

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., January 25, 2023  
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; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Denny Newell, Woodland (arrived at 7:06pm); Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Joe Langel, LMCD Legal Counsel; Vickie Schleuning, Executive Director; Thomas Tully, Environmental Administrative Technician; and Maisyn Reardan, Administrative Coordinator.

**Members absent:** Gabriel Jabbour, Spring Park; and Mark Kroll, Excelsior.

**Persons in Audience:** Jim Brimeyer, Marc Simpson, Soren Mattick, William Dickel, Archelle Georgia Feldshon, David Feldshon, Dan Gustafson.

**4. APPROVAL OF AGENDA**

**MOTION:** Hoelscher moved; Cook seconded to amend the agenda to move Item 7C to be considered as 13A.

**VOTE:** Motion carried unanimously.

**MOTION:** Walesch moved; Stone seconded to approve the agenda as amended, making the change noted above.

**VOTE:** Motion carried unanimously.

Director Denny Newell arrived at 7:06 p.m.

**5. CHAIR ANNOUNCEMENTS**

Acting Chair Hoelscher commented that this is the last meeting for Schleuning who will be resigning from her position with the LMCD at the end of the month. She thanked Schleuning for her service to the LMCD and Lake Minnetonka community. She recognized the progress and leadership that Schleuning has provided in her time with the organization.

**6. APPROVAL OF MINUTES-** 01/11/2023 LMCD Regular Board Meeting

**MOTION:** Cook moved; Stone seconded to approve the 01/11/2023 LMCD Regular Board Meeting minutes

as submitted.

**VOTE:** Ayes (10), Abstained (2), (Brandt and Baasen). Motion carried.

Anderson asked if a member were not present but watched the video and read the minutes, would they still have to abstain.

Hoelscher stated that if a member were to watch the video, it was her understanding that they could vote.

Langel commented that while it could be done that way, most times a person would not vote on the minutes if they were not at the meeting.

## 7. APPROVAL OF CONSENT AGENDA

**MOTION:** Zorn moved; Baasen seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (01/16/2023 – 01/31/2023); **7B)** Resolution Accepting Save the Lake Contributions (01/01/2023 – 01/19/2023); ~~**7C)** Approval of 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;~~ **7D)** LMCD Executive Director Performance Evaluation; and **7E)** LMCIT Liability Waiver Form.

**VOTE:** Motion carried unanimously.

## 8. RECOGNITIONS

A) Save the Lake Contributions

Baasen recognized 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. PRESENTATIONS

There were no presentations.

## 11. PUBLIC HEARING

There were no public hearings.

## 12. OTHER BUSINESS

There was no other business.

### 13. OLD BUSINESS

- A) Approval of 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

Schleunig stated that staff has received a few different emails in the past few days questioning the riparian rights of the parcel and therefore there are parties present tonight to speak about the riparian rights.

Hoelscher asked that speakers focus on the issue of riparian rights.

Mark Simpson, attorney representing the property owners at 1420 Shoreline Drive in Orono, stated that he would like to address the issue of riparian rights of the parcel identified at Outlot B. He stated that Outlot B is owned in fee title by the City of Orono. He reviewed the history of the outlot and when it was conveyed to the City, noting that the Duffs retained the riparian rights at that time. He stated that his clients and the City of Orono were parties of a Hennepin County District Court case that involved the riparian rights which was filed in 2017. He provided details on the District Court decision dated May 10, 2018 as well as subsequent order from the court related to the decree of descent, and probate findings. He stated that it was determined that the riparian rights were owned by the heirs of the Duffs. He stated that there is a quit claim deed from one of the children dated March 25, 2019 which provides those riparian rights to his clients. He stated that the applicant bases their riparian rights on a document dated April 12, 2021. He referenced documents provided to the LMCD which showed a date of April 7, 2021. He stated that the decree of descent was clear that the riparian rights were transferred to the three children of Ann Duff, which was subject to any prior disposition. He stated that Andrew Duff had previously disposed of his rights to the riparian rights to his clients. He stated that as of the date of the document that the applicant bases their riparian rights on, the estate had nothing to convey and therefore that document does not provide the applicant with any rights. He believed that it was clear that because the applicant does not hold riparian rights or fee title of the property, it would have no basis for pursuing the application and should therefore be denied.

Soren Mattick, representing the City of Orono, commented that the City of Orono does own the subject parcel which is clear in the report. He stated that the LMCD Code requires the property owner to consent and the City of Orono does not consent to this application. He stated that in regard to riparian rights, he agrees with the conclusions of Mr. Simpson. He stated that he handled the litigation on behalf of the City of Orono and noted that the court order does not assign or determine who has those riparian rights. He stated that during that case, the City of Orono as a property owner, also has riparian rights as the lakeshore owner. He stated that as part of the analysis, Orono would have riparian rights of its property. He stated that the City objects to this request as the property owner and a holder of riparian rights. He stated that Orono submitted a letter from Ms. Oakton with other objections related to inconsistency with zoning. He stated that the City of Orono objects as one of the holders of riparian rights and asked that the Board deny this request.

William Dickel, attorney representing the applicant, stated that riparian rights are a legal land right and as the court determined in the lawsuit, the riparian rights were still in possession of the Duffs who had passed away

and therefore the rights were part of the Ann Duff estate. He stated that the riparian rights were never transferred from Ann's estate when her will was initially submitted and therefore the legal rights were still in the possession of the estate. He stated that Ann's daughter submitted an application for special administration in the probate court and the decree stated that all riparian rights were part of the estate and the three legal heirs consented to the application for special administration. He stated that the court appointed one of the children to be the administrator of the estate, Elizabeth Duff, who then negotiated with the applicant the sale of the riparian rights. He stated that as of today, Dan Gustafson is the owner of the riparian rights. He referenced the quit claim deed signed by Andrew Duff in 2019 and recorded this last week, noting that is a conveyance of interest if there were any interest. He stated that there was no interest at that time as the rights were still part of the estate at that time.

Hoelscher referenced a letter from the Lake Minnetonka Association and its President, noting that it will become a part of the record. She asked for input from staff and legal counsel.

Langel stated that there are three attorneys present claiming different riparian rights over the parcel and provided a summary of each claim of riparian rights. He stated that there is a clear dispute over the riparian rights of the property. He stated that a threshold of the application is that the applicant must prove riparian rights and consent from the property owner. He stated that the LMCD does not have the jurisdiction to adjudicate property rights and therefore he does not see how the Board could move forward on the application with this issue looming. He stated that he would suggest a recommendation that staff prepare a motion of denial based on the disagreement of riparian rights. He noted that if the riparian rights are decided upon, and it could be demonstrated that the issue has been resolved, the application could come back for consideration.

Newell commented that he agrees with Langel.

Walesch stated that based upon the recommendation of Langel, he agrees that this is not something the LMCD can resolve as there is a clear dispute. He stated that it appears the riparian rights were sold or transferred twice.

**MOTION:** Walesch moved, Zorn seconded to deny the current findings of fact that approve the application and direct staff to prepare findings and order denying the application.

Further discussion: Kirkwood asked if the LMCD could ask the City of Orono to speak to their interest and intent on the lakeshore and whether it would allow a dock.

Hoelscher stated that the request has been made and it would be the decision of Orono on whether it wants to reach out and/or work with staff in the future.

Langel noted that the first part of the motion is not necessary and therefore it could simply include the second portion.

Walesch restated his motion as follows:

Walesch moved; Zorn seconded to direct staff to prepare findings and order denying the application.

Zorn confirmed her second.

**VOTE:** Motion carried unanimously.

**B) Discussion of Proposals and Authorization of Facilitator for Board Retreat**

Brimeyer stated that at the last meeting he reviewed several timelines that ran January through June. He provided a recap of that timeline. He stated that with the assistance of staff and Hoelscher, he developed an RFQ for proposals and received two responses. He highlighted the differences between the proposals and recommended the HueLife proposal.

**MOTION:** Anderson moved; Cook seconded to authorize staff to negotiate an agreement with HueLife for facilitation of a Board retreat with Dr. Irina Fursman as the facilitator.

Further discussion: Walesch stated that he read both proposals and believed they would both work but supports using HueLife. He suggested that there be an intro to the Carver model as that may be something the Board chooses not to pursue. He stated that he will be out of town for the second date because of spring break and asked that perhaps a different date is chosen for the second meeting.

Brimeyer asked how many members would anticipate they would not be able to attend the second date. At least four members stated they could not attend the second date. He stated that he will follow up to determine if a different date could be chosen for the second session.

Hoelscher stated that perhaps there is not even a Board meeting that week.

Newell asked if people could attend via Zoom if they were not able to attend in person.

Hoelscher stated that will be discussed later tonight.

Walesch stated that he will be in Mexico and other members may be traveling during that week as well.

Brimeyer commented that he will follow up to determine available dates HueLife would have for a second session.

Hoelscher asked and received consensus that the Board would be open to meeting outside of a regular Board meeting date to hold the second session.

Walesch noted that the Spano proposal included a forum where they would speak with each Board member for feedback, up to 30 minutes. He stated that it would be nice to have that type of contact with the Board, whether that is done via phone or written which would allow the members of the Board to provide direct input outside of the survey.

Brimeyer stated that could be built into the survey.

Newell referenced the language “strong executive role” as it was mentioned in the Carver model.

Brimeyer provided additional details on the Carver model.

Kirkwood asked for input on what the Board would be doing right and wrong in terms of policy and that model.

Brimeyer commented that he will not answer that at this time. He provided additional details on how he would expect to communicate with the Board and staff when he is out of town as well as when he returns. He commented that he will not be able to accomplish the same workload that Schleuning was. He received confirmation that the election of officers would be done at the second meeting date in February as the first meeting in February was canceled.

**VOTE:** Motion carried unanimously.

**B) Update Regarding Board Meetings and Committee Meetings Remote Access**

Schleuning stated that staff has been in discussion with the City of Wayzata as the city is planning to do updates to its Council Chambers. She stated that staff and some members of the Board met with Wayzata and LMCC staff recently to discuss potential updates that would allow remote attendance. She stated that they are still waiting to hear if Zoom could be integrated. She stated the School Board and City of Wayzata are not interested in a hybrid model and therefore if the Board were interested, the cost would fall upon the LMCD. She stated that the estimate that was provided was \$10,000. She asked if the Board were interested in moving forward on this item if it is feasible.

Kirkwood asked for details on how someone could attend remote and the obligations they would have to meet the requirements of the law.

Schleuning provided details on how a person could attend via Zoom and related requirements.

Hoelscher asked if the reason for remote attendance could be that the person is out of town.

Langel provided details on the statute language. He stated that someone could state that they are vacation.

Kirkwood stated that this would be different than the Zoom meetings they did during COVID, as there would be an obligation to open your location to the public.

Walesch asked for additional details.

Langel stated that the location has to be detailed enough that a member of the public could join the remote attendee if desired.

Walesch stated that the cost would be money well spent if it meant that people could participate remotely if desired. He asked if Baasen would utilize that option.

Baasen stated that he would have no problem disclosing the location and it would increase his attendance.

Walesch asked if every vote would need to be done via roll call if someone attended virtually.

Langel confirmed that if someone attended remotely, roll call votes would be necessary.

Zorn asked if they would be pursuing two options, the first to work with Wayzata to install equipment at this location as well as installation of the equipment at the LMCD office that was donated by Jabbour.

Hoelscher stated that those would be two separate considerations.

Zorn asked if others would be using the technology paid for by LMCD if it were installed at the City Hall.

Schleuning stated that it could be used by others.

Hoelscher asked the length of commitment with Wayzata for use of the City Hall.

Schleuning replied that the agreement is renewed annually.

Zorn asked if members of the public would be allowed to attend via Zoom.

Schleuning replied that would not be required to be offered for members of the public. She noted that they would not have the capability for that.

Newell stated that he attended the meeting with the City of Wayzata and LMCC staff. He noted that even if the Board supports this, it would take four to six months. He stated that this seems to be a seasonal need for those that spend the winter away and therefore did not see immediacy in making the decision. He stated that the cost would be \$10,000 and the LMCD would own the equipment/software. He commented that it would be clunky on both ends. He stated that perhaps if there were better Board management and less meetings, people could more easily attend, and this would not be necessary.

Kirkwood commented that he misses the people that are not there when they are not there. He stated that he values the input that those members provide, and the members owe it to their cities to attend the meetings when possible. He stated that as good as Zoom was when they were doing it, sometimes the person was simply identified by a phone number rather than video. He did not want to create an opportunity where half the Board would attend virtually.

Walesch stated that if he were on vacation, he would not choose to attend via Zoom. He stated that for the snowbirds, they have worked that out with their cities. He stated that Baasen and Jabbour have stated that

they would use this technology. He recognized that this would be cumbersome, but he would not be against it if people would use it.

Zorn commented that she would utilize it at certain times. She commented that this is a volunteer Board, and this would provide an option to meet people where they are in their life. She also recognized the value of being together. She stated that she could go either way.

Hoelscher stated that everyone got used to Zoom but it was a different way of conducting business and believed that the Board is more functional in person. She had concern with donating equipment to a space that is rented on an annual basis. She stated that perhaps the legislation and requirements will change in the future, following COVID. She stated that it sounds like more work and that it would make meetings harder to run.

Newell commented that Brimeyer participated in the meeting and the concept of a surrogate was discussed. He noted that if a city representative were going to be out of the state for an extended amount of time, the city could appoint a surrogate to act in their place.

Hoelscher confirmed that there have been surrogates on the Board in the past.

Klohs stated that efficient use of staff time should be a priority. He noted that they do not have the luxury of burdening staff.

Hoelscher stated that it seems that this topic should be tabled at this time. She noted that they could revisit this topic in the future.

Brimeyer stated that perhaps they meet with Wayzata a few more times to determine what is developed on the details and technical capacity to determine if a hybrid model could even be supported.

Schleuning stated that it would be an add on piece of equipment that could be added in the future.

Hoelscher stated that the committee meetings have been paused for the time being and they will discuss committee structure at the Board retreat. She asked if the LMCD office conference room could be setup for Zoom attendance.

Schleuning confirmed that could be done.

Hoelscher stated that Jabbour had offered to set that up and asked if staff had been in conversation with him.

Schleuning commented that she had not.

Brimeyer commented that the rotary club allows virtual attendance.

Schleuning stated that the same requirements would apply for committee meetings as Board members.



Hoelscher stated that seems to be a reasonable source of funds or donation through a Board member to setup the conference room at the LMCD office for Zoom meetings.

Anderson stated that he likes the committee structure and received confirmation that the location would need to be disclosed if attending via Zoom. He asked if work groups could function via Zoom.

Walesch stated that there needs to be discussion between committees and work groups.

Hoelscher stated that the title does not matter, the same rules would apply. She asked that topic be deferred to the retreat. She confirmed the consensus of the Board to direct staff to work to setup the allowance for Zoom attendance at the LMCD conference room. She suggested that staff first reach out to Jabbour to determine if he would still want to donate equipment.

### **C) Update Regarding Document Management and Public Access**

Schleuning reviewed the different areas of document management that is being investigated at this time and the potential costs.

Hoelscher asked if this was meant for informational purposes.

Schleuning commented that this will be a big undertaking and she was simply passing on the information as she will not be able to get it done before she leaves.

Baasen asked if it would be possible to streamline the process and identify the length of time records are required to be kept.

Schleuning stated that some things are required to be kept permanently and, but some are not and that will be a part of the document management process.

Newell stated that this would seem to be an issue of digital versus paper-based storage and asked the ratio currently.

Schleuning stated that almost everything is in digital format since she has been at the office and there are some items that have been digitalized, but they are a long ways away from that goal.

Newell asked if the North Shore Marina issue was digital, or paper based in terms of prior records.

Schleuning commented that some of that was paper based.

Newell stated that it would then appear that the organization is mostly paper based and therefore the individual documents would need to be scanned into a system.

Schleuning confirmed that to be true. She estimated a cost of at least \$50,000.

Anderson commented that he experienced a fire that caused document loss and therefore believes that this is something that should be prioritized.

Hoelscher stated that this has been put on the radar and will come back in the next few months for additional consideration. She recognized that it would be a progressive undertaking.

#### 14. NEW BUSINESS

##### A) Authorization to Enter Agreement for Website Maintenance Services

Schleuning stated that she was asked to identify tasks that could be moved off the plate of staff. She commented that certain things need to be done, which she typically completed outside of her normal work during the day, and there will not be sufficient staff available to do that. She stated that this vendor has a good technical background and has provided the quote for services.

Hoelscher asked who would collaborate with the vendor.

Schleuning commented that she will be working to assign tasks to the available LMCD staff before she leaves.

**MOTION:** Newell moved; Cook seconded to authorize staff to enter into an agreement with Brandography to provide backend maintenance of the website.

**VOTE:** Motion carried unanimously.

##### B) Authorization to Enter Agreement for Computer and Network Technology Services

Schleuning stated that over the years the requirements for cyber security have increased. She provided details on the proposal and recommended that the Board accept the proposal from My Computer Hero with block hours which would have a cost of \$480 per month. She noted that after the security risk is completed, there could be additional consideration.

Newell asked how vulnerable the organization is and whether other similar agencies have had issues.

Schleuning stated that smaller law firms have had issues with ransomware.

Baasen left meeting at 9:48 p.m.

**MOTION:** Walesch moved; Kirkwood seconded to authorize staff to enter into an agreement with My Computer Hero to provide computer and network technology maintenance services with block hours and further analysis of needs.

**VOTE:** Motion carried unanimously.

**C) Draft Updated Data Practices Policy for Public**

Schleuning commented on the data requests that the LMCD receives. She stated that the organization would benefit from some changes to its policy. She stated that an updated draft of the policy was presented in the packet and recommended adoption of the policy tonight. She noted that this would make for more efficient and effective processing of data requests and would also be compliant with state law.

Walesch stated that he read the policy and if staff and legal counsel agree, he would agree as well. He noted a few grammatical issues that he could send to staff.

**MOTION:** Walesch moved; Stone seconded to approve the updated data practices policy for the public as presented.

**VOTE:** Motion carried unanimously.

**15. TREASURER REPORT**

Anderson stated that the year-end P & L was sent tonight before the meeting but noted that he still needs to review that information. He demanded that the P & L be received each month so that he can review that and provide a report. He stated that if it is decided that monthly reporting is not necessary, the bylaws should be amended to require the report quarterly.

Cook commented that he believes there should be a monthly P & L as that is what he was used to. He noted that commentary is not required each month, but the P & L should be updated each month and people would be provided the opportunity to ask questions which would fulfil the requirement.

Schleuning stated that in the past they did the monthly P & L, but the Board requested that not to be done. She stated that they often do not receive the information from vendors until the end of January or even February. She stated that the P & L reports could be provided monthly.

Hoelscher stated that the Treasurer wants that report, so it should be provided monthly.

**16. EXECUTIVE DIRECTOR UPDATE**

Schleuning thanked everyone for the time they have spent working together. She commented that a lot of progress has been made and recognized that it is not easy to be on the Board. She wished everyone well.

**17. STANDING LMCD COMMITTEE/WORKGROUP**

Aquatic Invasive Species: No report.

Communications: Hoelscher stated that the group has not met. She stated that she and Klohs had a call with the consultant today related to the spring publication related to the distance from shore changes and educational materials.

Kirkwood commented that he really enjoyed the new newsletter that was sent out.

Schleunig stated that staff collaborated with the consultant to develop the template and new format. She noted that good feedback was also received from the Communications Committee. She noted that staff has received positive feedback.

Hoelscher agreed that it was a big improvement.

Finance: Anderson commented that the group has not met. He stated that he met with the auditor via Zoom, along with Hoelscher, Cook and staff. He noted that a meeting has been scheduled with the auditor on March 23<sup>rd</sup>.

Nominations: Zorn stated that the timeline was pushed into February, and they will work with staff to distribute the updated timeline. She stated that February 3<sup>rd</sup> is the new deadline for self-nominations.

Operations: No report.

Save the Lake: Newell thanked recent donors.

## 18. ADJOURNMENT

Being there is no further business, the meeting was adjourned at 8:58 p.m.

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Ann Hoelscher, Acting Chair

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Dan Baasen, Secretary