

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., September 14, 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; Denny Newell, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Thomas Tully, Environmental Administrative Technician.

Members absent: Gregg Thomas, Tonka Bay.

Persons in Audience: Thomas Delacy, Eric Evenson, LMA; Others in Audience may not have signed attendance sheet.

4. APPROVAL OF AGENDA

MOTION: Kroll moved; Walesch seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES - 08/24/22 LMCD Regular Board Meeting

MOTION: Cook moved, Baasen seconded to approve the 08/24/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (11), Abstained (2), (Walesch, Zorn). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Anderson moved; Stone seconded to approve the consent agenda as presented. Items so approved included: 7A) Audit of Vouchers (09/01/2022 – 09/15/2022).

VOTE: Motion carried unanimously.

8. RECOGNITIONS

Baasen commented that they are well on their way to reaching their goal and urged the Board to reach out to those that may wish to contribute prior to the end of the year.

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

There were no public comments.

10. PUBLIC HEARING

There were no public hearings.

11. OTHER BUSINESS

A) Public Hearing Follow Up North Shore Marina, New Multiple Dock License Clarification Change, 1449 Shoreline Drive, Orono, Browns Bay and Tanager Lake

Anderson stepped down as he is the applicant.

Schleuning reported that this is a continued review for North Shore Marina at Browns Bay and Tanager Lake which was discussed at the last meeting. She noted that new information was brought up by the applicant at the public hearing that was not reviewed or discussed in the Board memo which created confusion. She stated that staff and legal counsel reviewed all the information and original meeting minutes and noted that information is within the Board memorandum including responses to the public comments. She stated that based on that information, it is reaffirmed that Board approval is required to reclassify a commercial marina to a qualified commercial marina. She noted that the applicant signed the extension request through September 16th and this is the last Board meeting to act prior to that date. She stated that if a commercial marina does not wish to change its use, it continues to be renewed in that classification. If a commercial marina wishes to change its classification to a qualified commercial marina (QCM), the initial application will go before the Board. She explained that the notice placed on the license was just a notice, although that may have been confusing and North Shore Marina would still need to apply for the QCM license to make sure they would meet the requirements. She stated that findings of fact were included in the Board packet along with actions the Board could choose to take.

Zorn stated that she read the minutes from the last meeting, noting that she was freshly appointed to the Board in 2014 and did not recall that someone would need to apply for a change in licensure as the intention was to simplify this for marinas. She believed that process provided the reclassification and that marinas would not need to reapply.

Baasen commented that he was also a member of the Board at that time and involved in that process. He commented that the last meeting was unfortunate as the original intent of the ordinance change in 2014 was

meant to simplify. He stated that when the Board adopted the change in 2014, there was not a time limit that said someone had to apply to change its classification. He was unsure that was clarified by the information in the packet. He stated that the change in the code was meant to recognize the value that most of the marinas provide to the lake and the services they provide to the lake and community. He stated that some marinas were out further than others and they decided that the code change would clarify the 200-foot line, although not automatically giving that extension. He stated that the change also was not automatic in the 1 for 10 densities but that could be applied for. He stated that they also went to the sailing schools, yacht clubs, and communities themselves to identify the revision of what their rights were. He found it frustrating to have gone through that lengthy process that had a lot of community input to now go back to square one. He believed that the Board should go back and review this code language because this was not the intention of the Board. He stated that the applicant thought they had the QCM all along and when he found out he did not, he had to go back through all the hoops again. He believed that the Board should do the right thing and bring this to a close.

Klohs stated that he was also a part of this Board in 2014, noting that the marinas were over scrutinized before these changes were made which made it difficult to even move a pole. He stated that this created an envelope concept where the marinas could respond to market conditions without having to go through the process with the Board. He stated that the other concept allowed flexibility to go out past 100 feet, with the concept that a marina could take up less lakeshore which would be more efficient and aesthetically pleasing. He stated that he did not believe that anyone ever expected that a change from a linear 100-foot dock system could go to a 200-foot concept without coming back to the Board.

Hoelscher echoed the comments thus far. She stated that she recalled that one main purpose of the code revision was to recognize the value of marinas on the lake and get rid of the special amenities that were required by the code as a lot of those were obsolete. She stated that her understanding was consistent with that of legal counsel, that a marina would have to come to the Board to request the change but if they met the conditions, it would be granted. She stated that major changes as mentioned by Klohs would have to come to the Board, but minor changes would not. She stated that if the ordinance needs to be cleaned up, she suggests that be done at a later meeting and the application be addressed tonight.

Jabbour commented that he was also there during the process and helped to draft the code. He confirmed the statements of the Board members that spoke thus far are true. He stated that the intention was to protect the marinas from subdivisions, noting that he still receives offers from developers to turn his marina into residential. He provided background information on the LMCD changes from 300 feet to 200 feet for marinas and the change then to 100 feet. He noted the other changes that have been made since that time such as ADA compliance and fire code. He confirmed that a marina could not automatically go to 200 feet with the change. He stated that the intention was to allow the Executive Director to change the designation to QCM, but major changes would still go before the Board. He stated that the license states that a marina is a qualified marina but if it chooses not to be, it must provide the amenities. He stated that after the marinas got the designation they continued to apply for a license with no change. He noted that the language on the license changed, but the applicants did not change anything. He stated that it is within the power of the Board to designate the path forward. He stated that most marinas are not going to go out to 200 feet because they are already there. He stated that the classification is irrelevant if they fit the criteria. He stated that it makes

him furious that the applicant applied on March 17th, and this is still going on when it should have been a simple issue.

Cook stated LMCD Board should reaffirm the designation of North Shore Marina as a Qualified Commercial Marina as stated in the 2015 license certificate, stating that the notice is a notice of instruction and not a definition; the application fee should be returned to the applicant.

MOTION: Cook moved; Kroll seconded that the LMCD Board reaffirm the designation of North Shore Marina as a Qualified Commercial Marina as stated in the 2015 license certificate, stating that the notice is a notice of instruction and not a definition; the application and fee should be returned to the applicant.

Further discussion: Klohs stated that this is going back a long time and there is a packet of 129 pages of information. He asked if this motion would cover the Board going forward.

Gilchrist stated a motion like this is certainly within the authority of the Board. However, having looked at this, it doesn't answer the questions though. What does this mean for all other commercial marinas on the lake? There is obviously disagreement and anything written down can be clearer, especially when looked at eight years later. I think that if the board passes this motion, it really does need then to come to a policy decision on what is the status of all commercial marinas on the lake. Because just granting an automatic and wiping away special density is an issue, that you need to consider, maybe you are fine with that. I didn't see anything in any of what I looked at that talks about an opt-in to this, there wasn't a single reference that I saw. Either it was a blanket across the board and all special density licenses for these commercial marinas were extinguished, which is curious because even the applicants license today still has a special density license associated with it. The point is if you pass this motion, then the Board needs clarify the ordinance and make a clear policy statement as what the status is so everyone knows, the marinas, the Board knows, the public knows what the status is.

He stated that the Board must act on this application tonight. He noted that if the motion passes, the Board should expect staff to bring back amendment language to address this, maybe in a workshop setting. He noted that this should be clarified prior to issuing licenses for next year.

Hoelscher stated that clearly the applicant believes that he had this status. She asked the number of marinas, noting that it is unknown how many marinas believe they have a QCM. She asked if the marinas could ask to designate what they want in their license renewal.

Gilchrist stated that could be done but there would need to be code language to back that up. He stated that the Board needs to set the policy and then move forward with public outreach to the marinas. He stated that it could be a few sentences to clarify the code language and does not need to be a major undertaking.

Hoelscher asked if the Board could direct legally counsel to come back with such language.

Gilchrist stated that he would prefer to keep this motion clean, and direction could be given after that.

Baasen thanked the members for the motion and second. He stated that this was a code adoption in 2014 that was reviewed, stripped, and dissected. He stated that this becomes not only a historical issue but also an issue of integrity. He stated that there are also legalities involved. He believed that North Shore Marina has adhered to the legalities of the law. He commented that this also comes down to consistency and it bothers him a great deal that this will need to be rehashed. He believed that the Board would be doing a discredit to the lake if they rehash this again.

Kroll commented that he believes that it would be constructive to ask that the Executive Director send out a letter to each marina advising them of their status and that way the Board could immediately find out if there is confusion on the status of other marinas.

Newell stated that a QCM would have the ability to extend to 200 feet, with the approval of the Board. He stated that if the letter suggested by Kroll goes out and there are a number of marinas believe they are qualified, there would be a plethora of applications to extend to 200 feet. He asked if this would open an assortment of problems.

Klohs stated that it is very unusual for the Board to have an application that does not request any changes, such as this. He failed to understand what the concern of the applicant is.

Zorn appreciated and respected the opinion of legal counsel and staff but felt that the intent and effort of the code was opposite of the input from counsel and staff.

Walesch stated that he spent a lot of time reviewing the previous packet and watched the meeting. He stated that it seems clear from the review of the 2014 memo and subsequent language in the licenses in 2015 that the intent was to grant QCM status. He stated that language went on to say they no longer needed to provide the amenities and further went on to say that if the status was desired to change or if they cease to be a QCM, they will need to apply for a new special density license. He stated that is the opposite of what the premise of staff and counsel is. He stated that he talked to a lot of previous Board members and while some were a little fuzzy, most confirmed that the intent was consistent with what the Board members have said tonight that participated in that process in 2014. He was unsure why the language was removed from licenses later, but it seemed like that made a question of what the status then was. He stated that when the language was on the license it seemed clear they were QCMs.

Jabbour stated that most of the marinas have already been here to have that change because they changed their dock configurations. He did not think the response would be shocking and suggested that staff should figure out who is and is not before a letter is sent out that could cause confusion. He stated that if a letter is sent, it should be explained as to what is going on.

Hoelscher agreed that it should be explained. She invited the applicant to speak.

Rich Anderson, applicant, stated that he is perturbed that he had to go through this process. He stated that January 1, 2022, he mentioned this issue at the Executive Committee meeting because he and Jabbour had

already brought this issue up to staff, but nothing happened. He stated that he had to fill out the application, paying \$2,400 to get to this point and make this point for the marinas. He asked which marina came to the Board to request a QCM status without also requesting a reconfiguration. He confirmed that the intent was to change the status, but if a reconfiguration were desired, that marina would need to come before the Board. He stated that he requested his permits/licenses on June 21st and still had not received them prior to the last Board meeting. He noted that the Board packets were provided at 11 p.m. the Friday prior to the meeting and the follow up packet with the information for his marina came out to the Board at 4:30 p.m. Monday prior to the meeting. He noted that information was not to his marina, as the applicant. He stated that the Board has now seen the previous permits/licenses which show that the language was changed. He stated that when he went to the Officers meeting, the permits/licenses were provided that still had not yet been provided to him as the applicant. He displayed the language from the 2015 license which is also on the 2016 and 2017 licenses. He stated that in 2018 that changed to a special density license, and he reviewed the different requirements, including tours/fishing trips that could expose the marina to liability. He stated that he is not a special density license and is a QCM and he is here to clarify that. He stated that staff has not checked the amenities at any time during that period and he has not hosted the tours/fishing trips.

VOTE: Motion carried unanimously.

Hoelscher noted Kroll's earlier suggestion and asked if a motion would be necessary.

Kroll asked if a motion would be necessary or whether staff felt that direction was adequate.

Schleuning stated that the Board should do what it feels it should do. She stated that the Board should draft something to be sent.

Kroll suggested that the letter state, Dear marina owner, our records show that you are a QCM or CM, if you have any disagreement on this please reach out to staff.

Schleuning stated that it is more complicated than that as the direction of the Board goes against what was approved at the time. She stated that communication needs to be clear and concise and believes that a work group should manage that task.

Hoelscher asked for guidance on how the policy and ordinance could be clarified.

Gilchrist stated that he feels there should be a discussion of this in a policy committee or Board workshop. He stated that he is not entirely clear on how the Board would like this to work going forward.

Hoelscher asked the date of the next meeting of the Operations Committee and whether this would be appropriate for that group.

Zorn noted that the committee is scheduled to meet at the end of the month but believed that there is also a boat tour. She believed that a workshop would be the appropriate format and then the Operations Committee could wrap up the discussion after receiving that input from the full Board.

Walesch stated that he would be interested to know the number of marinas on the lake, noting that it would seem simple to make a spreadsheet that shows the name of the marina, anyone that has reconfigured as that would change the status. He noted that would show how many are left and then it could also reflect the number of marinas that had this language that was then removed from subsequent licenses. He did not believe this would impact that many marinas.

Hoelscher stated that this information can be brought to a workshop where staff can supply that information and the Board can further discuss the topic. She thanked the Board and staff for their time and consideration on this topic.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

There was no new business.

14. TREASURER REPORT

Anderson reported that he met with Schleuning following the last Board meeting and additional clarification was needed. He hoped to present the quarterly reports at the second meeting in October.

15. EXECUTIVE DIRECTOR UPDATE

A) Website and Social Media Statistics Update

Schleuning stated that there was a previous request to have information about the new website that was launched in June of 2021. She summarized some of the updates that were made at that time in attempt to enhance the customer experience. She stated that they gathered statistics of the new website as well as social media interaction. She reviewed the different statistics with the Board and summarized additional follow up.

Hoelscher stated that this is a terrific addition and commented that it will be great to continue to improve the website as they move forward.

Brandt asked if staff has noticed a reduction in calls since the update to the website.

Schleuning stated that it would be hard to say because of the more controversial topics that have come up this past year that generated a lot of calls and interest. She noted that there has been a reduction in general calls and there has been a reduction in the length of calls for those general topics because many people have reviewed the information prior to contacting the office.

Brandt noted that he has referred people to a specific page on the website when he receives questions.

Kroll commented that the website update has been great. He noted that sometimes internet providers show a different location and therefore he would not worry too much about that data point.

Schleuning agreed and stated that she does not put too much emphasis in the location but found it interesting on the split between lake communities and those from other areas.

Newell stated that as more of the views come from mobile devices, and maps are offered, maps could pull GPS information from the device to give them specific information for that area of the lake and related regulations, such as no wake bays.

Schleuning stated that is something staff has discussed. She stated that some of the price quotes for that service have been hefty but hoped that technology would be available in the future.

B) General

Schleuning provided the following information:

- Information was sent out with the results of Starry Trek

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: No report.

Communications: Hoelscher reported that the group met the previous day and there is a boat tour scheduled in place of the next Board meeting. She provided details on the tour and noted that spouses are invited. She stated that the committee has been collaborating with its consultant, who has been doing an excellent job assisting staff with communications. She stated that the committee is discussing its role now that there is a consultant collaborating with staff on communications and PR. She stated that the consultant is also working to prepare a template for the fall and spring newsletters, noting that the winter rules may also be sent out. She stated that there has been a proposal from the consultant to purchase software which would allow more efficient email blasts, noting that the software does not have an excessive cost. She stated that the committee will bring that to the Board when the expenditure occurs.

Klohs commented that recently the LMCD has been receiving more coverage than he has ever seen which indicates that people are paying attention. He believed that it was positive.

Hoelscher agreed and noted that the website is a great asset and should contain the most current information from the Board.

Walesch stated that he received the communication that was sent to the cities about the 300-foot rule, noting that he got the impression that the communication was soliciting feedback. He stated that he believes that

there were a few statements that were included to provide context on the 300-foot rule that he did not agree with and did not reflect the reason he supported that change. He commented that if that type of information is going to be included, it should reflect the opinions of most of the Board. He provided examples of the language with which he did not agree such as wakes causing erosion and being safer for kayaks. He stated that there are people on the Board that agree with those statements but believed that there should be a threshold of Board agreement when making declarations such as those. He stated that if most of the Board does not agree with those statements, they should be removed, whereas if most of the Board agreed with those statements, they could remain.

Hoelscher stated that she did see that same notice and thought it was fine. She stated that she does not want to be in a position where she is wordsmithing every communication from the Executive Director.

Anderson stated that he agrees with Walesch. He stated that the verbiage was received in an email and did not believe those statements were included in the motion from the Board. He stated that he also had exception with that language when he read it as well.

Brandt stated that the first sentence was great as it updated the community with the changes but stated that he also does not agree with the second statement which singles out small and specific watercraft. He stated that the beauty of the ordinance change was to apply the regulation unilaterally and not call out several types of watercrafts. He stated that this statement goes against the narrative of the Board.

Jabbour commented that he believes that it is a bad idea to open the logic under which the decision was made as there are 14 members of the Board and it was a controversial topic. He stated that the statement should have just specified the rules update and moved on.

Kirkwood appreciated the sensitivity of the language but noted that he did not have any problem with that as this was exactly what he heard the public say when they were in the room.

Kroll stated that he serves on a lot of boards and generally when a resolution is adopted the press release is not word smithed. He stated that there is a basic rule and style that you never hide numbers inside words. He believed that five should be 5 to make it clear and stand out to the reader. He commented that he believed that the release was fine.

Zorn commented that in hearing the comments tonight and the input from the public hearing, the first three paragraphs could be eliminated, and the communication could begin with the fourth paragraph describing the rule change. She stated that an additional statement could be added stating that the hope is to make the lake a safer environment and some concerns from the public hearing could be listed.

Hoelscher appreciated the input and acknowledged that each person would craft the release in a different manner. She asked how involved the Board would like to be in what is said. She believed that it is the prerogative of the Executive Director unless there is a giant issue.

Walesch stated that is not at all what he would suggest either. He stated that this is more of a broad comment

that statements are made that are not LMCD Board statements. He stated that there is no reason a statement like that would need to be in a press release and asked that staff refrain from creating narratives or perspectives that may not reflect most of the Board. He asked that the release stay more with the facts and less with a narrative.

Schleuning stated that she could put information such as statistics from USCG that show force from waves and wakes is a contributing factor to accidents and that kayaks and canoes are most susceptible to that. She acknowledged that it would be difficult to write something that everyone would agree with and stated that she had not received any negative comments from the public.

Hoelscher stated that she did receive questions about the new 300-foot rule and asking for details but did not get any questions about those statements. She thanked Walesch and the Board for the feedback and hoped that everyone will be at the tour.

Finance: No report.

Operations: Zorn reported that the committee has not met this summer. She noted that the committee typically meets before the second meeting of the month, which will be the tour and therefore will discuss an alternate date for the committee to meet. She stated that she has been Chair of the committee for the second year but will need to step back from that leadership position, although she would remain on the committee. She noted that will be discussed at the next committee meeting. She noted that Chase was on the committee and welcomed Jabbour to join the committee.

Hoelscher stated that Chase was also on the Communications Committee and would welcome Jabbour to join as well.

Save the Lake: Baasen reported that the fall appeal letter will hopefully be sent by the end of October. He stated that the committee will meet in October both in person and via conference call. He provided an update on the James J. Hill event in Wayzata. He commented that these public events are a benefit and provide an additional link to the public as people are interested and have questions.

17. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:38 p.m.

Ann Hoelscher, Acting Chair

Dan Baasen, Secretary