

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., January 22, 2020  
Wayzata City Hall

**WORK SESSION**

6:00 p.m.

**Members Present:**

Rich Anderson, Orono; Dan Baasen, Wayzata; Ann Hoelscher, Victoria; Mike Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Denny Newell, Woodland; Nicole Stone, Minnetonka; Gregg Thomas, Tonka Bay; Jake Walesch, Deephaven; and Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Justin Templin; LMCIT Legal Counsel.

**Members Absent:**

Ben Brandt, Mound; Bill Cook, Greenwood; Gary Hughes, Spring Park; and Mark Kroll, Excelsior.

**Persons in Audience:**

Paul Robinson and Peter Phlaum, representing The Cove Homeowners Association.

1. Oath of Office-Michael Kirkwood (Minnetrista)  
Gilchrist administered the Oath of Office to Michael Kirkwood (Minnetrista).
2. Conduct a closed session with attorney and defense counsel pursuant to the attorney-client privilege as authorized by Minn. Stat. § 13D.05, subd. 3(b). The purpose of the closed session is to seek and receive legal advice related to strategy and options in response to the recent threat of litigation by Steve and Sunhi Schussler.

Chair Thomas stated the following: As you all are aware, Steve and Sunhi Schussler, of 2217 Huntington Point Road, Minnetonka Beach, and an attorney representing them, have asked this Board to hold a public hearing regarding the application by the City of Minnetonka Beach for a Renewal Without Change Multiple Dock License for City Dock #10 for the 2020 season. Mr. Schussler and his counsel submitted a number of letters and other written materials, and appeared during the public comment portion of this Board's meeting on January 8th. During their presentations, they specifically threatened to sue the LMCD if the Board does not accede to their request for a public hearing. Mr. Schussler noted, more than once, that he has already spent significant money on litigation and has more set aside to fight the LMCD about this issue in court.

In response to the litigation threats, our attorney, Troy Gilchrist, submitted the matter to our insurer, the League of Minnesota Cities Insurance Trust. The LMCIT has appointed litigation counsel, Justin Templin, who is here tonight.

Mr. Templin has requested a closed meeting with the Board for an attorney-client privileged discussion. The discussion will relate to the Board's decision whether to grant the request for a public hearing, and the impact that decision is likely to have on litigation strategy given the explicit threats that have been issued to the Board. Mr. Templin has indicated that he needs to have a candid and open discussion with the Board about the potential litigation, including defense strategies and any possibility of resolution. If the discussion

happened in open session, it would harm the Board's legal position because potential adverse parties could hear the Board's strategy options and its counsel's legal opinions about them. Having the discussion in closed session benefits the public because portions of the expense of litigation and any financial liability will be funded by the public. The scope of Mr. Templin's representation is limited to the threat of litigation and no other business will be discussed.

The need for absolute confidentiality in seeking and receiving legal advice in this matter outweighs the public's right to observe Board discussions of its business, as set forth in the Open Meeting Law, Minn. Stat. § 13D.05, subd. 3(b), which authorizes this discussion to be held in closed session.

Could I have a motion to close the meeting for the reasons stated?

**MOTION:** Baasen moved, Stone seconded to close the meeting at 6:15 pm for the reasons stated.

**VOTE:** Motion carried unanimously.

The Board returned to open session at 6:55 p.m.

### 3. and 4. Deicing Workgroup Update and Deicing Code Amendment Request

Due to time constraints, the representatives of The Cove requested the deicing code amendment request be considered at a future board meeting. The deicing workgroup also believed the discussion needed more time than available this meeting and it was decided the conversation for both these items continue at a future board meeting.

## 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; Dan Baasen, Wayzata; Dennis Klohs, Minnetonka Beach; Michael Kirkwood, Minnetrista; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; and Vickie Schleuning.

**Members absent:** Bill Cook, Greenwood; Ben Brandt, Mound; Gary Hughes, Spring Park; and Mark Kroll, Excelsior.

### 4. APPROVAL OF AGENDA

Chair Thomas noted that an amended agenda was provided to the Board, related to Item 7A of the Consent

Agenda.

**MOTION:** Baasen moved, Anderson seconded to approve the agenda as amended.

**VOTE:** Motion carried unanimously.

## 5. CHAIR ANNOUNCEMENTS

Chair Thomas welcomed the newest member of the Board, Michael Kirkwood, and invited him to introduce himself.

Kirkwood stated that he has lived in Minnetrista on the lake for over 20 years and provided background information on himself and his experience.

Chair Thomas referenced Art on the Lake, which is an Excelsior event that takes place for two days during the summer. He stated that the last summer he and Baasen staffed a booth, with Stone providing assistance as well. He noted that the booth was split last year with the Excelsior Men's Garden Club and the club has expressed interest in splitting the event this year as well, with the LMCD staffing the booth on Saturday and the Garden Club staffing the booth on Sunday. He noted that the two groups would split the cost, similar to the previous year. He stated that the cost in 2019 was about \$135 for each of the two groups. He confirmed the consensus of the Board to participate again this year.

## 6. APPROVAL OF MINUTES- 01/08/2020 LMCD Regular Board Meeting

Chair Thomas noted on page seven, item five, it should state, "Chair ~~Green~~ Thomas..."

**MOTION:** Thomas moved, Baasen seconded to approve the 01/08/2020 LMCD Regular Board Meeting minutes as amended.

**VOTE:** Ayes (9), Abstained (2), (Walesch and Kirkwood) Motion carried.

## 7. APPROVAL OF CONSENT AGENDA

**MOTION:** Zorn moved, Stone seconded to approve the consent agenda as presented. Items so approved included: **7A**) Audit of Vouchers (01/16/2020 – 01/31/2020); **7B**) Resolution Accepting Save the Lake Contributions (12/28/2019 – 12/31/2019); and, **7C**) Acceptance of LMCD 2019 Watercraft Inspection Program Report.

**VOTE:** Motion carried unanimously.

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

Richie Anderson, 3205 Crystal Bay Road, showed the Board a survival suit that he is purchasing for the LMCD staff for de-icing inspections. He confirmed that the suit both floats and is insulated in the case a staff member falls into the water while inspecting de-icing operations. He noted that the suit will also help to keep the staff warm while inspecting.

Schleuning noted that staff spends a lot more time on the ice in addition to de-icing inspections and therefore these suits will be very nice.

The Board thanked Anderson for his contribution.

#### **9. PUBLIC HEARING**

There were no public hearings.

#### **10. OTHER BUSINESS**

There was no other business.

#### **11. OLD BUSINESS**

There was no old business.

#### **12. NEW BUSINESS**

There was no new business.

#### **13. TREASURER REPORT**

No report.

#### **14. EXECUTIVE DIRECTOR UPDATE**

Schleuning provided the following information:

- 2019 AIS Watercraft Inspection Summary – LMCD received a \$20,000 grant in 2019 for that program. She reported that while there are less violations being found, very basic violations continued to occur. She expressed thanks for the partnerships that exist to make this program possible and highlighted some additional efforts that could be implemented in the future.

Newell believed that only four of the eight accesses to Lake Minnetonka are monitored by Three Rivers Park District, and even those points are only monitored when staffed. He asked why funds are being spent on the program if it cannot be tightened up. He stated that there is phenomenal technology available and if the LMCD is going to track, it should fully track rather than collecting spotty data.

Schleuning noted that the LMCD information gathered will be used to apply for additional grant funds that would be used to purchase technology that could provide more consistent monitoring information.

Chair Thomas agreed that this monitoring is not a 100 percent guarantee, but the Board has decided that some inspection is better than none.

He stated that Schleuning and he met with staff from the LMA and BWS to discuss what could be done as a group together, which is how the suggestion to implement the video technology came about. He noted that this would also not be fool proof but is something else that could be tried. He noted that he continues to believe that some effort is better than none.

Schleuning advised of some of the other efforts that LMA is going to attempt to gain grant funding for.

Newell stated that it would be easy to put an RFID chip in every license issued in the State of Minnesota that could be scanned and used in critical lakes.

Chair Thomas stated that there are also boats from other states that use Lake Minnetonka.

Anderson stated that perhaps Newell would like to head a Committee on the topic to provide additional information and suggestions to the Board.

Schleuning suggested that Newell begin by joining the AIS Task Force.

Newell agreed.

Chair Thomas commented that while technology may be available, that does not mean there is adequate funding or political will to implement that type of technology.

Baasen stated that he observes the Spring Park launch, and for the most part there are really conscientious residents using the access even when not monitored. He stated that you cannot watch all the people all the time, but most people feel that the lake is a resource that should be protected.

Chair Thomas referenced an email he received from LMA staff the previous day related to starry stonewort and provided a summary, noting that the LMA is going to continue to seek grant funds for 2020.

## 15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: No report.

Budget Workgroup: No report.

Save the Lake Committee: Baasen reported that the Committee met the previous night to review a number of items including a review of solicitations for 2019 and ideas to increase contributions in 2020. The LMCD continues to receive a lot of support from the community. He welcomed additional Board participation on the Committee.

Strategic Plan Subcommittee: No report.

Nominating Committee: Zorn stated that after the nomination process has been fully vetted there will be additional information available. She stated that the Committee will be conducting interviews of the incumbent officers by

phone and will forward the recommendation to staff for approval at the February meeting. She noted that there will be opportunity for Board discussion and additional nominations to be made at the February 12<sup>th</sup> meeting.

**16. CLOSED SESSION TO CONDUCT PERFORMANCE EVALUATION OF THE EXECUTIVE DIRECTOR  
PURSUANT TO MINN. STAT. 13d.05, SUBD. 3(a)**

**MOTION:** Baasen moved, Klohs seconded to adjourn the meeting to closed session at 7:43 p.m. for the purpose of conducting the performance evaluation of the Executive Director.

**VOTE:** Motion carried unanimously.

The Board returned to open session at 8:30 p.m.

Chair Thomas asked if Anderson would like to give update for the deicing workgroup. Anderson stated it would be good to wait until next meeting due to time restraints.

**17. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:45 p.m.

  
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Gregg Thomas, Chair

  
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Ann Hoelscher, Secretary