

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, October 23, 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; Andrew McDermott, Orono; Gary Hughes, Spring Park; Jay Green, Mound; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; Rob Roy, Greenwood; and Sue Shuff, Minnetonka. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Dan Baasen, Wayzata; Anne Hunt, Minnetrista; Ann Hoelscher, Victoria; and Mark Sylvester, Shorewood. The City of Deephaven did not have representation at this meeting.

3. APPROVAL OF AGENDA

Babcock stated that an amended Audit of vouchers was included in the handout folders for consideration under the consent agenda.

MOTION: McDermott moved, Green seconded to approve the agenda as amended.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock stated that the City of Deephaven has rescinded their appointment of David Gross to the LMCD Board and has appointed Kent Carlson to serve in his seasonal absence (providing for his appointment on November 13th).

Nybeck recommended that the LMCD hold an open house for the new office on Wednesday, December 4th. The Board concurred with Nybeck's recommendation and established the time of the open house from 4:00 p.m. to 7:00 p.m. (logistics to follow).

5. APPROVAL OF MINUTES – 10/9/13 LMCD Regular Board Meeting

Babcock proposed rewording the second bullet point on page five to read "Babcock expressed concern in the use of point buoys for something other than water depth hazards."

MOTION: Babcock moved, McDermott seconded to approve the minutes from the 10/9/13 Regular Board Meeting as amended, making the change noted above.

VOTE: Motion carried unanimously.

Roy arrived at 7:04 p.m.

6. APPROVAL OF CONSENT AGENDA

Nybeck stated that there was one additional accounts payable in the amended Audit of vouchers (10/16/13 – 10/31/13), incorporating check #19799 to Frontier Communications in the amount of \$264.02.

McDermott moved, Hughes seconded to approve the consent agenda as amended, accepting the change noted by Nybeck above. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers, (10/16/13 – 10/31/13); **6B**, September financial summary and balance sheet; and **6C, Personnel Committee**, approval of 2014 LMCD Employees Benefit Package.

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

There were no public comments.

8. PUBLIC HEARING

- **North Shore Marina (Smiths Bay)**, variance application to amend conditions for a previously granted adjusted authorized de-icing area variance on Smiths Bay.

Babcock asked Harper for background on this agenda item.

Harper directed the Board to his staff memo, dated 10/15/13, which summarized a request from Mr. David Kirkland of North Shore Marina (Smiths Bay) to amend a previously approved variance to adjust the authorized deicing area (ADA). His comments were as follows:

- The current ADA variance was approved in 2009.
- A temporary amendment (the omission of an ice curtain on the lake ward side of the dock structure) was granted on a trial basis by the Board for the 2012-2013 de-icing season.
- The applicant has proposed to amend the current variance by changing the conditions of the currently approved Findings of Fact and Order as follows:
 - Amend condition “b” by not requiring an ice curtain on the east or lake ward side of the site;
 - Delete condition “e” requiring daily inspection logs;
 - Amend condition “c” requiring flashing traffic lights on all corners around the ADA (removing three lights but maintaining one light every 50 feet on the south side of the ADA toward the public winter access) as outlined on the proposed site plan.
- The applicant purchased the property in 2011 and has maintained the de-icing site well (including compliance with the current ADA variance conditions).
- He recommended that the Board direct LeFevere to prepare Findings of Fact and Order amending the variance as proposed above (maintaining all other previous conditions), as well as adding a condition that the Executive Director may attach such guarantees and conditions to the license as are necessary to ensure compliance with LMCD Code. In the event the licensee does not consent in writing to any conditions imposed by the Executive Director, the applicant will be referred to the Board.

- He entertained questions and comments from the Board, in which he confirmed the removal of the ice curtain during the 2012-2013 de-icing season did not provide for an extension of open water; referencing condition “d” (no open water beyond 10 feet from the dock structure) within the currently approved ADA Variance Order.

Babcock invited the applicant to address the Board, in which he declined.

Babcock opened the public hearing at 7:12 p.m. There being no comments, he closed the public hearing at 7:13 p.m. He expressed an interest in the LMCD receiving weekly inspection logs from the applicant (electronically or written). He confirmed other sites currently do not have this requirement; however, he expressed an interest in eventually requiring all permit holders to increase their ownership of compliance vs. staff's notification of concerns obtained at the time of inspection (recommending the future consideration of an ordinance amendment to this affect).

Some of the Board members expressed concern for setting this requirement, at this time, on an individual permit holder (especially one whose site is highly visible and regularly complies with the LMCD Code requirements).

Babcock believed his intentions to relax (not remove the condition) were warranted based on the following public safety factors: 1) the permit holder maintaining a variance (with prior listed “unique” conditions) that allows them to de-ice beyond the ADA established per LMCD Code, 2) the site is adjacent to a highly used winter public access, and 3) the prior owner (prior to the installation of the de-icing curtain) had problems complying with the LMCD Code provisions.

Nybeck stated that the condition to allow the Executive Director to attach such guarantees and conditions to the license as are necessary to ensure compliance with the LMCD Code was his recommendation. This language is already provided in the LMCD Code for all de-icing installations and he believed it should be reflected in an amended ADA Variance Order. He solicited the Board's consideration in allowing him to review this matter on a case-by-case basis, as well as re-evaluating the need for a possible ordinance amendment during the 2013-2014 de-icing season.

Morris stated that he was comfortable with reducing the inspection logs down to once a week for this year; providing for the ability to remove that condition if no concerns arise.

LeFevere recommended that if the Board amends the variance to allow for such a condition to be removed after one year, it could be done at the discretion of the Executive Director to avoid further Board action.

Babcock recommended that the condition expire in June of 2014.

MOTION: Morris moved, Babcock seconded to direct LeFevere to prepare Findings of Fact and Order amending North Shore Marina (Smiths Bay) variance as proposed; subject to: 1) condition “e” being reduced to weekly inspection logs until June of 2014 and 2) the Executive Director's ability to attach such guarantees and conditions to the license as are necessary to ensure compliance with LMCD Code. In the event the licensee does not consent in writing to any conditions

imposed by the Executive Director; the applicant will be referred to the Board.

McDermott solicited the applicant's feedback relative to the amended conditions.

Mr. David Kirkland, owner of North Shore Marina (Smiths Bay), stated that he did not have a concern about reducing the inspection logs down to a weekly submittal (acknowledging he is present on a daily basis). However, he believed conditions such as this should be lake wide.

Babcock stated that the condition being considered was partially based on the presence of an approved ADA variance (which few permit holders need). He reiterated the condition was not placed as a personal matter against the site (or their owner) but for public safety purposes.

Nybeck stated that the need for an ADA variance was based on the site's inability to de-ice within the extended side site lines (based on the current dock structures being approved for zero foot side setbacks). This matter was compounded by the mismanagement of the site's prior owners.

VOTE: Ayes (8), Nays (1, McDermott); motion carried.

9. OTHER BUSINESS

A. AIS Task Force, update on the concept of consolidating with other west metro AIS Advisory Committees

Babcock asked Morris for background on this agenda item.

Morris stated that many of the representatives that serve on the LMCD's Aquatic Invasive Species (AIS) Task Force (Minnesota Department of Natural Resources [MN DNR], Three Rivers Park District [TRPD], Minnehaha Creek Watershed District [MCWD], commercial marina owners, and other local government units [LGU]/stakeholders) also serve on other regional AIS advisory committees. Therefore, the AIS Task Force has been considering the possibility of consolidating their efforts (recognizing a fair amount of overlap discussion) with other west metro AIS advisory committees. This multi-meeting discussion lend towards the Task Force's interest in obtaining the Board's feedback in this regard. Prior to this discussion, he asked John Barten of the TRPD (25 year member of the Task Force) to present on this matter.

Mr. John Barten, Director of Natural Resources for TRPD, thanked the Board for their long time support of the AIS Task Force. He made the following comments:

- The Task Force has done some really good work over the years, as well as serving as a discussion forum in considering many initiatives (acknowledging long-time member representation from the MN DNR, University of Minnesota [U of M], U.S. Corp. of Engineers, etc.).
- The scope of the proposed expansion (consolidation) would provide for being more than an advisory committee for the LMCD as the same discussions held at the LMCD's AIS Task Force level are being considered by all of the west metro AIS advisory committees (in which many of the LMCD's Task Force members serve on).
- Many of the current AIS matters are now being considered amongst all advisory committees vs.

past years whereby the LMCD Task Force addressed matters that were Lake Minnetonka specific. He believed that the consolidation of the advisory committees (proposed committee) would:

- Assist in the inconsistent messages that are currently being disseminated throughout the State of Minnesota (referencing an editorial article within *Outdoor News* from the Minnesota Coalition of Lake Associations that believes the current system to prevent the spread of AIS should be thrown out). He believed (as well as other key members of the Task Force) that there is always room for improvement; however, the current system is having a positive impact on the prevention and management of AIS (as documented by the Minnesota Sea Grant).
- Have a positive impact on the coordination of various AIS projects currently being addressed by multiple agencies (i.e., watercraft inspections) and the ability to address challenges as they arise (i.e., the management of Eurasian Watermilfoil). He believed that the variation of objectives amongst the different agencies could be resolved by the consolidated effort.
- The LMCD's AIS Task Force has served as a good information transfer mechanism relative to the overall management aspect. He believed expanding this role to other groups would be beneficial.
- The Task Force further considered what the scope of the proposed committee should consist of (i.e., policy making, management, technical aspect, membership, etc.). Therefore, he met with Nybeck and Lake Minnetonka Association Executive Director Dick Osgood to produce a draft proposal for the Task Force's consideration at their next meeting.
- The Task Force believed that the proposed committee would not only be an advisory committee to the LMCD but also LGU boards, as well (in which he named). Therefore, the Task Force thought it would be beneficial to obtain feedback and/or guidance relative to this concept from the LMCD Board of Directors, in which he entertained.

The Board discussed this matter at length with Barten. A summary of the discussion was as follows:

- Barten believed there would be an estimated 15 members serving on the consolidated advisory committee (consisting of current Task Force members and expanding to representatives from Carver County, the Minneapolis Park and Recreation Board, various lake associations, and possibly municipalities and other watershed districts).
- A list of the current LMCD AIS Task Force members was provided, as well as a brief history of the Task Force's objectives and respective expansion over the years (acknowledging the core membership of the Task Force has been present throughout).
- The expansion in membership would provide for a consistent, regional approach to the watercraft operators.
- The question remained as to whether the proposed committee would be the advisory committee to the LMCD and how matters would be addressed specific to Lake Minnetonka.

LeFevere stated that other watersheds (in which he represents) handle the specific issues relative to their district by utilizing a super advisory coalition to examine matters that are common amongst all watersheds. To the matter at hand, he suggested the LMCD be the liaison to the advisory committee with other members, with more resources, offering sponsorship opportunities.

Barten was familiar with one such district, West Metro Watershed Alliance (WMWA). He stated the WMWA is a coalition of multiple watersheds (in which he named) and acts as an educational liaison for all. As a suggestion in considering a similar model, the LMCD could adopt the proposed committee as their technical advisory committee to all members.

- Recognition that there are numerous issues to work through (i.e., what is the scope of the advisory committee, as well as acknowledgement of the value received in maintaining the current Task Force for matters specific to Lake Minnetonka).
- The recommendation that this matter be moved forward (providing for a good communication platform).
- A consolidated committee is only going to work if all organizations have the same goals; acknowledging that the measurement of success is different for each organization. One thought in building the path to a strong coalition would be for the LMCD Board to provide a small objective for the proposed committee to work together on.
- Whether the LMCD should maintain an advisory committee specific to Lake Minnetonka; with the ability to participate within the west metro committee. Concern was expressed that the goal of the consolidation is to not overlap members' participation on regional objectives but maintaining the current level of expertise as the current Task Force or create a more formal consolidated committee that can act on Lake Minnetonka's behalf (which was an important aspect to keep intact).
- Barten foresaw the proposed committee responding to the LMCD Board for recommendations (providing for the current advisory level). This would be addressed by having a separate agenda item specific to Lake Minnetonka matters (i.e., receipt of the Lake Minnetonka Harvesting Program updates) with other agenda items that address the region as a whole. He acknowledged that many of the components of the MN DNR were initiated by the current Task Force and approved by the LMCD Board (which has also been adopted by other LGU's).
- Concern was expressed that the members of a proposed committee would continue to provide their own programming, which would be ineffective to the scope of the proposed committee.

Barten foresaw the proposed committee reviewing and, if warranted, endorsing researched projects (as highlighted by Klohs) that provide recommendations for the management or prevention of AIS. The LMCD Board would then ultimately consider approval or provide direction on a matter specific to Lake Minnetonka. He further expounded by expressing an interest in the proposed committee being the official advisory committee for the member's respective organization (providing for the commitment of the proposed committee members to endorse a specific matter that would be equally presented to their respective Board (acknowledging that the respective Board would have the final decision). He believed this concept would go a long way in providing consistent communication throughout the region.

- Babcock recommended that the Board offer direction to the Task Force by stating the Board foresaw a need for the proposed committee (growing beyond just Lake Minnetonka), that they recognize the LMCD needs to continue to be involved on an organizational level, and that they would consider the idea of adopting the committee as their primary advisory committee (reserving

action until a formal presentation of such was offered).

Barten paraphrased Babcock's comment by stating that the Board (upon formal action) would endorse the proposed committee. This would be subject to matters specific to Lake Minnetonka being addressed by members specifically affected by that subject matter (i.e., the purchase of a new harvester), in which Babcock offered examples of that paraphrase.

- Morris stated that it is important that the LMCD remain active in the current and/or proposed committees (acknowledging the wealth of knowledge that he, as a life time Lake Minnetonka stakeholder, continues to obtain from the members' professional expertise at each meeting).
- Acknowledgement that the structure of the proposed committee (policy setting, etc.) has not been addressed at this point, in which Shuff stated those fundamental decisions are important in considering the Board's level of interest (establishing the overall goal).
- Morris perceived the proposed committee as an expansion of the Task Force that provides formal, consistent recommendations for presentation to their respective Boards.
- McDermott recommended that the Task Force move forward in researching this idea.
- Klohs believed there are significant resources being offered by key players (i.e., U of M and MCWD) over the past couple years relative to AIS. He believed that having those resources available within one advisory committee is a very efficient move.
- Green believed that expanding the group brings more experience and knowledge to the table (concurring with Morris' comment above).
- Morris confirmed members of the Task Force did have interest in the proposed concept.

Barten stated that Dr. Ray Newman of the U of M seemed opened to the idea of having broader representation and geographic scope (acknowledging a sense of frustration in agencies re-inventing the wheel on matters that have been extensively researched).

- Shuff sympathized with the ability to share knowledge and experiences; however, she reiterated her concern that, in the end, the represented agencies can go their own direction (re-questioning what the proposed committee's goal is).
- Hughes expressed an interest in the LMCD being a part of a solution (which would be provided via the proposed committee).
- Babcock believed it was important to document reasons why a minority of members may have voted against a policy making matter that was passed (acknowledging the wealth of information that can be obtained from the reasons behind the minority vote). He foresaw the proposed committee as an educational/technical clearing house providing for the consideration of a coordinating and not formal policy. Additionally, he believed it would be beneficial to receive a commitment from the proposed member agencies that they would utilize the proposed committee as a mechanism in getting the primary work completed.

Morris thanked the Board for having this in-depth conversation and providing feedback as requested. He thanked Barten, as well, for his time and efforts in presenting this evening.

B. Save the Lake Committee, update on 2013 Pilot Boater Safety Education Program

Babcock asked Nybeck, in Save the Lake (STL) Committee Chair Baasen's absence, for an update on this agenda item.

Nybeck directed the Board to his memo, dated 10/22/13, in which he provided the following comments:

- At the February, 2013 STL Recognition Banquet, Baasen announced the interest in establishing a Boater Safety Education Program (program).
- Progress made to date includes the following:
 - Monthly STL Committee meetings;
 - Establishment of partnerships (Hennepin County Sheriff's Office Water Patrol, TRPD, and MN DNR);
 - The creation of a subcommittee to initiate work on the program (members Tom Skramstad and Jay Soule). The subcommittee recommended a pilot program prior to the initial kick off in 2014, in which the STL Committee concurred with.
- The pilot program would allow for 15 participants between the ages of 12 and 17, in which he solicited the Board's assistance in recruiting such (with the LMCD staff sending an email to member cities).
- He directed the Board to an attached pilot program registration form. The program will be held on Saturday, November 16th from 8 a.m. to 5:00 p.m.
- The program has fundraised over \$3,050 to date, in which the STL Committee recommended the Board's authorization to expend up to \$1,000 for the pilot program (in which an estimated overview of expenses were offered).
- He entertained questions and comments from the Board.

MOVED: McDermott moved, Shuff seconded to direct staff to proceed as proposed; providing for the expenditure of up to \$1,000 from the Save the Lake Fund.

VOTE: Motion carried unanimously.

The Board had a few questions, in which Nybeck confirmed the following: 1) the program will be highlighted on the LMCD's website, 2) the attendees will obtain their MN DNR Watercraft Operators Permit, 3) there will be interactive breakout sessions (i.e., fire extinguisher use, knot tying, etc.), and 4) parents are encouraged to attend with their child. Board members participation in this event is also encouraged.

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).

There were no committee reports.

Meyer reiterated Morris' comment relative to how much the AIS Task Force members learn from one another.

As an example, during a recent round table discussion, the members were informed that a recent study documented the need for Asian carp to have flowing water to survive.

Morris stated that the AIS Task Force has a regular AIS Task Force member update agenda item (providing for roundtable information on what is new relative to AIS). He stated this proved to be a great learning tool, such as what Meyer noted above.

11. EXECUTIVE DIRECTOR REPORT

Nybeck directed the Board to the completed 2013 harvesting map attached to his report. He stated that the acres harvested in 2013 (267) were low this year due to growth. The LMCD will receive a MN DNR grant for this program in the amount of \$26,700 (\$100 per acre).

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:42 p.m.

Doug Babcock, Chair

Andrew McDermott, Secretary