schleuning noted a few examples of damaged docks on the lake and stated that they would be removed this winter or in the spring or go into enforcement.

Thomas stated that if anyone had concerns about a damaged dock that they should contact the LMCD office.

Schleuning presented emerging trends and observations surrounding permanent docks, noting that some people are willing to accept the risk of ice damage to a permanent dock because they perceive paying to have a seasonal dock installed and removed every year becomes expensive. She added that some people have sought to install only permanent pilings which creates potential hazards.

She reviewed the potential environmental, safety, and aesthetic impacts of an increasing amount of permanent docks. She stated there are also advantages to permanent docks.

She asked the board if there were questions and what changes in standards and process, if any, for future permanent dock projects they would like?

Anderson suggested a committee be formed to visit sites and talk to property owners. He asked if deicing would be discussed.

Schleuning stated that deicing would be discussed at the next board meeting.

Zorn asked if there are more permanent docks on some parts of the lake than others.

Schleuning answered that there are more permanent docks in calmer bays and more protected areas.

Zorn stated that the greatest impact would be to the adjacent neighbors.

Schleuning agreed and added that it will also change recreational winter ice use. She noted that in March people may deice without deicing licenses under certain circumstances.

Klohs asked about a deicing operation at the City of Wayzata's boardwalk.

Schleuning stated that a plan was designed that did not require deicing.

Baasen noted that the boardwalk is anchored on shore and that while it overlooks the water, it is land-based.

Newell commented that area would be difficult to drive a piling in because of the deep water and muck.

Klohs asked if structures can overhang the water.

Schleuning answered that structures overhanging the ordinary highwater mark are under LMCD jurisdiction.

B Cook stated that he was interested in different rules for permanent docks than for seasonal docks because a permanent dock has year-round impact. He also suggested that the definition of "permanent" be revisited.

Thomas asked how big of an issue permanent docks are on the lake.

Schleuning answered that a permanent dock may result in complaints from neighbors and create potential for injury in winter because of weakened ice.

Baasen asked if the setback and length regulations are the same for a permanent dock as they are for a seasonal dock.

Schleuning answered that the regulations are the same.

Anderson commented that leaving a seasonal dock in all year may have less environmental impact than driving pilings. He stated that people should be warned that ice will cause damage until the deicing

moratorium is revisited. He noted that when the moratorium was established because many people had been leaving in their docks and operating deicing equipment incorrectly.

Thomas asked if someone installing a permanent dock today would be eligible for a deicing license.

Schleuning answered that a new permanent dock owner would not typically be eligible for a deicing license.

Hoeslcher referenced a dock in Lafayette Bay and asked if the LMCD could require reflectors be installed on all permanent docks.

Schleuning stated that currently staff asks permanent dock owners to add reflective tape and most oblige but there is no requirement.

Thomas asked where the dock in Lafayette Bay was located.

Howard Root, 25 Fairhope Ave, described where the dock is located and presented a history of other structures on the property. He requested that permanent docks not be allowed in free-flowing areas of the lake, that the number of structures allowed on a property be restricted, and if a property had a non-conforming structure that it not be granted any other permits.

Thomas asked if staff had approved the dock as Mr. Root had explained it.

Schleuning stated that the original plan with the dimensions mentioned by Mr. Root had been denied. She described the new layout and gave an update on the bridge located on the property.

Thomas asked the board if they would like to make any changes to the process or add any new regulations for future permanent dock projects.

Anderson asked what prompted the discussion of permanent dock regulations.

Schleuning answered that an increasing number of docks, the potential hazard of partial structures, and dock maintenance issues were all reasons why the discussion was brought to the board.

Hoeslcher commented that she had received questions from neighbors after flyers for a permanent dock company were distributed to mailboxes.

Newell asked is reflective tape is a current requirement.

Schleuning answered that it is not required but staff has been recommending adding reflective tape for the last few years.

Newell stated that the cost of reflective tape is minimal. He suggested that it be required for poles to be high enough above the waterline so they can be seen when snow piles up.

Zorn stated she supported a workgroup being formed to review and discuss the issue.

Thomas asked who would like to be on the committee.

Anderson, Hughes, and Newell volunteered.

2. Environmental Assessment Worksheet Overview

Schleunig provided a presentation about Environmental Assessment Worksheets (EAW).

She reviewed the historical changes to the language of the MN State statute regarding EAWs for marinas, the purpose of the requirements, the intent regarding marinas, and specific and detailed process illustrated with the handout. EAW category proposed in 1982 due to potential for significant impacts to water quality, air quality, noise, wildlife habitat, aesthetics, and use of public resources. It was clarified in 1995 to today's standards regarding the expansion of 20,000 square foot increments based on the reasoning that if the marina is not expanded, no significant impacts occur other than the impacts that have already occurred. (SONARs)

She defined the three types of EAW determinations and offered examples of recent EAW projects on Lake Minnetonka. Mandatory required for construction of new marinas and for 20,000 square foot expansions, discretionary where environmentally sensitive areas or significant impacts, and by petition if material evidence presented.

She explained how staff calculates the square footage of a project's water area so it is consistently applied for projects.

She asked the board if there were questions and if they would like to establish a policy about discretionary EAWs.

Anderson requested that the discussion be continued after the regular meeting. He stated that his interpretation of the statute differed from what was presented.

Thomas made a motion for the discussion to carry over after the regular meeting.

Hughes seconded the motion.

The meeting reconvened at 8:00 p.m.

Anderson asked why the Caribbean did not complete an EAW and offered historical examples of marina reconstructions that did or did not have to complete an EAW. He stated that it would be easier to make all projects complete the EAW at the beginning.

Klohs asked if the LMCD can require every project to complete an EAW.

Gilchrist stated that there would have to be findings of potential environmental impact to require an EAW. He noted that almost anything could fall under the definition of construction, but the intent of the Environmental Quality Board was not to include low impact projects.

Klohs agreed that it would be easier to make marinas complete the EAW at the beginning of the project. He asked if the board was consulted in the decision not to require the Caribbean to complete an EAW.

Schleuning stated that staff did extensive research in reviewing past projects and the criteria for EAWs and this has been discussed with the board in the past, noting there are now new members. She noted that after the first site plan was received for the Caribbean, staff recommended the applicant revise it before the board saw it because it did not meet the code and was unlikely to be approved. She gave other examples of past projects that also did not complete an EAW. She noted that other agencies are invited to comment on every project through a 10-day review. She asked the board if they would like to be presented every project that does not pass the thresholds for mandatory EAWs.

Thomas stated that he was comfortable with the LMCD attorney's interpretation of the statute and staff's discretion on when to consult the board. He noted that there could be inconsistencies in the 50-year history of the organization, but the process can be consistent moving forward.

Klohs asked if there are any upcoming projects that may require an EAW.

Anderson answered that Shorewood Yacht Club will have a project soon. He restated that the statute could be interpreted differently and gave an example of an inconsistency.

Schleuning stated that staff has and will continue to make materials and handouts in an effort to increase consistency and clarity. She stated that information will be standardized in the findings document similar to other items.

B Cook stated the LMCD should not try to justify past actions with flawed logic and instead should move forward in a way that is consistent and compliant with state law.

Baasen provided examples of why some EAWs were completed for projects mentioned by Anderson.

Thomas stated that the LMCD is obligated to remain consistent in each decision moving forward and to operate within state law.

Gilchrist prompted the board to decide how they would handle the situation moving forward and to give staff direction.

Hoelscher suggested staff could update the board throughout the process of deciding if an EAW will be recommended.

Gilchrist suggested that information about EAWs could be included in staff reports or findings.

Anderson stated there would be no harm in making every project over 20,000 square feet complete an EAW. He offered more examples of EAW projects.

Thomas stated that if there was no expansion or other environmental reason, the LMCD would be hard-pressed to require an EAW.

B Cook stated his comment saying the LMCD should comply with the law was not a suggestion that the LMCD's action for the Caribbean was right, wrong, or indifferent.

Gilchrist stated that the board can do what they think is necessary given there is concern for environmental impact.

B Cook suggested a workgroup be formed to create a board-authored policy to give staff direction for future projects.

Hoelscher noted that marina owners and other stakeholders should be contacted by the workgroup for feedback.

Brandt stated that because the board is interested in the environmental integrity of the lake, it should err on the side of caution.

Zorn stated that she supported the creation of a workgroup that could improve consistency and prevent the angst that surrounded the Caribbean project.

Baasen suggested that the EAW and permanent dock workgroups be combined.

Brandt asked what the timeline and cost is for an EAW.

Schleuning stated that the process takes 90 days and a significant amount of staff time.

Thomas asked the board if the topic should be placed on a formal agenda.

Gilchrist stated that the board could create a policy for discretionary EAWs. He noted that the LMCD will continue to receive complaints about the cost and time delay for the projects. He added that his interpretation of the MN statute was with the interest of the LMCD in mind.

Anderson thanked Gilchrist for his comment and withdrew from the workgroup suggestion.

Klohs stated that nothing is wrong with the current process. He added that the topic is fresh on the board members' minds and they have a better understanding of their authority going forward.

Thomas stated that the discussion will not be placed on a formal agenda and closed the meeting by thanking the board members for their respectful discourse.

The meeting was adjourned at 9:00 PM.

REGULAR SESSION

7:00 p.m.

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; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Andrea Rehm, Administrative Clerk.

Members absent: Jake Walesch, Deephaven. Vacant, Minnetrista,

4. APPROVAL OF AGENDA

Anderson requested to add an item to discuss Minnetonka Beach City Dock #10.

MOTION: Anderson moved, Zorn seconded to approve the agenda as amended, making the change noted by Anderson above.

VOTE: Ayes (2) (Anderson and Zorn), Nays (8). Motion failed.

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

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Chair Thomas welcomed new members Mark Kroll and Denny Newell to the Board.

A) Oath of Office to Mark Kroll (City of Excelsior)

B) Oath of Office to Denny Newell (City of Woodland)

Gilchrist administered the Oath of Office to Mark Kroll and Denny Newell.

Kroll stated that he has lived on the lake for 15 years. He stated that Orono is large and covers a lot of the lake but can only have one representative, which is Anderson at this time. He noted that Excelsior was kind enough to let him serve as their representative. He stated that he is glad to be back on the Board.

Newell stated that he has lived in Woodland for about 28 years but has had a history with the lake for his entire life. He stated that he is looking forward to participating as a member of the Board. He stated that he does have some concerns with budget and the direction of the organization. He stated that he is willing to accept Committee assignments and participate fully.

6. APPROVAL OF MINUTES- 12/11/2019 LMCD Regular Board Meeting

Cook noted on page one, the last paragraph, it should state, "...\$50,000 per year over and above the budgeted cost..." On page two, he would like the following line deleted, "B Cook stated the navigation areas of 150 feet for 2020..." On page seven, the motion was amended with a friendly amendment as indicated in the minutes "initiate a procurement process to obtain a professional lake manager."

MOTION: Baasen moved, Cook seconded to approve the amendment to the 12/11/2019 LMCD Regular Board Meeting minutes as requested by Cook.

VOTE: Ayes (7), Abstained (5), (Thomas, Klohs, Brandt, Kroll, Newell). Motion carried.

MOTION: Baasen moved, Cook seconded to approve the 12/11/19 LMCD Regular Board Meeting minutes as amended.

VOTE: Ayes (7), Abstained (5), (Klohs, Brandt, Kroll, Newell, Thomas). Motion carried.

7. APPROVAL OF CONSENT AGENDA

Anderson requested Item 7A be removed from the consent agenda.

MOTION: Baasen moved, Cook seconded to approve the consent agenda as amended, making the change noted by Anderson above. ~~7A) Audit of Vouchers (12/16/2019 – 12/31/2019) and (01/01/2020 – 01/15/2020);~~ **7B) Resolution Accepting Save the Lake Contributions (12/03/2019 – 12/31/2019).**

VOTE: Motion carried unanimously.

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

James Gilbert, Orono resident, stated that that he is present as an attorney representing Steve and Sunhi Schussler regarding the riparian rights for their property at 2217 Huntington Point Road. He stated that their request is for the Board to hold a public hearing related to the renewal license for Dock #10 in Minnetonka Beach. He stated that they are not asking the Board to make a decision but simply that the issue be considered by the Board at a public meeting. He noted that a similar request was made at the December 11th meeting at which time they provided information to staff to be distributed to the Board. He stated that he was surprised that the information was not distributed to the Board until last week. He stated that he was also surprised by the comment of Gilchrist that the license renewal for Dock #10 could be reviewed and approved administratively. He noted that the Board could request to review that license. He stated that Mr. Schussler is the fee owner of the northern portion of the fire lane for Dock #10 and has not given consent to have his shoreline used for this dock. He stated that he was also concerned with a letter dated December 23rd from the Kennedy & Graven Law Firm, which is the firm that represents the LMCD and whom also represents the City of Minnetonka Beach, stating that the Minnetonka Beach City Council consented to submitting the dock license to the LMCD at its December 9th meeting. He noted that he attended the December 9th Council meeting and was refused to speak both at open forum and during the specific agenda item. He asked and received confirmation that his letter dated December 26th was also distributed to the Board. He noted that the

letter from Kennedy & Graven states that the issue should be taken up with the LMCD. He stated that he is simply asking for due process and that the Board order the Executive Director to bring that license renewal request forward to the Board for consideration. He explained that his concern is that the LMCD process would be similar to that of Minnetonka Beach and they are not given an opportunity to prevent information to be considered. He stated that if that happens, his clients will take the issue to court. He stated that Dock #10 should not be there, and they are simply requesting that the LMCD hold a public hearing with the Board making the final determination.

Steve Schussler, 2217 Huntington Point Road, stated that he provided a packet of information at the December 11th meeting which he has spent about \$275,000 in research, development, and legal assistance to generate. He stated that he will not stop and does have a lot of money that has been put aside solely for this issue, should it need to go forward to court. He stated that his office hand delivered packets to the homes of each of the Board members the previous day, as he found that it took LMCD staff four weeks to distribute the information he provided on December 11th. He stated that his information included a letter from the Ambassador that previously owned the home at 2217 Huntington Point Road dated May 6, 2019. He read aloud a portion of the letter which states that Dock #10 has been a subject to acrimonious dispute and provided additional input about the dispute that took place when that person owned the property. He stated that the previous owner, an attorney and Ambassador, discovered that a neighbor who values docking his boat at Dock #10 is also a member of the LMCD Board and therefore believed the "fix was in" and no serious consideration was ever given to the request to not renew the dock license. He provided a summary of a letter from another previous owner of his property, Lisa Smith, whom sold her property as they felt that their property rights were violated and use of the lake was taken away from them because of Dock #10. He repeated that he will not hesitate to spend the money necessary to take this forward to court. He stated that he has been abused and harassed by the four users of Dock #10. He stated that his riparian rights have been misrepresented and taken away from him and therefore will pursue punitive damages and legal fees. He stated that he is attempting to present his request to the Board to avoid taking that course of action.

Richie Anderson, 3205 Crystal Bay Road, addressed the Board as a resident. He noted that the request was previously made by Mr. Gilbert for a public hearing at the December 11th meeting. He stated that he read through the minutes and reviewed the tape of the meeting. He reviewed notes from the discussion at the last meeting related to whether the Board would hear more about this request and Gilchrist noted that the Board could require the review to be completed by the Board. He stated that if this goes forward to lawsuit, that costs the taxpayers money and he believes the Board should work to avoid that rather than letting the license renewal get rubber stamped.

Denny Newell, Woodland, addressed the Board as a resident. He stated that he read through the 86 pages of documents that he received along with a second packet that was well presented. He stated that he has a concern that the issue of Dock #10 goes back 100 years and has continued to be an issue over time. He believed that the Board should address the issue and not just rubberstamp an approval. He stated that if the Board does not discuss the issue, there will be a big problem involving attorneys.

9. PUBLIC HEARING

There were no public hearings.

10. OTHER BUSINESS

There was no other business.

11. OLD BUSINESS

A) Adopt 2020 Public Meeting Calendar

Schleuning stated that there is a holiday conflict for the first meeting in November. She noted that the packet included a few options for alternative dates.

Thomas stated that he would suggest that staff pick an alternative date and suggested Thursday, November 12th.

Schleuning stated that she will make the change and distribute that to the Board.

Anderson commented that he thought there was a date set for an AIS meeting.

Schleuning confirmed that she would distribute that information as this schedule includes the routine public meetings. Schleuning stated she would work on the holiday if needed for scheduling.

Kroll noted that he has a conflicting meeting on November 12th and therefore would not be able to attend.

Thomas stated that there would most likely be some conflicts with whatever date is chosen.

It was the consensus of the Board to hold the meeting on November 12th.

MOTION: Hughes moved, Stone seconded to adopt 2020 Public Meeting Calendar as amended moving the November 11th meeting to November 12th.

VOTE: Motion carried unanimously.

12. NEW BUSINESS

7A) Audit of Vouchers (12/16/2019 – 12/31/2019) and (01/01/2020 – 01/15/2020)

Anderson referenced a specific payment and asked for additional details, similar to the question he asked the previous month.

Schleuning stated that is the prosecuting attorney which invoices monthly. She confirmed that the invoice includes a breakdown of the charges.

Thomas noted that if Anderson has a question on the audit of vouchers in the future, he can ask that question prior to approval of the consent agenda rather than pulling the item off.

Schleuning stated that when the Board packet is received, Board members can contact staff with questions they may have as well.

MOTION: Cook moved, Anderson seconded to approve the Audit of Vouchers (12/16/2019 – 12/31/2019) and (01/01/2020 – 01/15/020).

VOTE: Motion carried unanimously.

13. TREASURER REPORT

No report.

14. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Board packet definitions page created: This was provided to the Board by request as information is created or updated over time.
- New Board Member Orientation
- The Calendar of Events on the website has new events added.

15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: No report.

Budget Workgroup: No report.

Save the Lake Committee: Baasen reported the group is scheduled to meet within the next week but that meeting will be postponed. The financial results of the calendar year contributions are not yet finalized, but the results will be under goal. He stated that there have been changes to the Board and the Save the Lake Committee and welcomed any new members that may be interested in joining.

Anderson stated that he spoke with staff about having mustang survival suits for Schleuning and Matt Cook for the times when they have to go on the ice. He stated that he would be willing to contribute the funds but wanted to do it in the appropriate manner. He asked if a contribution could be made through Save the Lake for that purchase.

Baasen explained purchases that are made through Save the Lake. He stated that he would provide that information to Anderson.

Hoelscher asked if Anderson could make a donation specifying that the funds are for the purchase of the suits

for staff.

Baasen confirmed that could be done. He noted that staff would still need to submit a request for the equipment.

Hoelscher asked if there is something that would prevent a Board Member from purchasing the equipment for staff.

Gilchrist confirmed that could be done as well.

Newell commented that he believed he had read something stating that contributions to Save the Lake have decreased because of the lack of harvesting this past year.

Baasen confirmed that the non-harvesting of the LMCD cost Save the Lake a significant amount of contributions.

Newell stated that harvesting has been the "brand" of the LMCD historically and believed that there should be a rebranding of the organization to explain the proactive and beneficial actions the LMCD completes outside of harvesting.

Hoelscher agreed that the LMCD does a lot more than harvesting and should work to spread the message of the other programs to the public.

Strategic Plan Subcommittee: No report.

Nomination Committee: Zorn reported that the group is on schedule and will meet within the next week. She stated that self-nominations are still being accepted through Friday the 10th.

16. ADJOURNMENT

MOTION: Baasen moved, Hughes seconded to adjourn the meeting at 7:58 p.m.

VOTE: Motion carried unanimously.

Gregg Thomas, Chair

Ann Hoelscher, Secretary