

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, May 28, 2014
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Jeff Clapp, Tonka Bay; David Gross, Deephaven; Ann Hoelscher, Victoria; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Dan Baasen, Wayzata and Anne Hunt, Minnetrista

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Vice Chair Green

There were no Chair announcements.

5. APPROVAL OF MINUTES – 5/14/14 LMCD Regular Board Meeting

Green requested amending the following paragraphs: 1) third paragraph on page 9 (further documenting that the plan to bring EOF's site into compliance was exclusive to the City of Orono's consideration of their rezoning application) and 2) tenth paragraph on page 14 (renaming Becker County Pelican River Watershed District to Becker County Coalition of Lake Associations [Coalition] and further referencing it as "Coalition" vs. "Watershed District" to avoid confusion with the Minnehaha Creek Watershed District).

MOTION: McDermott moved, Roy seconded to approve the minutes of the 5/14/14 Regular Board Meeting as amended, making the changes noted by Green above.

VOTE: Ayes (10), Abstained (1, Hoelscher); motion carried.

6. APPROVAL OF CONSENT AGENDA

Nybeck directed the Board to an amended audit of vouchers within their handout folders (providing for the processing of payroll after the Board packet was mailed to accommodate pay for a seasonal employee).

Gross moved, Shuff seconded to approve the consent agenda as amended, making the change noted by

Nybeck above. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (5/16/14 – 5/31/14) 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 HEARINGS

There were no public hearings.

9. OTHER BUSINESS

A. Browns Bay Marina (Site 2), staff update on May 19th Orono Planning Commission Public Hearing

Green asked Nybeck for an update on this agenda item.

Nybeck directed the Board to a letter, dated 5/21/14, to Mr. Luke Kujawa (an EOF Investments LLC [EOF] representative that owns Browns Bay Marina) within their handout folders. On May 14th, staff provided the Board an initial overview on this matter. He attended the scheduled City of Orono Planning Commission (commission) meeting for the documented purpose of not representing a position of the agency but to provide confirmation, if need be, on the LMCD code and any pending application process. He stated the commission briefly discussed docking logistics; however, most of their discussion lend towards land issues (ingress, egress, water quality, neighboring buffer areas, etc.). This agenda item was tabled to a future meeting. After speaking with Assistant City Administrator Mike Gaffron, he confirmed there was a potential for rezoning; however, there was a lot of work to be done for the balance of the summer. A summary of the May 14th Board discussion was reviewed at the May 20th LMCD Executive Committee meeting (including some Board members' interest in receiving a Plan B separate from the re-zoning process). Based on this discussion, he verbally spoke to Kujawa on what is outlined in the attached letter (to bring the non-compliant dock into compliance with the approved order or submit the appropriate application(s) and proposed site plan consistent with LMCD Code). He confirmed that one of the above listed actions was required to be met by June 23rd; after which, he would schedule a Board update for their June 25th meeting (with the scheduling of a public hearing in July should a new application(s) be submitted. He entertained questions and comments from the Board.

The Board had a lengthy discussion on this matter, in which Nybeck confirmed the following:

- He had talked to Kujawa prior to the submittal of the letter.
- He reiterated that the June 25th scheduled agenda item would provide for an update (with the possibility of enforcement consideration should lack of action warrant it). Furthermore, staff would proceed in scheduling a public hearing for a future meeting should complete application(s) be submitted.
- He believed the submittal of the letter and scheduled agenda items provide for this matter continually moving forward (apart from the city's consideration of their re-zoning application). He recognized the Board has the option to consider further enforcement if they were not satisfied with the progress.
- He was unsure when the city would continue to consider the re-zoning application. Although they

have a scheduled meeting the third Monday in June, he believed a number of steps are required prior to city council consideration (i.e., the commission's input on specific conditions).

- Gross and Zorn discussed more aggressive action than what was outlined in the attached letter (with Gross' belief that the non-compliant dock was considered a trespassing action and Zorn questioning if the Board could bar EOF from using the non-compliant dock).
- Green confirmed the Executive Committee supported the process Nybeck outlined, which provided for matters moving forward (acknowledging their interest in seeing a site plan).
- Nybeck confirmed that the Board traditionally does not review a site plan without the appropriate application. He further confirmed that there are boats moored within the non-compliant dock.

Green invited Rich Anderson, who was in attendance, to address the Board.

Mr. Rich Anderson, owner of North Shore Marina, reiterated the same concerns that were expressed and documented from the May 14th meeting. He believed this matter had gone on way too long, that EOF received an undue favor that was not afforded to him, and that one cannot operate the subject dock in a conformance manner as it is drawn on the approved site plan. He questioned when had the LMCD ever been concerned with what a member city had stated. He believed that it is not hard to reconfigure a dock structure and believed if the Board would "put the hammer down" EOF would make it work. In summary, he stated: 1) EOF's rezoning application will not be considered without a fight, 2) the Board is jeopardizing his business by allowing EOF to continue to rent the docks out, 3) that he recommended the Board take a look at all the watercraft at the subject dock (acknowledging a number of them are over the extended site line), and 4) that it took a resident such as himself to point the non-compliant actions while LMCD and city staff/council members drive by without documenting their concern.

Green stated that he had the following two concerns: 1) the existence of a non-compliant dock and 2) not holding EOF to the same standards as others. He believed that, moving forward, this matter will be actively addressed.

The Board had a brief discussion on enforcement and the past history of. The following comments were responded to by Nybeck:

- He confirmed that all violations had been documented in writing (reiterating the LMCD has been quite specific in their communication to the applicant).
- He documented a meeting with EOF that was held just prior to the holidays and follow-up discussion in February/March. He discussed the efforts taken by EOF to date and he communicated that he had hoped the non-compliant dock would have been resolved by this time.
- He believed that the non-compliant dock has been in existence since the 1980's. He confirmed that staff cannot document the placement of a dock structure based on the approved site plan during their annual inspections (with McDermott pointing out that staff didn't realize it was over the property line until a survey was completed).
- He reminded the Board that in addition to the boats not being fully contained within the slips, the dock is not installed consistent with the approved site plan.
- A question was raised that at what point the LMCD holds an applicant responsible (expressing concern for setting a precedent).

LeFevere reminded the Board that the enforcement questions Nybeck was fielding were questions for the

Board. He stated the Board needs to decide how much they want to work with applicants vs. how often they want to "put the hammer down." He reminded the Board that they recently went through a long process with the commercial marinas based on their belief that the LMCD is too rigid. He confirmed there were many other documented commercial marina enforcement cases that staff had worked with the owners on to avoid prosecution (acknowledging that precedent previously being set). Additionally, the Board has regularly considered the established communication process for enforcement of non-commercial sites (private watercraft storage). In follow-up to Mr. Anderson's comment that he was told a multiple dock license would not be issued for the subject site, he confirmed that the LMCD had not issued such (including no consideration by the Board to do so). To this end, the dock is non-compliant and was simply operating without a license. Furthermore, he confirmed if they did have a license, the applicant would be out of compliance with the approved variance order and that the Board has the ability to start a criminal or civil prosecution as early as tomorrow (with civil being more time consuming and expensive). In summary, the decision to prosecute or work with an applicant is a policy decision of the Board (a question Nybeck has posed to the Board via his update at both this meeting and on May 14th).

Clapp asked Anderson (referencing his comment that he adjusted a non-compliant dock at his site last winter) whether he adjusted that dock on his own or was informed by the LMCD to do so. If the LMCD initiated that communication, did he receive a timeline for such.

Anderson confirmed that he was informed to come into compliance by the LMCD. At that time, they submitted a new multiple dock license application, in which the non-compliant dock surfaced through the survey process. He could not confirm the timeline offered by the LMCD (acknowledging they just did it through the winter months). He further clarified that, to his knowledge, the LMCD informed him that EOF was not going to get a multiple dock license last September (referencing a comment that the proposed communication was made in March). He asked Nybeck if the Board was in receipt of an October, 2013 letter to EOF that he was copied on.

Nybeck confirmed that the Board was not in receipt of that letter, as it would be presented to the Board if further discussion occurs with regards to enforcement option (if needed).

Anderson believed the Board needed to see that letter as it specifically spelled out the requirement to bring the dock into compliance by the next boating season (comparing their response to a non-compliant situation to the lack of efforts by EOF).

Nybeck stated that this agenda item was scheduled at the Board's request for the sole purpose of providing an update on discussions held and actions taken since their last meeting (confirming he did not intend on discussing enforcement matters). He did not believe his judgment to submit a 30 day written notice of action was inappropriate based on his belief that this was the Board's direction (via the follow-up Executive Committee meeting). He confirmed he will provide the Board with an update at their June 25th meeting, at which time he will present all written communication to the applicant should it be warranted.

Anderson believed the Board's receipt of the written enforcement documentation was important (highlighting the timeline involved). He further believed he had been compromised by: 1) EOF's ability to continue to rent slips without a license, 2) his decision (based on his documentation of prior communication) to not purchase the property, and 3) his efforts to operate in a compliant manner and

EOF's lack of.

B. Draft 2013-2014 LMCD Annual Report

Green asked Nybeck to provide background on this agenda item.

Nybeck stated that the LMCD's Annual Report has been produced for a number of years (providing for and outline of the Board's goals and objectives and a summarization of the adopted strategic plan). He confirmed that he pulled the strategic plan from this year's report based on updating needs. He provided a brief overview of the report itself (offering some new additions such as the Board's pictures). He recommended the Board approve the report as is or with revisions.

Green suggested this agenda item be rescheduled for their June 11th meeting to provide the Board more reading time (acknowledging the report looks good on the surface).

Klohs arrived at 7:39 p.m.

C. Draft AIS Peace Officers letter

Green asked Nybeck for an update of this agenda item.

Nybeck directed the Board to a draft letter, dated 5/29/14, to the member city mayors (with a proposed copy to the city administrators and respective law enforcement agencies) requesting their consideration in certifying the peace officers in aquatic invasive species (AIS) enforcement. He stated this subject was initiated at the request of the AIS Task Force, in which Morris requested the Board's support (at their May 14th meeting) in directing staff to initiate the communication process to the member cities, as well as offer their assistance in coordinating these efforts. To this end, the Executive Committee (in working with Task Force member Dick Woodruff and staff) reviewed the draft letter and offer it for the Board's consideration. He entertained approval of the letter as written or with revisions; documenting distribution as early as tomorrow. Additionally, he stated that approval of such would allow for staff and Board to present the matter during the budget presentation to the member cities.

Zorn believed the content was very good; however, recommended making the third paragraph the first.

Morris stated that he liked the letter and was okay with Zorn's recommendation. He prefaced the need to tone down the emphasis on enforcing AIS violations and recommended the letter stress the ability to enforce (obtaining their certification provides them an option to enforce) and that this will provide additional assistance to the few officers that are certified. Lastly, as a member of the Task Force, he offered his time in personally presenting this to the member cities.

Nybeck stated that he was presenting the draft 2015 LMCD Budget to the cities of Mound, Shorewood, and Victoria next week (acknowledging the ability to introduce this option if time allowed).

Shuff asked Morris to clarify the Task Force's vision of what the peace officers' role would play.

Morris confirmed that there are AIS laws that cannot be enforced without training (based on the requirement that the peace officer be certified in AIS enforcement). The AIS Task Force would like to see the peace officers have the ability/option to enforcement those laws. This option would also provide additional assistance to the few Minnesota Department of Natural Resources (MN DNR) conservation officers and other peace officers that are currently certified. The State of Minnesota (State) is currently discussing additional AIS laws; offering to what point if they do not have the ability to enforce such. He confirmed that the MN DNR will provide the training free of charge (with the assistance from the LMCD to coordinate such). He believed that local officers trained offers more tools to fight AIS.

The Board had a brief discussion on how the letter should be amended; considering suggestions from Gross, LeFevere, and Zorn that would further express the LMCD's encouragement to have the peace officers trained so they have the ability to utilize the option(s) of enforcing AIS violations, as well as the addition of the respective State statute that documents such (84D, Sec. 13, Subd. 4).

MOTION: Morris moved, Hughes seconded to approve the submittal of the letter, subject to Zorn and LeFevere working with staff to amend the sections of the letter that would address comments made above.

Hoelcher and Meyer stated that believed the letter was fine as written. Their comments brought forward further discussion on specific areas of the letter that seemed to be of concern for some. To this end, the Executive Director was authorized to work with Zorn and LeFevere in amending the letter consistent with the comments made within.

VOTE: Motion carried unanimously.

D. 2014 EWM Harvesting Program, project overview

Green asked Harper to provide an overview of this agenda item.

Harper provided a detailed overview of the 2014 EWM Harvesting program, which included: 1) a list of tasks pending and completed, 2) an overview of the budget, and 3) confirmation in using the "Lower Lake North" option (subject to EWM growth patterns) offered on the LMCD's rotating harvesting schedule. He entertained questions and comments from the Board.

The Board had a few questions and comments, in which the following was offered:

- Roy confirmed (as a Lake Minnetonka Association Bay Captain) that Carmans Bay was going to be treated with herbicides. He could not confirm a specific deadline in the consideration of not treating the bay based on weather and lack of growth.
- Harper confirmed that the equipment is in good shape, offering the following: 1) a paddlewheel motor is currently being replaced, 2) the transom on the transporter is going to be used as is (vs. the consideration in removing an extension of the motor), and 3) that the harvester storage stands worked very well (confirming he did not see any damage from winter ground shifting, etc.). Additionally, he is working with Hennepin County to level out the lot once the harvesters are launched.
- Harper confirmed the \$95,000 budget was consistent with the 2014 budget (offering that budget

was reduced to \$92,000 based on the reduction in grant funds offered).

E. Staff update on current Lake Minnetonka water levels

Green asked Nybeck for an update of this agenda item.

Nybeck directed the Board to a document within their handout folder that provided a list of recent Lake level readings, as well as a High Water Declaration map delineating the restricted minimum wake areas. He made the following comments:

- An overview of the 2014 Lake level readings as follows: 1) the first documented Lake level was 929.57' on April 28th, 2) on May 9th, the Lake level was above the 930.00' mark, which increased the discharge rate to 300 cubic feet per second, 3) consistent rainfall increased the Lake level to 930.25' on May 13th, at which time the LMCD declared "High Water," and 4) Lake levels were reducing until the heavy rains set in on May 20th (providing for the current Lake level reading of 930.25').
- A detailed overview of the declaration policy offered in the adopted "High Water" ordinance ("may" declare after five consecutive days of 930.00' or above but "must" declare after eight consecutive days or when the Lake level reaches 930.25').
- On May 13th a press release was submitted announcing the declaration and signage was posted (with drop boxes containing a "High Water" pamphlet outlining the respective minimum wake restrictions).
- The LMCD has been in receipt of public comments documenting enforcement concerns for watercraft operators that are not conforming to the ordinance (offering possible future consideration of amending the ordinance to minimum wake for all of Lake Minnetonka).
- He referenced damage to the shoreline is provided by both watercraft and wind wakes (offering a great deal of damaged to logistically exposed shoreline from the wind).
- An overview of the current "High Water" signs, as well as the pamphlet noted above (acknowledging the signs were posted and pamphlets distributed to not only the drop boxes but also various gas docks throughout the Lake) prior to the Memorial Day weekend.
- He provided a detailed overview of the declaration termination policy (below 930.0' for three consecutive days; offering the same process as used for the declaration of). He could not predict when the LMCD will reach Lake levels to allow for the termination. However, he confirmed the Public Safety Committee will be assessing the current ordinance at their next meeting (scheduled for June 12th at 3:00 p.m. at the Water Patrol office).
- He entertained questions and comments from the Board.

The Board had a few questions, in which Nybeck confirmed the following: 1) once the Lake level is above 930.00', the water releases over the spillway, 2) he believed there was flooding downstream and confirmed that the Minnehaha Creek Watershed District (MCWD) was recommending no canoeing, 3) he would like to see better signage that drew the users attention to what is going on, and 4) he concurred that wake violations are many and recognized the need to expand the notification process.

Roy confirmed the City of Greenwood had submitted an email to their residents, as well as the bay captains spreading the word via their distribution list. He asked LeFevere what the fine is for violating the minimum wake restrictions.

LeFevere stated a violation would be a misdemeanor. If this violation was included as part of an adopted fine schedule, the person violating would have the option to pay the approved fine amount. Otherwise, violators may have to go to court.

10. UPDATE FROM STANDING LMCD COMMITTEES

Green asked committee chair members if there are any updates to report.

Morris stated the AIS Task Force is scheduled to meet on June 13th at 8:30 a.m. in the LMCD office.

Nybeck stated the Save the Lake Committee is scheduled to meet June 2nd at 7:30 a.m. in the LMCD office, at which time they will consider the preparations to the June 23rd Lake Minnetonka Boater Safety Education session (including confirmation of the meeting room location). In response to a question on public notification, he stated the class is filling up via the use of an established waiting list.

Green stated the Executive Committee has asked Nybeck to resurrect the list of ordinances in need of updating; after which, a meeting will be scheduled and a new chair will be appointed.

Nybeck stated the committee also discussed the other user groups that were identified in the recently considered commercial marina proposal (yacht club, municipalities, and commercial/transient dockage). At that time, they recommended initiating communication with the yacht clubs; asking them to provide their proposed changes in writing within the next 30 to 60 days. He solicited the Board's consensus in staff following through with that communication.

Gross stated that he will be talking with his represented city and local yacht club. He questioned what timeframe he should report for their consideration of a proposal.

Green and McDermott recommended they consider their proposal at this time, in which further communication on the time frame to consider such would be provided as this matter progresses. Green further communicated that the Executive Committee discussed developing a Board training workshop which would include discussion on open meeting law, data privacy act, conflict of interest, etc.

Nybeck recommended the Board consider this training session on June 25th, in which a few Board members recommended that session be held prior to vs. after the regularly scheduled meeting.

Morris stated that he would also like to incorporate AIS training for the Board, as well.

Gross asked that any application and site plan submitted by EOF Investments LLC (Browns Bay) prior to their June 25th agenda update be emailed to the Board, in which LeFevere confirmed that is possible.

11. EXECUTIVE DIRECTOR REPORT

Nybeck confirmed he will be presenting the 2015 draft budget and peace officer training to five (as of this date) of the member city councils. He confirmed the draft budget was mailed to them, which included the meeting notice for the scheduled budget review session of June 5th (11:00 a.m. at the LMCD office).

McDermott questioned if staff had an opportunity to work on the capital improvement plan, in which Nybeck confirmed he is working with Hughes on that matter.

12. ADJOURNMENT

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

Jay Green, Vice Chair

Andrew McDermott, Secretary