

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., August 24, 2022
Wayzata City Hall

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gabriel Jabbour, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; and Denny Newell, Woodland; and Nicole Stone, Minnetonka (arrived at 7:08 p.m.). Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Thomas Tully, Environmental Administrative Technician.

Members absent: Gregg Thomas, Tonka Bay; Jake Walesch, Deephaven; and Deborah Zorn, Shorewood.

Persons in Audience: Chris Jewett, Eric Evenson, Brett Niccum, Barbara Burwell, Dorrance David Reisee, Jr.

4. APPROVAL OF AGENDA

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

Further discussion: Anderson stated that he would like to add an item to the agenda to review the deicing dock applications. He stated that the applicant currently requires a person to apply rather than a marina. He commented that the applicant should be the entity for a commercial application.

Hoelscher stated that there is a deicing item on the next agenda and asked if this discussion should occur at that time.

Anderson explained the difference between the agenda item and the item is proposing and clarified that he would prefer to add the item to this agenda.

MOTION: Anderson moved, Cook seconded to amend the agenda to add an item to discuss how the applicant is defined for commercial deicing applications.

VOTE: Ayes (9), Nays (1), (Kroll). Motion carried.

Hoelscher noted that item will be considered under New Business as Item B.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

A) Oath of Office

Hoelscher stated that a new member is being welcomed back and noted that Gilchrist will administer the Oath of Office.

Gilchrist administered the Oath of Office to Gabriel Jabbour.

Jabbour joined the Board. He introduced himself noting that he is a resident of Orono and was asked to represent the City of Spring Park.

6. APPROVAL OF MINUTES- 08/10/2022 LMCD Regular Board Meeting

MOTION: Brandt moved, Baasen seconded to approve the 08/10/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (9), Abstained (2), (Cook and Jabbour). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Anderson moved; Kroll seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (08/16/2022 – 08/31/2022); and **7B)** Resolution Accepting Save the Lake Contributions (08/01/2022 – 08/16/2022).

VOTE: Motion carried unanimously.

8. RECOGNITIONS

Baasen recognized donors that made recent contributions to Save the Lake.

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

There were no public comments.

10. PUBLIC HEARING

A) Public Hearing, Daniel Gustafson, New Multiple Dock License, Shoreline Drive, PID 11-117-23-22-0013, Orono, Browns Bay

Schleuning stated that staff recently received a request from the applicant to continue the process and continue the request to a future meeting.

B) Public Hearing, North Shore Marina, New Multiple Dock License Classification Change, 1449 Shoreline

Drive, Orono, Browns Bay and Tanager Lake

Hoelscher stated that Anderson has left the dais and is abstaining from this discussion.

Schleuning presented an application for a new multiple dock license for North Shore Marina located on Browns Bay and Tanager Lake. She stated that this would be a change in classification and there are no changes proposed to the currently approved site plan for the property. She stated that the purpose of the reclassification would be to remove the special amenity requirements. She highlighted the property and displayed the current approved site plan, noting the additional structure on the submitted site plan is not being considered at this time. She stated that staff received concerns as to whether the marina would be expanding or adding BSUs but clarified that is not part of this request. She provided a general site overview of the property and of the license request. She stated that staff does recommend approval of the existing site plan and change in classification with the conditions noted in the staff report.

Kirkwood stated that he would like more information as the presentation repeated that nothing is changing and asked the reason for this request.

Schleuning explained that this would be a change to the classification which would mean, if approved, the applicant would no longer need to meet the special density requirements.

Kirkwood asked if more boat slips could be added.

Schleuning stated that they could but that type of request would need to come back to the Board for additional consideration.

Baasen clarified that if approved, the classification change would allow the applicant to be eligible for a different density which would allow a subsequent request to increase the density.

Schleuning confirmed that is correct but noted that even without the change in classification this time, the applicant could come back and ask for a change in classification and increased density.

Baasen commented that the ability to expand would be there if the classification is changed.

Jabbour asked staff to revisit the question from Baasen as he believed the answer is incorrect. He stated that density is determined by the shoreline. He stated that opening additional shoreline could allow increased density but the change in classification would not alone provide for an increase in density to be requested.

Klohs asked if the change in classification would change the distance from shore the docks could extend.

Schleuning reviewed the dock length maximums extending from 100 feet to 200 feet and an allowed density of 1 boat to 50 feet of shoreline, 1 boat to 10 feet of shoreline for special density, and 1 boat to 10 feet of shoreline for QCM.

Richie Anderson, applicant, stated that he thought he was previously licensed in this manner from 2015 and would like to be reinstated to what seems to have been taken away from him. He referenced changes that were made to commercial marinas by previous Board action in 2014 and related language. He stated that he never ceased to operate as a qualified commercial marina and never requested a special density license. He stated that he thinks he does not need a special density license because in 2015 he was considered a qualified commercial marina. He stated that he requested his licenses from 2016 through current and has not received that information, noting that he lost those documents in a fire. He noted that the same language that was included in his license in 2015 was also included in Jabbour's 2016 marina licenses. He stated that he has always been a qualified commercial marina and has never requested a special density license, but he is present tonight having paid the \$2,400 application fee to request something that he believes already exists. He commented that it is ridiculous to go through this process as nothing has changed since his 2015 license.

Gilchrist stated that the applicant brought this forward to raise this issue as no other changes are proposed. He noted that a number of applications have been reviewed in the past where this designation is requested in combination with other changes to the marina. He noted that there are certain criteria that must be met to satisfy the criteria for a qualified commercial marina classification. He stated that this has been viewed as a classification change, which is usually accompanied by other changes to the facility. He stated that this would be the opportunity for the Board to ensure the criteria in the Code are met by this applicant. He noted that usually this classification change is coupled with other asks, but this does not include any additional requests. He stated that he cannot speak to what was stated in the 2015 or 2016 licenses.

Hoelscher stated that she believes the main question of the applicant was that he received a license in 2015 that stated he was a qualified commercial marina but that somehow has changed since that time without any action from the applicant.

Gilchrist stated that he has not gone through a review of past licenses. He stated that putting language in a license does not necessarily make that designation. He stated that in 2015 and earlier years that classification was not clearly designated in the license.

Kroll asked if the applicant would like the Board to adopt the resolution but waive the fee.

Anderson stated that he wants the classification that he had that was taken away from him. He stated that he had a qualified commercial marina status that was taken away for some reason.

Hoelscher asked if the applicant would like the designation to be made retroactive.

Anderson confirmed that he would like that.

Jabbour commented that he had the same experience. He stated that the fact that staff and the attorney were not present when this happened does not mean it did not happen. He stated that the LMCD must work hard to gain the trust of the public. He stated that he sent an extensive letter to the attorney when this happened to him. He stated that the answers to the neighbors are incorrect. He reviewed the elements that would remain the same with the classification change and the changes that would no longer be required. He stated that it is

very annoying when the LMCD continues kicking the can down the street. He stated that Gilchrist answered to the Executive Committee on the letter he spent two hours drafting and nothing happened. He believed that the LMCD should recognize and own the mistake that it made and move on. He stated that there are a lot of inconsistencies in the LMCD files and staff should slow down. He stated that there is no service to the public when the files are released to the public and the Board the same day as the meeting. He stated that the information should be made available to the public and the Board the week prior to the meeting to allow proper review.

Anderson claimed that he brought this forward because he filled out the application and paid the \$2,400 fee. He stated that the marina owners tried to reach out to ask and there was no follow up by staff.

Hoelscher opened the public hearing at 7:40 p.m.

Chris Jewett, 20305 Lakeview Avenue in Deephaven, stated that he was a previous representative of the Board for the cities of Deephaven and Minnetonka and was a part of the planning for the qualified marinas. He stated that the intent was to protect the amenities available on the lake and to make it easy for the marinas to continue in that status. He stated that the intent was that the marinas would not have to come back and prove themselves every year if nothing is going to change. He stated that although he has disagreed with Anderson on a number of things over the years, he does agree with him on this matter. He stated that for Anderson to have to come back up and restate his reasoning for being a qualified marina is crazy. He stated that the fact that staff states that they have not had time to investigate the matter prior to a public hearing is inexcusable. He stated that if a public hearing is being conducted, there should be knowledge of the licenses for 2016 through 2020. He stated that the spirit of this was to protect the status of the marinas, not to take that away.

Bret Niccum, 3280 CR 44 in Minnetrista, stated that he served as a former member of the LMCD Board and was also a part of the marina discussions. He agreed with the previous speaker. He stated that there were even discussions that if a piling needed repair, the marina would not even need to pull another permit to replace that for the ease of the marinas to continue unless a major change was needed. He commented that it is ridiculous that they are here talking about this tonight.

Barbara Burwell, 1100 Millstone Road, commented that her property looks out at the marina property. She stated that she was not aware of this until about three hours ago and is also representing some of her other neighbors that were aware of the meeting and were unable to attend. She stated that she is not within the notification area and therefore was not sent a mailing. She stated that she lives on Tanager and daily witnesses the traffic on the lake, which has increased in all seasons. She expressed concern for her neighborhood on the water and surrounding streets. She stated that she does have concern with the dock configurations and potential high density of boats. She stated that she has concerns for safety and with eroding shorelines. She recognized that this is a discussion of a lost license but would like clarification as she does not have a clear understanding of the impact of this decision as a neighbor. She was troubled that staff did not take time to gather the information that would have been helpful for this discussion. She also commented on the people on the channel that are impacted by the traffic and stated that the parking lot has been under construction for this summer and asked the impact and status of that. She stated that she has

been confused by the discussion tonight and would like this continued to the next meeting which would provide more time for review. She expressed concern for increased density. She stated that she is not satisfied with the answers that have been given tonight. She asked that more work be done to inform the public, showing the past licenses, and explaining why this is being done.

Dorrance David Reisee Jr, 1520 Green Trees Road, commented that he agrees with the comments of his neighbor that just spoke. He commented that he has owned his home for 40 years and traffic continues to increase on the small area of water. He commented that there seems to be a lot of misinformation about this request as he was told 200 new boat slips were being added whereas this is more of a zoning type change. He commented that the road by the marina is one of the most dangerous roads in Minnesota and therefore he would have concerns with parking but that does not appear to be part of this request. He stated that he also did not understand the pictures of the marina and again commented on the misinformation involved related to this case. He was unsure how many more boats could be added to this small area of water and expressed concern for the traffic.

Hoelscher commented that the LMCD does not have jurisdiction over the land as that would fall to the authority of the cities. She clarified that the application does not propose any changes to what already exists. She stated that this application would not result in a change of the marina.

No additional comments were offered, and the public hearing was closed at 7:54 p.m.

Gilchrist stated that the applicant elected to apply requesting for the classification but indicated that he ought not to do that. He noted that staff could have examined the past licenses to determine whether the marina was grandfathered in as a matter of right, but he was not asked to conduct that review. He stated that staff is processing the application as received.

Jabbour disagreed. He stated that he collaborated with staff for two years regarding this issue, but staff does not want to deal with anything without an application. He stated that the LMCD needs to reform and cannot continue to kick things down the road.

Gilchrist stated that the applicant made an application which was reviewed by staff and is recommending approval. He noted that in that instance he would not be asked to complete a historical review. He stated that the issue of what may or may not have happened in the past could have been a discussion of the Board rather than through submission of an application. He stated that if there should be a review to determine whether there should be retroactive granting of qualified marina status, which could be done, but noted that he would not necessarily recommend that as it could eliminate amenities available on the lake and could take a great deal of work.

Hoelscher stated that this is an application for a qualified marina license. She believed that this item should be voted on and if the applicant chooses to come back to request that the historical qualification be reviewed, that could be done.

Gilchrist clarified that they are at the end of the review period and therefore action needs to be taken tonight,

this could not be continued.

Jabbour commented that the information is incorrect as this could be tabled with permission from the applicant for an additional 60 days. He commented that the information provided to the Board by staff should be accurate.

Gilchrist stated that it is not within the power of the Board to demand an extension. He stated that staff already extended the review and therefore the Board would not have the right to extend, that would be the decision of the applicant.

Jabbour asked the applicant if he would grant an extension.

Anderson clarified that he brought this discussion to the Executive Committee and has an email chain involving Gilchrist and Schleuning stated that this would not happen, therefore the only reason he submitted the application is to ensure this would be reviewed and addressed. He stated that he would want the action that he is recertified as a qualified commercial marina from 2015.

Cook commented that it seems to him that the question that everyone would like answered is whether the 2015 permit is a designation of a particular status to the marina. He stated that he has not heard that question answered. He stated that an extension of time would be appropriate to get that question answered as the applicant's position is that he has that status, and it was taken away, and that is the way it appears to look. He would like to see the applicant provide more time so that question can be addressed, and the appropriate action could be taken. He stated that he would be conflicted on whether they should vote no to start the process over again, or yes to honor the application process.

Anderson commented that he would have no issue taking additional time. He stated that he has no issues with the neighboring residents. He stated that what he is asking for is legal in his code and he is convinced that he had legal status in 2015, as did Jabbour in 2016. He stated that he requested the permits and licenses from staff multiple times and those documents have not been provided.

Klohs commented that this is more complicated than anyone wanted. He stated that staff is telling the Board it can only deal with what is in the application, which is to clarify that this is a qualified commercial marina. He stated that approving the action would provide the classification and there could then be additional discussion on the topic.

Anderson stated that he had the license in 2015 and staff is now requesting that additional conditions be added that were not required in the past. He stated that he should not have to make additional concessions for something he already had.

Klohs asked if there are conditions attached to this approval.

Hoelscher asked if it would be possible to grant the approval with the conditions as set forth in the 2015 license.

Schleuning stated that staff did look at the qualified commercial license and definitions. She stated that definitions were placed on the license that were not related to the license granted. She stated that she did not see anything where anyone received an automatic change in their license without going through some sort of process. She stated that two public hearing notices were sent out for items on the agenda tonight, the first of which was continued and the second for this application. She noted that this action would remove the special density amenities and reviewed the recommendations of staff. She stated that there might have been confusion with the different application processes but stated that they followed the application process and the needed timeline specified by the State. She stated that if put in writing by the applicant, the request could be extended. She stated that this could be approved tonight, and she could then spend more time going through the code to complete a more in-depth review. She noted that there needs to be a balance in the information requested for review and made available to the public and being able to process applications in the allowed period.

MOTION: Baasen moved, Kirkwood seconded to secure facts and findings to be returned to the Board at the next meeting to determine the credibility of the license in 2015 and 2016, and if found to be true, the classification would be reinstated, and the application fee would be returned to the applicant.

Further discussion: Newell stated that he felt that evidence was presented that there was a qualified commercial marina license in 2015. He asked if licenses are periodically changed, noting the verbiage from the 2015 license and whether modification would have occurred from what is requested now.

Schleuning stated that because a definition was placed on the notes of the license does not make that license that classification. She recognized that this was confusing but did not see anything in previous minutes that no action is needed to change the classification. She noted that there would be additional review to ensure the qualifications are met.

Jabbour requested to amend the motion. He asked that the motion be changed to recognize the license from 2015 with no further work needed. He stated that the applicant applied 120 days ago, and the paperwork was sent out today at 3 p.m.

Klohs stated that would be impossible because no one on the Board knows what the license means.

MOTION: Jabbour moved to recognize the license and qualified commercial marina status from 2015.

The motion to amend failed for lack of a second.

VOTE: Motion carried unanimously. (Anderson abstained as the applicant)

Anderson rejoined the dais.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

A) Watercraft for Hire – Additional Review of Berthing Requirements

Schleuning stated that the Board has requested additional review of the commercial berthing requirements for watercraft for hire, as well as whether trailering watercraft for hire would be considered differently than berthing from a residential location.

Hoelscher stated that Anderson and Stone spoke to this item at the last meeting. She stated that the Board could opt to not discuss this fully as a Board, could discuss this item as a Board, or could direct a committee to discuss this and make a recommendation to the Board.

Baasen asked the capsule of the issue and whether that is that an application was approved that allowed trailering a boat.

Stone stated that two residents have been denied a watercraft for hire license because they would be berthing their boat from the residence but then it came to her attention that a non-resident was granted a license because they did not live on the lake and would be trailering the boat to a public launch. She commented that this did not seem fair. She felt like this issue would continue to come up and people will continue to run illegal watercraft for hire because licenses would not be granted if they are residents and keeping their boats on their private dock.

Newell commented that it is allowed that a person could launch their boat from a public launch and then pickup customers at a municipal dock, which would seem to be a work around.

Brandt asked if it would be appropriate to bring this item to a work session.

Hoelscher agreed that would be an option.

Stone agreed that could be a good option. She stated that in the past no one was willing to review the implications of changing the language in the ordinance, but it now is worth that effort because of this identified work around.

Kirkwood supported bringing this to a work session as there are several questions he would have on this topic. He believed that a more thoughtful discussion should occur in a work session.

Klohs asked if the LMCD has the authority to stop people from using public launches, picking people up and leaving later.

Gilchrist commented that there is nothing in the code that would allow regulation of that activity.

Stone stated that the person got a license to do that.

Klohs stated that the LMCD does not have the authority to prohibit that.

Stone asked how a resident could then be controlled to say they cannot leave their residential dock to pick up people at a municipal dock.

Gilchrist commented that he has not yet thought this all the way through. He commented that the code could be amended to state that watercraft would need to be stored at a specific location. He stated that his previous comment was related to the authority to launch boats which he did not believe the Board wanted to get into.

MOTION: Baasen moved, Stone seconded to direct staff to bring this topic for discussion at a work session.

VOTE: Motion carried unanimously.

13. NEW BUSINESS

A) AIS Management Funding Request – Carp Management: Jennings, Harrison, West Arm Bays

Brandt stated that the AIS Committee received an application from Harrison's Bay for funding to assist with their carp studies and provided details on the desired studies and objectives. He reviewed the cost estimates for the project. He stated that the AIS Committee reviewed the application and recommended approval for 35 percent of the not to exceed amount which would equal a not to exceed amount of \$2,807.

MOTION: Cook moved, Newell seconded to authorize funding for Harrison's Bay Association to support carp population management up to 35% for Jennings, Harrison, and West Arm Bays with additional actual project costs and services rendered not to exceed \$2,807 of the estimated costs in the application, and to authorize payment directly to service provider(s) upon verification by AIS Committee and Finance Committee Chairs or proof of completed work, receipt of copies of all surveys, shapefiles, etc.

Further discussion: Kirkwood asked if this is within the funding boundaries previously discussed.

Brandt confirmed that this would fall within the funding allocations for 2022.

VOTE: Motion carried unanimously.

B) Discussion Related to the Definition of Applicant for Commercial Deicing Applications

Anderson referenced a previous application from a marina for deicing which requires a person to be identified. He believed that should be changed to the corporation, such as the marina.

Jabbour stated that late one evening he received a call from the Mayor of Spring Park expressing his frustration with the application he received. He stated that when he redid Saint Albans Bay it mentioned he and another party has

special attribute and the license was issued to both parties rather than the entity. He stated that insurance cannot be gained for certain elements because the company is not listed on the application. He stated that the insurance company has stated that the company would need to be listed as the applicant, but a contact person could be identified on the application.

Hoelscher asked if there is a reason that is not the practice.

Schleuning stated that staff could investigate that. She noted that typically a person is needed for prosecution. She stated that an officer must be identified, and a date of birth is required to ensure the right person.

Hoelscher asked if the applicant's name could then be the business and the contact then be listed.

Schleuning confirmed that change could be made.

Anderson confirmed that he would agree with that change.

Jabbour confirmed that would resolve his issue as well. He stated that the person that filled out his application last year has changed employment and therefore is no longer with his marina.

Schleuning stated that she could complete a draft and asked if the application would need to be resent.

Hoelscher stated that staff could make the changes and then complete the action in the most efficient method.

14. TREASURER REPORT

Anderson stated that he met with Schleuning this week in attempt to solidify the line-item budget numbers. He stated that the copier in the office is slowly deteriorating and presented an offer to rent a copier. He stated that this copier would also allow digitizing.

15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- Thanks to the Starry Trek volunteers for a great event. We are waiting for statewide results from MAISRC
- Information is available showing the link between human pollution and red tide.
- An update will be provided on the analytics from the new website and social media use
- A lot of calls and inquiries have been received recently

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt thanked the Board for its support of the funding request and thanked the volunteers for participation in Starry Trek. The group will look to schedule a meeting in September.

Jabbour commented that USGS has been parked at his home and occupied his three-car garage to complete an

experiment in Maxwell Bay. He stated that he was alerted that Brunswick hired a CSO (Chief Sustainability Officer) as they recognize the impact of invasives. He provided an update on his interaction with the group and the tour they completed. He commented that it was productive and extremely engaging. He commented that there are still four other experiments going on locally. He commented that he is encouraged by Brandt as that generation is the future and he is excited about partnership opportunities.

Brandt commented that he was appreciative to be involved and was encouraged by the experiments. He thanked Jabbour for making his property and home available to USGS this summer.

Communications: Hoelscher stated that the group is working to develop educational materials related to the newly adopted ordinance. She stated that in place of the second Board meeting in September, the Board will be completing a tour.

Finance: Anderson had nothing further to report.

Operations: No report.

Save the Lake: Baasen reported commented on the public events the Board participate in locally. He advised of an upcoming event that will be held and welcomed additional Board volunteers.

17. ADJOURNMENT

Being no further business, the meeting adjourned at 8:48 p.m.

Ann Hoelscher, Acting Chair

Dan Baasen, Secretary