

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

6:00 P.M., May 26, 2021
Virtual Meeting

Due to COVID-19 Guidelines, pursuant to a statement issued by the presiding officer (Board Chair) under Minnesota Statutes, section 13D.021, the meeting was conducted remotely through electronic means using Zoom. The LMCD's usual meeting room was not open or available to the public or the Directors.

WORK SESSION

6:00 p.m. to 7:00 p.m.

Members Present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Ben Brandt, Mound; Gary Hughes, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; and Nicole Stone, Minnetonka. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Matt Cook, Environmental Administrative Technician.

Members Absent: Dan Baasen, Wayzata; Jake Walesch, Deephaven; and Deborah Zorn, Shorewood

Persons in Audience:

Bev Aho.

The following username was present but the person(s) did not identify themselves: Murdych.

1. Review and Discussion Regarding Sales on the Lake

Thomas reviewed the background information that was included in the packet from past discussions related to sales on the lake.

Gilchrist commented that this issue has come forward through diverse types of requests over the years and provided some background. He reviewed the details of his memorandum which was written in 2016 and included in the Board packet.

Thomas provided examples of services that are allowed around the lake, such as dock installation and services that are not allowed such as fuel delivery.

Gilchrist stated that, in his time, concern has never been expressed related to dock installation or riprap installation.

Hoelscher commented that if something is going to be precluded from the lake, there should be an issue behind that such as safety. She provided examples of things that the Board expressed safety concerns with. She stated that she could support delivery of items on a jet ski and noted that perhaps it starts with a pilot program for a season.

Kirkwood referenced the sale of fuel and asked if the concept were that someone would bring a tanker to the dock to fill someone's boats. It was confirmed that was the case. He noted that neighbors often bring five-gallon drums of gas down to a dock to fill boats, which has spillage risks as well.

Thomas stated that he believed that there are regulations that gas sales can only occur at gas stations or gas docks.

Gilchrist confirmed that the proponent for the gas sales did use the example of the precautions they take to prevent spills and the fact that people filling their own boats do not follow those same precautions. He stated that the issue came down to the interpretation of fire code regulations and the Board did not believe that would be allowed.

Kirkwood asked if the delivery would be for food such as a pizza and whether that delivery would be to a dock or boat. He noted that if a person were to order food from a restaurant and have to dock in a congested area to get their food, which would seem to create more issues than boat to boat delivery or boat to personal dock delivery.

Anderson referenced the issue of illegal charter boats, which has been identified as a main concern of the Water Patrol. He stated that they have been trying to sell ice on the docks for 40 years but have been unable because of the provision. He stated that he would be against the sales on the lake because of the additional risks it would create and additional enforcement that would be needed.

Thomas asked if Anderson would want to leave things as written or would want to choose an option included within the memorandum from Gilchrist.

Anderson commented that he believes it is an issue of both safety and litter.

Thomas stated that if sales on the lake were allowed that would create additional boat traffic.

Hughes recognized the concern that exists with private parties renting their boats out for use and asked what the decision was on that.

Schleuning stated that if someone is renting a boat there are requirements for rental watercraft. She stated that some cities have various regulations on how that issue can be addressed. She reviewed some of the different regulations that exist. She noted that the LMCD has addressed some issues that have occurred with B&B's.

Kroll stated that it would be fun to try an ice cream truck concept on the water but recognized that it would also be a hassle because of the conflict that could occur between the boats when making a transaction.

Newell commented that he would tend to say that this would be a complicated issue because of the boat-to-boat contact in possibly choppy water.

Klohs stated that this conversation has occurred numerous times over the years and the LMCD chooses not to deal with it because it is too complicated but that does not mean it is not occurring. He stated that

delivery services under the radar will most likely continue to occur and' therefore' is probably something the LMCD should deal with. He stated that if the number one goal is safety, the LMCD should ensure that those doing this illegally are also doing this safely and did not believe it could be ignored. He stated that perhaps there is monitoring done this year to ensure that the LMCD is not blamed for a delivery service that ends up injuring someone. He believed that it is time to tighten up the ordinance and make it more specific.

Cook commented that he disagrees that the LMCD is not doing anything because it is too hard. He stated that the LMCD is not doing anything because there is not much to fix. He stated that not allowing commercial sales on the lake is a reasonable thing. He commented that delivery is less of a problem than the concentration of boats because of a sales opportunity. He stated that boats are rafted together all over the lake and therefore he is not concerned with boat-to-boat contact or deliveries. He stated that he would be concerned with sales and believed the ordinance addresses that. He stated that there are also deliveries in the winter and did not think those should be banned either.

Stone commented that she agrees that this is happening anyways and was unsure that it should be ignored. She stated that the LMCD should not just look the other way because it is happening, but was unsure how that would be policed.

Brandt commented that he is not opposed to expanding sales on the lake as he does not see that as a safety issue. He stated that the challenge would be where the line is drawn on what is regulated or not regulated. He stated that an ice cream boat would seem harmless as would pizza delivery. He noted that the sale of alcohol could create more intoxicated boat drivers and therefore could cause a safety issue.

Thomas stated that there is clearly not consensus on this issue.

Kroll commented that White Bear Lake allows food delivery to boats and has not had issues. He stated that if food sales are allowed that helps to soak up alcohol that people have drank and therefore could help reduce the risk of intoxicated boaters. He stated that perhaps this is allowed with certain regulations such as only use of electronic payment and boats have to be anchored in a quiet area. He stated that he would not want to allow gas or alcohol sales.

Kirkwood asked if there would be a limit to the number of sales/deliveries allowed.

Kroll stated that he would guess that the activity would be self-limiting as the market would only support so much activity.

Thomas stated that the LMCD could create an ordinance that regulates the number of allowed sales but was unsure how that would be controlled.

Kirkwood asked if he could have a barge and have boats pull up to him for sales.

Thomas stated that was discussed in the past and the consensus was that would create a safety issue. He noted that would most likely also create a problem with cash sales.

Anderson stated that operations that are currently licensed such as charter boats or municipalities should be protected.

Thomas stated that there are speed limits on the road based on the science that has been developed. He noted that people violate that all the time, but the statement is not made that there should not be speed limits because people are not following them. He commented that the fact that people are doing it anyway does not make it right. He stated that the Board could leave things as they are and kick things down the road yet again or could pass this to the Operations Committee to discuss options and present a recommendation to the full Board. He stated that he is unsure whether he supports sales on the lake but is aware that there is currently a regulation that sales on the lake are not allowed. He stated that the intent of the ordinance is to protect safety on the lake, but recognized some of the comments that have been made in support of allowing deliveries.

Hoelscher commented that the way the regulation is written it does not preclude delivery or could be interpreted as such. She commented that she feels that the ordinance could be left as is, or the LMCD could allow people to try it this year with certain regulations. She noted that enforcement should not be very hard as Water Patrol is not enforcing the delivery currently and therefore, she does not see a reason to not allow delivery or a reason the ordinance would need to be changed to support that. She stated that she believes that something could be brought back to the Board at the next meeting to try it for this season.

Schleuning clarified that the LMCD is doing something and there are consequences to those operating illegally. She stated that currently delivery is considered part of sales and therefore this needs to be clarified so control is not lost. She recommended that the Board makes some code amendments so it is clear about what is allowed if any changes are proposed.

Thomas stated that there is an individual that asked to speak at the public comments portion of the regular meeting from Foodski LLC with an address in White Bear Lake and therefore would assume that operation currently operates on that lake. He noted that the individual will be proposing three jet skis that deliver food using insulated backpacks on the lake.

Hughes commented that his concern would be that the jet ski cannot be out after a certain time and therefore pizza deliveries would be limited to daylight hours.

Klohs commented that if this is formalized and there was permitting for food delivery on the lake, he would be surprised if most of those licenses would not go to the local businesses as those businesses are already setup and some of them are already doing it.

Hoelscher agreed that it could also help to boost the business for those local restaurants.

Klohs commented that the number of permits could be limited, and it could be a revenue generator. He believed that this should be formalized, and they should acknowledge that this is already happening.

Thomas stated that if a one-year pilot is done he would like to establish some review criteria upfront related to safety, such as whether there were accidents because of delivery activity. He stated that once

the window is opened, it most likely cannot be closed unless there are strict evaluative criteria.

Hoelscher agreed that would be a great idea. She agreed that the Board should setup the desired protocol as to who is completing this activity, how they are identified, and what limitations would exist. She agreed that those regulations should be flushed out with review criteria to be discussed at the end of the season before deciding whether to formalize this activity.

Thomas asked why this activity would be limited to jet skis?

Kirkwood asked if only delivery would be allowed or whether a static sales site would be allowed.

Hoelscher stated that she would suggest only delivery using electronic payment done prior to the delivery. She stated that she would not specify only a jet ski could be used. She stated that perhaps the Board review the request from each applicant.

Kroll stated that a jet ski is the most economical because of the gas that would be needed to use a larger boat for deliveries.

Gilchrist commented that he believes that this would need to be in the form of ordinance in order to provide enforcement. He stated that this could be a temporary ordinance to allow a temporary pilot program with certain criteria. He believed that he captured enough from the discussion tonight to draft a potential ordinance for the Board to discuss.

Thomas commented that he did not believe there was a consensus of the Board but would support Gilchrist drafting a potential ordinance for the Board to consider at the next workshop and possibly regular meeting.

Schleuning agreed that she could work with Gilchrist. She stated that there are many factors involved in regulating this type of activity, similar to whether cities allow food trucks and transient businesses, and its impact on stationary businesses. She stated that she would want to ensure that littering is included along with how sales in navigation areas and large groups would be addressed.

Thomas asked if staff feels that this could come back to the June 9th meeting.

Schleuning noted that there had been discussion about not holding the first meeting in June.

Anderson agreed that he was under the impression that there would not be a June 9th meeting and believed that this should go to the Operations Committee first.

Thomas stated that bringing this to the Operations Committee would slow things down a bit.

Klohs stated that Gilchrist commented that he believed he could capture the comments tonight and suggested that go forward to review at the next meeting. He stated that if there is not consensus at that time, the issue could go to the Operations Committee.

Thomas asked staff to work on crafting a draft ordinance that would be available for the June 15th Operations Committee to review prior to the June 23rd meeting.

Hoelscher agreed and asked that the item appear on the June 23rd Board meeting.

The work session adjourned at 6:57 p.m.

FORMAL MEETING

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; Ben Brandt, Mound; Gary Hughes, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Jake Walesch, Deephaven (arrived at 7:03 p.m.). Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Matt Cook, Environmental Administrative Technician.

Members absent: Dan Baasen, Wayzata; Jake Walesch, Deephaven; and Deborah Zorn, Shorewood.

Persons in Audience:

Bev Aho; Dylan Dierking; Dustin Fossey; Susanne Johnson; and, Joel Stone.

The following usernames were present but the person(s) did not identify themselves: iPhone 2; and, Murdych.

4. APPROVAL OF AGENDA

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

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	absent
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	aye

Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	absent
Zorn	absent

Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 05/12/2021 LMCD Regular Board Meeting

MOTION: Thomas moved, Stone seconded to approve the 05/12/2021 LMCD Regular Board Meeting minutes as submitted.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	absent
Brandt	aye
Cook	aye
Hoelscher	abstain
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	absent

Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Kirkwood moved, Stone seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (05/16/2021 – 05/31/2021); **7B)** Approval of Joint Variance Applications for Side Setbacks and Structure Dimensions for 16940 Grays Bay Boulevard, PID 17-117-22-21-0090, and 16930 Grays Bay Boulevard, Minnetonka, MN 55391; and **7C)** Denial of New Multiple Dock License for Expansion of Boat Slips and Structures, and Variance Application for Dock Length and Side Setbacks, 5th Street Ventures/Back Channel

Brewery, Spring Park, MN 55384

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	absent
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	nay
Zorn	absent

Motion carried.

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

Dylan Dierking, Foodski, LLC thanked the Board for their time and the opportunity to speak tonight. He stated that his business is a jet ski delivery service that functions similarly to DoorDash or UberEats. He stated that it is only a matter of time before the bigger companies find a way to deliver on the water. He believed that his company is in a position to set the precedent for how food is delivered on the water. He stated that his business began delivering food on White Bear Lake last summer and delivered over 150 orders over 14 four-day weeks. He explained that his business uses drivers with insulated backpacks to deliver food to boats using Square card readers to take electronic payment. He explained how he would plan to provide service to Lake Minnetonka within certain boundaries and within certain hours. He understood concerns related to boat traffic and litter. He noted that boat traffic would not be impacted as the boats would not have to drive to docks to get the food. He stated that the food would be enclosed in the backpacks to prevent litter. He stated that his business would help the local restaurants gain a new revenue stream through delivery of their food and would also enhance the experience of the boaters. He stated that he is open to answering any questions the Board may have. He stated that he is fully committed to working with the LMCD to ensure that his business is nothing but helpful to the Lake Minnetonka communities.

Thomas commented that currently the LMCD has an ordinance prohibiting retail sales on the lake. He stated that the Board is currently in the process of discussing whether to modify that ordinance. He asked if Schleuning could reach out to the staff at the White Bear Lake Conservation District to gain information related to this topic.

Schleuning confirmed she could reach out to that staff.

Dierking commented that he is not selling the food on the water, only delivering food that has already been purchased and, therefore, from the language he has seen within the Code and the opinion of LMCD legal staff in 2016 there is not an issue with delivery. He commented that he is not attempting to ruffle feathers.

Thomas stated that during the comments it was mentioned that the Jetski would take payment through a device upon reaching the boat.

Dierking commented that the Square card reader would be used to take payment for delivery.

Thomas stated that the ordinance prohibits retail sales on the lake, but legal staff could provide additional input to Mr. Dierking.

9. PUBLIC HEARING

There were no public hearings.

10. OTHER BUSINESS

There was no other business.

11. OLD BUSINESS

A) Approval of Preliminary 2022 LMCD Budget

Anderson commented that the budget remains essentially the same from the figures reviewed in the previous workshop meetings. He stated that the budget numbers for Save the Lake have been populated and reviewed those figures. He reviewed the total fund balance for previous years and as projected and asked for details.

Schleuning stated that she has been tracking some of the expenditures that the Board has authorized from the reserves and reviewed those details.

Anderson asked that the reserve fund projections are not shared with the cities as he did not believe that is related to the requests to the cities.

Thomas commented that the statement is being made to the cities that AIS funds will not be levied because reserve funds will be used for AIS activities in 2022 and this figure supports that statement.

Anderson commented that the Finance Committee feels that the projected reserves are not part of the equation.

Thomas commented that based on the discussion at the last meeting the General, Equipment, and AIS reserves were combined. He agreed that the chart showing the three separate funds would be irrelevant but was unsure why the projected reserve balance would not be shared.

Anderson stated that he reviewed past presented budgets and did not see a similar figure. He did not believe

the projected figures were correct and the Finance Committee does not support inclusion of that table.

Hoelscher stated that she does not ever recall showing a chart with fund balances or projected balances when she presents the budget to her city. She stated that the only budget and levy information has been presented and she believed that to be sufficient. She commented that the LMCD has never levied separately for AIS, but simply levied and then distributed per line items. She stated that she would support including the cover letter and draft with the levy share information.

Schleuning stated that charts have been provided in the past. She added those charts because one of the summary points was related to a reduction of fund balance and therefore relevant to the presentation.

Kirkwood referenced page four of the preliminary budget which states 2020 budget and asked when that would be actual.

Schleuning stated that she can update that for the city letter.

Thomas stated that he is not hearing any comments about the cover letter but that some attachments should not be included.

MOTION: Hoelscher moved, Anderson seconded to approve the 2022 preliminary LMCD budget and direct staff send the letter, budget, and chart with the budget and levy to member cities to seek input.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	absent
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	nay
Kroll	aye
Newell	aye
Stone	aye
Thomas	aye
Walesch	aye
Zorn	absent

Motion carried.

12. NEW BUSINESS

There was no new business.

13. TREASURER REPORT

Anderson had nothing further to report.

14. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Solar light installation has begun
- Review of low water levels in response to questions received
- Clean, Drain, Dry Initiative promoted by Wildlife Forever
- Stop Spiny Waterflea promoted by the University of Minnesota
- Additional AIS Updates provided through Hennepin County newsletter
- The updated LMCD website will launch the following day

15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt reported that the group will meet the following week.

Communications: Hoelscher reported that the group meets the following day.

Finance: Anderson had nothing further to report.

Operations: Schleuning stated that Zorn is awaiting feedback from some of the committees related to the Strategic Plan items.

Save the Lake: No report.

16. ADJOURNMENT

MOTION: Kroll moved, Walesch seconded to adjourn the meeting at 7:40 p.m.

VOTE: A roll call vote was performed:

Anderson	aye
Baasen	absent
Brandt	aye
Cook	aye
Hoelscher	aye
Hughes	aye
Kirkwood	aye
Klohs	aye
Kroll	aye
Newell	aye
Stone	aye

Thomas	aye
Walesch	aye
Zorn	absent

Motion carried unanimously.

Gregg Thomas, Chair

Dan Baasen, Secretary