

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, March 14, 2012
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:00 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; James Doak, Woodland; Gary Hughes, Spring Park; Anne Hunt, Minnetrista; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Sue Shuff, Minnetonka; 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: None

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock made two Chair announcements: First, he directed the Board to a resolution in their packet from the City of Spring Park. He stated that Board member Hughes has been appointed through January, 2013. This appointment was necessary due to Spring Park's prior Board member, Roger Swanson, recently relocating. Second, he stated a meeting has been scheduled in the LMCD office to meet with a representative of EnviroScience. He asked Nybeck to provide additional background on this.

Nybeck stated that a representative from EnviroScience, Inc., will be in town for the scheduled Minnesota AIS Symposium on March 19th and 20th. Board member Hunt expressed an interest in having that representative meet with the LMCD Board to discuss the use of weevils. Therefore, a meeting has been scheduled for March 20th at 6:00 p.m. in the LMCD office. He stated that he and a combination of Board members (Babcock, Baasen, and Morris) are scheduled to attend the Symposium. Additionally, he stated that staff would be working with Board member Morris, as well as Chris Jewett, Gabriel Jabbour, and any other interested parties, on March 20th (at 2:30 p.m. in the LMCD office) to review policies and procedures for the LMCD's EWM Harvesting Program.

**5. APPROVAL OF MINUTES – 2/08/12 LMCD Regular Board Meeting
2/29/12 LMCD Special Board Meeting**

MOTION: Shuff moved, Hunt seconded to approve the minutes from the 2/08/12 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (13); Abstained (1, McDermott); motion carried.

Hunt stated that there was a typo within the 2/29/12 LMCD Special Board Meeting minutes (page 3, item #5, fourth paragraph; 2nd sentence). She believed the sentence should read, "At that time, staff acknowledged..... interest in researching PWC storage and use patterns (vs. patters)...residents)."

MOTION: Hunt moved, McDermott seconded to approve the minutes from the 2/29/12 LMCD Special Board of Directors Meeting as amended, making the change recommended by Hunt above.

VOTE: Ayes (12); Abstained (2; Johnson and Page); motion carried.

6. APPROVAL OF CONSENT AGENDA

McDermott moved Baasen seconded to approve the consent agenda as submitted. Items so approved included: **6A**, Audit of vouchers (2/15/12 – 2/29/12) and (3/1/12 – 3/15/12), and **6B**, 12/16/11 AIS Task Force Meeting Minutes.

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

Mr. Chuck Levake stated that he represented Lakewinds Association, which has a multiple dock license for 43 dock holders. He was in attendance to better understand the procedure for dock extensions that may be offered for low water (acknowledging that the Board will be considering this matter at their March 28th meeting). He asked the following questions of the Board: 1) if a decision will be made on March 28th, 2) can an application be submitted ahead of schedule in preparation for the proposed action, and 3) what else can they do to be proactive in this matter.

Babcock stated that the Board has not taken formal action on this matter. However, he did not see a concern in the submittal of an application prior to that action. He asked Nybeck to provide further comments.

Nybeck stated the submittal of an application prior to approval of a resolution would be a decision of the Board (taking into consideration whether or not a fee would be assessed for the application process). The last time the Board adopted such a resolution, the Board waived public hearing and application fee requirements. The LMCD has been receiving inquiries on this matter. Therefore, a press release (with website download) was submitted in early March for the purpose of educating the Lake residents. Staff has continued to monitoring the Lake level readings taken by the Minnehaha Creek Watershed District, in which, at this time, there has only been one reading. The March 28th Board meeting will provide for more time to see whether a resolution is warranted (as well as provide staff time to prepare for the process).

Baasen asked Levake what the water depth is at the end of the dock in normal water levels.

Levake stated that during normal water levels, there is approximately three feet of water at the end of his dock. He asked if the LMCD website had forms that could be downloaded.

Nybeck stated the press release was the only document on the website. Staff could provide Mr. Levake the last application provided for such (late 1980's and early 1990's). However, he anticipated changes to be made to that application.

8. PUBLIC HEARINGS

There were no public hearings scheduled.

9. OTHER BUSINESS

A. Abdo, Eick, & Meyers, review of draft 2011 LMCD Audit

Babcock stated that Steve McDonald was in attendance to provide an overview on this agenda item. He welcomed him on behalf of the Board.

McDonald made the following comments:

- 2011 was the first year where all financial functions have been performed in-house (acknowledging that the process worked very well and was more efficient).
- Financial operations were all in compliance with State of Minnesota standards (meeting the goal of an "unqualified" opinion within the audit process).
- One internal control deficiency was noted (preparation of financial statements). He explained that the account receivable portion of finances is well segregated. However, at the end of the year, it is the Executive Director (one employee) who has ultimate responsibility of the financial statements, which is common in a small office setting. He believed that the statements were well managed and that Nybeck should continue to do what he has done every year (maintaining a close review of the statements via meetings with the Treasurer). He acknowledged that Nybeck takes full responsibility for this task (asking very good questions and keeping the auditor accountable, which is a good compensating control measure).
- 2011 provided for the implementation of GASB 54, which designates assignments for fund balances at the end of the year. This does not change the fund balance in terms of dollar amounts.
- Performing the audit provided for no disagreements or difficulties. All material requested was received and in compliance.
- The General Reserve Fund balance was up approximately \$44,000 from 2010 (\$269,405). This was driven by higher court fine revenue than what was expected. He stated that revenue was in excess of what was budgeted, approximately \$27,000, with expenditures less than what was budgeted (primarily legal expenses). He reviewed the fund balance as it relates to the LMCD's reserve fund policy of maintaining a 30% to 50% of annual expenditures (acknowledging that year-end 2011 provided for a fund balance of 63%).
- The Aquatic Invasive Species (AIS) Fund balance had an increase of approximately \$21,000. This was driven by higher revenue than what was expected, primarily for watercraft inspections and reduced expenses due to the State of Minnesota (State) shutdown. He reviewed the fund balance as it relates to the reserve fund policy of maintaining 30% to 50% of annual expenditures (acknowledging that year-end 2011 provided for a fund balance of 55%).

- The Save the Lake Fund balance decreased by approximately \$8,500 from 2010, in which the budgeted amount was planned to decrease by approximately \$18,000. Contributions received in 2009 exceeded what was budgeted by approximately \$9,000.
- The Equipment Replacement Fund balance was \$112,649 (compared to \$79,897 in 2011). This balance includes one-half of the insurance settlement (\$32,500) that has been received for the replacement of the capsized harvester. The second half of the settlement (\$32,500) will be received after the new harvester has been delivered.
- He entertained questions and comments from the Board.

Baasen asked what the reserve level was for the Save the Lake Fund.

McDonald that the Save the Lake Fund balance would be about 350% of the annual operating expenses. However, because the Save the Lake Fund is driven by contributions, it does not have the same operating measurements as the General and AIS Funds.

Babcock directed the Board to two documents provided within their handout folder for their consideration. The first document was draft LMCD Resolution 127, authorizing the transfer of \$20,856 from the Eurasian Milfoil Fund to the Equipment Replacement Fund. He stated there was an unspent fund balance due to the lack of harvesting during the 2011 State shutdown, as well as other factors (i.e. a slow growth year). The second document was a letter from Aquarius Systems, dated 3/14/12, responding to staff's question on increasing the inspection openings on the deck of the barge from 2" to 4". That change would increase the purchase price of the harvester by \$1,500.

Nybeck stated that when the Board approved the purchase of a new harvester, he communicated that there would be excess aquatic invasive species (AIS) funds at year end that would need to go towards the purchase of the new harvester (approximately \$9,000 short of the purchase cost). The change order received from Aquarius Systems would increase the purchase price of the harvester by \$1,500 (providing for an estimated ending purchase price of \$176,400, including taxes). He recommended Board approval of LMCD Resolution 127 (transferring \$20,856 to the Equipment Replacement Fund), as well as an order change to increase the inspection openings as noted above.

Babcock stated that he spoke with Nybeck on the change order, in which he confirmed the request does not change the bidding process as the change would have applied to all vendors that submitted a bid.

Baasen asked why the LMCD is requesting the change.

Harper stated the inspection equipment on the Lake requires a larger hose to accommodate for pumping, etc. Through the bidding process, there was a recommendation to have access ports on both sides; however, after the Board approved the purchase, the Working Group suggested inspection openings be increased to 4".

MOTION: Johnson moved, McDermott seconded to: 1) approve LMCD Resolution 127 as submitted and 2) approve a change order with Aquarius Systems, in the amount of \$1,500, excluding taxes, to increase the size of inspection openings to 4".

Olson questioned whether all of the excess 2011 AIS Funds (\$20,856) needed to be transferred to the Equipment Replacement Fund.

Nybeck stated that excess funds in the Equipment Replacement Fund, estimated at approximately \$14,000, would provide some flexibility for unforeseen capital equipment problems that could occur in 2012.

VOTE: Motion carried unanimously.

B. Staff update on 2011-2012 Lake Minnetonka De-Icing Inspections

Babcock asked Harper to provide background on this agenda item.

Harper directed the Board to his staff memo, dated 3/8/12, in which he highlighted the following:

- 33 de-icing licenses were issued.
- He reviewed the inspection process; noting that the following four areas are documented for compliance with LMCD Code: 1) Authorized De-icing Area (ADA) requirements, 2) fencing, 3) signage, and 4) lighting.
- 27 of the 33 sites passed first inspection. Three of the remaining six failed and have been re-inspected, with the issues being resolved. The other three sites did not de-ice. He reviewed respective communication that was sent out to the license holders in follow-up to the inspections.
- He stated that one formerly licensed site was observed operating de-icing equipment without a license. The Hennepin County Sheriff's Water Patrol, in conjunction with the LMCD prosecuting attorney, are handling the matter.
- He stated that the weather was unseasonably warm and ice formation was slow and not adequate for activity on the lake. He reviewed a February 19th press release from the Hennepin County Sheriff's Department prohibiting motorized vehicles on all frozen bodies of water within the County; closing Lake access points.
- He will continue to monitor the sites until March 15th, at which time de-icing licenses are not required as long as signage is present along the affected shoreline.
- He entertained questions and comments from the Board.

Baasen stated that the Wayzata City Council has questioned how a site that is adjacent to a winter public access would be able to safely de-ice. One example is the Wayzata Yacht Club (WYC) where the adjacent winter public access is closed and the public access has been relocated to Eastman Drive.

Harper stated that there has been ongoing communication with the WYC and the city staff on the closing of the adjacent winter public access.

Babcock stated various historical techniques have been tried (such as a de-icing curtain) to maintain usage of this abutting winter public access. He believed that the techniques were not sufficient in keeping the access open safely.

Baasen asked who has the jurisdiction to shut a public access down.

Babcock stated that he believed it would be the city (or agency maintaining jurisdiction of the access) and the LMCD.

McDermott commented on the improvements made in de-icing at the former Sailors World Marina location (currently North Shore Marina- Smiths Bay). In particular, the use of the de-icing curtain to keep the open water contained near the dock.

Olson questioned how a deicing curtain works, including if all types of curtains are acceptable. He compared the use of the de-icing curtains at the Caribbean Marina and North Shore Marina- Smiths Bay.

Harper stated that the Board has approved de-icing variances at both of these sites, which provides for the performance level of each de-icing curtain.

Mr. Richard Anderson, owner of North Shore Marina- Smith Bay, was in the attendance and offered to provide the Board an education on the use of the curtain placed at this site. He stated that the curtain was a \$4,800 investment (providing for a 6' chain going down to the lake bottom). Other curtains are available (i.e., black curtain) in which different current strengths are offered (the heavier, the more expensive). He confirmed the curtain he purchased will last quite a few years and provides for keeping the fence up without concerns.

The Board asked a few questions of Anderson, in which he provided more detailed specifications on the curtain. He expressed concern that his site is scrutinized more heavily than other de-icing sites that are not as visible; whereby the other sites are not regularly called on when their fence is down.

C. Chair update on possible 2012 Save the Lake Fundraising Initiatives

Babcock asked Olson to provide an update on this agenda item.

Olson made the following comments:

- 2011 provided for a series of goals to be accomplished, which were as follows: 1) to familiarize lake stakeholders with the Save the Lake (STL) identity and mission, 2) to increase fundraising success to more effectively fund grant requests, 3) to increase donor participation (both in numbers and contributions), and 4) to establish a variety of fundraising techniques for broader audience appeal.
- Three approaches were established to accomplish those goals. First, to continue to promote the Aerial Photography Campaign, which was initiated in 2011. Second, to coordinate a series of fundraisers, which will be focused on teaming with bay captains to provide for more large scale fundraising efforts (small to larger events planned for 2012 and 2013). Third, to work with the commercial marinas who have agreed to campaign for specific programs (solar lights and the Remotely Operated Vehicle (ROV) by contacting their customers for contributions.
- He provided further background on how the purchase of the ROV came to the STL Committee's attention. A request was made for a STL grant to purchase a ROV, in which he reviewed the use

of Ramsey County's ROV last summer for the search of a drowning victim, as well as one in Wright County.

- He acknowledged that the STL reserve fund currently has enough funds to pay for the entire ROV purchase. However, some Board members, on February 29th, expressed concern that there would be too high of risk of generating "bad press" (or misunderstood press). He confirmed that a matching offer has been made; providing for a total of \$65,000 from STL funds to purchase the ROV.
- He provided an overview of the ROV fundraising drive by stating the Board has currently approved \$13,676 in Save the Lake funds for this initiative. It was the recommendation of the committee to fully fund \$25,000 from surplus funds not spent in 2012; providing for all funds raised would be forwarded to the Hennepin County Sheriff's Foundation for its purchase.
- He solicited the Board's consideration in the following: 1) approving \$65,000 in STL funds to purchase the unit outright (providing for \$65,000 in matching funds), 2) approve \$25,000 (\$25,000 in matching funds) and raise the remaining amount, or 3) maintain the currently approved \$13,676 in STL funds.
- He entertained questions and comments from the Board.

The Board asked questions of Olson, in which his responses are provided below:

- He confirmed that the Sheriff's had not approached Ramsey County on the possibility of a lease arrangement due to the fact that the use of the equipment requires a trained operator to accompany the equipment.
- He confirmed the ROV verifies if there is a victim, in which a diver would then be sent down immediately.
- Continued fundraising initiatives are planned via the assistance of the Lake's marinas communicating with their customers for both the solar light program and ROV fund drive (as noted above).
- He was not aware of communication efforts by the Sheriff's Department to other Hennepin County lake associations for fundraising purposes. However, he believed the Sheriff's department was going to speak to the 14 member cities, as well as local clubs and fire departments. If the Board would like to fund the ROV upfront, fundraising efforts made would replace those funds or possibly the enactment of a grant moratorium until 100% of the fund replacement was met.
- Confirmation that the Hennepin County Sheriff's Foundation does not have the available funds to purchase the ROV due to their commitment to the special deputies.

Hughes stated that he spoke with the Spring Park City Council, in which they were surprised STL would expend funds for county-wide use. The city council expressed an interest in expending the funds for water quality, etc. To this end, the city does not support use of STL funds for the ROV project.

Sylvester stated that he spoke with the Shorewood City Council, in which they concurred with the purchase. He reviewed the LMCD's charter with the Council, in which they did not see the use of donated funds being limited by such.

Babcock stated that, in terms of the LMCD's charter, STL has helped the Sheriff's Office out with equipment that was used directly in line with Lake usage (maintaining noise levels, speed limits, etc.).

Hughes stated the safety of the divers is a necessity, but also a responsibility of the County.

Babcock questioned why the Sheriff's Department was not funding a portion of this if it reduced man hours and insurance premiums.

Nybeck stated that the Sheriff's Department has confirmed the possible use of forfeiture funds in the purchase of the ROV. He stated that he talked to Major Hugget and requested how much forfeiture funds would be contributed to this purchase. He reviewed the Board's current direction to staff, in which \$13,676 is currently approved, and recommended the Board's decision on this matter be communicated to the Sheriff's Department.

McDermott expressed an interest in talking to Ramsey County about a Joint Use Agreement because he did not believe the purchase of the ROV was a direct benefit to Lake Minnetonka.

Olson reviewed the procedures that are in place for searching for a drowning victim (i.e, the shutting down of that Lake area, etc.). He believed that the grant funds would be recouped by year end; providing for 2013 to be business as usual.

LeFevere stated that if it is not within the purview of the LMCD, the LMCD could not contribute funds for any activity no matter how worthy the cause may be. Once they are public funds, they can only be expended for activities within the LMCD's purview. With that said, historically, STL funds have been used to support the Sheriff's Office (cold water rescue suits, life jackets, radar guns, etc.). He stated that the LMCD does not have a law enforcement; however, he read the State of Minnesota Statute that documented the LMCD's authority to contract with other law enforcement agencies to police the Lake and its shores. He believed that the expenditure of STL funds for the ROV is within the scope of the LMCD's charter.

Shuff asked if the LMCD could communicate with other counties to collect some data and/or confirm if a joint agreement is viable.

Nybeck reiterated the need to communicate to the Sheriff's Office that the LMCD continues to offer \$13,676 in STL funds towards the purchase of the ROV.

D. Timetable for 2013 LMCD Budget Process

Babcock asked Nybeck for background on this agenda item.

Nybeck reviewed the proposed timetable for the 2013 LMCD budget process. He recommended that a Work Session be held to review and modify the draft budget prior to the initial consideration at the April 25th Board meeting. An email will be sent out soliciting the Board's availability for a Workshop/Planning Session in the office for the week of April 9th. A meeting will be held in the LMCD office on June 7th, with

further review planned by the Board at their June 13th and 27th meetings. By Minnesota State Statute (103B.635, Subd. 1), the adopted budget needs to be received by the 14 member cities no later than July 1st; providing for the member cities receiving the adopted budget by June 29th.

Babcock provided a review of the above noted statute; reiterating the submittal of the adopted budget to the State by July 1st. Additionally, he reviewed the historical process of the LMCD Workshop/Planning Session (noted by Nybeck above). He recommended conditional approval be considered at the June 13th Board meeting, with a final review at the June 27th Board meeting (if needed).

Page stated that the LMCD receives pressure to fund many different programs (i.e., herbicide treatments). He requested confirmation, for the record, as to how much more the LMCD could levy.

Nybeck stated the LMCD could levy an estimated additional \$200,000.

Hunt stated that she could not entertain a levy increase with the City of Minnetrista unless the LMCD had a plan outlining the increased amount. She hoped that the levy to the cities for the 2013 LMCD Budget would remain flat.

E. Staff update on proposed 2012 Watercraft Inspection Program

Babcock asked Nybeck to provide background on this agenda item.

Nybeck made the following comments:

- An overview was provided by staff at the February 8th Board meeting on 2012 AIS Management and Prevention Programs (mechanical harvesting, herbicide treatments, and watercraft inspections). At this meeting, the Board directed staff to: 1) prepare for a similar watercraft inspection program in 2012 as what was conducted in 2011 and 2) to submit a MN DNR grant application for this program.
- He reviewed a spreadsheet that highlighted key details proposed for the 2012 watercraft inspection program. This included: 1) duration of the inspections, 2) targeted days, 3) coverage times, 4) public accesses to be covered by Volt Workforce Solutions (Volt), MN DNR, and Three Rivers Park District, and 5) proposed contract details with Volt for inspections, supervision, and training.
- Funding sources targeted for 2012 include: 1) \$30,000 from the LMCD, 2) a \$7,500 grant that has been secured from the Minnehaha Creek Watershed District (MCWD), and 3) a pending grant request of \$7,750 from the MN DNR.
- He solicited the Board's direction to proceed in preparing a draft Agreement with Volt to conduct watercraft inspections, as well as a Joint Powers Agreement with the MN DNR. If directed to prepare these Agreements, they will be brought back to the March 28th Meeting for Board consideration.
- He entertained questions and comments from the Board.

A summary of the Board discussion and comments were as follows:

- The likelihood that the LMCD would be approved for the \$7,750 grant request by the MN DNR.

- The need to increase inspection hours around the holidays, in particular the 4th of July.
- The funding of the \$7,500 grant from the MCWD and whether additional funds could have been secured for this program. There was discussion as to the level of funding provided to the MCWD by the Lake Minnetonka communities.
- That inspections proposed would be for both incoming and outgoing watercraft.
- A discussion of whether the inspectors would be trained to look for all invasive species, including the number of invasive species in Minnesota and whether the inspectors would have the authority to prohibit a watercraft from being launched.
- The need for the Board to discuss how the \$30,000 allocated for this project in 2012 could be used in 2013 and beyond.
- The MCWD has expressed an interest in a joint Agreement with Volt for watercraft inspections (in particular Christmas Lake). In talking with MCWD Administrator Eric Evensen, LeFevere, and Volt management, Nybeck concluded that it would be cleaner for the LMCD to contract with Volt individually (specifically for inspections completed on Lake Minnetonka). The Board discussed this and concurred with Nybeck's recommendation for 2012.
- The consensus of the Board was for Nybeck to prepare draft Agreements with the MN DNR and Volt for consideration at the March 28th LMCD Board Meeting.

F. Staff update on LMCD Code for Personal Watercraft (PWC)

Babcock asked Nybeck to provide background on this agenda item.

Nybeck directed the Board to his staff memo, dated 3/8/12, and made the following comments:

- This agenda item was scheduled at the request of the Board based on discussions at the February 29th Special Board Meeting. At that time, staff provided an update to last December's 2011 LMCD Code Enforcement Program overview. During that overview the Board expressed an interest in researching the storage and use patterns of personal watercraft (PWC); therefore, referring this task to the Ordinance Review Committee (ORC).
- At the February 29th meeting, staff stated that any amendment to the LMCD's Code regarding watercraft density would be a significant policy change and, therefore, recommended the review be completed by the Board rather than the ORC. Based on the information presented, staff was directed to address the Board at this meeting for possible closure to this discussion.
- With that said, he provided the Board with a detailed overview of the LMCD's current code pertaining to watercraft storage density rules. This overview included reviewing the definition of restricted and unrestricted watercraft, as well as the current density code excerpts pertaining to residential storage (LMCD Code 2.02, subd. 1-3). He reviewed the statistical trend information obtained by staff in the storage of PWCs (utilizing historical LMCD Code Enforcement and Shoreline Inventory Program findings).
- Based on those findings, staff does not believe there is a need to further evaluate Code changes for PWCs stored at residential sites as the current Code seems to be working well. He recommended the Board move to bring this matter to a close.

MOTION: Olson moved, Shuff seconded to bring the matter of researching storage and use

patterns of PWC to a close.

VOTE: Motion carried unanimously.

10. Update from standing LMCD Committees:

Babcock asked for an update from the Chair, or designated representative, of each committee. Only one report was provided, in which Babcock stated the Finance Committee met this date to allocate funds for the purchase of a Certificate of Deposit.

11. EXECUTIVE DIRECTOR REPORT

Nybeck acknowledged the numerous meetings, and/or events, that staff recently participated in. He commented on two of these events. First, Minnetonka Power Squadron had a Watch Commander Change on February 25th. He announced that Board member Kask was the new Commander for the Minnetonka Power Squadron. Second, he, Harper, and Board member Olson attended the Minnesota B.A.S.S. Federation Banquet on March 5th. He acknowledged the progress that has been made in mending a prior challenged relationship with the Federation to the current complimentary partnership.

Babcock thanked the staff for all their effort in coordinating the recent Save the Lake Recognition Banquet.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:00 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary