

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

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

1. CALL TO ORDER

Babcock called the meeting to order at 7:01 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; David Gross, Deephaven; Gary Hughes, Spring Park; Anne Hunt, Minnetrista; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; 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: McDermott moved, Gross seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock stated that there are two meetings scheduled for the month of August (8th and 22nd). He solicited Board feedback on: 1) cancelling the Board meeting of August 8th and holding a Workshop/Planning Session on the Lake or 2) simply cancelling the Board meeting of August 8th. He acknowledged that a Regular Board Meeting would be scheduled for August 22nd.

It was the consensus of the Board to cancel the August 8th meeting and not conduct a Workshop/Planning Session that evening.

5. APPROVAL OF MINUTES – 6/27/12 LMCD Regular Board Meeting

MOTION: McDermott moved, Johnson seconded to approve the minutes from the 6/27/12 Regular Board Meeting as submitted.

VOTE: Ayes (11), Abstained (3; Gross, Olson, and Sylvester); motion carried.

6. APPROVAL OF CONSENT AGENDA

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

Page recommended a friendly amendment to consider approval of check number 19455, to Aquarius Systems, in the amount of \$147,996 (included in the 7/16/12 – 7/31/12 Audit of vouchers) after receiving the mid season report on the 2012 EWM Harvesting Program under agenda item 9B. McDermott and Shuff agreed to this friendly amendment.

Hunt requested clarification of check numbers 19444 and 19448 to Tonka Bay Marina.

Nybeck stated that check number 19444 was for services rendered in the repair of the lower unit of the motor for the transport barge. Additionally, check number 19448 was for fuel for both the EWM Harvesting and Code Enforcement programs.

Babcock directed the Board to the check detail ledger attached to the individual check registers; providing for a detailed description of the services rendered for each check written.

McDermott questioned whether the check register portion of the Audit of vouchers was needed. The consensus of the Board was to keep the check register as it provides a total of all checks written, which is not available under the check detail portion of the vouchers.

VOTE: Motion carried unanimously. Items so approved included **6A**, Audit of vouchers (7/1/12 – 7/15/12) and (7/16/12 – 7/31/12), excluding check number 19455, and **6B**, May 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 HEARINGS

There were no public hearings.

9. OTHER BUSINESS

A. Staff update on the possible purchase of a Remotely Operated Vehicle (ROV) by the Hennepin County Sheriff's Office

Babcock asked Nybeck for an update on this agenda item.

Nybeck stated that Lt. Art Saunders from the Sheriff's Water Patrol was in attendance to address the Board. His comments were as follows:

- A general background of the discussions and actions held to date, which included the following:
 - 1) the Sheriff Foundation's original request of \$25,000 from the Save the Lake fund in 2012,
 - 2) a detailed overview of three Save the Lake Committee recommendations, 3) a review of Chair Olson's Save the Lake Committee update to the Board on June 27th, and 4) the Board's consensus on June 27th was to schedule an additional update at this meeting.
- A summary of the ROV costs (base price, transportation, and add-ons).

- He reviewed the Federal Port Security Grant that has been approved for the purchase of the ROV.
- A detailed assessment of an estimated \$9,926.53 in surplus 2012 Save the Lake funds from three budgeted programs (Lake Minnetonka Association (LMA) herbicide treatments, Long Lake Fire Department safety equipment, and a one-time herbicide treatment for the Libbs Lake Property Owners Association. He stated that he spoke with LMA Executive Director Dick Osgood who communicated that he did not anticipate any further herbicide treatments in 2012. Additionally, he questioned whether the Minnesota Department of Natural Resources (MN DNR) would permit a treatment after August 1st.
- He reviewed other fundraising efforts to date: 1) commercial marina campaign, 2) Hennepin County Sheriff's Foundation and Office (unknown), and 3) other commercial entity fundraising (unknown). He questioned whether there was a need for further fundraising by the commercial entities due to the Federal Port Security Grant.
- \$13,676 had already been approved by the Board for this expenditure; acknowledging that a release form will need to be executed by the Hennepin County Sheriff's Foundation. He questioned whether the Board would like to provide additional funding (such as 50% of the local match or \$18,886.81) from the surplus of the 2012 Save the Lake funds noted above.
- He entertained questions and comments from the Board.

The following is a summary of the Board's questions and comments:

- Nybeck reiterated the availability of \$9,926.53 in surplus funds; confirming that the Board could not reach the originally requested \$25,000 unless other fundraising efforts were entertained. He stated that he was unsure how many Board members supported the use of the above noted surplus funds. If the Board were to entertain additional funding above the approved \$13,676, he did not think the Board should go above 50% of the local match.
- Discussion was held as to whether the purchase of the ROV with Save the Lake funds was within its Charter, including the provision to provide safety. Olson confirmed the ROV would provide safety to the rescue divers (both in ascertaining whether a dive was needed and the retrieval of a victim). He believed the efficient use of a readily available ROV could possibly save a victim that had been submersed in frozen waters.
- In an effort to confirm the logistical storage and use of the ROV on Lake Minnetonka vs. other Hennepin County lakes and rivers, Babcock invited Lt. Saunders to address the Board.

Lt. Art Saunders acknowledged Sheriff's personnel that were instrumental in obtaining the above noted grant for the purchase of the ROV. He confirmed the unit would provide safety to Sheriff's personnel, would be stored at the Water Patrol Headquarters in Spring Park, and used throughout Hennepin County as needed. He provided an overview of the recovery efforts of a recent drowning victim on Lake Minnetonka; confirming the additional safety factors that would have been provided to the divers had Hennepin County owned the ROV. He stated Lake Minnetonka is the largest and most patrolled lake; however, most drowning victims are recovered from pools and spas. He informed the Board that the Sheriff's Office is partnering with St. Paul to secure a Homeland Security Grant for other underwater identification programs, including bomb detection.

The Board finalized their discussion on this matter, in which the following comments were made:

- Continued expressed concern that other entities have not invested in the purchase of the equipment, in which Lt. Saunders confirmed that the Sheriff's Office is actively asking for donations and will commit to fund the remaining portion needed.
- A brief update was provided on the funding assistance from the Lake Minnetonka marinas; confirming the marinas have been actively speaking to the Sheriff's Office.
- In an effort to provide the Board with a better understanding of the Water Patrol's needs, Lt. Saunders provided an overview of the Water Patrol's time and efforts provided when addressing a drowning accident. Additionally, he provided an overview of the line items provided in a quotation received from VideoRay for the purchase of the ROV.
- A request to only contribute funds currently approved for release (\$13,676) and wait and see what other contributions come forward.
- Confirmation that Lt. Saunders would provide the Board with a listing of the local agencies representing the remaining Hennepin County lakes and rivers that were approached by the Sheriff's Office.
- Expressed interest by Baasen to document our leadership and contribute 50% of the remaining funds needed for the local match (\$18,886.81 as noted by Nybeck above).

MOTION: Baasen moved, Olson seconded to provide 50% of the local match (\$18,886.81) from the 2012 Save the Lake Budget, subject to the remaining match being raised by the Hennepin County Sheriff's Office.

Gross questioned whether the remaining match must be a 501(c)(3) organization. He expressed an interest in finding out what communication transpired with the Hennepin County Commissioners in the purchase of the ROV.

Hunt requested clarification that Ramsey County would not lease or loan the equipment to Hennepin County. Olson confirmed that they would not.

Saunders confirmed that Ramsey County's equipment did not have all the needed functions. Additionally, Hennepin County had to wait two days to use the equipment.

Babcock expressed an interest, in concept, to purchase two ROVs for the seven counties based on the metro area needs.

Klohs questioned what capabilities the ROV would provide over Ramsey County's ROV, in which Saunders provided an overview of.

Page expressed opposition in using surplus 2012 Save the Lake funds allocated for herbicide treatments by the LMA. He based this on future funding needs of other AIS projects (i.e., a Comprehensive Vegetation Management Plan for Lake Minnetonka that is currently being worked on). He believed the LMCD's commitment of \$13,676 is very generous in light of the equipment being used county wide.

Shuff expressed an interest in receiving a listing of the other local agencies that were solicited to fund the ROV. Olson stated he would confirm whether the Minnehaha Creek Watershed District's had continued

financial interest in the equipment.

McDermott asked Saunders if it would be too late for the Board to obtain the requested information and consider additional funding at the August 22nd Board meeting. He noted that none of the member cities have provided funding as the committed funding of \$13,676 was based on private donations solicited through the Save the Lake Fund.

Saunders stated that the unit must be obtained by September 31st.

Baasen reiterated that the motion was subject to the remaining 50% of funds raised.

Johnson and Hughes concurred with McDermott to revisit the matter in August. They were both comfortable with the release of the \$13,676 as already approved to date.

Morris did not believe the Board needed to expand funding over the \$13,676 already provided. He concurred with Page that future AIS funds will be needed and that there are other funding sources that could be tapped into.

Baasen and Olson withdrew their motion based on the comments of the Board.

Nybeck directed the Board to a Release Form to the Hennepin County Sheriff's Foundation. He provided an overview of the conditions listed on the form; acknowledging that both LeFevere and the Sheriff's Department concurred with its content. He solicited the Board's verbal approval to send the Release Form to the Sheriff's Foundation, in which they provided such.

Babcock asked: 1) staff to follow-up with the LMA and the MN DNR on the 2012 herbicide treatment projects, 2) the Save the Lake Committee to approach the marina owners and other governmental agencies on possible funding sources, and 3) the Sheriff's Office to provide an update on the information requested above at the August 22nd Board meeting. He thanked Saunders for his time.

B. Mid Season Report on 2012 EWM Harvesting Program

Babcock asked Harper for an update on this agenda item.

Harper made the following comments:

- A general overview of the program itself.
- Key statistical data through July 12th (190 acres harvested, which were delineated on a map, 103.25 harvester loads, and 76 truck loads).
- Lake areas harvested (based on the Lower Lake South Option)
- A financial assessment (\$37,000 incurred through mid July; based on the 2012 program budget of \$93,633). He reviewed one change in the 2012 MN DNR's annual grant received for the Harvesting Program. The LMCD is reimbursed \$150 per acre or a total \$35,000, whichever is less.
- Harvesting is planned up to mid-August and that staff will continue to monitor the program's

budget.

- An overview of the process involved in the delivery of the new harvester on July 24th (through a series of photographs) was provided.

Nybeck stated that the harvester, per approved specifications, was to be delivered by July 16th (with a \$200 per day penalty thereafter). The harvester was available for delivery by July 20th; however, staff recommended the delivery be made the following week due to traffic concerns at the public access and the availability of Tonka Bay Marina staff to assist in its launching. He solicited the Board's interest in waiving the \$800 late fee from July 16th – July 20th. He reminded the Board that Board member Page removed check number 19455 to Aquarius Systems in the amount of \$147,996 (contracted payment of 90%) from the consent agenda for consideration under this agenda item. He also reviewed the remaining payments the LMCD would need to make: 1) a 10% retainer after successful Lake trials (\$16,444) and 2) taxes to be paid by the end of the year (\$11,963.01).

Babcock asked what basis was provided in considering the waiving of the late fees, in which Nybeck believed none was provided. He believed it was a business decision by Aquarius in juggling multiple orders that were being handled at one time; one of which was the Minneapolis Park Board.

Gross questioned if the LMCD could receive \$800 in spare parts.

Page questioned if that decision had to be made at this meeting as it could be addressed when paying the 10% retainer fee.

Babcock expressed the need to remain consistent with the RFP; providing the same condition outlined to all bidders so that the LMCD is not placed in a position to be challenged by one of them. He asked LeFevere which part of the payment schedule should be adjusted to accommodate for the penalty fee.

LeFevere stated the first payment should be 90% of the purchase amount, less the late fee for delivering the harvester after July 16th.

Nybeck recommended a decision be made at this meeting and that he work with Treasurer Page on whatever amount is deemed appropriate by the Board.

Olson questioned if the LMCD was going to receive a bill from Tonka Bay Marina for the launching of the harvester, in which Nybeck confirmed no charges would be assessed. Olson asked if the LMCD is allowed to accept donated labor.

LeFevere stated that as an individual Board member one is not able to accept individual gifts. However, as a public body, one can accept such a gift. He recommended the Board take the original contracted price, reduce it by \$800, and pay 90% of that amount; providing for no indication that the Board is waiving the penalty fee.

MOTION: Johnson moved, McDermott seconded to approve the initial 90% payment to Aquarius Systems based on LeFevere's direction above.

Hunt asked why the LMCD is paying taxes on the harvester.

LeFevere stated that the LMCD is not exempt from paying taxes on most purchases, including the new harvester.

VOTE: Aye (13), Naye (1, Klohs); motion carried.

Nybeck reviewed the funding sources that will pay for the purchase of the new harvester. These included: 1) Equipment Replacement Funds as of 12/31/11 which were \$112,649; this included a \$32,500 payment from the League of Minnesota Cities Insurance Trust (LMCIT), 2) an additional \$20,856 of Equipment Replacement Funds from 2011 AIS Management and Prevention programs (per LMCD Resolution 127), 3) the second payment of \$32,500 from the LMCIT, and 4) a General Reserve Fund transfer, in the amount of \$25,000, to the Equipment Replacement Fund in the adopted 2012 LMCD Budget.

10. Update from standing LMCD Committees

Babcock asked for an update from the Chair, or designated representative, of each committee (Save the Lake, AIS Task Force, Finance, Personnel, Public Safety, and Ordinance Review).

Page stated the AIS Subcommittee met on August 16th and discussions are proceeding on a Comprehensive Vegetation Management Plan for Lake Minnetonka. The next meeting has been scheduled for August 10th.

Nybeck recommended that the AIS Task Force meeting should be cancelled to allow the sub-committee to continue its work on a plan.

Babcock stated that he will be working with staff to move the special density amenities discussion (previously considered under the Ordinance Review Committee) forward. Additionally, he will be meeting with LeFevere and staff to discuss easements on Lake Minnetonka and how they affect watercraft storage and dock use areas. Lastly, he stated there are renewed discussions on gating, closing, and/or monitoring public accesses on the Lake. Future ordinance amendments may be needed relative to permitting public accesses. He will keep the Board apprised of those discussions.

Johnson stated the Public Safety Committee will reconvene at the end of the boating season. He asked the Board to call staff when observing problems with the solar lights.

Nybeck directed the Board to his Executive Director Report, dated 7/24/12, within their packet. There are two items of interest that pertain to the Public Safety Committee (bow fishing and a Quiet Waters Area (QWA) request). In follow-up to past Board discussion, staff has solicited the member cities input on bow fishing. An email, dated 7/20/12, with attached correspondence, was provided within the Report. Additionally, he has been observing an area of West Arm, in which there is a QWA request. Both matters noted above will warrant a Public Safety Committee meeting in the near future.

Olson stated that the Save the Lake committee had received a request from local businesses to place "We support Save the Lake" verbiage on their products. He ran this request by LeFevere who confirmed that anyone can legally do so without permission (including not being contingent upon a donation). However, one cannot place the Save the Lake logo on their product without permission. Therefore, the committee is creating an agreement (with annual fee) for such Save the Lake sponsorship requests. Additionally, the committee discussed whether Save the Lake could be a foundation rather than a fund. LeFevere confirmed Save the Lake could not be a foundation unless it broke ties with the LMCD and chartered its own foundation. He solicited the Board's input on Save the Lake remaining as a fund or pulling away from the LMCD.

Babcock did not see a direct benefit to have Save the Lake charter its own foundation. No other comments were provided.

Olson stated that the committee also received public comments that they do not support any government body raising major contributions. They believed it was okay to solicit limited funds for granting of a focused project but did not believe Save the Lake should be involved in hiring a professional fundraiser or raising funds for million dollar projects. He solicited the Board's input, once again, as to whether Save the Lake should remain more focused on smaller grant projects or direct efforts to raising large funded projects.

Babcock asked if the professional fundraisers thought Save the Lake could raise a substantial amount of funds for large projects. He expounded on the fact that the LMCD has tried to obtain funding for project in the past, which were never sustainable on an annual basis (i.e., the initial purchase of the harvesters).

Olson stated the professional fundraiser had a formulary in which they would utilize for Save the Lake. However, at this point, he is interested in soliciting the Board's direction as to whether the Fund should stay more focused or proceed with professional fundraising efforts.

Hunt stated there has been discussion of the Three Rivers Park District (TRPD) maintaining an entertainment contract for the Lake as a whole; providing for possible future Save the Lake revenue. She stated the TRPD is currently soliciting the member cities interest.

Olson stated that he does not see the committee obtaining a professional fundraiser. To do so would require the efforts to raise large amounts of funds for a specific goal driven approach; based on the charter as it is currently written.

McDermott stated he did not see the need; acknowledging the whole bay herbicide treatment projects would have been the only exception lakewide.

Babcock stated that the Board had independently raised large amounts of funds in the 1980s to purchase the harvesters; however, did not recall any other larger purchases since then. He solicited the Board's input, in which all concurred there was not an immediate need to consider hiring a professional fundraiser.

11. EXECUTIVE DIRECTOR REPORT

Nybeck directed the Board to a letter, dated 7/23/12, responding to Hennepin County Health Department's

request as to whether Project Tonka, LLC's Food Plan (as presented to Hennepin County by application) would comply with LMCD Code. As noted within his letter, the request would be prohibited by the LMCD Code.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:53 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary