

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, August 22, 2012
Wayzata City Hall

1. CALL TO ORDER

Baasen called the meeting to order at 7:04 p.m.

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; 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: Doug Babcock, Tonka Bay; and David Gross, Deephaven.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Vice Chair Baasen

Baasen stated that the City of Wayzata is celebrating their 100th year anniversary the weekend of September 8th. He invited all to join in on the festivities; including a street dance sponsored by the Wayzata Fire Department that Saturday night.

5. APPROVAL OF MINUTES – 7/25/12 LMCD Regular Board Meeting

Hunt stated that the AIS Subcommittee met on July 16th vs. the August 16th date presented within the second paragraph of agenda item #10 on page 7.

MOTION: McDermott moved, Shuff seconded to approve the minutes from the 7/25/12 Regular Board Meeting as amended, making the change noted by Hunt above.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Shuff moved, McDermott seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (8/1/12 – 8/15/12) and (8/16/12 – 8/31/12); **6B**, June and July financial summary and balance sheets, and **6C, LMCD Resolution 131**, a resolution expressing appreciation to Tonka Bay Marina for assisting in LMCD 2012 EWM

Harvesting Program Projects.

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.

Meyer arrived at 7:07 p.m.

9. OTHER BUSINESS

A. Staff update on 2012 EWM Harvesting Program

Baasen asked Harper to provide background on this agenda item.

Harper made the following comments:

- An overview of the program to date (a mid-season report was presented on July 25th, the last day of harvesting was August 16th, all bays were harvested twice, the equipment was scheduled for removal next week, and that a Final Report is scheduled for the September 26th Board meeting).
- A financial assessment of the program (acknowledging the total program budget was \$93,633, with \$61,000 of estimated expenses incurred through August). He reviewed an approved Minnesota Department of Natural Resources (MN DNR) Grant that will provide for \$150 per acre or \$35,000, whichever is less.
- Tonka Bay Marina will provide assistance in the removal of the equipment, including the use of their tractor with a three point hitch. He reviewed historical removal practices (with Hennepin County) and the equipment that was previously utilized. Tonka Bay Marina has recommended that the LMCD consider the purchase of stands for the storage of the harvesters (vs. blocks currently being utilized). The use of stands should provide for less wear and tear of the base and hull of the machinery. A quote has been received for stands from Victoria Repair and Manufacturing (12 galvanized, weight tested stands at \$270 each for an estimated total of \$3,475.71). He recommended directing 2012 EWM Harvesting Program surplus funds for the purchase of the stands in 2013 (acknowledging the stands would not be available by the time the harvesters are removed).
- Prior to Nybeck reviewing the payment schedule for the new harvester, he entertained questions and comments from the Board.

Harper received a few questions, in which he explained that the estimated \$32,000 budget savings to date (\$93,633 budget vs. \$61,000 in estimated expenses as noted above) was largely due to utilizing the site supervisor as the general mechanic, in cooperation with a specialty mechanic when needed. He did not see this cost savings as being sustainable due to variables presented.

Nybeck reiterated that the cost savings noted above is an estimate and that projected savings would be

closer to what has been budgeted by year end. Other anticipated expenses yet this year include trucking, mechanical work on one of the harvesters, as well as other miscellaneous expenses. He provided a detailed overview of the payment schedule for the new harvester, which included a recommendation that the Board approve the final payment in the amount of \$15,288.95 (10% of adjusted retainer payment, including the deduction of \$1,075.05 for Lake Trial deficiencies that Harper documented).

Baasen asked Page if the LMCD is prepared to issue the above noted payment, in which Page stated that he reviewed: 1) a variety of correspondence relative to the deficiencies noted and 2) quotes received and respective paperwork to resolve these deficiencies. Page recommended that the Board approve such payment.

MOTION: Page moved, Sylvester seconded to approve check #19490, in the amount of \$15,288.95 to Aquarius Systems, for the final payment of the new harvester as noted above.

VOTE: Motion carried unanimously.

Nybeck also provided a detailed overview of the insurance settlement with the League of Minnesota Cities Insurance Trust (LMCIT); acknowledging that the reimbursement of the bimini top is forthcoming.

Morris asked if the second round of harvested acres can be included in the total acres harvested that will be provided to the MN DNR when requesting the grant payment, in which Harper confirmed that it could.

Hughes stated that a couple residents on the north end of Black Lake asked that he publically acknowledge that the last harvester cut was the best they had witnessed. Harper was asked if the same crew would be back next year, in which he confirmed all but two are expected to return.

B. Chair update on August 21st Public Safety Committee Meeting

Baasen asked Johnson for background on this agenda item.

Johnson stated that the Public Safety Committee met on August 21st to discuss: 1) a request for a Quiet Waters Area (QWA) petition, 2) the possibility of a bow fishing ordinance for Lake Minnetonka, and 3) 2012-2013 winter needs (i.e., signage). He asked Nybeck to further review the three areas discussed.

Nybeck provided the following comments:

- He directed the Board to an email from Kathy Bryan, dated 4/30/12, petitioning for a QWA on West Arm Bay, as well as the LMCD's QWA policy. He reviewed the process for establishing a QWA and discussions originally held on this matter at the June 6th committee meeting. Consistent with the policy, staff observed the area on June 17th, July 7th, and August 5th. Based on his findings, he recommended, and the committee concurred, that a QWA not be established for this area.
- Consideration of a bow fishing ordinance for Lake Minnetonka was originally discussed at the June 6th committee meeting. The following was offered:

- He confirmed that: 1) bow fishing is allowed by State law (subject to local firearms and archery ordinances) and 2) an ordinance for Lake Minnetonka would improve public inquiries as to where one can bow fish.
- Whatever ordinance may be considered would be more restrictive than State law.
- Staff has received municipal feedback on the ordinance concept (per the committee's direction). He directed the Board to an email within their packet to the member cities, dated 7/20/12, as well as the attached formal communication to the cities. He provided a detailed overview of that documentation (specifically the cities responses to the posed questions).
- Brian Petschl of Minnesota Outdoor Heritage Alliance participated in the committee discussion on June 6th. Petschl presented an educational perspective on bow fishing and provided valuable feedback on both the committee and member cities comments and concerns. One example provided for a better understanding of why the State did not require a specific footage allowance for the tethered line. Johnson expounded on this; providing for the committee to remove the recommendation to provide a restriction to the length of the tethered line.
- A review of committee recommendations that should be included in an ordinance that would be more restrictive than State law. These included: 1) a 300 foot setback from swimming beaches or a swimmer, 2) nighttime restrictions (two hours after sunset, one hour before sunrise, and 300 feet from all structures during nighttime – with further clarification needed for defining structures).
- 2012-2013 winter needs were discussed (specifically improved speed limit signage for Black, Emerald, and Seton Lakes). He recommended staff work with Johnson on designs and quotes prior to coming back to the Board for consideration of.
- He reviewed the following two recommendations for Board consideration: 1) that a motion or consensus of the Board be provided stating no further consideration will be taken on Ms. Bryan's request for a QWA on West Arm Bay and 2) a decision as to whether the Board should direct LeFevere to prepare a draft bow fishing ordinance for Lake Minnetonka.
- He entertained questions and comments from the Board.

The Board had a lengthy discussion on the above three items, in which the following comments were made:

- The member cities' (Minnetonka as an example) jurisdiction may extend into the water (based on their corporation documents), in which the most restrictive rule would apply.
- The Hennepin County Sheriff's Water Patrol (Water Patrol) can issue permits for private swimming beaches (in considering the 300 foot setback for bow fishing as noted above).
- A review of the lights utilized when bow fishing at night.
- A review of state regulations pertaining to the removal of rough fish when bow fishing.
- Johnson believed that a draft ordinance for bow fishing on Lake Minnetonka could be prepared (taking into consideration the member cities' comments and concerns).
- If the Board does not want to prohibit bow fishing on Lake Minnetonka, there is a need for an ordinance on Lake Minnetonka to establish consistent communication amongst the LMCD, Water Patrol, and the 14 member cities. It was acknowledged that a number of fishermen that bow fish do not fish on Lake Minnetonka as the boundary regulations are so inconsistent.

- A review of bow fishing practices was provided to address what safety concerns might be present, including a review of the committee's recommendation to maintain the various 300' regulations noted above. Additionally, it was noted that there is a future trend to utilize LED lights to eliminate the need to run a generator for night time fishing.
- Confirmation that the committee is recommending the draft bow fishing ordinance to address open water fishing only (providing for the State regulations to prevail during the winter months).
- Expressed interest by a number of the 14 member cities supporting one bow fishing ordinance for Lake Minnetonka (acknowledging that some cities would have to approve ordinance amendments to allow for such).

Page stated that the City of Greenwood was in favor of one bow fishing ordinance for Lake Minnetonka. He believed that the LMCD's jurisdiction prevailed over the cities when below the 929.4' ordinary high water mark and he asked LeFevere to expound on this.

LeFevere stated the LMCD Code currently does not speak to the issue of bow fishing. Therefore, he reiterated Nybeck's comment that any regulation one imposes would be more restricted than State law (which may be warranted to meet the committee's intended goal to provide more consistent and understandable regulations). In most cases, the LMCD cannot supersede the cities' regulations. However, the cities' jurisdiction on the Lake is somewhat of a mystery because it is defined in their original corporation documents. He stated that the only way to make the regulations consistent is to match the most restrictive regulation, which may provide for a prohibition on bow fishing due to at least two of the member cities or, at the minimum, adding another layer of regulations by addressing the goal of improving the communication with one ordinance. He acknowledged that some of the member cities may amend their ordinances to accommodate one bow fishing ordinance for Lake Minnetonka.

Baasen asked if the LMCD's jurisdiction would prevail if the draft bow fishing ordinance was adopted by the respective member cities. Additionally, he asked if the bow fishing ordinance could provide for approved zoned areas to accommodate the municipalities that prohibit, or would like to prohibit, bow fishing.

LeFevere stated that the LMCD's jurisdiction would prevail for surface water areas within the member cities that adopt the ordinance. Additionally, he stated that the Board has the ability to outline fishing and non-fishing zoning areas within the ordinance itself.

MOTION: Page moved, Hunt seconded to direct LeFevere to prepare a draft bow fishing ordinance for Lake Minnetonka.

VOTE: Motion carried unanimously.

Hughes recommended that Petschl be invited to address the Board at a future meeting. This would allow for the Board to be educated on bow fishing prior to sending a draft ordinance to the member cities for their review and comments.

Nybeck recommended that other committee members who have actively participated in the bow fishing

discussion be invited to the Board meeting when Petschl attends.

McDermott asked if Bryan had the ability to appeal the Board's decision should it decide not to further consider her QWA request.

Nybeck stated he would check into her appeal rights; however, one can always re-submit a petition in the future.

MOTION: McDermott moved, Page seconded to deny Kathy Bryan's 2012 request for a QWA on West Arm Bay.

VOTE: Motion carried unanimously.

C. Chair update on "Save the Lake" Education and Stewardship Program

Baasen asked Olson for an update on the purchase of the Remotely Operated Vehicle (ROV), prior to giving the above noted update.

Olson stated that sufficient funds have been privately raised to assist the Hennepin County Sheriff's Office in the purchase of the ROV (up and above the 2012 "Save the Lake" Funds already approved). In regards to the agenda update, the following comments were offered:

- The "Save the Lake" committee has been primarily focused on fundraising efforts over the past couple years.
- At a recent committee meeting, an idea to change the direction the committee is heading was discussed (providing for the committee to re-evaluate the goals and objectives outlined in the approved LMCD Strategic Plan). He reviewed the goals and objectives of the Plan; specifically Objectives #6 and #7, "Ensure that Lake Minnetonka is safe" and "Improve public awareness of the LMCD," respectively. He believed that the re-design of the LMCD and Save the Lake logo, as well as the website, provided avenues to improve public awareness of the LMCD. That public awareness provided for expressed interest (i.e., lake users, the member cities, marina owners, Power Squadron representatives, and the Water Patrol) in soliciting the committee's help in establishing a comprehensive public safety education program. With that said, he solicited the Board's interest in initiating such a program.
- Based on the feedback provided above, the committee would like to: 1) create a clear, compelling, and relevant marketing platform (brand), 2) freshen the LMCD and Save the Lake identity to enhance perception, 3) create awareness, interest, and support for the organization, and 4) create a platform for growth and vitality (creating interest, engagement, and support from the community).
- He reviewed the 2010 committee goal to change the way the LMCD and Save the Lake are currently perceived (regulatory to more of a proactive, forward thinking public agency).
- Education was the first of four priority goals that had not yet been addressed. He further stated that boat safety was the preferred educational curriculum the committee would like to develop (reviewing the most documented boating safety concerns, basic boat operation, typically not offered in many of the boating safety courses).

- The committee recommended a program that would involve working with the Power Squadron (who offers basic boat operation), Water Patrol, and the Minnehaha Creek Watershed District (MCWD); all of which would create the educational curriculum and provide the volunteer educators. Graduates would be Lake Minnetonka watercraft operator certified; distinguishing Lake Minnetonka by focusing more detail on training for a safer place.
- He entertained questions and comments from the Board.

The Board discussed Olson's request. The following outlines the Board's questions and comments:

- General support of the idea (acknowledging that it made sense).
- The LMCD would be the sponsor of the program (with "Save the Lake" providing for its establishment and cost).
- This would be an elective course as one believed that the State would not provide for a mandatory license for such.
- A recommendation to engage the marina operators, such as offering a gas discount for those that take the course, as well as premium discounts with insurance agencies.
- Consensus that safer boating is needed on Lake Minnetonka. However, there was expressed interest in the LMCD and "Save the Lake" being more of a sponsorship in the program by offering grants for such vs. directly being the educator.
- There was a recommendation to offer such a course on line.
- Johnson, who has been a member of the Power Squadron for 20 years, stated that they hold their watercraft safety classes in the spring. Current class locations included churches, high schools, Excelsior Boat Club, and watercraft dealerships. He recommended educational material be produced to outline the various opportunities.
- A recommendation to get the watercraft manufactures involved, such as demoing a boat while being a teacher at the same time (similar to Tonka Bay Marina's training program when their dealership was in operation).
- The need to re-initiate the informal, annual meeting with the marina owners to discuss various matters.

Baasen expressed appreciation to the committee for their upfront communication on this matter. He solicited the Board's input as to whether the committee should pursue this matter and reach out to other organizations, who could also be a financial supporter of this project.

Hughes and Hunt encouraged the committee to talk with the Lake Minnetonka Cable Commission (LMCC) and other independent producers. Additionally, there is a need to produce materials for on-line use.

Baasen believed the last committee meeting provided for much enthusiasm (passion and support).

Meyer was in favor of education; suggesting the adult education programs within the school district would be a good source (no boating safety within the recent catalog of classes offered).

The consensus of the Board was to move forward with this project.

10. Update from standing LMCD Committees:

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

Page stated the AIS Subcommittee has been routinely meeting, in which the next meeting is scheduled for September 5th. He believed that the meetings were very fruitful and a Comprehensive Vegetation Management Plan (CVMP) is coming together.

McDermott requested an update on what herbicide treatments were provided this year (noting that Pheasant Lawn, Lydiard Beach, and the north side of Carmans Bay were relatively weedy). Additionally, he asked if any harvesting was completed anywhere near Carmans Bay.

Nybeck stated that he believed: 1) a full bay treatment was completed on Grays Bay, 2) a large portion was re-treated on Gideons and Phelps Bays, 3) Carmans Bay was spot treated, and 4) St. Albans Bay did not get treated. The Army Corps of Engineers (Army Corps) was currently in town to complete field work for the 2012 treatments, in which the results, at some point, will be provided to the Board. No harvesting was done on Carmans Bay in 2012.

Page stated that a small portion of Phelps Bay has not been included in the herbicide treatments, which resulted in some harvesting being completed in this area of the bay. He believed it was important to watch the growth progress of a bay when only a portion of it is being treated. He stated that he misspoke at an AIS Subcommittee meeting by stating that St. Albans Bay was milfoil free as a representative from the MN DNR quickly informed him that was incorrect.

Olson asked when the Army Corps Report would be available.

Nybeck stated that timing of the Report is difficult to predict since the work is being done by the Army Corps on a pro-bono basis. However, he hoped that some form of a Report would be available sometime between October and the first of the year. Additionally, the draft CVMP will be presented to the full AIS Task Force prior to presenting it to the LMCD Board.

Sylvester requested confirmation on any surplus "Save the Lake " funds being available, in which Nybeck confirmed no further funds were expended for herbicide treatments by the Lake Minnetonka Association since previously discussed by the Board.

Baasen asked Olson if the dam is closed as he believed it was important for the Lake community to know that, in which Olson confirmed it was closed.

11. EXECUTIVE DIRECTOR REPORT

Nybeck asked the Board whether they would like to extend the presence of Volt watercraft inspectors two weekends beyond Labor Day weekend (the contracted end date). He provided an overview of the days covered to date, that the extended coverage would be for 192 hours at a cost of \$3,024, and that there were

funds available in the budget for such expense. He recommended the Board consider this option.

McDermott asked if the MN DNR would be continuing their coverage at the primary accesses, in which Nybeck confirmed they would be present but inspection hours would most likely be reduced.

MOTION: Johnson moved, Page seconded to extend Volt watercraft inspector coverage an additional two weekends through September 16th.

VOTE: Motion carried unanimously.

McDermott asked Olson if he could provide an update on whether there would be a weevil project in 2013.

Olson confirmed that a test site on Christmas Lake in 2012 indicated that milfoil in this area was largely controlled. He stated the MCWD needs more time to analyze the situation, in which they will report their findings in October. He further explained that the test site in Duluth was successful (55,000 weevils). He believed that there will be a test site on Lake Minnetonka in 2013. 2012 provided for the plants being too high prior to the proposed placement of the weevils in Lake Minnetonka.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:28 p.m.

Dan Baasen, Vice Chair

Andrew McDermott, Secretary