

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, May 22, 2013
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; Gary Hughes, Spring Park; Jay Green, Mound; Ann Hoelscher, Victoria; Anne Hunt, Minnetrista; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; Rob Roy, Greenwood; 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: David Gross, Deephaven

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock stated that Nybeck had a couple of announcements.

Nybeck provided the following two announcements:

- The City of Wayzata will be upgrading audio and visual equipment from July 17th to August 1st (as outlined in a 5/14/13 email). The LMCD has two Board meetings scheduled in July (10th and 24th), in which he solicited the Board's interest in cancelling the July 24th meeting (with the option to schedule a Workshop/Planning Session at the LMCD's office).

Babcock proposed an alternate plan; recommending the Board coordinate a Lake tour that evening (no objections were offered).

- The LMCD's current five-year office lease expires at the end of August; with an additional five-year renewal option. He received a recommendation to research the current lease rate as compared to market values offered. Therefore, he recently spoke with local commercial realtor Bill Wolfson regarding the LMCD's current lease in comparison to current office space market rates around Lake Minnetonka. Mr. Wolfson has offered to provide the Board with an overview of the above findings at their June 12th meeting. He recommended that the Board schedule a Workshop/Planning Session at 5:30 p.m. on June 12th, just prior to the Regular Board meeting for this purpose. The Board concurred with Nybeck and directed him to schedule such session.

5. APPROVAL OF MINUTES – 5/8/13 LMCD Regular Board Meeting

MOTION: McDermott moved, Hughes seconded to approve the minutes from the 5/8/13 Regular Board Meeting as submitted.

VOTE: Ayes (12), Abstained (1, Sylvester); motion carried.

6. APPROVAL OF CONSENT AGENDA

Baasen moved, Green seconded to approve the consent agenda as submitted. Items so approved include: **6A**, Audit of vouchers (5/16/13 – 5/31/13) and **6B**, April 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

- **Dan and Anne Baasen**, dock length variance application at 912 East Shady Lane in Wayzata Bay (*Board member Baasen stepped down during this agenda item and participated from the audience*)

Babcock asked Harper for an overview of this agenda item.

Harper reviewed his staff memo, dated 5/17/13, which summarized a request from the applicants to lengthen their dock use area (DUA) based on documenting shallow water as their hardship. The site has approximately 65' of continuous 929.4' shoreline and is located on the north side of Wayzata Bay. He directed the Board to two proposed site plans showing potential dock configurations (100 and 120 foot dock extensions, respectively), in which he provided an overview of. Staff believed that the Board could consider the granting of a dock length variance that defines a new extended DUA for the site (with conditions deemed appropriate). He provided an overview of relevant LMCD Code Sections, which included: 1) Code Section 2.01, subd. 1 – defining of authorized DUA; 2) Code Section 1.07 – outlines the variance process; and 3) Code Section 2.02 – outlines the number of restricted watercraft that can be stored at a residential site. The applicants have justified a hardship to support a dock length variance. However, he provided an overview of three specific questions for the Board. These included: 1) is the Board comfortable with granting a variance for an extended DUA, with flexibility on the configuration, or would the Board prefer to approve the variance site plan specific, 2) is the Board comfortable with the request for normal boat density allowances for the dock length variance, and 3) are there other restrictions appropriate for this site. He entertained questions and comments from the Board.

Babcock invited the applicant to address the Board.

Mr. Dan Baasen, 912 East Shady Lane, stated that the configuration of the shoreline offers very shallow water levels directly west of their property (approximately 3.5 feet and very flat); with their property gaining about three-quarters of a foot in water depth when extending the dock out beyond 60 feet. He

confirmed that the water levels deepen as you move towards the east. He stated his home on this site has been in the family for 45 years, in which they had always installed the dock out to 100 feet (acknowledging he did not realize they were out of compliance with LMCD Code until he served on this Board, thinking it was grandfathered in). He stated that he received a permitted dock extension in 2012 during the declaration of "Low Water." He confirmed his dock is not installed at this time and that he believed a hardship existed. As a representative of this Board, he expressed an interest in setting an example for the community in which he lives.

Babcock opened the public hearing at 7:15 p.m. There being no comments from the public, he closed the hearing at 7:16 p.m. He confirmed that the site had straight, extending property lines (providing for both proposed site plans meeting side setback requirements). He recommended a motion to approve the variance request once the Board considered which proposal to approve (100 or 120 foot dock extension). In consideration of this, he responded to the following questions:

- No other neighboring dock extension variances have been approved; providing for the inability to legally extend their dock beyond what is offered by LMCD Code (including shared docks).
- Either proposal being considered would be consistent with other approved lake-wide variances (falling within the recently adopted ordinance amendment that provides for the extension of docks to five feet of water depth measured from the 929.4' ordinary high water mark).
- The difference between the two proposals is that the 120 foot dock extension requires greater side setbacks (20 feet).
- Approving this variance does not guarantee granting future neighboring variance requests; as they are considered individually based on their documented hardship.

MOTION: McDermott moved, Hunt seconded to direct LeFevere to prepare Findings of Fact and Order approving a DUA length variance of 120 feet for this site.

VOTE: Motion carried unanimously.

9. OTHER BUSINESS

A. City of Minnetonka Beach (Dock Site #10), request to amend a condition of an approved Variance Order, dated 3/25/09.

Babcock invited a representative from Minnetonka Beach to address the Board.

Ms. Susanne Griffin, City Administrator for Minnetonka Beach, directed the Board to a letter within their packet (dated 5/15/13), which outlined the city's request to amend their multiple dock license and 3/25/09 variance (specifically Condition #5 of the Order). The request is based on the following:

- The license and variance document the city's need to annually arrange for marking (by a qualified professional) and buoy placement of a gas pipeline that is located within a dock use area located at 730 Big Island. This pipeline documents one of the four hardships outlined within the approved variance.
- The professional marking of the gas line costs the city over \$265 annually; providing for the annual delay in the installation of the dock (which utilizes a mud plate).
- The city is in receipt of an email, dated 5/15/13, from the site owner documenting the gas line

remains in existence; however, not in use (providing for the continued ability to document that hardship).

- The city's acknowledgement that they will send a letter to the above noted property owner requiring that they notify the city in the event that the line is put back in use.
- She documented the professional marker installs buoys based on observation (to the length the gas line is visible). She reiterated the gas line was not in use but was unsure if the line was turned off at the meter (confirming a meter does exist on shore).

Klohs stated that he believed the gas line is shut off at the meter and there is not an explosion hazard of any kind. Additionally, its existence more greatly affects the abutting property owner to the south and he recommended the condition be removed from the Order all together.

LeFevere stated that the presence of the gas line was just one of other hardships documented within the variance. If the pipeline was not a safety concern, that hardship could be removed (providing for the variance to withstand based on the other hardships offered).

Babcock would like the pipeline to remain as a documented hardship based on its existence; acknowledging the gas could be turned back on at a later date.

Green questioned if there was an inspection process offered to confirm the integrity of the line (for possible future use).

MOTION: Baasen moved, McDermott seconded to direct LeFevere to prepare Findings of Fact and Order amending Minnetonka Beach (Dock Site #10) dock length variance (specifically Condition #5); taking into consideration the above comments.

VOTE: Motion carried unanimously.

B. Staff update on current Lake Minnetonka water levels.

Babcock asked Nybeck for an update on this agenda item.

Nybeck directed the Board to his staff memo, dated 5/22/13, which outlines the gradual rise in water level readings from April 30th to May 22nd (928.70 to 929.24, respectively). He stated this agenda item was scheduled for informational purposes only and that he will update the Board one more time at their June 12th meeting. He entertained questions and comments from the Board, in which he confirmed the following: 1) that the Minnehaha Creek Watershed District (MCWD) documents lake levels manually and 2) the dam's outflow rate is dictated by an approved management policy (including operating procedures), which is offered on their website.

C. 2013 EWM Harvesting Program, staff update on project

Babcock asked Harper for an update on this agenda item.

Harper stated there are two pending items for the Board to consider (the hiring of a site supervisor and the approval of the fleet mechanic). He offered the following information relative to those two matters:

Hiring of EWM Site Supervisor

He stated six applicants were interviewed for this position and he recommended the Board hire Joel Pantos at the rate of \$16 per hour. Mr. Pantos offered supervisory experience and logistical knowledge of Lake Minnetonka.

MOTION: Roy moved, McDermott seconded to approve the hiring of Joel Pantos for the seasonal 2013 EWM Harvesting Program Site Supervisor position at the rate of \$16 per hour.

VOTE: Motion carried unanimously.

EWM Fleet Mechanic

He stated that during the 2012 season, the former site supervisor provided for much of the mechanic work (utilizing another company for specialty needs). The LMCD will be going back to contracting for this service (as previously provided prior to 2012). He recommended the Board approve an Agreement with Curfman Trucking and Repair, Inc., (as provided within their handout folder) for the 2013 season.

MOTION: McDermott moved, Hughes seconded to approve the 2013 EWM Harvesting Program Fleet Mechanic Independent Contractor Agreement with Curfman Trucking and Repair, Inc.

VOTE: Motion carried unanimously.

McDermott asked if a start date to the program had been established.

Harper stated the program is tentatively scheduled for the week of June 10th. However, an assessment of the EWM growth (currently being schedule) will determine such date. He confirmed that the South Upper Lake option is planned for 2013.

Nybeck stated that he recently had an opportunity to tour a portion of the Lower Lake (Veterans Cove, Big Island, Gideon Bay), in which he confirmed no growth at that time. He believed that the cool weather and late ice out were contributing factors (Babcock and Morris concurring). Findings such as this could delay the start date of this program (and possibly the planned herbicide treatments) in 2013.

D. Minnehaha Creek Watershed District (MCWD), discussion of draft AIS Management Plan

Babcock asked Nybeck for an overview on this agenda item.

Nybeck provided the following overview:

- The MCWD has prepared a draft watershed-wide aquatic invasive species (AIS) Management Plan (Plan); providing for Babcock, Morris, and Green (representing Anglers for Habitat at that time) serving on the AIS Plan Task Force.

- The draft Plan has been submitted to the LMCD and other local governmental units in an effort to amend their 2007 Comprehensive Water Resources Plan (as required) with the Minnesota Board of Water and Soil Resources for AIS management and prevention (with comments due by 6/3/13).
- The Board briefly discussed this matter on May 8th, in which it was tabled to this meeting for the purpose of: 1) allowing the LMCD's AIS Task Force to discuss and comment on the draft Plan at their May 10th meeting and 2) provide time for staff (and some Board members that expressed interest) in highlighting specific areas and offer direction in the review of the draft Plan.
- The consensus of the AIS Task Force documented that the draft Plan was well prepared and should be supported by the LMCD Board of Directors. A recommendation was made that a draft Resolution to such (prepared by Nybeck in consultation with Morris and Green) be presented to the Board for consideration (within).
- He provided a detailed overview of seven areas of the draft Plan, as outlined within his staff memo, as well as offered four discussion points for the Board's consideration (with respective suggestions).
- He entertained questions and comments from the Board.

Babcock thanked Morris and Green for reviewing the draft Plan with the AIS Task Force, as well as drafting the resolution for consideration. He provided the following overview of his comments:

- In general, the draft Plan was good (offering some inconsistencies in one area of the Plan to another).
- The MCWD's primary concern is environmental. He believed there was a bit of disconnect in the hopes of restoring a body of water to its natural state. In serving on their Task Force, he urged the MCWD to not only consider environmental/ecological effects but also recreational (all of which need to be considered in the management of the Lake).
- He believed that some programs offered duplicated what is already out there (mainly MN DNR's programs based on preventative measures).
- He recognized their goals to incorporate management techniques; acknowledging he would like to see that as an initial focus.
- The draft Plan does not mention what efforts have been undertaken around the country, or, more importantly, within the watershed district (i.e., the LMCD's five-year herbicide treatment demonstration project completed with multiple partnering agencies, including the MCWD).
- He did not agree with the use of the word "quarantine," unless the MN DNR adopted such state wide.
- With this said he suggested staff forward his comments to the MCWD (either formerly or informally) and solicited other Board comments.

Green stated that he had communicated to the AIS Task Force that the MCWD does not always follow the same path as planned by the State of Minnesota (State), in which Babcock concurred (outlining past legislative efforts).

McDermott acknowledged some proposed programs are a bit of a stretch (i.e., portions of the watercraft inspection program) and that he would have liked to see them build on past experiences from other agencies. However, the draft Plan was refreshing (a departure from typical thinking).

Babcock listed a number of public agencies' AIS prevention and management reports that were not mentioned within the draft Plan.

Green stated that he spoke with Minnesota Sea Grant AIS Coordinator Doug Jensen at a State AIS Advisory Committee meeting, in which he documented a great deal of research that had been published over the past 15 years (i.e., the number of infested bodies of water in Minnesota is relatively small in comparison to the potential number of water bodies). He believed that the Minnesota Sea Grant's program is working and recommended all acknowledge their process and information offered.

Morris applauded the comprehensiveness offered in the draft Plan (very broad). He expressed concern about what they did not say (i.e., the critical overview and documentation as to whether their programs are or were effective). Additionally, the draft Plan acknowledges working with marinas or homeowner associations (but does not offer specifics). He believed the LMCD should not wait for them to come to us but that the LMCD should be proactive in communicating with the MCWD directly.

Baasen concurred that he was more concerned with what they do not say vs. what they do.

Babcock believed the MN DNR should be the program clearing house, in which the MCWD would adhere to their direction.

The Board finalized this discussion by making the following comments:

- The idea of a draft resolution remains appropriate but is in need of amending its language to incorporate comments provided herein.
- The belief that the MCWD does not have the authority to "quarantine."
- The draft Plan was very informative.
- The draft Plan was more of a policy document and not operational (acknowledging the MCWD has a different focus than the LMCD).

MOTION: Babcock moved, Baasen seconded to approve the draft resolution providing support for the draft MCWD AIS Management Plan as amended, subject to the Chair working with Morris and Green in its re-drafting to incorporate comments made above.

VOTE: Motion carried unanimously.

E. 2013 Proactive Code Enforcement Program, staff update on the hiring of a seasonal employee

Babcock asked Nybeck for background on this agenda item.

Nybeck recommend that the Board approve the hiring of Miles Wilson as the seasonal employee for this program (at the rate of \$12 per hour). He believed Wilson was a good fit for the position based on just

finishing his college years, lifelong resident, and long-time employee of a local marina (offering the knowledge of watercraft operation and the logistics of Lake Minnetonka). This position is consistent with past years and confirmed that a \$2,000 line-item was included in the adopted 2013 LMCD Budget.

MOTION: McDermott moved, Baasen seconded to approve the hiring of Miles Wilson for the seasonal 2013 Proactive Code Enforcement position at the rate of \$12 per hour.

VOTE: Motion carried unanimously.

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).

Morris and Green reported that the AIS Task Force met May 10th, in which they established a more defined agenda (monthly meetings with specific goals and direction). Additionally, they discussed other represented agency programs in consideration of consolidating those efforts.

Baasen stated the Save the Lake Committee has not met since his report to the Board on May 8th. However, they are scheduled for June 3rd at 8:00 a.m. in the LMCD office. Current efforts include: 1) the drafting of the spring solicitation letter (offering alternative programs for the contributors' consideration), 2) the approval to expend \$3,000 of budgeted funds for the improvement, replacement, and expansion of the LMCD's Solar Light Program (approved by the Board at their May 8th meeting), and 3) Phase 1 implementation of the Watercraft Safety Education Program (working with outside source contacts; providing for an update at their June 3rd meeting).

Hughes stated a Public Safety Committee meeting will be scheduled in the near future, in which they will review winter safety activities based on recommendations from the Sheriff's Water Patrol. Nybeck briefly expounded on this.

Babcock stated the Ordinance Review Committee will be meeting on June 19th to discuss other code amendments and updates to public amenities for special density licenses.

There was no report from the Finance and Personnel Committees.

11. EXECUTIVE DIRECTOR REPORT

Nybeck highlighted the following information as outlined in his Executive Director Report:

- He had attended five city council meetings to present the draft 2014 LMCD Budget (Options 1 and 2). Two additional city council meetings were planned, as well.
- He directed the Board to the LMCD spring/summer newsletter and summer rules pamphlet (within their handout folders) that have recently been printed and distributed (pamphlets in public access drop boxes prior to the Memorial Day weekend).
- The Harvesting and Code Enforcement Programs are finalizing the preparations; reiterating the

possibility of a late start date.

- The Watercraft Inspection program starts this Friday, May 24th.
- Solar lights are pending installation prior to the holiday weekend.

The Board and staff briefly discussed the draft 2014 budget review process, in which the following was offered: 1) a public meeting is scheduled for June 6th at 11:00 a.m. in the LMCD office to provide an overview and obtain public comments and questions relative to the draft budget, 2) a conditional approval of such is scheduled for the Board's June 12th meeting, 3) that Nybeck had received feedback in support of both Options 1 and 2 of the draft budget (not a consistent direction or action to that affect), and 4) that the City of Wayzata believed Nybeck's presentation was very constructive; discussing more specific matters (i.e., salaries, vs. the two options offered).

Babcock stated that he will not be in attendance at both June meetings (providing for Baasen and McDermott to chair the 12th and 26th, respectively).

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:23 p.m.

Doug Babcock, Chair

Andrew McDermott, Secretary