



# LAKE MINNETONKA CONSERVATION DISTRICT

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Gregory S. Nybeck, EXECUTIVE DIRECTOR

January 17, 2013

**TO:** Board of Directors

**FROM:** Emily Herman, Administrative Assistant/Code Enforcement

**SUBJECT:** 2012 LMCD Proactive Code Enforcement Program Report

## **Background**

In 2006, the Lake Minnetonka Conservation District (LMCD) developed and implemented a Proactive Code Enforcement Program; specifically for the enforcement of watercraft storage ordinances for residential sites on Lake Minnetonka (Code Section 2.02). Staff surveys the Lake's shoreline to identify and re-inspect sites storing five or more restricted watercraft that do not have a multiple dock license or sites storing three or four larger, restricted watercraft that do not comply with the 1:50' General Rule. 2012 provided for this program to be completed in conjunction with the Shoreline Boat Storage Count.

The process involved in completing the Program includes the documentation of a site's watercraft storage (GIS waypoints, watercraft information/registration, pictures, etc.). Once documented, staff initiates the assessment process (working with the Minnesota Department of Natural Resources) and categorizes the documentation as in or out of compliance. Non-compliant sites are then assessed as to whether they are sent a letter (tailored for initial or repeat violations) asking for voluntary compliance. If a site has exhausted staff's request to come into voluntary compliance, the site is scheduled for what is known as the "defining process" (Code Section 2.02, subd., 8, "Definition of Moored or Docked"). Staff documents non-compliant storage three days within a 14 day period, in which the documentation is turned over to the prosecuting attorney.

## **Communication Process**

In 2011, staff was directed to compress the communication process from three letters down to two, with the second letter acknowledging possible legal consequences for continued non-compliance. This process is completed prior to initiating the above noted defining process.

## **2012 Enforcement Priorities**

At the April 11, 2012 Board meeting, staff presented, and the Board concurred, the following enforcement priorities for the 2012 boating season: 1) resolve violations that require specific communication (more complicated storage matters with historical background), 2) document only new flagrant violations, 3) continue with the two-part communication process, 3) re-inspect and define sites where necessary; working with prosecuting attorney when warranted, and 4) keep the Board apprised of any prosecuting matters within their represented municipality.

**2012 Code Enforcement Findings**

The following findings for the 2012 season are outlined below (not including 61 other sites that were documented and found, after assessment, to be in compliance):

<b>Category</b>	<b>5-Boat Violation</b>	<b>3-4 Boat Violation</b>	<b>Foot Note</b>
New Violations	14	24	
Repeat Violations	15	16	Some counts represented in other categories based on re-inspection
Customized Violations	6	3	Non-compliant variance (Harper handling), shared dock, former formal complaint, obtaining information, etc.
Formal Complaints	3	0	Received and resolved in 2012
Prosecuting Complaints	6	5	Staff provided update to respective Board members.

**Prosecuting Matters**

The LMCD Board of Directors has appointed Steve Tallen of Tallen and Baertschi since the 1980's. Therefore, Mr. Tallen has been consistently settling the Complaints filed (since 2009) relative to this program. Settlements typically consist of: 1) a Court hearing and sentencing (rare), 2) agreeing to suspend prosecution, or 3) pleading guilty (the latter two agreeing to not having any new or same violations for one year and paying prosecution costs or court fines). The LMCD receives 100% of prosecution costs and 80% of Court fines (typically \$800 and \$300, respectively), paid by the defendant. The following highlights Complaints filed in 2011 and 2012:

**2011 Boating Season**

The following four Complaints were filed:

- One maintained more than four restricted watercraft and pled guilty to the charge via a Stay of Adjudication; based on compliance for one year.
- Two maintained less than five restricted watercraft and agreed to suspend prosecution based on storage compliance for one year.
- One is more of a high-profile case that maintained less than five restricted watercraft. Mr. Tallen documented a conflict of interest and the LMCD has retained a special prosecutor from Anoka County to handle this matter. The special prosecutor is charging the same rate schedule set by Mr. Tallen and staff has kept the respective Board member apprised.

**2012 Boating Season**

Staff has submitted 11 Complaints to Mr. Tallen (six of which maintained five or more restricted watercraft). Those Complaints are currently being drawn up. One unique aspect this year is that three of the 11 documented sites have previously been prosecuted (acknowledging past the one year set date agreed upon when settling their original case). Staff will provide an update to the Board on the settlement of these cases in the spring.

### **Concluding Comments**

Staff offers the following comments for Board consideration:

1. Staff will present goals for the 2013 program during the spring presentation to the Board. One anticipated goal is the continuation of the compressed communication process. With that said, there are times when the second letter cannot always be sent during the non-compliant boating season (due to timing of the documented violation or during seasons when staff is completing the Shoreline Boat Storage Count).
2. In recent years, the Board considered the storage and use patterns of personal watercraft (PWC); in particular, whether a PWC should continue to be counted as one restricted watercraft. During that discussion, staff could provide the Board with how many PWCs were being stored for documented sites with five or more restricted watercraft. However, staff could not respond to sites storing PWCs with four or less restricted watercraft or whether they were typically documented when one, two, or three other restricted watercraft were being stored. Therefore, staff conducted a more detailed PWC count during the 2012 Shoreline Boat Storage Count. This count has historically only documented how many PWCs are in a specific bay. Please find attached a more detailed account of PWC storage counts. The attachment is provided for informational purposes only and not with the intention to re-consider PWC storage and use patterns as it pertains to code enforcement.
3. Staff believes 2012 was a very busy year for non-compliant watercraft storage, as this was the first year staff has documented previously prosecuted property owners with non-compliant watercraft storage. Additionally, the findings, including Complaints filed, seem high. Therefore, staff would like to solicit the Board's interest in providing for future funding to submit an educational flyer in early spring (other than what is provided in the spring/summer newsletter). Staff believes this may provide for a proactive approach in continuing to work with the Lake's shoreline owners.
4. Staff has been asked to review the Code Enforcement Program for consideration of any needed Code amendments. In doing so, staff has provided the Director a list of four topics for discussion and consideration.
5. Staff is currently processing the remaining letters (first and second) to site residents documented as being out of compliance with their watercraft storage.

Attachment