

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, January 25, 2012
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:02 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; Gary Hughes, Spring Park; Chris Jewett, Minnetonka; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; and Mark Sylvester, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director, Judd Harper, Administrative Technician, and Emily Herman, Administrative Assistant.

Members absent: Anne Hunt, Minnetrista; Steve Johnson, City of Mound; Keith Kask, Deephaven; Herb Suerth, Woodland.

3. APPROVAL OF AGENDA

MOTION: Jewett moved, McDermott seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock reminded all that the 45th annual Save the Lake Recognition Banquet is scheduled for Wednesday, February 15th (6:00 p.m. at the Lafayette Club).

Nybeck stated he recently sent an email to the Board soliciting their interest in serving on a LMCD Committee in 2012; acknowledging that the resolution documenting such appointments is scheduled for the Board consideration at their next meeting. He further stated that Herman maintained a sign-up sheet for the Board's review and consideration this evening.

5. APPROVAL OF MINUTES – 1/11/12 LMCD Regular Board Meeting

Babcock recommended amending the sentence in the sixth paragraph of page two to read, "Babcock asked Olson to comment on agenda item 6E".

MOTION: McDermott moved, Jewett seconded to approve the minutes from the 1/11/12 LMCD Regular Board Meeting as amended, making the change recommended by Babcock.

VOTE: Motion carried unanimously

6. APPROVAL OF CONSENT AGENDA

Baasen moved, McDermott seconded to approve the consent agenda as submitted. Items so approved included: **6A**, Audit of vouchers (1/16/12 – 1/31/12) and **6B**, December financial summary and balance sheet.

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

There were no public comments.

8. PUBLIC HEARING

- **William Mernik**, side setback variance application for a permanent dock at 5341 Three Points Boulevard. The application has been submitted to amend a previously approved side setback variance.

Babcock asked Harper to provide background on this agenda item.

Harper reviewed the staff memo, dated 1/17/12, which summarized a request for a permanent (non-multiple) dock license and variance to amend a previously approved side setback variance for a permanent dock. The applicant has proposed to reconfigure the dock use area (DUA) to accommodate two 5' wide floating personal watercraft (PWC) lifts and a 10' wide runabout lift due to difficulty in using the area between the dock and shore for watercraft storage. Specifically, the applicant has proposed to remove 220 square feet of the approved DUA and add a 6' x 12' area on the west side of the dock and a 6' x 23' area east of the permanent dock (resulting in a decrease of the DUA by approximately 10 square feet). He provided an overview of relevant LMCD Code Sections, which included: 1) Code Section 2.06 - outlining permanent dock license requirements, 2) Code Section 2.01, subd. 1 – defining of authorized DUA, and 3) Code Section 1.07 – outlining the variance process. He recommended the Board direct LeFevere to prepare Findings of Fact and Order for approval of the side setback variance application, subject to four conditions outlined within his memo. He entertained questions and comments from the Board.

Babcock asked if there were any prior license conditions that need to be carried over for Board consideration of this application, in which Harper confirmed there were not. He asked the applicant if he would like to address the Board, in which Mernik did not have any additional information or comments. He opened the public hearing at 7:11 p.m. There being no comments, Babcock closed the public hearing at 7:12 p.m. He entertained questions and comments from the Board.

Baasen questioned the change in boat storage units (BSUs) from one documented on the approved site plan to the four on the proposed site plan.

Harper stated that the previously approved variance did not address BSU limitations (just DUA).

MOTION: Jewett moved, McDermott seconded to direct LeFevere to prepare Findings of Fact and Order amending William Mernik's previously approved side setback variance, subject to staff's recommendations.

VOTE: Motion carried unanimously.

9. OTHER BUSINESS

A. Staff update on Board member terms that expire in January

Babcock asked Nybeck for background on this agenda item.

Nybeck directed the Board to his memo, dated 1/19/12, which outlined the communication received on the re-appointment (or appointment) of the seven Board members whose terms expire on January 31st. Additionally, he directed the Board to a letter in their handout folder, dated 1/18/12, from the City of Woodland; documenting Mayor Jim Doak serving as their LMCD representative until such time two other recommended appointments can serve individually throughout the remaining term. He acknowledged the terms offered were not as staggered as requested in the memo to the member cities last October.

Babcock expressed appreciation to all returning Board members for their time and effort. He reviewed the State of Minnesota's enabling legislation that calls for Board members to be appointed for a three year term (providing for 1/3 of the Board members to be appointed each calendar year). He stated that this requirement has not been fully met over the years and solicited the Board's assistance in communicating this to their represented city for future consideration.

B. Nominating committee recommendations for 2012 LMCD Board Officers

Babcock asked Jewett, as chair of the committee, to provide an update on this agenda item.

Jewett stated that the nominating committee recommends the same Board Officers for 2012 as was in place for 2011.

Babcock asked the Board if there were any other nominations from the floor for the individual 2012 LMCD Board Officer positions. Seeing none, Babcock closed the nominations from the floor and entertained a motion to approve the recommendations of the nominating committee.

MOTION: Jewett moved, Morris seconded to approve the following slate of 2012 LMCD Board Officers as recommended by the nominating committee: Chair- Doug Babcock; Vice Chair- Dan Baasen; Treasurer- Kelsey Page; and Secretary- Andrew McDermott.

VOTE: Motion carried unanimously.

C. Chair update of 1/11/12 Executive Session to discuss the performance of Executive Director Greg Nybeck

Babcock stated that the Board went into an Executive Session at the January 11th Board Meeting for the purpose of discussing Nybeck's annual performance evaluation. He is in the process of drafting the results of that evaluation for completion in the near future.

D. Staff update on LMCD Strategic Plan Tasks

Babcock asked Nybeck for background on this agenda item.

Nybeck directed the Board to his staff memo, dated 1/19/12, which provided background on the LMCD's adopted Strategic Plan (with tasks identified in a Work Plan). One of the objectives is to "Promote public access to Lake Minnetonka." He provided the following information on the two goals established for this objective:

- Evaluate the adequacy of car/trailer spaces for public access
 - Task – Review 1994 Lake Minnetonka Lake Access Task Force (LATF) Report with the Minnesota Department of Natural Resources (MN DNR)
 - Responsible Party – Subcommittee of the LMCD Board, which was not established.
 - Timeframe – Fall, 2011
 - Deliverable – Committee Report to the LMCD Board

He directed the Board to the 1994 Lake Minnetonka LATF Report provided in their packet. He stated that the Report provided for a summary of policies dating many years back for public access on Lake Minnetonka. To date, a subcommittee of the Board has not been established to review this Report with the MN DNR. He posed the following two questions for the Board's consideration: 1) Does the Board still want to form this subcommittee, and 2) If so, what direction would the Board like to provide this subcommittee during their review of the Report with the MN DNR.

- Evaluate the adequacy of car/trailer spaces for public accesses
 - Task – Create a map utilizing GPS waypoints and GIS software
 - Responsible Party – LMCD staff
 - Timeframe – January, 2012
 - Deliverable – Lake Minnetonka car/trailer map

Fieldwork for this goal has been conducted, with analysis ongoing to prepare the map (utilizing concepts outlined within the 1994 Lake Minnetonka LATF Report). He stated that review of the map and report is planned for the February 8th Board meeting.

McDermott asked for a brief overview of the 1994 Lake Minnetonka LATF Report.

Babcock provided the following overview:

- The Lake Access Task Force, created in 1994, was the third Task Force that was established to address lake access for Lake Minnetonka; prior years also included 1983 and 1986.
- This Report was a result of the 1991 Comprehensive Management Plan and reaffirmed the outlined goals and objectives of the Plan. Specifically to have 700 quality, assigned, dedicated, free car/trailer access locations.
- Lake Minnetonka does not have a lack of parking but a lack of quality, dedicating parking (reviewing late 1980's and early 1990 statistical non-quality parking counts of 1200). He acknowledged the great strides that have since been accomplished (Maxwell and Grays Bay public accesses) in cooperation with the member cities and representatives from the MN DNR. He estimated the current count is around 500 spaces, in which he reiterated the goal of obtaining 700 quality parking spaces as appropriate locations become available.

- He directed the Board to Appendix 8 in the Report; outlining the Access Site Evaluation Criteria created by the Task Force. He believed that Appendix 8 provides for very reasonable criteria on the standpoint of the MN DNR, local community, and Lake Minnetonka users. He further noted that the Report provides for guidelines on how to acquire sites, as well.
- The introduction of aquatic invasive species lends towards the focus of fewer, bigger locations that are more manageable. He stated the Task Force was in existence for up to 14 months, in which he believed some of the rules that were formed from this Task Force were very astute for future use.

The Board briefly discussed this agenda item, in which the following was confirmed: 1) that the newer public accesses (Maxwell, Grays, and Spring Park Bays) are designed for specific handicap use (by Federal mandate), 2) that Nybeck's goal was to provide the Report to the Board at this meeting so that questions can be formulated for in depth discussion at the next meeting, and 3) acknowledgement that once the staff's produced public access map is completed and approved, it will be downloaded on the website.

E. Update on sealed bids received for possible purchase of a new mechanical harvester.

Babcock asked Harper for background on this agenda item.

Harper provided a detailed overview of the sequence of events and activities that have taken place from when the harvester capsized in July up to this Board meeting. This included: 1) updates to the Board by staff and Board member Jewett, 2) the efforts by a Working Group, in which Jewett was a member of, to refine the minimum specifications for a new harvester, and 3) an overview of the sealed bid process. Sealed bids were solicited for four alternatives. These included: 1) hydraulically lifted paddle wheels with 11' cutter width, 2) fixed paddle wheels with 11' cutter width, 3) hydraulically lifted paddle wheels with 10' cutter width, and 4) fixed paddle wheels with 10' cutter width. Additionally, an option was provided for the consideration of installing spud anchors. The Working Group opened the five sealed bids that were due in the LMCD office by 12 NOON on January 18th. Based on compliance with the minimum specifications, a bid tabulation sheet was prepared for review of the sealed bids, in which he provided a copy to the Board. He provided an overview of the two lowest bids received; respectively: 1) United Marine International (UMI), which did not meet the minimum specifications, and 2) Aquarius Systems, which meet all minimum specifications.

McDermott requested clarification as to the LMCD's legal requirements in considering bids that do not meet minimum specifications. Additionally, consideration of some of the other features that did not meet minimum specifications from other vendors submitting sealed bids.

LeFevere stated that the Board has a limited ability to waive irregularities and defects. However, when a defect goes to the price or gives a material advantage to a bidder, then the Board is not free to waive irregularities. He stated that it was staff's evaluation that failure to meet the two year warranty requirement fits into that later category. In regards to the other features where other vendors did not meet specifications, he stated that those sealed bids were discussed at both staff and manufacture level. However, the matter was academic as those bidders were higher than the second lowest bid, which was

the lowest bid that met specifications. The Board is required to accept the lowest responsible bid that meets minimum specifications.

Jewett stated that they considered a warranty defect as significant in considering a responsible bid. With that said, he confirmed that communication was made to UMI to confirm that the warranty was not just overlooked, in which they confirmed the warranty was for one year (submitted shortly after discussions held).

Harper reviewed the League of Minnesota Cities Insurance Trust (LMCIT) claim process; providing for 200% of the fair market value (\$65,000) if the harvester is replaced and 100% (\$32,500) if not. He recommended that the Board: 1) reject the UMI bid because it did not meet all minimum specifications and 2) award the bid to Aquarius Systems (Alternative Two) in the amount of \$162,940 (\$174,793 including taxes), which met all minimum specifications. The Working Group does not recommend purchasing optional spud anchors. He entertained questions and comments from the Board.

McDermott asked for the rationale to: 1) not purchase spud anchors and 2) purchase fixed paddle wheels rather than hydraulically lifted paddle wheels.

Jewett stated that the Working Group considered the benefits of spud anchors. The Working Group does not believe they are needed because: 1) they would be used primarily for night parking, 2) they could cause possible damage to the foundation of a public access while loading to the shore conveyor, and 3) a concern about creating a potential operator error for clearance under a bridge.

Harper stated that the last three harvesters purchased by the LMCD have had hydraulic paddle wheels. However, this feature is not needed because of the short distances they are transported on the public roads.

Olson requested confirmation on the manufacturer of the harvesters currently owned by the LMCD, including whether there would be any common parts.

Harper stated that the two current LMCD harvesters were purchased from Aquarius Systems, which would provide for common parts.

Nybeck reviewed the funding sources available for the purchase of the harvester. These included: 1) \$99,897 from the Equipment Replacement Fund, 2) \$65,000 from the LMCIT claim, and 3) \$9,896 from surplus 2011 AIS Management and Prevention Funds.

McDermott requested clarification on the LMCD's historical budgeting practices for the Equipment Replacement Fund.

Nybeck stated the Board has not been budgeting for depreciated harvesting equipment in recent years (Equipment Replacement Fund) due to budget constraints. However, back in the 1990's, the Board budgeted an estimated \$35,000 annually.

Babcock stated that the late 1980's provided for a five to seven year replacement schedule when assessing budgeting needs, in which he believed a seven to ten year replacement schedule is more reasonable (\$20,000 annually).

Nybeck stated the oldest harvester currently owned by the LMCD was purchased in 2002 or 2003. Based on the current replacement schedule the useful life of the harvesting equipment has been considered between 10 and 15 years due to the LMCD's regular, proper maintenance.

McDermott acknowledged that the LMCD has some fiscal work ahead of them to catch up on replenishing the Equipment Replacement Fund. Babcock and Nybeck concurred.

Olson asked if the new harvester would have a failsafe access to the air tight chambers.

Harper confirmed that the specifications require two access holes on the top of six air tight compartments vs. the older harvesters having one access hole and four compartments. Additionally, the new harvester will not have any drain plugs vs. one on the existing harvesters. He confirmed that annual maintenance will provide for winterization to void all moisture.

Morris asked Harper to outline any different operational functions as compared to the current harvesters (i.e., capacity, fuel usage, etc.).

Harper stated the current harvesters store up to 100 gallons of fuel, in which the tanks are platform mounted. The proposed harvester will store up to 50 gallons of fuel, in which it will be deck mounted (lower center of gravity). All other operational controls remain consistent with the current harvesters.

Jewett reviewed the research performed by the Work Group prior to this point; acknowledging that modernized updates to the specifications were provided based on that research. He believed the work performed to date was good for both staff and himself, as a Board member. He reviewed the difference provided in the cutter blades (11' vs. 10') and the proposed benefits that it may provide.

Olson questioned if a sun bonnet will be provided for this new harvester; acknowledging the significant amount of funds expended to cover the other harvesters in the past couple of years.

Harper stated that a new bimini top would be provided at no cost to the LMCD as part of the LMCIT claim settlement.

Jewett acknowledged that a dual management program of both chemical treatments and harvesting (as noted by agencies represented in recent aquatic invasive species discussions with Three Rivers Park District, U.S. Army Corp of Engineers, MN DNR, and Hennepin County) was evident in the continued management of Eurasian Watermilfoil and Curlyleaf Pondweed.

Babcock confirmed there was broad consistency on this by the Board at their November 16th Workshop/Planning Session.

MOTION: Jewett moved, Olson seconded to: 1) authorize the expenditure of \$162,940 (excluding federal, state, and local taxes) to Aquarius Systems for the purchase of a new mechanical harvester (Alternative Two), and 2) to reject the UMI sealed bid as non-responsive.

VOTE: Motion carried unanimously.

Jewett thanked Tom Niccum (Minnetonka Portable Dredging), Gabriel Jabbour (Tonka Bay Marina), LeFevere, and staff for all their efforts in this process.

10. Update from standing LMCD Committees:

Babcock asked for an update from the Chair, or designated representative, of each committee.

AIS Task Force

There was no AIS Task Force report.

Save the Lake

Olson stated that a committee meeting is scheduled for February 1st in the LMCD office at 8:30 a.m. Additionally, he reiterated the 45th Anniversary Save the Lake Recognition Banquet is scheduled for February 15th.

Jewett solicited all members available to attend the committee meeting as a fundraising expert will be presenting on possible options for the committee to consider.

Personnel Committee

There was no Personnel Committee report.

Finance Committee

There was no Finance Committee report.

Public Safety Committee

There was no Public Safety Committee report.

Ordinance Review Committee

Babcock stated a committee meeting is pending to be scheduled.

11. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First, he directed them to an informational packet within their handout folder outlining the aquatic invasive species training schedule for lake service providers (coordinated by the MN DNR and Minnesota Waters). He attended the first training session held this date and commented that an established LMCD lake service provider database that was provided to Minnesota Waters was a great benefit to today's attendance. He anticipated working with the remaining providers, MN DNR, and Minnesota

Waters to provide further training in this area, in which Jewett believed provider training would be a good way for the LMCD to take some leadership. Second, he stated that Board member Jewett raised a concern at the last Board meeting on the accuracy of costs per acre for mechanical harvesting referenced in a recent article. A document included in the handout folders has been the only information provided by LMCD staff.

McDermott asked if staff was considering setting up a meeting with the marina owners this spring (as provided historically) to review how things are going.

Nybeck stated that meeting was not held in 2011; however, recommended it be scheduled for 2012.

Baasen questioned the status of dealing with low water this spring due to the lack of snow fall.

Nybeck stated he would follow-up with the Minnehaha Creek Watershed District on projected spring water levels; providing an update on both the water level and the LMCD Code pertaining to low water at the February 8th Board meeting.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:00 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary