

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

6:00 P.M., January 11, 2023  
Wayzata City Hall

**WORK SESSION**

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

**Members Present:** Rich Anderson, Orono; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Gabriel Jabbour, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Joseph Langel, LMCD Legal Counsel; Vickie Schleuning, Executive Director; Thomas Tully, Environmental Administrative Technician; and Maisyn Reardan, Administrative Coordinator.

**Members Absent:** Dan Baasen, Wayzata; and Ben Brandt, Mound.

**Persons in Audience:** Jim Brimeyer, Steve Tallen, Dan Gustafson, Kim Brown, William Deckle, David Feldshon, Jennifer Labadie, and Marc Nevinski.

Other persons in audience were present but did not sign in.

**1. Update Regarding Status of Executive Director Recruitment**

Brimeyer introduced himself and reviewed his proposed process for recruitment of the Executive Director position and potential facilitated Board discussion to further define the roles and responsibilities of the position. He also reviewed his recommended proposed schedule for the next months that he is with the LMCD as Interim Executive Director.

Anderson noted that typically committee meetings are not attended by the Executive Director.

Brimeyer commented that would be fine as well but noted that he would be willing to attend via Zoom when able.

Hoelscher stated that the issue with committee meetings is that they need to be noticed and there is some staff time involved in agendas and minutes. She agreed that it would be advantageous to pause committee meetings for a brief period.

Brimeyer continued to review the proposed timeline for the posting and search for the Executive Director. He stated that he would intend that the January 25th meeting would solidify what they would like to gain from the facilitated session to develop an outline for that session. He stated that he would then use that information to find a facilitator for that session which would occur in March.

Hoelscher asked for input on whether the Board would like to hold a facilitated discussion as mentioned.

Jabbour stated that he would be interested in having that meeting videotaped.

Cook stated that he would like the option to allow people to attend the meeting via Zoom.

Hoelscher stated that she would like to verify that with legal counsel.

Brimeyer stated that as long as the meeting is noticed as such, Zoom participation would be allowed.

Zorn asked if Brimeyer would be articulating his role in this process.

Brimeyer stated that he will not be the facilitator and money will need to be spent on that process. He stated that the following should be discussed: Board governance, proper behavior, and to guide development of the Executive Director position needs.

Zorn asked if the position would be posted prior to that time of the facilitated meeting.

Brimeyer confirmed that the position would have been posted for about a week or so prior to that facilitated meeting and the information gained at that meeting will help the search committee develop criteria to use to select semifinalists for the position.

Walesch asked why a work session would be needed to talk about what was just described. He confirmed consensus that the Board agrees with the items as proposed by Brimeyer.

Brimeyer stated that perhaps he develop a framework for that facilitated meeting and the Board could provide input.

Walesch agreed that Brimeyer could provide that summary and that could be the framework for the facilitated meeting.

Hoelscher stated that perhaps at the next meeting, Brimeyer could provide a summary of what is available for facilitation and potential costs and the Board could provide more direction.

Newell asked the number of applicants received during the last search for an Executive Director.

Brimeyer estimated about 25 or 30 candidates were received last time. He noted the salary range for the position and noted that every City Manager around the lake is making more than that.

Jabbour stated that he respects the experience of Brimeyer and recognized that the Board needs help. He asked if Brimeyer believes that the LMCD should hire a headhunter for the position.

Brimeyer replied that he does not have a yes or no answer. He stated that they could see what they receive for applicants and if that does not work out, they could go the path of a headhunter.

Jabbour stated that when this body did an RFP for an attorney, only one response was received. He stated that when he asked attorneys why they did not apply, the term, "dumpster fire" came up

repeatedly.

Brimeyer stated that he will look into the option of a headhunter as well.

Hoelscher asked for Board input on whether the Board would like to meet in February.

Klohs asked what Spring Park is paying for their Administrator.

Brimeyer replied that he started at \$90,000 per year.

Hoelscher asked for input on whether the meetings in February could be canceled. She suggested canceling the first meeting in February and if a meeting is necessary, it could be held on the 22nd.

Schleuning stated that she has a list of things that need to be addressed at the January 25th meeting but noted that there are no applications that would require a February meeting at this time. She stated that liquor licenses could be reviewed at the first meeting in March.

Anderson stated that the Treasurer would need to work with the auditor in February. He believed that the new members should be sworn in and Officers should be elected and proposed to skip the January 25th meeting and hold a meeting on February 8th.

Brimeyer did not agree. He believed the meeting on January 25th would be productive and meaningful.

Hoelscher agreed that the January 25th meeting would be necessary. She noted that the decision on February meetings would not necessarily need to be decided at this time.

Kroll stated that he would prefer to hold the second meeting if a February meeting is needed.

Walesch supported meeting only once in February.

Kroll confirmed that Anderson would agree with meeting on February 22nd.

Hoelscher confirmed the consensus of the Board to only hold one meeting in February on February 22nd. She asked for input on whether one or two meetings are needed in March.

Jabbour suggested that one meeting is identified to process application requests and the second of the meeting is held if there are general Board matters to discuss.

Hoelscher asked for inputs from the committees and whether they would be able to pause until March. It was confirmed that all committees, with the exception of the Nominations Committee, could pause until that time.

Walesch stated that the Board has discussed remote capabilities and it was mentioned that Jabbour has

offered to pay for the equipment and have it setup. He stated that he would love to hold a workshop to develop a resolution that would allow remote participation at the meetings. He noted that Brimeyer has also stated that he would be attending some meetings via Zoom. He proposed that this topic be discussed at the January 25th workshop.

Hoelscher stated that the issues have been identified in the handout provided by Walesch and questioned whether a workshop would be needed.

Walesch stated that Jabbour was willing to finance and setup the equipment and that was stopped by Hoelscher.

Hoelscher stated that they have since received legal input that remote participation would be allowed.

Jabbour commented that he had the equipment, and it was supposed to be setup two weeks ago but that was stopped. He noted that he provided input from his legal counsel but would not be willing to accept the responsibility until the LMCD legal counsel provides input.

Brimeyer asked what was done during the pandemic.

Hoelscher stated that the emergency declaration allowed remote participation.

Klohs stated that the email from Jabbour was forwarded to the LMCD legal counsel, and he provided input on what would need to be done.

Schleuning stated that a few months ago staff met with the School District and City of Wayzata related to technology improvements that will be made. She stated that the City and School District are not interested in hybrid meetings but provided a cost estimate of about \$10,000 for the hybrid technology.

Hoelscher stated that staff can then bring forward the technology needs to hold remote Board meetings. She noted that committee meetings can be held virtually as long as the criteria are met.

Jabbour stated that he has the equipment and provided details. He noted that he would be donating the equipment which would remain in the conference room in the LMCD office.

Hoelscher suggested that Jabbour work with staff to install the equipment in the LMCD conference room.

Newell thanked Jabbour for the donation as it will help to streamline committee meetings.

Hoelscher noted that it would also assist in increasing participation.

### **3. ADJOURNMENT**

There being no further business, the work session was adjourned at 6:55 p.m.

## FORMAL MEETING

### 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; Gabriel Jabbour, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Joe Langel, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Thomas Tully, Environmental Administrative Technician, Maisyn Reardan, Administrative Coordinator.

**Members absent:** Dan Baasen, Wayzata; and Ben Brandt, Mound.

**People in Audience:** Jim Brimeyer, Steve Tallen, Dan Gustafson, William Deckle, Kim Brown, David Feldshon, Mark Nevinski.

Other persons in audience did not sign in.

### 4. APPROVAL OF AGENDA

Zorn stated that based on the Board decision at the December 14<sup>th</sup> meeting for a closed session to discuss the Executive Director review, evaluation, and discussion she would like to request to hold that closed session at the end of the meeting.

**MOTION:** Zorn moved, Anderson seconded to amend the agenda, making the change noted by Zorn above.

Further discussion: Kirkwood asked the intent of the closed session.

Zorn replied that the intent would be to evaluate the current Executive Director as she closes her tenure with the LMCD.

Kirkwood again asked the intent and what would be gained.

Zorn stated that this would be a forum to share thoughts and concerns that would help the LMCD as it moves forward with recruitment of the next Executive Director. She stated that they would gain input on what has been working well and what has not been working well.

Kirkwood stated that he would prefer to have the facilitated discussion in February.

Jabbour stated that he is surprised that everyone voted for that to happen, including Kirkwood.

Hoelscher stated that since that time some things have changed as they have engaged an Interim Executive Director, have brought on the new legal counsel, and have decided on a process to move forward in selecting a new Executive Director. She stated that because Schleuning will be leaving in two weeks, she did not believe providing feedback to Schleuning would be helpful and believed the better path forward would be to hold the facilitated discussion in February as the Board discussed at the workshop.

Anderson contended that if this is done now, this would provide a Board opinion when suggestions are sent in the future.

Klohs stated that in the workshop it was determined that a facilitator would be needed. He stated that it would seem that the Board does not need to talk about what has happened in the past, as that would not be healthy, and the Board needs to focus on moving forward.

Walesch commented that an evaluation of the Executive Director is done each year with feedback provided. He agreed that there are opinions on whether that is needed as the Executive Director is leaving, but that is completed each year and therefore it would not be odd to do that. He believed that the exercise would still be constructive.

Brimeyer commented that this would seem to be a waste of time and would not stay for it if the Board decided to hold one. He stated that the purpose of the evaluation is to guide future performance. He stated that what they need to talk about in the future is what they are looking for in a new Executive Director. He stated that if he were a member of the Board, he would vote no on this item.

Anderson commented that the Board would not need Brimeyer to stay for the closed session. He explained that in the closed session the Board would figure out what is good and bad and would send those thoughts to Brimeyer.

Hoelscher stated that would then not be an evaluation of the Executive Director but more of the process moving forward.

Jabbour commented that he made the motion in December which was unanimously approved. He explained that his intention for the closed session was to evaluate Schleuning and two other employees to understand the staffing needs. He commented that could be done publicly or in closed session. He stated that he came to the meeting with the understanding that this would happen, but it continues to be kicked down the road. He stated that the review is not on Schleuning but what he thinks the other employees learned the wrong way. He stated that this ship needs to get back on track and there needs to be leadership as that is lacking.

Hoelscher stated that the Board only evaluates the Executive Director, who then evaluates their staff.

Zorn commented that her motion for closed session was based on the motion at the December meeting.

Hoelscher noted that the process has changed since that time and the direction may change as well.

**VOTE:** Motion carried 7 – 4 (Cook, Kirkwood, Hoelscher, Klohs opposed).

Hoelscher stated that the Board can go into closed session under New Business.

**MOTION:** Cook moved, Walesch seconded to approve the agenda as amended.

**VOTE:** Motion carried unanimously.

## 5. CHAIR ANNOUNCEMENTS

Hoelscher commented that she has taken over as Acting Chair as Thomas is no longer on the Board. She welcomed the new legal counsel.

Langel introduced himself.

Hoelscher introduced Brimeyer, the Interim Executive Director.

## 6. APPROVAL OF MINUTES- 12/14/2022 LMCD Regular Board Meeting

Hoelscher stated that Evenson should be removed as a participant.

**MOTION:** Walesch moved, Zorn seconded to approve the 12/14/2022 LMCD Regular Board Meeting minutes with the noted change.

**VOTE:** Motion carried unanimously. (Cook abstained)

## 7. APPROVAL OF CONSENT AGENDA

Anderson referenced a payment to North Shore Marina in the payment of vouchers. He stated that he will not be accepting the payment until there is resolution of his dock licensing from 2018 through 2022 and requested that payment be removed.

Schleuning confirmed that payment can be removed, and the Consent Agenda can still be approved.

**MOTION:** Cook moved; Walesch seconded to approve the consent agenda with the noted change. Items so approved included: **7A)** Audit of Vouchers (12/16/2022 – 12/31/2022 and 1/1/2023 – 1/15/2023); **7B)** Resolution Accepting Save the Lake Contributions (12/16/2022 – 12/31/2022); **7C)** Denial of Variance for Adjusted Dock Use Area and Setbacks, 2000 Shadywood Road, Orono, MN 55391, Crystal Bay; and **7D)** Interim Director Jim Brimeyer Agreement.

**VOTE:** Motion carried unanimously.

## 8. RECOGNITIONS

Newell recognized those that have recently made 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. PRESENTATIONS

### A) Prosecution Services Update: Law Offices of Steve Tallen

Tallen introduced himself and reported that 2022 was a typical year with a few variations. He commented that it seems that the number of cases that he has had in his office have been down . He noted the decreasing trend of BUI cases because of the aggressive work the Water Patrol has done over the years. He stated that unlicensed charter boats has become a larger issue in recent years and noted that almost all of those cases have been resolved. He noted that with one or two exceptions, once resolved the problem does not reoccur with the same person. He stated that the vast majority of the people were not aware of the licensing requirements. He stated that there has been a huge decrease in underage drinking cases, which he attributed to the social host ordinance passed by the Board. He reviewed the revenue received via fine payment compared to the cost for his services. He commented that he has enjoyed working with Schleuning, who has helped to make his job easier.

Newell commented that a few years ago it was realized that the Water Patrol Officers are shared with Hennepin County and therefore those Officers could be pulled off the lake to assist in other cases. He stated that Save the Lake raised funds to secure two committed Officers on the lake. He stated that logic would tell him that with more Officers on the lake, there would be more interaction but noted the decrease in violations.

Tallen replied that the decreasing trend is historical and was not reflective of just the last two years. He recognized the difficulties in having a full staff at this time for police. He noted that about 15 years ago there was direction from the Board for the Water Patrol to not be as aggressive with tickets and to issue more warnings. He explained that if someone receives a ticket and pays that ticket, he does not see those. He noted that his office handles those violations that are contested.

Schleuning commented that citations are not the only duty of the Water Patrol. She provided details on emergency response and education. She noted that there has been a lot of education and contact to ensure people are safe and following the rules. She commented that proactive work and education has been paying off.

Jabbour commented that the Water Patrol did a great job controlling 4<sup>th</sup> of July and does a great job



partnering with the DNR Officers. He stated that some tickets are written under the DNR code.

Tallen explained that those tickets issued under DNR code are prosecuted by the County Attorney. He explained that if he processes a case, the fine revenue goes to the LMCD whereas the fine revenue gained through a DNR issued ticket handled by the County Attorney is split between the County and LMCD.

Jabbour commented that Sheriff's Office has the right to choose under which code a ticket is written. He stated that they often choose the easier code to prosecute under and that may not always be the LMCD code.

## 11. PUBLIC HEARING

- A)** New Commercial Multiple Dock License, Dan Gustafson, Lake Minnetonka Real Estate II, LLC; PID 11-117-23-22-0013, Outlot B Dragonfly Hill, along Shoreline Drive, Orono, 55391, Browns Bay (Continued from August 23, 2022)

Tully presented a request for a new commercial multiple dock license at the subject property and provided background information on the request. The applicant proposed to construct a new commercial multiple dock facility on the site for use as a commercial marina, with boat slips available for rent by the general public. Nine boat storage units (BSU) are proposed. He reviewed the size of the proposed boat slips, setbacks, and boat density. He provided an aerial photograph of the property and displayed the proposed site plan. He explained that the originally proposed multiple dock facility calculation for structure and navigation would have exceeded the threshold and triggered a mandatory EAW. He stated that the plans were then changed to a configuration below that threshold. He noted that the Board may consider a discretionary EAW, given that this is a new multiple dock facility for this location. He reviewed the multiple dock criteria and described how the application would meet those requirements. He stated that no agency comments were received from the MCWD or MN DNR, but the City of Orono and Hennepin County provided feedback with concerns regard the proposed commercial multiple dock. He also reviewed the public comments received prior to the meeting which voiced concern with the request. He provided more details on the concerns raised by the City of Orono, Hennepin County, and residents. He stated that staff recommends approval of the request with the minimum conditions listed in the staff report and reviewed those conditions.

Anderson asked if a commercial multiple dock is always considered a marina.

Tully confirmed that is true by definition.

Anderson asked where it states in the Code that a discretionary EAW can be required.

Schleuning provided details on where that information is found under State Statute. She stated that this is a new facility that is close to the threshold, but it is under the mandatory threshold.

Anderson contended that is not true.

Newell referenced the provision that the applicant would need to prove riparian rights and asked if the LMCD reviewed the ownership of the shoreline. He asked if residential property along the lake, separated by a road, would preclude the riparian rights of the property owner to the shoreline on the other side of the road.

Hoelscher stated that a deed was included in the packet which showed the riparian rights were separated from the property rights but had been purchased by the applicant.

Jabbour used the example of a resident owning lakeshore with a boat density of 50:1 which would allow nine slips. He asked if the property owner could then rent those slips to any party.

Tully replied that would be allowed as long as it was considered commercial/business or marina.

Jabbour referenced a previous application considered and approved by the Board for Big Island and asked if those slips could be rented.

Schleuning stated that it was a residential dock and it does raise questions as to whether it could be a residential multiple dock or commercial multiple dock.

Jabbour referenced the comment from Orono that this would be commercial. He stated that nine boats would be nine boats.

Schleuning stated that the difference would be related to traffic as people would come to the property that would not typically come to the property. She also stated that a resident with nine boats, would most likely not be using all nine boats at once.

Klohs referenced the LMCD enabling legislation, which was previously amended relating to commercial marinas, and that only allows LMCD consideration for water issues while the cities control the issues on land. He stated that the land issues would no longer be of consideration to the LMCD. He stated that it is the understanding that the applicant does possess the riparian rights for this area. He stated that if approved, he would recommend a condition noting that this approval is not physically connected to the land, at or above the high-water mark.

Kroll agreed with the explanation of Klohs related to the law change and therefore wondered why time was spent looking at the responses from Orono and Hennepin County.

Klohs noted that is still a part of the public record.

Kroll stated that perhaps in the future the input from those entities is not obtained.

Klohs commented that there is a legal obligation to notify those entities.

Schleuning stated that sometimes there may be things outside the purview of the LMCD, but people still work together to resolve those potential issues.

Walesch commented that this application conforms to the LMCD Code in every manner. He stated that there is a communication from an attorney representing a few residents and asked if that has been reviewed by legal counsel.

Langel commented that he has seen the communication but has not spent hours reviewing all the legal arguments. He noted that much of this goes back to the limited authority of the LMCD in this case. He noted that many of the concerns address issues related to the land, whereas the LMCD only has control over the water.

Hoelscher invited the applicant to address the Board.

Dan Gustafson, applicant, stated that he appreciates the assistance of staff throughout this process and has a representative present to address any questions of the Board.

William Dickel, Attorney representing the applicant, stated that he is present to address any questions.

Hoelscher opened the public hearing at 8:12 p.m.

Kim Brown, 1300 Shoreline Drive, referenced the statement that the LMCD authority lies in the water. She asked what happens where the water meets the land.

Klohs replied that can be debated, which is why he suggests that another condition of approval that the dock does not connect to the land at or above the normal high-water mark. He stated that the dock could be shortened to not meet the land or could connect below the normal high-water mark. He stated that the issue of LMCD authority change that was made only applies to commercial marinas.

Brown stated that it would appear that the responsibility of the dock in the water would be of Gustafson, but the land responsibility would be of the City or Orono. She asked who the final decision maker would be if the LMCD approves this. She did not see how this would work and who would carry liability insurance if someone were injured on the City of Orono property. She commented that the homeowners in this area would be impacted by the additional boat traffic generated from this location. She asked if there would be an educated marina person employed at the dock facility. She asked if there would be restrooms and patrolling of the docks. She asked who would be responsible for issues that arise from this location.

Hoelscher confirmed with legal counsel that the Board should not be engaging in discussion with the public during the public hearing; only the comments from the public should be received.

David Feldshon, 1420 Shoreline Drive, commented that this issue began four or five years ago when he wanted a sailboat on the bay and applied for a permit to install a buoy. He stated that it was then determined that the City or Orono owns this strip of land between the lake and highway. He stated that he retained an attorney that looked into the matter and the riparian rights still existed but did not sell with the home when he purchased it and were retained by the owner of the property two before him. He stated that those people had

passed away and when the court made its decision, the riparian rights were then passed to the heirs of those previous property owners. He provided details on the process they followed with those heirs but noted that it did not move quick enough and were sold to Mr. Gustafson. He stated that these riparian rights originally lied with his property as residential riparian rights. He stated that because the City owns the shoreline, the consent of the City must be obtained for dock installation. He stated that if the applicant does not have the consent of the property owner, the application should be denied. He stated that there is a question as to whether this dock space would be commercial or residential. He noted that a multiple dock license with public access would seem to be commercial and it is his understanding that marinas are not allowed within this area as this is a residential district. He commented on the challenges that exist for this use in this area. He stated that if this were approved, he would be concerned that residential property owners could construct their own commercial marina or sell their riparian rights for such use.

No additional comments were offered, and the public hearing was closed at 8:23 p.m.

Jabbour commented that it is unfortunate that the audience gets the feeling that they are destitute and there is nothing that can be done. He reiterated that he believes the LMCD does not have authority over the land. He stated that the City has a lot of remedies for this proposal. He stated that the City Code defines docks as an accessory structure, similar to a garage and an accessory structure cannot exist without a principal structure. He stated that this request might meet the LMCD Code but agrees that this would be a dangerous place.

Anderson commented that there are requirements for marinas in Orono, but a fee is not paid for that license.

Hoelscher invited the applicant to address the comments made by the public.

Gustafson appreciated the position of the residents and offered to provide his contact information to work with them. He stated that he is unsure whether he would run the marina or whether that would be outsourced. He stated that relating to accessory structures and principal structures, that relates to land and the lake is its own lot separate from the land. He stated that every dock on the lake is a primary structure in his opinion.

Dickel commented that there is always concern for safety and they do value the environment of the lake. He stated that this would not be a commercial entity where many people would be coming and going. He noted that the deed for the home was determined to not include the riparian rights as those had been withheld from a previous owner and therefore the riparian rights were then purchased by Gustafson.

Anderson referenced the letter from the City of Orono, noting that he was asked to put this into the public record by a City of Orono Councilmember. He stated that as stated in the letter, the City of Orono is the owner of the parcel and does not consent to the proposed use of City owned land. He stated that the LMCD ordinance requires the consent of the owner to be considered as a complete application.

Hoelscher stated that she is not familiar with that ordinance and asked for guidance.

Langel commented that the LMCD Code does state that the consent of the owner has to be received. He stated that is defined in the Code as fee title owner. He stated that despite that definition there is the issue of

riparian rights which has been severed from the underlying fee. He stated that it is unclear under the Code as to whether that riparian rights holder would be considered as the owner. He provided details on case law and the history of LMCD actions to provide licenses to the riparian rights owner even when the fee owner objected, therefore an argument could be made that the applicant meets the definition of owner.

Anderson stated that even though the City, Hennepin County, and adjacent property owners object this, he does believe that this application meets the requirements of the LMCD. He stated that he intends to vote present and provided additional details noting that the applicant has secured bids for dock building and his son's company has provided a bid.

Hoelscher asked if present would be different than abstaining.

Langel stated that this type of organization typically does not use a present vote.

Anderson stated that he has reviewed a similar matter with the previous legal counsel and his abstention was counted as a nay, therefore he will be voting present to avoid that situation.

Zorn stated that Klohs mentioned the high-water mark and asked if the staff map shows that high water mark for this strip of riparian rights. She asked if that measurement was exact.

Tully displayed the survey.

Schleuning stated that approximately or generally is typically used because of the different changes such as topography and erosion. She stated that an ordinary high water (OHW) mark of 929.4 was identified on the survey. She commented that it is lower than the land because of the change in elevation.

Zorn asked if there would be a situation where the OHW would affect placement of the dock.

Schleuning commented that this is another example where the legislative split of authority between land and water does not work well. She stated that they have had these discussions with the applicant. She stated that while she does not agree with how this works, this is how it works under the legislative authority of the LMCD. She stated that they have spoken with the applicant about concerns for safety. She stated that the applicant and all parties need to get together to determine how this would work safely. She stated that the hands of the LMCD are tied as this request does meet the requirements of the Code. She asked the applicant how they would make this location safe.

Zorn recognized that the enabling authority shifted by the legislation changes, and this meets all requirements of the current Code. She commented that she does not feel that the LMCD Code has been updated to meet the enabling legislation changes. She stated that passing this in a silo without considering the other elements would not be the right choice. She stated that there needs to be acknowledgement that there is a parcel of land that would make a request safe. She stated that she would be interested in seeing the applicant pull together the interested parties to resolve these issues rather than pursuing a commercial enterprise solely for financial gain.

Schleuning stated that a few years ago the previous attorney brought forward potential Code changes to address the legislative changes and the item was pulled from the agenda. She stated that the case law and riparian rights provided by statute would not change.

Walesch stated that this is a strange case with a lot of circumstances that would not typically lead to this chain of events. He agreed with Zorn in that the Board should review the Code again. He recognized that there was a previous attempt, but it is hard to predict a set of circumstances such as this. He stated that this application was presented under the existing Code and must be considered under that Code. He stated that if a request conforms to the Code, the LMCD would not have a basis not to approve the request. He stated that he would be open to tabling this to allow further review, based on a very unusual set of circumstances.

Cook stated that they are starting to see people purchasing lines on the lake and turning them into dock opportunities and marina opportunities. He stated that this is not the first one of these and will not be the last. He stated that he does not like this concept, but it does meet the rules of the LMCD. He commented that he would be supportive of reviewing the Code to make a change that would prevent this from continuing to happen but would reluctantly support this application.

Kroll shared the opinions of Cook and Zorn but noted that the larger issue cannot be resolved tonight. He stated that the LMCD must consider the application under the existing rules. He noted that this is lawful, but awful and reluctantly would vote in favor because it does meet the requirements of the LMCD. He hoped that neighbors would be able to pursue their concerns with the City and County.

Kirkwood agreed with the previous speakers, noting that this application smells bad. He commented that with the danger factor of the highway, this would be a safety issue. He asked what would happen if this were tabled with desire to obtain further clarification on a State level. He asked if this could be denied based on the factor of safety.

Hoelscher asked for clarification on the reason for tabling.

Kirkwood replied that he would want to pursue undoing of the box that the LMCD has been put into where this could not be denied based on legitimate reasons.

Schleuning replied that the applicant has been responsive to timeframes and provided an indefinite extension request, which can expire after one year or could be withdrawn by the applicant. He stated that the legislature did not pass bills last year that had no objection and therefore she would not expect bills to move quickly. She noted there have been changes to the legislative body and waiting to see the outcome of the change moving forward.

Jabbour commented that the applicant could withdraw their unlimited extension which would trigger the 60-day review. He was bewildered on how the LMCD finds itself in such a terrible place. He stated that there are many things that require approval and collaboration from multiple entities. He stated that the City of Orono could deny the request. He stated that he will have to abstain as he purchased riparian rights from a

previous owner, and it could be interpreted that he would benefit from this decision.

Klohs stated that he did not believe that the audience should be misled to believe the LMCD could fix this issue in its Code as this is an issue of legislation. He stated that the Board is sympathetic to the concerns and shares those concerns, but the LMCD cannot fix this. He stated that it would have to be addressed at the State level.

Kirkwood asked if Klohs would be suggesting an amendment related to the OHW.

Klohs stated that he will not be dictating this but if a motion is made, it should clarify that the LMCD is not approving anything that attaches to the land, or at or above OHW. He stated that in review of the drawing there is a steep bank, and the applicant could easily come in under the OHW.

**MOTION:** Cook moved, Newell seconded to direct legal counsel to prepare Findings of Fact and Order approving the commercial multiple dock license application for the property located at PID: 11-117-23-22-0013, along Shoreline Drive in Orono for final approval at the January 25, 2023 Board meeting, with the recommended comments of staff and the additional condition that the LMCD would only approve the lake side activity of the OHW.

Further discussion: Klohs stated that the additional condition should state that the dock cannot connect to the land at or above the OHW.

Cook confirmed that is the language he proposes.

**VOTE:** Motion carried 7 - 2 opposed (Zorn and Stone) - 2 abstain (Anderson (present) and Jabbour).

## 12. OTHER BUSINESS

There was no other business.

## 13. OLD BUSINESS

### A) Update Regarding Status of Executive Director Recruitment

Hoelscher reported that a workshop was held earlier this evening at which time Brimeyer was introduced to the Board.

Brimeyer stated that he will operate as Interim Executive Director for no more than five months.

Hoelscher stated that Brimeyer will look into facilitators and options for Board reflection that will help guide the process. She stated that information will be brought back to the Board at the next meeting.

## 14. NEW BUSINESS

**A) Closed Session: Evaluation of Executive Director Performance**

**MOTION:** Zorn moved; Anderson seconded to move to closed session pursuant to Minnesota Statute 13.D.05 to evaluate the performance of the Executive Director at 9:00 p.m.

**VOTE:** Motion carried unanimously.

The meeting returned to open session at 9:33 p.m.

**15. TREASURER REPORT**

Anderson reported that he has a meeting the following week with the auditor to ensure the process is moving forward.

Hoelscher asked that Brimeyer be notified of that meeting to determine if he would be interested in attending.

Schleuning confirmed that she would be attending.

**16. EXECUTIVE DIRECTOR UPDATE**

Due to limited time, Schleuning stated that she will provide her update via email.

**17. STANDING LMCD COMMITTEE/WORKGROUP**

Aquatic Invasive Species: No comments.

Communications: Hoelscher reported that the group met the previous day. She stated that an email was sent to the Board with a link to the video produced in collaboration with the LMCC. She confirmed the consensus of the Board to post the video on the LMCD website. She stated that the group will not meet again until March.

Finance: Anderson reported that the group has not met.

Nominating Committee: Zorn commented that the timeline has been shifted as there may be a change in the February meeting schedule, therefore the timeline from the committee will be adjusted by one week. The deadline for self-nomination will be the 20<sup>th</sup>. Recommendations to the Board for Officers will be made at the February 22<sup>nd</sup> meeting.

Operations: Zorn reported that this committee would be pausing with the other committees.

Save the Lake: Newell expressed thanks for the contributions received this year and looks forward to this next year. They look forward to discussions about sustained cash flow to support Water Patrol.



**18. ADJOURNMENT**

**MOTION:** Cook moved; Walesch seconded to adjourn the meeting at 9:38 p.m.

**VOTE:** Motion carried unanimously.

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Ann Hoelscher, Acting Chair

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Dan Baasen, Secretary