

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, December 10, 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; Gary Hughes, Spring Park; Jennifer Caron, Excelsior; Ann Hoelscher, Victoria; Chris Jewett, Deephaven; Dennis Klohs, Minnetonka Beach; Dave Lang, Minnetrista; Fred Meyer, Woodland; Rob Roy, Greenwood; Sue Shuff, Minnetonka; Gregg Thomas, Tonka Bay; 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:** Andrew McDermott, Orono

**3. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

Jewett arrived at 7:03 p.m.

**4. CHAIR ANNOUNCEMENTS, Chair Baasen**

Baasen stated that the City of Excelsior had recently appointed Jennifer Caron to the Board. He welcomed Caron and asked her to provide a little background of herself.

Caron stated that she was just elected to serve her third term on the Excelsior City Council. She was excited to learn more about the LMCD as she is a relatively new watercraft owner that utilizes the city's docking program. Additionally, her daughter completed the LMCD's Boater Safety Course in which she received her watercraft operator's permit. Their recent use of the Lake has provided her family a deeper appreciation for the LMCD.

LeFevere administered the Oath of Office and Caron was seated as a member of the Board.

Baasen stated that this was the last meeting of the year. In reflecting back, he believed that this year offered fairness and flexibility. Some of the topics addressed included a review of ordinance amendments (working with the commercial marinas in 2014 and continuing that work with other various stakeholders in 2015), historical high water levels and the additional minimum wake restrictions that were placed in effect (referencing the positives and negatives but believing the additional restrictions were the right thing to do), continual aquatic invasive species prevention and management efforts, and initiating the review and update of the LMCD's approved Strategic Plan. He stated that the LMCD will move forward in its productivity while

continuing to maintain the Lake's order, in which the Board is charged with. On a separate note, he referenced the continued discussion and possible action that will be held at this meeting for the petitioned Quiet Water Area (QWA), agenda item 9A, which was not a public hearing. He recognized the stakeholders' passion for this matter and believed the November 12<sup>th</sup> public hearing provided them ample opportunity to comment. With that said, he will offer a few minutes under the Public Comments section of this meeting to those wanting to comment on something that had not previously been presented.

Nybeck stated that the annual LMCD and Hennepin County Sheriff's Office meeting has been scheduled for 5:30 p.m. on Wednesday, January 28<sup>th</sup> at Wayzata City Hall (just prior to the regular meeting). He stated Sheriff Stanek will be in attendance and asked all Board members to please schedule their attendance, as well.

**5. APPROVAL OF MINUTES- 11/12/14 LMCD Regular Board Meeting**

Nybeck requested that the word "business" used within the last sentence in parentheses at the bottom of page 8 and top of page 9 be replaced with the words "customers' use of the Lake." This change is at the request of the presenter, Ms. Kelli Gillispie, who wanted to clarify that it was her customers' use of the Lake that drastically dropped and not her business.

**MOTION:** Zorn moved, Roy seconded to approve the minutes as amended, making the change noted by Nybeck above.

**VOTE:** Ayes (10), Abstained (3; Caron, Lang and Shuff); motion carried.

**6. APPROVAL OF CONSENT AGENDA**

Lang and Green requested the removal of agenda items 6C and 6D, respectively, from the consent agenda.

Thomas moved, Shuff seconded to approve the consent agenda as amended, removing items 6C and 6D as noted above. Motion carried unanimously. Items so approved included: **6A)** Audit of vouchers (11/16/14 - 11/30/14) and (12/1/14 - 12/15/14) and **6B)** October financial summary and balance sheet.

**6C. Berta Kvamme, draft Findings of Fact and Order approving a dock length variance at 2050 Shoreline Drive on Smiths Bay**

Lang stated that he had previously worked with Berta Kvamme. Therefore, he would recuse himself from the vote.

**MOTION:** Roy moved, Zorn seconded to approve the draft Findings of Fact and Order as submitted.

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

**6D. Approval of appointments for 2015, as recommended in 12/3/14 staff memo (Auditor Selection- Abdo, Eick, & Meyers; Legal Counsel- Kennedy & Graven; Prosecuting Attorney- Tallen & Baertschi; Official**

Newspaper- Lakeshore Weekly News; and Banking Depository for 2015- Beacon Bank).

Green requested that the Board have the ability to review future solicited proposals 30 days prior to consideration of approval to provide for added transparency and the ability to solicit further proposals (if warranted).

**MOTION:** Hughes moved, Shuff seconded to approve the staff recommended appointments for 2015 (Auditor Selection- Abdo, Eick, & Meyers; Legal Counsel- Kennedy & Graven; Prosecuting Attorney- Tallen & Baertschi; Official Newspaper- Lakeshore Weekly News; and Banking Depository for 2015- Beacon Bank).

**VOTE:** Motion carried unanimously.

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

Baasen recognized that this section of the meeting provided for one's ability to address the Board on matters that are not on the agenda. However, he opened this section up for not only those individuals but those that would like to have a few minutes to address the Board on matters that have currently not been raised for agenda item 9A.

Ms. Connie Claire Szarke, 1956 Shorewood Lane in Mound, made the following comments relating to agenda item 9A:

- She listened attentively to the opponents' comments made at the November 12<sup>th</sup> public hearing. She was struck by the minor issues, arguments, and time people took to do math to determine how many extra minutes it would take them to traverse from points A to B.
- In living on this beautiful and unique body of water, it soon became evident that the opponents wished to boat on the Lake as if it were a freeway.
- Many spoke from a very personal point of view which struck her as self-centered and wishing to maintain tradition while others should consider staying away from specific areas in which they do not feel safe on non-motorized crafts. She spoke with residents after the hearing to find that unsafe conditions do happen right along their shoreline (i.e., young children and dogs getting slammed by wakes against their retaining walls), near accidents while swimming beyond their dock use area, and getting capsized while navigating a non-motorized craft. To this end, incidents are happening but not necessarily being reported to the Hennepin County Sheriff's Water Patrol (Water Patrol).
- The destruction of Deering Island within the last 10 years was of great concern to her. She stated it is a nesting site to Blue Herons and of great risk due to erosion and falling trees. A former owner hauled in large boulders which are now like pebbles against the frequent and enormous wakes (offering one point of the Island that used to display a statute that is now gone).
- That the "C" in LMCD stood for "Conservation," in which she named words synonymous to such.
- She hoped that the LMCD would move to provide for what remains at risk in this area; protecting the existing wildlife, land, and waters and eliminating the dangers to individuals and their operation of non-motorized craft. Additionally, she requested the Board halt the damage being caused along one of the Lake's busiest, narrow corridors by the ongoing, excessive speed of larger vessels.
- She thanked the LMCD for what they are doing and quoted Minnesota author Faith Sullivan, "...keeps

one in touch with forces larger than one's self."

Ms. Beatrice Amidon, 1909 Lakeside Lane in Mound, commented on agenda item 9A. She stated that she is a proponent of the petitioned QWA and expressed her interest in having it expanded further into Harrisons Bay about 50 to 100 feet past her home (acknowledging it is only about 600 to 800 feet from her home to one of the petitioner's). She referenced the years of erosion and damage to her property, in which she has lost over 150 feet of a point. She believes the water skiers could move further northwest into West Arm Bay to eliminate the repetitive ski route that is being used in front of her home. In closing, she asked that the Board let the kayaks and canoes out.

Mr. Randy Bickmann, representing the petitioners, inquired on his ability to address the Board.

Baasen stated that the Board may have questions for the petitioner(s), at which time they would invite him to address the Board. He asked if that was sufficient for his needs.

Bickmann stated that he would like about 10 minutes at this time to provide additional information to the Board (in addition to answering any questions).

Baasen denied the request to address the Board at this particular time; however, this could possibly take place later in the meeting.

## 8. PUBLIC HEARINGS

There were no public hearings.

## 9. OTHER BUSINESS

**A. Robert & Gloria Rich, Randy Bickmann, Norina Dove, and Gene & Wendy Shavlik**, petition for Quiet Water Area from the north Seton Channel to the east end of Deering Island (covering parts of Harrisons Bay and West Arm)

Baasen asked Nybeck for an update on this agenda item.

Nybeck offered the following update via a PowerPoint presentation:

- The LMCD received a petition on August 5<sup>th</sup> (see described agenda title). The petition included a letter with a series of maps and photographs (depicting shoreline erosion and watercraft operational behavior in the area).
- The LMCD Public Safety Committee considered the petition at their September 22<sup>nd</sup> meeting, in which they subsequently recommended the Board schedule a public hearing to gather testimony. The Board concurred with that recommendation and a public hearing was conducted on November 12<sup>th</sup>. This agenda item is scheduled for discussion and consideration.
- The petitioners submitted an amended petition on December 4<sup>th</sup>, in which the following two changes were offered: 1) reduce the width of the eastern border to the west end of Deering Island (rather than the east end) and 2) apply the proposed QWA to weekends and holidays only.
- A detailed overview of the LMCD's adopted QWA policy and how the petitions are considered in

accordance to the following respective sections:

Goals: 1) Recreational Management - insure each recreational demand the highest possible availability of satisfaction of that demand (consistent with satisfaction of other recreational demands and preservation of Lake Minnetonka as a recreational resource) and 2) maintain and improve the quality of the recreational experience in the least restrictive manner.

Policy: Establish QWAs in strictly limited areas where public safety, environmental, and recreational needs are demonstrated consistent with the quiet waters and recreational goals of the District.

Criteria for determining need to consider the establishment of a QWA:

- *Determination of need as expressed by the applicant:* He stated Bickmann provided background of their request at the Board's November 12<sup>th</sup> meeting (details of this background were outlined in the draft public hearing report that was included within the Board packet).
- *Determination of the boating safety record for the area:* Petition considered at the September 22<sup>nd</sup> Public Safety Committee Meeting in which the following was documented: 1) the petition should be considered for public safety reasons and not environmental (shoreline erosion), 2) Lake-wide shoreline erosion problems existed in 2014 due to historical high water levels, and 3) the Water Patrol could not access historical citation and accident history for this area based on change to their record system. He stated that Water Patrol representatives were in attendance at this meeting to address this criteria and questions from the Board.
- *Determination of LMCD boating density index for this area:*
  1. Criteria references 1974 Boat Density Policy Statement;
  2. Identify critical areas of excessive storage and potential overuse;
  3. Index to determine whether a "Critical" designation shall be deemed for any area of the Lake
    - a. One index (potentially critical)
    - b. Two or more indices (critical and referred to Board for remedial action);
  4. Staff did not believe this criteria should be used (not valid because it is 40 years old); and
  5. Not used by the LMCD Board in the past 20 years.
- *Observation of the proposed QWA during at least three normal high-use periods for one boating season by the LMCD:* Staff observed the area on August 10<sup>th</sup>, 17<sup>th</sup>, 24<sup>th</sup>, 26<sup>th</sup>, and 31<sup>st</sup>, as well as September 1<sup>st</sup> (documentation provided within Board packet).
- *Determination of any natural or special geographic features of the area which need to be considered:* Staff questioned whether natural or special geographic features of this area existed (described via map), e.g., the narrow surface area between Shadywood Point and the west end of Deering Island.

- *Determination of any special boating or other use characteristics affecting the area:* The east-west traffic was documented by Nybeck as clearly heavy on certain days and times while not heavy during numerous other times. He recommended the Board discuss whether this petition met the criteria for the establishment of a QWA. If the Board moved to approve the QWA, he recommended it be approved full time as establishing such for just weekends and holidays would be nearly impossible to communicate to the public and difficult for the Water Patrol to enforce.
- *Conduct a public hearing to develop further information about the application:* A great deal of favorable and opposed testimony (both verbal and written) were received prior to, at, and after the November 12<sup>th</sup> public hearing (documentation provided within Board packet).
- *Determination of effects of the establishment of the QWA on nearby areas or on the Lake as a whole:* It was recommended that the Board discuss how the proposed QWA would affect nearby bays (i.e., Harrison's Bay), as well as the time that would be added for boaters traversing the area.
- *Determination of whether or not the establishment of the QWA would be essentially of private or of general public benefit:* He believed that the proposed QWA would clearly benefit the petitioners' concerns; however, the benefits offered to the general public were unclear. He recommended the Board discuss this, as well.
- *Determination of any effects on the public health, welfare, safety, and the most general public use of the Lake.* He recommended the Board discuss this, as well.
- This is a Legislative Board decision and that action required a majority of the Board. The two actions would include:
  - Approve the petition as requested or amended. The Board would direct LeFevre to prepare an ordinance amendment approving the action, which would be considered by the Board in January. He reiterated that it would take eight affirmative votes to adopt.
  - Deny the petition, in which a motion by the Board should be made and approved.
- He entertained questions and comments from the Board.

Zorn asked if a representative from the Water Patrol could address the Board relative to the second criteria, "Determination of the boating safety record for the area."

Sgt. Kent Vnuk stated that the Water Patrol did not have the past 10 years of empirical data available based on a change in software that did not allow that information to pass from system to system. However, based on anecdotal recollection of his and other officers' tenure of approximately 15 and 20 years of experience, respectively, he stated that no accidents or incidents could be recalled in that area except for: 1) one overturned boat to the west of Deering Island during a non-busy time of the season and 2) one personal watercraft accident.

Roy believed previous comments existed acknowledging the Water Patrol's documentation of some safety concerns for the north/south passage of West Arm on the west side of Deering Island. He asked if that was accurate.

Vnuk stated that particular question was asked of the Water Patrol in 1997, in which their response is essentially the same. They did recognize a potential safety concern in the north/south traffic (offering a possible collision with traffic flowing from the east/west). He confirmed a collision of such has not been reported to date; however, the potential definitely existed. To this end, if a safety concern existed, it would be for that north/south channel.

Thomas asked how the Water Patrol's empirical and anecdotal safety record of this area compared to other areas of the Lake.

Vnuk anecdotally believed this area offered less reported accidents than other areas of the Lake; referencing more concerns around higher density areas such as Big Island, as well as the Narrows and Arcola channels. He further confirmed the Water Patrol is present multiple times on a daily basis near the Coffee Cove channel based on that area's high density traffic. In terms of higher density areas, he stated their presence was more regularly needed in the Lower Lake area (around Big Island, as well as Crystal, Wayzata, and Excelsior Bays).

Klohs asked if the Arcola Bridge area was more dangerous than the area being discussed this evening.

Vnuk did not believe the Lake was "dangerous." He believed what the Lake offered was the presence of high boat density during peak times that create more problems (i.e., alcohol consumption and inappropriate use of the rules of the road, etc.).

Hoelscher questioned if placing the buoys out further from shore would be of benefit based on prior comments that it would assist in erosion and the inability for a watercraft operator to cut around them too close to shore.

Vnuk stated that erosion was not his area of expertise. However, he spoke with Tony Brough from Hennepin County Environmental Services in regards to that option, in which Brough documented it would not change the wake size.

Baasen invited Bickmann to address the Board.

Mr. Randy Bickmann, 4652 West Arm Road in Spring Park, stated that he was one of the petitioners. He outlined the following three questions relative discussion held at the September 22<sup>nd</sup> Public Safety Committee meeting (offered via audiotape) in hopes of having Vnuk address them:

1. A comment was made by a Water Patrol representative (approximately 26 minutes into the meeting) that there were 42 verbal warnings and four accidents in West Arm Bay;
2. Comments were offered (approximately 41 minutes into the meeting) that: 1) this area had been discussed as being dangerous over the last five years and 2) the north/south traffic channel to the

west of Deering Island was the most dangerous (recognizing that the east/west traffic flow was also dangerous); and

3. Recognition that the Sheriff (approximately 48 minutes into the meeting) understood the area was considered dangerous (referencing their 1997 documentation for the north/south traffic channel to the west of Deering Island).

Vnuk offered the respective responses:

1. The verbal warnings and accidents documented were for West Arm as a whole (not specific to the proposed petitioned QWA).
2. He served another division of the Sheriff's office from 2006 to March of 2014. Therefore, in speaking with the other deputies and Lt. Saunders, he did not recall them documenting the subject area more dangerous over the last five years. He did recall comments offered within the meeting that acknowledged the high boat density but that it was not a public safety concern based on the lack of documented incidents and accidents.
3. In 1997, the LMCD received a QWA petition for this area in which they solicited the Water Patrol's input relative to public safety (under the leadership of Sgt. Ken Schilling at that time). He confirmed that the Water Patrol's opinion remained unchanged (acknowledging any issue that may exist would pertain to the north/south channel traffic merging into the east/west traffic of West Arm). He could not speak to the 1997 documentation but to his current experience on the Lake, in which he stated it was dangerous to have the north/south channel traffic merging into the east/west traffic at 30 miles per hour. He believed there was a potential to provide for public safety by putting "Slow – No Wake" buoys on the north/south traffic flow.

Baasen asked Nybeck to provide an overview of the 1997 petition based on his employment at that time.

Nybeck stated the LMCD received petitions in 1997 and 1998. In 1997, a petition was initiated by the owner of Deering Island, in which the owner requested minimum wake buoys be placed 150 feet from shore around the entire Island to identify the shorezone. The Board considered and denied that request. He believed the petition Bickmann and Vnuk discussed pertained to a petitioner from 1998 (who lived along Shorewood Lane) that requested the establishment of a QWA for the north/south traffic channel west of Deering Island. The request was also denied by the Board.

Baasen asked Bickmann if he had further comments.

Bickmann expressed concern for the comments offered being in conflict with what was offered on the audiotape (speaking from the audience).

Baasen proceeded to ask Nybeck if the flooding he referred to in the update offered above pertained to the 2014 high water levels.

Nybeck confirmed his comments relative to flooding were based on the 2014 high water levels and not boat traffic. Such flooding was Lake wide and not specific to this area (i.e., Baldur Park Road, Woodpecker Ridge, and other low lying properties throughout).



Klohs asked Nybeck if the Deering Island erosion was documented over the years.

Nybeck stated that Deering Island maintained a lot of history (going back to 1998). The owner's request for minimum wake point buoys documented the need based on boat traffic; however, evidence offered at that time documented the owner removing vegetation that contributed to the shoreline erosion (as well as the boat traffic). He could not speak to how much erosion to date but confirmed it existed.

Klohs believed that this area has provided a lot of history and comparable discussion.

Nybeck further documented a third QWA petition to expand such between the existing QWAs from Seton Channel to the Coffee Cove area. He confirmed that this area does have a lot of history in that regard.

Zorn asked Nybeck to comment on any recollection he had pertaining to the 1998 QWA petition for the north/south channel to the west of Deering Island.

Nybeck stated that request was based off of comments pertaining to site line issues (ingress/egress of both traffic directions) and the narrow aspect of the channel. The Board needs to keep in mind the 150 foot minimum wake restriction for the channel's shorezone, which provides for a 130 foot passage in between such. Based on his 2014 observations, he noticed operators simultaneously passing through at both at minimum wake and on plane, at which time they did not look to be safely lined up. He believed that could offer a public safety concern. He could not provide specifics as to why the Board denied the original request but believed the Board determined it did not meet the criteria standards to approve such. In 1998, there was an effort to make some adjustments of the red and green buoys.

**MOTION:** Jewett moved, Green seconded to deny the petitioners' request to establish a QWA from the north Seton Channel to the east end of Deering Island (covering parts of Harrison's Bay and West Arm).

Hughes requested clarification as to whether the motion would include the north/south channel between Shadywood Point and the west end of Deering Island.

Jewett confirmed the motion is to deny the entire request.

**MOTION TO AMEND:** Hughes moved, Green seconded to amend the original motion to deny the east/west traffic only (allowing for the ability to keep the north/south channel open for additional studies (utilizing existing data obtained to date)).

Baasen asked if the motion to amend is to further restrict the north/south channel or to remove it from the original motion.

Hughes stated that the motion to amend would remove the north/south channel from the original motion.

Baasen asked LeFevere to advise the Board of the procedure at hand.

LeFevere stated that the motion to amend was to exclude the denial of the QWA petition for the north/south channel west of Deering Island. Therefore, if that amendment were passed, that would leave the original motion on the floor to deny only the east/west traffic flow of the petitioned QWA. He further offered that in approving such denial does not approve the north/south channel but leaves it on the floor for further consideration.

Baasen solicited questions or discussion from the Board relative to the motion to amend.

Thomas asked Hughes to outline the north/south channel area on a map.

Hughes outlined the area documenting his interest in having the Water Patrol and Hennepin County Environmental Services involved in further studying such to alleviate documented public safety concerns. He requested this matter be kept within the current petition as he did not believe a second public hearing was in order (unless found appropriate). He did not believe asking for a division of the question was warranted as that opens up more issues (offering his current proposal leaves the decision up to the Board vs. the Chair). He further clarified that the motion to amend the original motion is to restrict action on the east/west traffic only.

Jewett requested clarification that this study would be over time and not acted on this evening, in which Hughes confirmed over time.

**VOTE ON MOTION TO AMEND:** Ayes (10), Nays (3; Hoelscher, Jewett, and Lang); amended motion carried.

**VOTE ON ORIGINAL MOTION (AS AMENDED):** Motion carried unanimously.

LeFevere stated that the approval only excluded the north/south channel area from the denial. Therefore, he recommended a new Board action be offered to further study the subject area.

**MOTION:** Hughes moved, Zorn seconded to refer the north/south traffic channel portion of the petitioned QWA request back to the Public Safety Committee for further study; requesting the following three agencies be present at that time: Hennepin County Environmental Services, Water Patrol, and Minnesota Department of Natural Resources.

**VOTE:** Motion carried unanimously.

**B. 2014 Lake Minnetonka Watercraft Inspection Report**

Baasen asked Green for an update on this agenda item.

Green stated that the presentation of this report will be re-scheduled to allow the Minnesota Department of Natural Resources time to further refine some errors in their data.

C. Staff update on 2014 LMCD Proactive Code Enforcement Program

Baasen asked Herman for an update on this agenda item

Herman directed the Board to her staff memo, dated 12/5/14, in which she highlighted the following:

- The program was initiated in 2006 for the purpose of enforcing watercraft storage ordinances at residential sites on Lake Minnetonka.
- The primary enforcement efforts included: 1) identifying and/or re-inspecting sites storing five or more restricted watercraft that do not have a multiple dock license and 2) sites storing three or four larger restricted watercraft that do not comply with the 1:50' General Rule.
- A detailed overview of the established documentation and communication process, as well as the 2014 enforcement priorities.
- A general overview of the 2014 findings and how prosecution matters are typically settled.
- An update to 10 Complaints filed for the 2013 boating season, as well as an overview of the 10 that are scheduled for the 2014 season.
- Concluding comments provided for an overview of:
  - One approved ordinance amendment that further defined an unrestricted watercraft and one pending ordinance amendment to further consider refining "...persons who live in the one residential structure...", both of which are relative to the Proactive Code Enforcement Program.
  - The processing of formal complaints (acknowledging they are open for submittal by all stakeholders and that 2014 offered her first complaint that could not be resolved by voluntary compliance; therefore a Complaint was filed and settled).
  - The research of one clustered watercraft storage area within a Lake inlet per season.
  - The benefits of offering a program with consistent enforcement procedures, in which this program offers.
  - An overview of the established history staff maintains of particular sites that assist in a more efficient review of the storage each year (i.e., confirmed ownership of a site owner's watercraft or combined density of two or more lots).
  - The approval of the 2015 program goals would be presented to the Board in the spring.
- The offering of a 2012-2014 Proactive Code Enforcement and Shoreline Boat Storage Count Program Cost Assessment spreadsheet requested by the Board last October.
- She entertained questions and comments from the Board.

The Board offered questions and comments, in which the following responses were provided:

- Further clarification of LMCD Code Section 2.02, "Shoreline Requirements" as it pertained to a site's shoreline measurement (1:50' Rule) and the ability to dock or moor four or less restricted watercraft.
- That initial documentation of a site is based on the storage of three or four larger watercraft that look to not have the shoreline to support such storage, as well as the watercraft ownership by

individuals living within the single family dwelling on the site (i.e., multiple cruisers, pontoons, etc.). As per past Board direction, staff considers all sizes of watercraft if the site remains non-compliant for the second boating season and beyond (i.e., the storage of personal watercraft, etc.).

- That staff's record of storage (photographs, registration numbers, etc.) is directly available to assist in deciding whether a site remains in compliance or should be documented.
- Green stated that he was unaware of other cities that proactively review land ordinances (i.e., fence lines) for compliance and asked what the rationale for initiating this annual program was.

Nybeck stated there was a movement by commercial marinas that had suggested that there was potential commercial activity taking place at residential sites. In response to this, the Board established, after committee review, a pilot code enforcement program in 2006 for the purpose of offering further education that would result in greater compliance of watercraft storage (offering a prosecution process for those non-compliant storage matters that could not be resolved at staff level). With regard to cities proactively enforcing their land ordinances, he deferred to LeFevere.

LeFevere stated that the enforcement varies with the type of violation. He confirmed there are some cities that are not proactive (possibly based on lack of need) with others that are very proactive (dividing the cities up in to quadrants). Those cities enforce matters such as the registration and storage of vehicles, as well as placement of trash cans and firewood to maintain their property values. He referenced the need to educate the Lake stakeholders based on their lack of knowledge of the LMCD Code; referencing those that just copy their neighbor's storage. Additionally, proactive enforcement assists the stakeholder in knowing that a site is not individually being enforced while other neighbors are maintaining the same concerns.

Green stated that the City of Minneapolis proactively enforced but did not do so on an annual basis. He was not passing judgment but asked if this level of enforcement was needed.

Jewett reiterated the fact that this matter was originally brought forward by the commercial marinas. In noting Mr. Rich Anderson of North Shore Marina in the audience, he asked him if he was in attendance during that initial discussion to expound on.

Baasen invited Anderson to address the Board.

Mr. Rich Anderson, owner of North Shore Marina, stated that he was the complainant to Herman's formal complaint referenced in her presentation. He submitted that complaint based on a neighboring property owner storing watercraft that were not all owned and registered to him (referencing a requirement of the City of Orono who does not maintain a proactive enforcement program). He further stated that he pays taxes on the amount of funds generated; therefore, non-compliant residential storage takes money out of his pocket. He stated the proactive program is imperative to the Lake based on a neighbor that would not turn another neighbor into the LMCD because they have to live with them nine months out of the year.

- A site would need 126 feet of shoreline to maintain three restricted watercraft that are not all

owned and registered to individuals living within the one single family dwelling of the site (offering examples of storage that may look to be all owned and those that do not).

- Zorn expressed an interest in further documenting the prosecution costs, as well as establishing the LMCD's watercraft value and operational costs, i.e., maintenance, storage, etc. Additionally, staff provided a brief overview of its usage.

Nybeck stated that the watercraft is documented as an asset in the LMCD's audit. He further stated that in regards to the revenue and expenses of legal counsel past reviews have confirmed that they are cash neutral vs. the expenses that are obtained.

- That Court fines are typically assessed at \$300 to \$500 as compared to those that chose to settle out of Court and pay prosecution costs typically estimated at \$800. Many have the option to have the misdemeanor removed from their record if they do not have any new or same violations for one year. She further stated that one case was recently settled in considering their 2012 and 2013 complaints at the same time. This settlement provided for a reduction in charge to petty misdemeanor but also offered probation, in which she believed that was a new condition.
- The Board's streamlining of the communication process down to two notification letters vs. three prior to initiating legal action [confirmed action taken in April of 2011] offered more precedence and consistency in bringing sites into compliance; especially those that chose to remain out of compliance two years in a row.
- Confirmation that staff will provide the Board with a future update on prosecution costs as it compared to fine review, as well as the documentation of the watercraft's as an asset.

#### D. Taping of 2015 LMCD Board Meetings

- **City of Wayzata**, agreements for use of the Community Room and Production Studio
- **Lake Minnetonka Communications Commission**, agreement for Video on Demand Streaming Services
- **Daphne Okey**, agreement for Contract Producer

Baasen asked Nybeck for an overview of this agenda item.

Nybeck stated that for a number of years, the LMCD has been holding the Board meetings at this location, which has offered the ability to videotape and provide streamlining (Video on Demand) of such via a three-way agreement between the LMCD, City of Wayzata, and the Lake Minnetonka Cable Commission (LMCC). He acknowledged the use of the community room only is directly contracted with the city. This agenda offers the Board's consideration of approval for four agreements (outlined within the title above) with the following changes:

- The City of Wayzata's agreement to utilize the production studio is now a two-way agreement with the LMCD. He reminded the Board of discussions held in mid-2014 that documented the LMCD's need to contract with a separate producer for the taping of the meeting in 2015 and beyond.
- Staff recommends the LMCD approve the draft contract with the LMCC, in which they will continue to refine the production of the videotape for placement on their network, as well as Video on Demand (removing the prior option of providing a producer). The draft contract

- proposed a fee of \$100 per meeting for this service, which is approved in the 2015 budget.
- Ms. Daphne Okey has regularly produced the LMCD meetings via a contract with the LMCC. As documented above, the LMCD would need to contract directly with a producer as of 2015. Staff recommended the contract be approved for the continued use of Okey's service in which that amount is also approved in the 2015 budget.

Baasen asked Nybeck to review the individual contract amounts and where the meetings are available for viewing.

Nybeck outlined the following one year term, draft contract proposals: 1) use of the community room- \$3,224; 2) use of the production studio- \$1; 3) LMCC's time in video streaming the meetings- \$100 per meeting (averaging \$2,000 per year); and 4) contract producer- \$80 per meeting (averaging \$1,600). He confirmed Okey's rate was consistent with other member city contracts she maintained (i.e., City of Orono). He further stated that the LMCD has a link to the LMCC's website whereby one could find the meeting schedule for viewing on their Government Channel 20 or utilize Video on Demand. He recognized past discussion in downloading the meetings directly on the LMCD website; however, further work needed to be completed in that regard. Therefore, he recommended approval of the above contracts for 2015 with the Board's ability to continue working towards other options as soon as possible for 2016 and beyond. He entertained questions and comments from the Board.

Hughes asked if the contract with the LMCC offered agenda parsing, in which Nybeck confirmed it did not. However, that option could be added at \$250 per meeting.

Green stated that he had previously worked with Harper to initiate the investigation process of hosting the LMCD's meetings on the website. He expressed an interest in not letting that effort get lost in the shuffle.

Baasen believed that having the meetings directly downloaded on the LMCD website was more productive on both a visibility and efficient standpoint.

Zorn questioned if the LMCC had any viewing numbers to offer, in which Nybeck offered to work with the LMCC in obtaining.

**MOTION:** Thomas moved, Shuff seconded to approve the 2015 Board meeting contracts as listed above.

**VOTE:** Motion carried unanimously.

## 10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Green made the following five comments:

1. The State of Minnesota Aquatic Invasive Species (AIS) Committee, in which he serves on, met last Thursday in St. Cloud. Beginning in July of 2015, those that trailer a boat in the state will be required

to take the state's on-line AIS training course that will result in the receipt of a required sticker on the trailer. There will be a fee assessed to the company contracted in offering the on-line test which is estimated to be available after the first of the year; however, the sticker offered by the Minnesota Department of Natural Resources (MN DNR) will be of no cost. Although there will not be a fine if pulled over for not having the sticker, there will be a warning assessed. He recommended that the LMCD highlight this requirement wherever possible (i.e., website and newsletter).

2. The MN DNR Roundtable is scheduled for January 16<sup>th</sup>, in which he will be attending as a state committee representative and believed that Nybeck was invited, as well.
3. The Initiative Foundation, who is assisting in reviewing and making recommendations of Lessard Sams grant fund requests, is holding an AIS Summit on January 20<sup>th</sup> and 21<sup>st</sup> in St. Cloud. The summit will provide training to local government units in building consistent, comprehensive AIS programs, as well as how to access county funds that have been divided up by the state legislature. He hoped to attend under the sponsorship of an organization (estimated cost of \$150).
4. He state that he was working with Nybeck in preparing for the 2015 Watercraft Inspection Program, in which he outlined the following four options that would be considered: 1) continue contracting the service with a personnel agency, 2) do nothing (comparing that to the extreme of inspecting 24/7), 3) work with the MN DNR in picking up the LMCD's four accesses that are typically covered, or 4) contract with a third party. He believed a proposal would be offered to the Board for consideration in late January.
5. The LMCD's AIS Task Force is scheduled to meet at the LMCD office on December 12<sup>th</sup> at 8:30 a.m. He invited all to attend that were interested.

Baasen encouraged Board members to serve on at least one committee each year (recommending the members consider their strengths and abilities in researching which one best fit their interest). He stated the standing committees are very vital to what the LMCD does as an organization, in which all work cannot be completed within the regular meetings alone.

Klohs stated that the Ordinance Review Committee met just prior to this meeting, in which they continued on the same path as what they recently accomplished with the commercial marinas (ordinance updates/amendments). This process is moving forward with the Lake's yacht clubs; therefore, the next step is with the municipalities. A draft introductory letter to the municipalities will be provided to the Board in January for their consideration and approval, in which he provided an overview of.

Hughes stated that the Public Safety Committee will schedule a meeting in the near future to continue discussion on the outcome of agenda item 9A above. He deferred to Nybeck on how the 2015 committee selection would proceed.

Nybeck stated that he will be sending an email to the Board offering the list of committees and their respective goals and objectives, as well as dates and times that they are typically held. After which, he will consolidate the Board's feedback relative to their interest and schedule consideration of the 2015 LMCD Committee appointments in January.

Baasen stated the Save the Lake Committee will be meeting at 7:30 a.m. on December 16<sup>th</sup> at the LMCD office. Topics planned for this meeting include: 1) the solicited 2015 Save the Lake funding proposals that

were recently due, 2) the 2014 Boater Safety Education sessions and the scheduling of the 2015 sessions, and 3) the 2015 Save the Lake Recognition Banquet (scheduled for Thursday, March 19<sup>th</sup>). He further stated the Executive Committee met yesterday, in which they reviewed: 1) the annual performance evaluation process and 2) the updating of the LMCD's approved Strategic Plan (with initial discussion scheduled directly after this meeting via a special meeting/workshop).

Zorn stated that the Nominating Committee will be contacting the Board members individually for their feedback on 2015 Board officers and asked that they watch their email for that communication. The committee will then meet on January 14<sup>th</sup> to draft the proposed selection for Board consideration at their January 28<sup>th</sup> meeting.

#### **11. EXECUTIVE DIRECTOR REPORT**

Nybeck directed the Board to the newly released LMCD newsletter within their handout folders. He believed it offered the high points of the LMCD's activities.

#### **12. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:45 p.m.

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Dan Baasen Chair

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Jay Green, Vice Chair