

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, September 24, 2014  
Wayzata City Hall

**1. CALL TO ORDER**

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

**2. ROLL CALL**

**Members present:** Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Ann Hoelscher, Victoria; Anne Hunt, Minnetrista; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Gregg Thomas, Tonka Bay. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** David Gross, Deephaven; Fred Meyer, Woodland; and Deborah Zorn, Shorewood.

**3. APPROVAL OF AGENDA**

**MOTION:** Green moved, Shuff seconded to approve the agenda as submitted.

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Baasen**

Baasen stated that the City of Tonka Bay had recently appointed a new Board member to the LMCD. He welcomed Gregg Thomas on behalf of the Board and asked LeFevere to administer the Oath of Office, in which he did.

Baasen welcomed Thomas to the Board and asked him to provide a brief overview of his background.

Thomas stated he was born and raised in Excelsior (parents were originally from Excelsior and Deephaven). He obtained his Masters of Business Administration and worked for the Mayo Clinic for the past 40 years (retiring back to Lake Minnetonka in an effort to contribute his time in this resource).

Baasen announced that the Executive Committee has been meeting with representatives of three yacht clubs on the Lake (providing for discussion similar to what was provided with the marina owners in considering possible code amendments). Additionally, he will be offering comments relative to agenda item 9B during consideration of such.

**5. APPROVAL OF MINUTES- 8/27/14 LMCD Regular Board Meeting**

**MOTION:** McDermott moved, Green seconded to approve the minutes as submitted.

**VOTE:** Ayes (9), Abstained (2; Hoelscher and Thomas); motion carried.

## 6. APPROVAL OF CONSENT AGENDA

McDermott moved, Shuff seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved include: **6A**, Audit of vouchers (8/26/14 – 9/15/14) and (9/16/14 – 9/30/14); **6B**, August financial summary and balance sheet, and **6C, Personnel Committee**, approval of 2015 LMCD Employees Benefit Package as outlined in 9/18/14 memo.

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

There were no public comments.

## 8. PUBLIC HEARING

- **Beans Greenwood Marina**, new multiple dock license and variance applications to reconfigure the facility on St. Albans Bay utilizing LMCD Ordinance 217 for a Qualified Commercial Marina. The variance application has been submitted to continue an existing dock use area variance.

Baasen asked Harper to provide background on this agenda item.

Harper directed the Board to his staff memo, dated 9/19/14, in which Beans Greenwood Marina had submitted new multiple dock license and variance applications for the 2015 boating season. He provided an overview of his memo via the following comments:

- The site is currently considered a legal, non-conforming facility on approximately 870' of continuous shoreline that is approved for 120 Boat Storage Units (BSU) for a density of 1:7' (110 overnight storage and 10 transient BSUs).
- The applicant is proposing to reconfigure a portion of the facility utilizing the Qualified Commercial Marina (QCM) ordinance, in which he provided an overview of.
- The applicant proposes the following changes: 1) relocate BSUs 100 and 59 located along shore on the second northwest dock to the end of the dock, 2) realign the walkway on Dock #2 so BSUs 30, 31, and 24 are in line with the west slips (extending them further from shore), and 3) reconstruct and reconfigure the walkway and slips on Dock #4 so they are all south opening (maintaining the same number of BSUs but changing the size of some and reducing total BSU square footage).
- The applicant submitted a new variance application (based on a condition outlined in the QCM ordinance). He stated the existing 1972 dock use area (DUA) variance defined the overlapping DUAs for this and the abutting neighbor's site. The variance application currently being considered does not outline any further variance(s) than what was offered within the currently approved variance.
- A review of the State of Minnesota (state) law pertaining to a mandatory Environmental Assessment Worksheet (EAW) that would be required for the construction or expansion of a marina or harbor project that exceeds 20,000 square feet for dock structure and maneuvering space. He stated an EAW is a precursor to whether a mandatory Environmental Impact Statement (EIS) would be required. He provided an overview of the EAW calculations for this site (current and proposed). Based on the decrease in proposed square footage, staff confirmed an EAW was not needed (acknowledging that any future application(s) increasing the square footage of such would require an EAW).
- He believed that a variance application was not needed (based on the lack of change to the currently approved variance) and recommended the \$500 application fee be refunded. He further recommended the Board approve the applicant's 2015 multiple dock license based on the following conditions: 1) all

watercraft must be stored within authorized BSUs, 2) construction of dock structures and location of moored watercraft must be in strict conformance with the approved site plan, and 3) no permanent or overnight boat storage is allowed within the transient BSUs.

- He entertained questions and comments from the Board.

McDermott asked Harper to provide further background on the currently approved variance.

Harper stated that in 1972, there was a previously existing marina to the west, in which the overlapping DUAs were in need of defining. The variance provided for the creation of boundary lines that both abutting neighbors had to adhere to (establishing a navigational corridor).

LeFevere stated that the LMCD Code provided for two types of variances: 1) a permissive variance that allows a matter to exist that the code does not allow for and 2) a mandatory variance that limits the uses that one can place on their facility. In this case, the DUA cannot expand based on the limitations of the overlapping DUAs (offering limitations to the facility). He stated this was a little different than what other variances offered based on the QCM ordinance.

Green stated that the requirements of the EAW (and any possibility of an EIS) were new to him during his tenure on the Board. He asked Harper to further review that requirement for the benefit of all.

Harper stated that many sites are considered legal, non-conforming, in which they had the ability to reconfigure their dock structures but not expand. With the adoption of the QCM ordinance, those facilities are now able to do so. Based on this change, staff is reviewing all applications prior to moving forward. He reiterated that this is a state requirement, in which the LMCD would be the responsible governing unit.

Baasen invited the applicant to address the Board.

Mr. Aaron Bean, owner of Beans Greenwood Marina, thanked the Board and staff for their time. He read a statement that offered the following comments:

- This application provides for the third of a four-phase dock improvement project (offering a long list of positive uses, including more convenient and safer egress/ingress access).
- This third phase remained consistent with the parameters of the QCM ordinance (while offering a safer layout that was made in a shallow, no wake area).
- He provided an overview of photographs that depicted prior dock improvement projects as compared to the structures not yet reconfigured, as well as the current and proposed expansion to the south as it compared to the distance of an existing point buoy.
- He entertained questions and comments from the Board.

Baasen opened the public hearing at 7:24 p.m.

Mr. Patrick McCarthy, 4900 Sleepy Hollow Road in Greenwood, stated that he has worked for Beans Greenwood Marina for many years and is currently serving on the Fire Department. In working for the Fire Department, he stressed the importance of having a properly sized dock structure to transport a victim on or off the watercraft, as well as the ability to not tie up a gas dock. He further stated that by extending the dock further out towards the point buoy, they are saving watercraft operators from hitting a rock pile should they cut the point

short.

There being no further comments, Baasen closed the public hearing at 7:27 p.m.

Roy congratulated Bean for his efforts (acknowledging the positive aspects to their reconfiguration). He further stated that the City of Greenwood was in favor of this application.

**MOTION:** Roy moved, McDermott seconded to approve Beans Greenwood Marina 2015 Multiple Dock License, subject to refunding the \$500 fee for the Variance application.

**VOTE:** Motion carried unanimously.

Klohs believed this application was a perfect example behind the intent of the QCM ordinance (acknowledging the improvement of safety factors on the Lake).

## 9. OTHER BUSINESS

- A. Browns Bay Marina (Site 2)**, new multiple dock license and side setback variance applications at 1444 Shoreline Drive on Tanager Lake to reconfigure 40 Boat Storage Units utilizing LMCD Ordinance 217 for Qualified Commercial Marinas

Baasen asked Nybeck to provide an update on this agenda item.

Nybeck stated that a public hearing was conducted on August 27<sup>th</sup> for the above noted applications. At that time, individual motions were made to prepare draft Findings of Fact and Order for both approval and denial, in which both motions failed. LMCD staff, Baasen, and two representatives from EOF Investments, LLC (EOF), owners of Browns Bay Marina (Site 2), met on September 11<sup>th</sup> at which time they discussed: 1) compliance with the 60-day rule and 2) options for the applicant to consider. On September 17<sup>th</sup>, an executed indefinite extension form to the 60-day rule and amended proposed site plan were received by the LMCD. He stated the amended proposed site plan triggered the need for a mandatory Environmental Assessment Worksheet (EAW), which he provided an overview of this state law (outlined within the Environmental Quality Board [EQB] rules). He stated that the dock structure and maneuvering space for the amended proposed site plan provided for 26,519 square feet (an additional 4,979 square feet from the currently approved site plan). He stated that a draft EAW will be prepared for consideration at their October 8<sup>th</sup> meeting, at which time the Board will review the draft document and authorize staff to proceed in accordance with EQB rules. The process should take between 60 to 90 days, after which the Board would need to determine whether an Environmental Impact Statement (EIS) was needed. If a decision is made that an EIS is not needed, a public hearing for the amended proposed site plan would be scheduled.

Baasen thanked Nybeck for the update.

- B. Discussion of LMCD Code relating to littering on Lake Minnetonka**

Baasen stated the LMCD had a number of conversations with stakeholders relative to lake users dumping their trash overboard (causing litter and pollution within the Lake). Most of the discussion pertained to

concerns in and around Big Island. In regards to this, he reminded the Board (via past committee updates) that the Save the Lake Committee had an interest in pursuing methods to participate in the reduction of this concern, including enforcement options. He directed the Board to a chart, within their packet, that outlined both the LMCD and State of Minnesota (state) laws pertaining to such.

Hughes liked the state law reference that documented not only public waters but "...the ice thereon...." He further stated that prevailing winds blow garbage inland from the ice fisherman.

Green concurred that the Board needed to consider enforcement of this concern; however, he asked them to also consider the ongoing collection of such, as well. He recommended establishing regular clean up events via partnerships with other stakeholders (referencing a clean-up event that took place last weekend [pictures offered] via multiple stakeholders.

Baasen solicited the Board's interest in whether the LMCD code (outlined within the chart) needed to be amended.

Nybeck stated that he spoke with Minnesota Department of Natural Resources Conservation Officer Jackie Glaser who referenced the Save the Lake's past coordination of an annual ice cleanup event, in which she recommended that could be re-activated.

Mr. Gabriel Jabbour, 985 Tonkawa Road in Orono, made the following comments:

- He believed that it was imperative the Board understood the scope of the concern prior to considering such.
- He expressed frustration with staff and asked if the Board received his email (documenting the hundreds of tons of trash that was recently removed from Big Island). He believed that the trash was present based on: 1) underage drinkers that do not want to take it home and 2) riparian contractors that would rather pay a \$175 dumping fine than \$600 for a dumpster.
- He has been coordinating shoreline cleanup for over 40 years (acknowledging it has become overwhelming).
- Red Bull (who sponsors coastal cleanup projects) conducted an unauthorized special event on July 4<sup>th</sup>, in which the Minnehaha Creek Watershed District spent \$1,800 to remove the trash off of the vegetation recently planted to secure the bluffs. He asked why the LMCD was not aware of the unauthorized event and that he had to inform the Board of such (offering he was tired of being the custodian of the Lake when the LMCD had entrusted powers to do so).
- He referenced an email asking the LMCD to show value to the Lake by participating in the recent cleanup project relative to the Red Bull event that took place, in which he heard nothing. Power Squadron members are required to have merit points and some members have chosen to obtain such by cleaning up all islands on the Lake. Other participants of the cleanup project included the Lake Minnetonka Association (who provided divers) and a resident that filled six 55 gallon drums.
- He believed a clumsy process existed in getting the LMCD involved in Lake matters and felt it was best to just stay out of the way.
- He would like to see all LMCD fines be changed to civil as most gross misdemeanors can change young lives and their future jobs. Additionally, the LMCD could be of help in asking the Hennepin County Sheriff Water Patrol (Water Patrol) to visit now and then.

- He expressed concern for not being aware this agenda item was scheduled this evening.
- In closing, he had offered to take the Board out and show them the concerns that exist. He asked the Board to not make decisions without first getting on the Lake to better understand the agenda item at hand (offering the LMCD needed partnerships, vision, and disciples singing out of a hymn book vs. relying on the three full-time staff members).

Baasen confirmed he was present for the recent cleanup event. He confirmed the LMCD is in the process of defining their role in this matter, which included being involved, stricter rules, and/or financial support (confirming this evening's agenda item was offered for the purpose of reviewing the laws and fines offered).

Mr. Matt Johnson, 1432 Shoreline Drive in Orono, stated that he came upon a watercraft in which the group within dropped litter into the Lake. As the Water Patrol was close, the officer addressed the matter but was only able to ticket the operator as no other party spoke up. He stated that the Orono High School parking ticket proceeds go directly back to the school and wondered if LMCD could consider a similar action with proceeds directed to cleanup projects.

McDermott concurred with researching the amendment of the criminal charge to civil.

Baasen recommended the following review steps for consideration (via staff working in conjunction with himself and LeFevere): 1) the LMCD code, 2) code enforcement (variables of), and 3) how the funds are retrieved (with possible future consideration of direction).

Hoelscher stated that a stronger ordinance may not solve all the problems. She believed that underage drinking could be the first topic of consideration. She questioned whether the purchase and maintenance of trash receptacles on Big Island (possibly funded by Save the Lake) would be of help.

Morris stated that the LMCD needs to think outside the box, possibly a two prong approach (enforcement and reward). He recognized the benefits in preventing underage drinking but also that it was going to continue. The placement of receptacles would give the Lake users the opportunity to do the right thing. The LMCD has volunteers that install and remove the solar lights and he believed the LMCD could coordinate the same for trash collection.

Green concurred that the LMCD needed to think outside the box. In regards to the receptacle idea, he stated that was tried at the public access for the collection of aquatic invasive species. Based on that experience, he stated the receptacles would have to be manned as he believed people would throw away anything for free, e.g., bathtubs.

McDermott offered the idea to contact Lake Havasu (large density) or research the floating trash receptacles that were presented by a representative of a past special event request.

**MOTION:** McDermott moved, Green seconded to continue pursuing this matter (further researching the interest of other local stakeholders (including marinas) and lake associations, as well as various ideas offered above.

**VOTE:** Motion carried unanimously.

## 10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Morris stated the AIS Task Force met on September 12<sup>th</sup>, at which time they received a report from the Minnehaha Creek Watershed District (MCWD) on their early detection and rapid response efforts to utilize Zequanox to eradicate zebra mussels in Christmas Lake.

Green stated that he had heard the MCWD had found zebra mussels outside of the curtain area on Christmas Lake. Additionally, Board members that attended the September 17<sup>th</sup> workshop that took place on the Lake, viewed the United States Geological Society's (USGS) Zequanox test site on Robinson Bay. He understood their equipment will be picked up within 30 days and that a report was expected sometime in the future. Lastly, that he was working with AIS Task Force member Dick Woodruff on a more comprehensive Request for Proposal relative to the watercraft inspection program (for the purpose of leveraging additional funds from the Minnehaha Creek Watershed District and other local groups).

Hughes stated the Public Safety Committee met on September 22<sup>nd</sup>, at which time they considered the current Quiet Water Area (QWA) petition for Seton Channel (covering a portion of Harrison and West Arm Bay), in which some of the petitioners were in attendance. Committee members had a few remaining questions but the consensus was to recommend the Board consider a public hearing on this petition.

Nybeck confirmed that the committee's request for a public hearing would be based on public safety, not environmental (i.e., shoreline erosion). Prior to scheduling a public hearing, the committee wanted to confer with member Tony Brough (Hennepin County Environmental Services) who was unable to attend that meeting. He believed the committee would bring forward committee recommendations at the October 8<sup>th</sup> Board meeting.

McDermott questioned if interested parties were originally confused as to whether a public hearing would be scheduled.

Nybeck stated that the role of the committee is to advise the Board on the petition for a QWA by making recommendations. However, the decision to hold a public hearing is ultimately up to the Board. In regards to this petition, he believed the committee would recommend the Board schedule a public hearing.

Hughes stated that the Finance Committee has been considering transferring the LMCD's banking depository to Beacon Bank. He asked Nybeck to give further details on this process.

Nybeck stated the idea of transferring banking depository came forward last spring. In follow-up to that discussion, LMCD staff and Hughes met with representatives of the bank; after which provided an update to

the Finance Committee. That committee has chosen to recommend such transfer at the Board's October 8<sup>th</sup> meeting.

Baasen further explained that the LMCD was having trouble obtaining Certificates of Deposit without multiple personal signatures and information (i.e., social security number) from the Board Officers (over and above what the Patriot Act requires). However, Beacon Bank has exhibited a willingness to work within the LMCD's framework (as opposed to theirs). Additionally, they agreed to secure any investments above the \$250,000 FDIC insured amount (per LMCD's adopted Investment Policy).

Hughes referenced the positive aspect of Beacon Bank's on-line banking system and the security controls available to the LMCD Executive Director in using such.

Baasen stated that the Save the Lake Committee will be meeting on September 30<sup>th</sup> to review solicitation of grant funds and have a preliminary discussion of the fall solicitation drive (offering normal levels of contributions are being received). The third and final 2014 Boater Safety Education Course is scheduled for November 1<sup>st</sup> for youths between the ages of 12 and 17. He encouraged all Board members to attend and assist if they have not done so in the past (explaining how they may be of assistance). In regards to the Executive Committee, they are meeting monthly, in which he welcomed all to attend.

Klohs stated the Ordinance Review Committee met this date (prior to this meeting), in which they initiated the process of communicating to the municipalities.

## **11. EXECUTIVE DIRECTOR REPORT**

Nybeck stated that staff has been working on pending water structure and de-icing applications, as well as compiling report results from the summer programs.

Green expressed an interest in meeting with Nybeck within the next two weeks relative to further discussions on the Watercraft Inspection Program (specifically for Cooks Bay).

## **12. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:10 p.m.

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Dan Baasen Chair

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Andrew McDermott, Secretary