

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, June 25, 2014
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Jeff Clapp, Tonka Bay; David Gross, Deephaven; 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: Ann Hoelscher, Victoria and Anne Hunt, Minnetrista

3. APPROVAL OF AGENDA

Green requested an additional agenda item be added under Item 9D (an update on the Eurasian Watermilfoil [EWM] Harvesting Program).

Nybeck requested an additional agenda item also be added (consideration and approval of the Lake Minnetonka Cable Commission (LMCC) and LMCD Agreement for videotaping LMCD meetings. He recommended that agenda item be scheduled as 9E to accommodate Green's request.

MOTION: McDermott moved, Shuff seconded to approve the agenda as amended, making the changes noted above.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

Baasen made two Chair announcements. First, staff is scheduled to provide an update on the current Lake Minnetonka water levels under agenda item 9B. Therefore, he welcomed the comments of all those in attendance on that matter at that time (vs. under public comments). Second, he recognized the wet year and all the damage to the Lake and personal property that has taken place. Furthermore, he stated that other lakes/streams have joined Lake Minnetonka on the entire lake minimum wake restriction (i.e., Lake Minnewashta, Christmas and Prior Lakes, as well as the St. Croix and Mississippi rivers).

**5. APPROVAL OF MINUTES – 6/4/14 Special LMCD Board Meeting
6/11/14 LMCD Regular Board Meeting**

MOTION: Green moved, McDermott seconded to approve the minutes of the 6/4/14 Special LMCD Board Meeting as submitted.

VOTE: Ayes (11), Abstained (1, Shuff); motion carried.

Green requested that his comment be added relative to revising the title of the "Emergency High Water" Hot Topic, found on the front page of the LMCD's website, so that the words "entire Lake" stand out within the title vs. clicking on the article to find the words within. Additionally, he questioned if the word "increase" should be changed to "decrease" relative to Nybeck's acknowledgment of the \$1,876 within the third paragraph on Page 6.

Nybeck stated that the word "increase" is correct as written.

MOTION: McDermott moved, Shuff seconded to approve the minutes of the 6/11/14 Regular Board Meeting as amended, making the change noted by Green above.

VOTE: Ayes (11), Abstained (1, Gross); motion carried.

6. APPROVAL OF CONSENT AGENDA

Baasen requested clarification on agenda item 6B. Specifically, whether the "Budget" column within the individual reports was an annual figure, in which Nybeck confirmed yes. He recommended that staff provide more of a quarterly (or time adjusted) budget number within this report for the purpose of narrowing down the percentages offered for 2015 and beyond.

Nybeck directed the Board to an amended Audit of vouchers within their handout folders.

McDermott moved, Shuff seconded to approve the consent agenda as amended, making the changes noted by Nybeck above. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (6/16/14 – 6/30/14); **6B**, May financial summary and balance sheet; and **6C**, **Wayzata Yacht Club (Site 2)**, draft Findings of Fact and Order for approval of new multiple dock license, special density license, and variance applications.

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

There were no public comments.

8. PUBLIC HEARINGS

A. T & T Boatworks Marina LLC, new multiple dock license application to increase the number of Boat Storage Units at the conforming facility by adding 10 transient BSUs.

Baasen asked Nybeck to provide background on this agenda item.

Nybeck directed the Board to his staff memo, dated 6/19/14. Mr. Rick Born, owner of marina facility, has submitted a new multiple dock license application to increase the number of Boat Storage Units (BSU) at the density conforming facility by adding 10 transient BSUs. The applicant is currently licensed for 80 overnight BSUs on 1,134 feet of shoreline (1:14 foot density). The facility is considered legal, non-conforming relative to their dock use area (DUA) allowances; in particular length. He provided a detailed overview of the LMCD code sections relative to this application (specifically the license requirements of

being defined as a Qualified Commercial Marina, an ordinance to which was recently adopted and how this respective site falls within). On June 18th, Born informed staff that the site received storm damage on June 14th; specifically BSUs one through nine on the southeast corner of the facility. Although he had the ability to approve the reconstruction of those BSUs at staff level, he recommended Born provide an amended site plan that would include the reconstruction of those BUS for Board consideration at this time. To this end, he recommended approval of the application, subject to: 1) the submittal of an as-built survey (with approved changes, by 10/1/14, and 2) docking and boat storage must be in strict compliance with the approved site plan. He entertained questions and comments from the Board.

McDermott asked how far away from shore will the BSUs extend.

Nybeck provided an overview of the 200 foot contour line in respect to the length of their BSUs, which Born confirmed were 48 feet long.

Klohs stated that since the applicant is going to amend their survey, he recommended they document a 100 to 150 foot contour line (east to west) beyond the extended site line so that one has a visual of how the docks will interact with the neighboring properties. He thought this would be helpful in anticipation of an application from the City of Wayzata (city).

Nybeck believed a public hearing would be scheduled for the Board's July 23rd meeting, in anticipation of the city submitting an application for additional transient slips.

Baasen asked the applicant if he would like to address the Board.

Mr. Rick Born introduced Troy Nelson, who was in attendance, and acknowledged that he and his brother Todd own T & T Boatworks Marina, LLC and currently lease the marina from him. He stated that the reconstruction of BSUs one through nine was not originally planned; however, he would like the amended proposed plan that included transient parking considered by the Board. He provided further background on the proposed changes. He entertained questions and comments from the Board.

Morris asked how he planned on managing the transient slips during high traffic times (i.e., dock attendants).

Born stated that he envisioned the management of that area will be handled by a combination of the restaurant and T & T Boatworks Marina employees. He assured the Board that the use of the transient BSUs will be monitored closely (including alcohol consumption).

Green asked what the timeline was in reconstructing the BSUs.

Born stated construction will commence upon approval (as early as the next day). He confirmed he was working with Minnetonka Portable Dredging (Tom Niccum) on this matter. To this end, he stated they need to move forward to make this business a success (acknowledging summer is here and the restaurant is open).

Nybeck confirmed that this application does not require the preparation of Findings of Fact and Order;

therefore, construction could commence upon the Board's approval.

Baasen open public hearing at 7:21 p.m. There being no comments, he closed hearing at 7:22 p.m.

MOTION: McDermott moved, Green seconded to approve the 2014 T & T Boatworks Marina, LLC new multiple dock license application, subject to staff recommendations.

VOTE: Motion carried unanimously.

9. OTHER BUSINESS

A. Browns Bay Marina (Site 2), staff update on 5/21/14 letter regarding 2014 multiple dock license.

Baasen asked Nybeck for an update on this agenda item.

Nybeck stated that the May 21st letter (within their packet) was sent out summarizing the May 19th Orono Planning Commission Meeting and setting expectations for the balance of the 2014 boating season. The following two options were provided to Browns Bay Marina (Site 2), with a target date of June 23rd: 1) to bring the dock into compliance, in particular the south dock structure, with the approved 1985 variance order or 2) to submit the appropriate application(s) to reconfigure the current docks within the dock use area established by the two commercially zoned properties at this site. New multiple dock license and variance applications have been submitted and a public hearing will be scheduled for the July 23rd Board meeting.

Green asked for clarification of the proposed site plan.

Nybeck stated that the proposed site plan would provide for the dock structures to be located within the extended side site lines of the two commercially zoned properties.

Baasen asked if the proposed site plan would resolve the current non-compliance issues.

Nybeck stated the application(s) provided for the south dock to be contained within the extended side site lines (requiring some side setback relief per the application submitted).

B. Staff update on current Lake Minnetonka water levels

Baasen asked Nybeck for an update on this agenda item.

Nybeck stated that the June 11th (two weeks ago) water level reading was 930.53 feet, compared to 931.05 feet this day. Thus, the water levels have increased approximately six inches since the last Board meeting (primarily due to the June 18th and 19th rain). He stated information within in the packet, as well as updates within the handout folders, provide for a water level reading chart and public comments. Furthermore, he stated that he attended the Orono City Council Meeting on June 23rd, in which residents from Baldur Park Road provided an update on their current flooding concerns. He reminded the Board that comments were received from a resident representing Baldur Park Road when they adopted the emergency ordinance on June 4th. Baldur Park Road pictures provided to the Orono City Council are

available at this meeting and a neighborhood representative is in attendance.

Baasen stated that a great deal of feedback has been received on the emergency ordinance (some positive and some expressing concerns). This was discussed in great detail on June 4th and the Board recognized that this would affect the use of Lake Minnetonka, including some commercial businesses. He welcomed feedback from the public on the emergency ordinance. The emergency ordinance was prepared so that the Board could terminate it at any time; however, he personally was not prepared to do so.

Mr. Rick Born, an Orono resident who lives on Maxwell Bay, stated that he has lived on Lake Minnetonka for 25 years. Additionally, he owns a marina, which was discussed earlier at this meeting. He reluctantly agreed with the Board's decision to implement minimum wake restrictions for the entire Lake. If the Board did not decide to implement this under current conditions, he questioned whether the Board could ever consider implementing such a restriction. He commented on problems he has experienced with the dock at his residence, reduced fuel sales at the commercial marina, and observations he has made with other commercial facilities (i.e., Lord Fletchers). Although the current minimum wake restriction takes the fun out of boating and has affected some of the commercial businesses, he believed the decision by the Board was responsible.

Mr. Andy Weigman, a Mound resident, stated that he was in attendance to comment on the Minnesota Wakesurf Championship special event planned for July 18th and 19th on Cooks Bay. He commented on the current emergency ordinance and the effect that this could have on the planned event. The event is planned in conjunction with the Mound Spirit of the Lakes and he hoped that the Board could find a way to keep the event alive, which could assist the Lake Minnetonka businesses. He stated that he was willing to work with Mr. Nybeck to retool the course, pointing out that a number of the homes in the area are up on a hill. He welcomed question and comments from the Board.

Baasen stated that he did not know how to answer that question himself. He believed that this could be discussed further at an upcoming Executive Committee meeting, which should be scheduled in the next 10 days. He encouraged Weigman to continue to work with Nybeck on this.

McDermott stated that it appeared that the proposed course layout is at least 600 feet from the shore. If there is accuracy to the chart offered by the Minnehaha Creek Watershed District, the water level could recede below 930.30 feet around July 6th.

Nybeck stated that he has had periodic conversations with Weigman relating to his planned event and high Lake levels. Prior to last week's increase of six inches to the Lake level, the consensus was to hang tight and allow the Lake to recede. However, he suggested that Weigman attend this meeting to express his concerns to the Board (recognizing there is one additional Board meeting prior to the planned event).

Ms. Cindy McDonnell, 1420 Baldur Park Road, stated that she appreciated the current entire Lake minimum wake restriction. She believed that the prior minimum wake restriction of 600 feet from the shore was problematic (in particular the public has problems understanding what 600 feet is). She commented on the current flooding problems in the neighborhood and the efforts being taken to address them (including sandbag and berm efforts that have taken place). Although she supports the current

minimum wake restriction, she recognized that the restriction was affecting commercial businesses around Lake Minnetonka. She stated that the water was within one inch of the floor joists in her house. She thanked the Board for listening

Baasen expressed his sympathies to McDonnell and her neighbors.

Ms. Sonya Hutchinson, 1424 Baldur Park Road, stated that she was McDonnell's neighbor. Both properties have hired a landscaper to save their homes by constructing the berm. She thanked the Board for the current minimum wake restriction because she believed it assists in limiting shoreline erosion (including limiting floating materials into the lake). She questioned how quickly the Lake levels will recede for the rest of the summer. She stated that she grew up in the Spicer/Willmar area (noting that lakes in that vicinity are also flooded and that wake restrictions have been placed on Green Lake for the first time). Lake Minnetonka is everybody's resource (not just an event). She believed that residents have not faced Lake levels like this before and that actions are needed to protect it.

Baasen referred to an article written last Friday by the manager of Lord Fletchers, in which he wrote of the current economic challenges. He believed that the public responded well to this article (based on observations he made when he recently had dinner there). He encouraged the public to come together and frequent the marinas and other commercial businesses. He hoped that the minimum wake restriction for the entire Lake would be removed in the near future, adding that it was adopted to protect Lake Minnetonka (not harm the commercial businesses).

McDermott added that the ordinance was also adopted to avoid hitting a lot of stuff floating in the Lake (public safety).

Mr. Nick Johnson, a Deephaven resident that has previously lived in Orono and Wayzata, stated that he owns a skiff craft and has always gone slow. During the current minimum wake restrictions, he and his neighbors have been able to experience and enjoy the Lake on a daily basis. He commented on boating during peak days (i.e., weekends) and locating quiet areas on Lake Minnetonka (i.e., Carsons Bay). He offered the idea of creating one day per week with wake restrictions (i.e., Wakeless Wednesdays). With the current restriction, he and his wife have commented, when observing the activity on the Lake, that they feel like they are in northern Minnesota.

Mr. Jack Lynch, 5205 Edsall Road, stated that he resided on West Upper Lake. He believed that the emergency ordinance is killing Lake Minnetonka (noting that it is a major recreational resource). The ordinance is affecting commercial businesses on the Lake and a number of its uses. He questioned the wake effect of a Jet Ski or fishing boat would have on the shoreline or flooded areas of Lake Minnetonka. He encouraged the Board to consider exemptions for these types of watercraft. He commented that he believed the wind has a greater impact on shoreline erosion than wakes from watercraft. He thanked the Board for the opportunity to provide comments.

Nybeck stated that staff would benefit from any direction the Board could provide Mr. Weigman on his proposed special event.

McDermott questioned how soon Weigman could use feedback from the Board.

Nybeck stated that in conversations with Weigman, he would prefer feedback from the Board sooner rather than later. However, Lake levels could be further assessed over the next two weeks and the Board could discuss this matter at their July 9th meeting.

Baasen suggested that Weigman continue to work with Nybeck on options available, in which this topic could be discussed further at the upcoming LMCD Executive Committee meeting. He asked Weigman to provide an update on registered participants.

Weigman stated that 55 participants were registered in 45 minutes.

Meyer questioned whether there was an opportunity for the Board to view the shoreline of Cooks Bay should there be consideration of a minimum wake restriction exemption for this particular event.

Baasen suggested allowing Mr. Weigman to work with Nybeck and the Executive Committee first. After this occurs, perhaps the Board could visit the area as part of a scheduled boat ride.

C. Adopted 2015 LMCD Budget

Baasen asked Nybeck for an update on this agenda item.

Nybeck stated that the 2015 LMCD Budget was adopted at the June 11th Board Meeting. At that time, staff was directed to hold off forwarding the adopted budget until after June 26th. He directed the Board to a copy of the adopted budget and respective cover letter for such purpose. The budget was reviewed with the Orono City Council on June 23rd and no objections were expressed.

MOTION: Gross moved, Zorn seconded to direct staff to send out the adopted 2015 LMCD Budget.

VOTE: Motion carried unanimously.

D. EWM Harvesting Program Update

Green complimented staff in the launching of the harvesting equipment on June 17th (with assistance from Gabriel Jabbour and the Water Patrol). There are three items that need further follow-up for the program. First, the LMCD should look into getting rid of the old equipment that is not currently being used. Second, the LMCD needs to follow-up with Hennepin County on the grading of the lot where the equipment is stored during the off-season. Third, the Board discussed and agreed last August on the need to map power and other utility lines that are submerged in the Lake. He understood that Harper has made some phone call relating to this. He believed that further emphasis is needed on this project (based on a gas line that was recently cut within the Noerenberg Channel, which required the temporary closing of).

McDermott questioned what needs to be done to get rid of the old equipment (i.e., scrap it).

Nybeck stated that there might be some people interested in purchasing the equipment. If so, we need to research the fair market value of such. Otherwise, the equipment could be scraped and the benefit would

be to get rid of the equipment (not for financial gain). He stated that he would work with LeFevere and Harper on this matter.

McDermott stated it would be nice to resolve this by August 1st.

Baasen asked Harper for an update on plans for the 2014 season.

Harper stated that staff training in the office is planned for tomorrow, with on-site training planned for July 7th. He anticipated starting in Lafayette Bay and moving east on the Lower Lake.

McDermott asked what was observed during the recent scouting efforts.

Harper stated that not a great deal of EWM was observed. The vegetation observed was curly-leaf pondweed (CLP), which typically goes down around July 4th.

Gross stated that EWM is currently over the top of the docks where he stores his boat on Carsons Bay. He wondered whether this could cause problems when Lake levels recede.

Nybeck stated that he understood the Lake Minnetonka Association (LMA) planned a whole bay or large scale treatment for Carsons Bay in 2014. This may be adjusted because of the current Lake levels.

Roy state that it would be silly for the LMA to treat anything right now (for a number of reasons). This could be re-evaluated when the Lake levels recede.

Nybeck requested that the LMA stay in contact with the LMCD office on what is planned in 2014.

Green asked where EWM is being observed on Carsons Bay.

Gross stated he had observed EWM on the south shore near the Minnetonka Yacht Club.

Green stated that he had observed a great deal of CLP in Carsons Bay.

Morris stated that anecdotally, he had heard (from a number of people) on the explosion of vegetation growth in the last week (not necessarily EWM). With the high water, there has been a higher level of nutrients introduced into Lake Minnetonka (when compared to a typical year). At some point this year, he believed that there will be a great deal of vegetation in the Lake (weather dependent).

E. LMCC and LMCD Agreement for Videotaping LMCD Meetings

Baasen asked for background on this agenda item.

Nybeck stated that the LMCD agreed (a few months ago) to pay for the production of the LMCD Board meetings, commencing July 1st. The respective draft agreement has been prepared whereby the LMCC would contract with the current producer and the LMCD would reimburse the LMCC for such costs.

McDermott asked what the LMCC is currently providing the LMCD.

LeFevere stated that the LMCD already has a separate agreement with the LMCC in 2014 for use of the Wayzata cable television production studio and nothing would change in this agreement. The proposed agreement provides for reimbursement of the current producer's time.

MOTION: Roy moved, Shuff seconded to approve the LMCC and LMCD Agreement as submitted.

VOTE: Motion carried unanimously.

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Hughes stated that the Public Safety Committee met on June 25th, in which the meeting was well attended by Board members. Two topics were discussed at this meeting. First, Lt. Saunders reported on a pressure ridge(s) safety inspection fly over that was performed last winter. Second, the majority of the meeting provided for the discussion of the current "High Water" ordinance, as well as the Emergency High Water Declaration. From a consensus standpoint, the committee is scheduled to meet on July 24th, at which time they will consider updating the current ordinance (with recommendations planned for the Board's consideration in August).

Morris stated that the AIS Task Force met June 13th, in which the main topic of discussion was an update from Gabriel Jabbour on his boat design standards progress with the American Boat and Yacht Council for AIS prevention. Upcoming meetings include a West Metro AIS Coordinating Committee on July 11th and the next LMCD AIS Task Force Meeting planned for August 8th.

Baasen stated that the Ordinance Review Committee has not met; however, he was looking to reboot and continue on with the review of current ordinances so that they are updated. Save the Lake has not met since the last Board meeting; however, a Boater Safety Education Course was coordinated on Monday at the Mound Westonka ESC (22 youth and 8 parents). All but one youth passed the test (with this individual planning on taking the test on their own). Committee member Jay Soule once again coordinated the training, in which he complimented his efforts. He reported that further work is planned by the Save the Lake Committee on refining the annual banquet dinner in 2015.

11. EXECUTIVE DIRECTOR REPORT

Nybeck provided a brief update of his Report, dated 6/24/14. He entertained questions and comments from the Board.

Zorn asked for a timeframe of the 2014 EWM Harvesting Program.

Nybeck stated that harvesting is typically completed mid June to mid August. Harvesting is not planned for the week of June 30th (July 4th holiday) due to the traffic levels and keeping the public accesses open for use. With the first two weeks suspended, he envisioned working 10 hour days (Mondays through Thursday) and

possibly some overtime on Fridays (depending on the EWM growth). Consideration will be to add another week in mid August (also depending on growth).

Hughes stated that there was discussion at the Executive Committee on training topics for the LMCD Board. He questioned when this training was planned.

Baasen stated that further discussion on training topics was planned for the next Executive Committee Meeting. He asked for a general overview on one of these training topics, "Open Meeting Law."

LeFevere provide a brief overview on the Open Meeting Law, in which the following was summarized:

- The requirement of the law (to have meetings open to the public).
- Regular and special Board meetings (including minute requirements).
- Committee meetings (including minute requirements).
- E-mails and their potential for violation of the Open Meeting Law (avoid replying to the full Board and use Nybeck as the gate keeper).
- He entertained questions and comments from the Board.

Klohs stated that a quorum of the Board is eight. Should eight Board members attend a committee (i.e., Public Safety), would this be a problem.

LeFevere stated that would not be a problem because LMCD committee meetings are posted in accordance with the Open Meeting Law (three days in advance of the meeting).

Green questioned whether a quorum of committee members (non LMCD Board members) would be subject to the Open Meeting Law, in which LeFevere confirmed yes.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:21 p.m.

Dan Baasen Chair

Andrew McDermott, Secretary