

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, January 14, 2015
Wayzata City Hall

1. CALL TO ORDER

Baasen called the meeting to order at 7:02 p.m.

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Jay Green, Mound; Gary Hughes, Spring Park; Jennifer Caron, Excelsior; Ann Hoelscher, Victoria; Gabriel Jabbour, Orono; Chris Jewett, Deephaven; 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: Dennis Klohs, Minnetonka Beach

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 made the following announcements:

- A Board Workshop has been scheduled for 5:30 p.m. on January 28th at Wayzata City Hall (just prior to the Regular Board meeting). He stated the purpose of this workshop is to hold the annual LMCD and Hennepin County Sheriff's Office meeting.
- He thanked the following representatives for their participation in the January 10th Board Workshop relative to updating the LMCD's Strategic Plan: 1) the Board for their attendance, 2) Tom Skramstad for his efforts in leading the workshop (acknowledging his expertise in facilitating the meeting), and 3) Board members Jewett and Zorn for their pre-planning efforts. Additionally, he directed the Board to three documents offered within their handout folders relative to the workshop discussion (LMCD's adopted Personnel Policy and Bylaws, as well as a 2005 draft document on LMCD's Board member and Officers expectations).
- He recognized former Board Member Keith Kask for his service on the LMCD Board. He presented Kask with a service gift while offering that he served on the LMCD Board from 2009 to 2013. He currently serves on the LMCD's Public Safety Committee, the Deephaven City Council (since 2005), and the Minnetonka Power Squadron (offering assistance to the LMCD's Boater Safety Education Program). Additionally, he formerly served on the Deephaven Planning Commission from 1983 – 2004.

Kask stated that he plans to continue his community service. He thanked the Board for not only this

recognition but also their service to the LMCD. He believed the LMCD was a great organization in which he enjoyed serving on.

- The City of Orono had recently appointed Gabriel Jabbour to the Board. Baasen welcomed Jabbour and asked LeFevere to administer the Oath of Office, in which he did. He welcomed Jabbour who was then seated as a member of the Board.

5. APPROVAL OF MINUTES- 12/10/14 LMCD Regular Board Meeting
12/10/14 LMCD Board Workshop

Zorn directed the Board to the first bullet point on page 13. She requested that the LMCD not only establish the watercraft value as previously documented but also its operational costs (i.e., maintenance, storage, etc.).

Thomas referenced the same sentence and asked that the word "LMCD's" be placed in front of "watercraft value." The final sentence would read, "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."

MOTION: Green moved, Shuff seconded to approve the minutes of the 12/10/14 LMCD Regular Board Meeting as amended, making the changes noted above.

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

MOTION: Thomas moved, Green seconded to approve the minutes of the 12/10/14 LMCD Board Workshop as submitted.

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

6. APPROVAL OF CONSENT AGENDA

Nybeck directed the Board to an amended Audit of vouchers (1/1/15 – 1/15/15) within their handout folders. He outlined the following: 1) check #20510 in the amount of \$73.60 to reimburse Zorn for the refreshments served at the 1/10/15 workshop, 2) check #20511 in the amount of \$156.33 to Health Partners (providing for the need to submit a paper check for the months of January and February to accommodate the recent transfer to another banking depository), 3) check #20512 in the amount of \$140.35 to Press Perfect Printing and Graphics for the copying of the 1/10/15 workshop packet materials, and 4) check #20513 in the amount of \$96.39 to Francotyp-Postalia, Inc. to correct a minimal numerical error (voiding previously printed check #20501). He recommended the approval of item 6A reference the amended document.

Green moved, Shuff seconded to approve the consent agenda as amended, making the change noted above. Motion carried unanimously. Items so approved included: **6A)** Audit of vouchers (12/11/14 – 12/31/14) and (1/1/15 – 1/15/15); **6B)** November financial summary and balance sheet; **6C)** Approval of 2015 LMCD Meeting Calendar; and **6D) Variance Deposits**, staff recommends Board approval of partial reimbursement of variance deposits as outlined in 1/6/15 staff memo.

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

There were no public comments.

8. PUBLIC HEARINGS

There were no public hearings.

9. OTHER BUSINESS

A. Wayzata Yacht Club (Site 1), 2015 new multiple dock license (with minor change) application

Baasen asked Harper for an overview of this agenda item.

Harper stated that Jonathan McDonagh, representing Wayzata Yacht Club (WYC), has submitted a reconfiguration of non-conforming multiple dock license (minor change) application for Site 1. The site is considered legal, non-conforming with a boat storage unit (BSU) density of approximately 1:4'. The applicant proposes to reconfigure one of the three existing permanent docks, BSUs 77-108, on the west side of the facility. Specifically, the applicant would reconstruct the existing BSUs with consistent 28 foot dock fingers that would extend all the way to the dolphin poles (currently varying from 28 feet to 31 feet, with dolphin poles). He provided a detailed overview of applicable LMCD Code Sections 2.015, Subd. 3 and 2.015, Subd. 4b. Although the proposed application met the requirements to approve this at staff level, the Executive Director wanted the Board to review the application and allow the City of Wayzata (city) time to provide comments on the proposed changes. The city reviewed the proposal at their January 6th Council meeting, in which city planner Brian Gaddow communicated that the city does not have an issue with the request based on their understanding that the same boats that are presently stored within the existing dock will be stored at the new dock. A January 8th letter relative to those comments was provided within the Board packet. Staff recommended approval of the application for the 2015 season, subject to the following four conditions: 1) watercraft stored in BSU's 93-95 must be fully contained within the dock structure to meet a 28 foot setback, 2) all remaining BSUs must comply with a four foot overhang restriction for watercraft stored within them, 3) all watercraft must be stored within authorized BSUs, and 4) a revised site plan must be provided documenting the lengths of BSUs 1-76. He entertained questions and comments from the Board.

Jewett questioned whether some of the current watercraft stored was greater than 28 feet in length.

Harper confirmed that some of the watercraft could be longer than 28 feet because the current slip length ranged from 28 feet to 31 feet (with a four foot overhang allowance).

Baasen asked if the proposed docks would be constructed out to the dolphin poles.

Harper stated that the docks would be constructed out to the dolphin poles; however, a number of BSUs would be reduced in length because the proposal is for all of them to be 28 feet in length.

Baasen directed the Board to the City of Wayzata's letter within the packet, dated 1/8/15, in which he believed the city understood that the approval would not provide for the extension of dock structures which would, in turn, provide for larger boats and more parking needs.

Harper believed the city documented that the watercraft stored at Dock "D," site 1 would not provide for larger boats. He further stated: 1) the applicant was extending the dock structures up to the spud poles and 2) that conditions offered would require the watercraft to be fully contained within some of the BSUs while the remaining would have a four foot overhang restriction. However, all BSUs would be constructed to 28 feet in length.

Jewett compared the currently approved site plan in which the applicant has a 31 foot long BSU with a four foot overhang allowance (providing for up to 35 feet in length) vs. the proposed application bringing them all in at 28 feet with a four foot overhang restriction (maximum 32 foot extension). He recommended the applicant speak to BSU 96 and whether that four foot overhang allowance could meet setback requirements or should a fully contained restriction be imposed on that BSU.

Green asked if the dolphin poles were being replaced, in which Baasen invited the applicant to address the Board.

Mr. Jonathan McDonagh, WYC Rear Commodore, confirmed that all the dolphin poles were being replaced, as well as the existing BSUs with new dock structures (extending the fingers out to the dolphin poles). All BSUs will be 28 feet in length and that the same boats are going back in to their respective slips.

Baasen referenced the city's letter and specifically read the numbered considerations under paragraph two. He asked if the proposed application would: 1) be accommodating larger boats, 2) that consideration number two remained consistent with the WYC's intentions, and 3) that they were on the same page for consideration number three. He informed the Board that the city approved such at a recent city council meeting.

McDonagh confirmed that: 1) the proposed application would not accommodate larger boats, 2) the consideration of number two remained consistent with their intentions, and 3) they were on the same page as offered in consideration number three. For the record, he documented that the city did not approve or disapprove consideration of this application but that, per the requirements of the 2012 approved Planned Unit Development (PUD) application, the WYC was required to go before the Council for their written comments to the LMCD Board, in which they did.

Jewett questioned whether the watercraft in BSU 96 could meet setback requirements with its ability to have a four foot overhang.

McDonagh stated that he could not confirm that question and would look into it.

MOTION: Jewett moved, Zorn seconded to approve the 2015 WYC (Site 1) Reconfiguration of Non-Conforming Multiple Dock License (Minor Change) Application subject to: 1) staff's recommended conditions and 2) confirmation that BSU 96 could meet the side setback requirements with the four foot overhang allowance (if not, to adjust the condition appropriately).

VOTE: Ayes (11); Abstained (2, Jabbour and Meyer); motion carried.

B. 2014 Lake Minnetonka Watercraft Inspection Report

Baasen asked Nybeck for an overview of this agenda item.

Nybeck offered the following comments:

- The 2014 Lake Minnetonka Watercraft Inspection Program was coordinated by the LMCD. The primary goals were to inspect incoming and outgoing watercraft and trailers (offering an educational component to both inspections). Partnering agencies included the Minnehaha Creek Watershed District (MCWD), Minnesota Department of Natural Resources (MN DNR), and the Three Rivers Park District (TRPD).
- The methodology provided for the coverage of nine of the 11 public accesses. The two accesses not covered were located on Phelps Bay in Minnetrista (four designated car/trailer spaces) and Echo Bay in Tonka Bay (no on-street parking is allowed east of County Road 19).
- The following details the components of the program:

LMCD

Entered into an approved Delegation Agreement with the MN DNR, which allowed the LMCD to contract with Volt Workforce Solutions (Volt) for 2,396 hours of MN DNR trained Level 1 inspections (including 100 hours of training).

Coverage provided for Friday (11 a.m. to 7 p.m.) and Saturdays, Sundays, and holidays (6 a.m. to 6 p.m.); starting Memorial Day weekend through Labor Day.

Public accesses included Carsons, Halstead, Cooks, and Wayzata Bays (Deephaven, Minnetrista, Mound, and Wayzata, respectively).

The LMCD expended a total of \$31,223 (1,939 inspection hours) to Volt; \$2,007 to the project coordinator; and \$2,333 for the purchase of electronic tablets and accessories.

MN DNR

Level 1 and 2 inspections were conducted at no cost to the Lake Minnetonka community. Those inspectors provide the following: 1) inspect for plants, other aquatic invasive species (AIS) and water, 2) notify licensed peace officers with alleged AIS violations, 3) deny a launch or use when appropriate, and 4) require actions for problematic watercraft (remove plants and other AIS, as well as drain water). Two additional authorities offered by Level 2 inspectors include: 1) may visually inspect the inside and outside of a watercraft and 2) may conduct decontamination efforts

when deemed necessary and appropriate. Both level of inspectors generally focused on Grays, Maxwell, North Arm, and Spring Park public accesses during peak times; covering the majority of other public access during non-peak times. He provided an overview of the total inspection hours (based on inspector level) for each access via a chart within the draft report.

TRPD

The TRPD provided an in-kind contribution to this program through gate attendants inspecting incoming watercraft/trailers (with an educational component) at the Lake Minnetonka Regional Park. Weekends were covered prior to the Memorial Day with additional inspections from 9 a.m. to 5 p.m., seven days a week through Labor Day. Staff estimated 1,000 hours of inspections were offered and recognized this partnership worked well.

- He highlighted the following funding sources: 1) MCWD- \$23,979 or 50% of project costs, whichever is less. He anticipated that funding to total \$17,724.84, in which staff will submit that request after the approval of the draft report; 2) MN DNR- \$4,000, which has been received; 3) LMCD- , \$13,724.84, which is the balance of expenses; and 4) TRPD- in-kind services.
- He turned the overview of inspection results over to Vice Chair Green.

Green provided an overview of the inspection results based off of the respective charts offered within the draft report: Total Inspections (MN DNR and LMCD) and Inbound and Outbound Watercraft Inspections (LMCD and MN DNR). His comments were as follows:

- Cooks and Carsons Bay maintained the bulk of the inspections per hour (about 2.5 inspections per hour) vs. fewer inspections per hour at Halstead and Wayzata Bays. He stated that the statistics help adjust the inspection hours (providing for more bang per buck). He further stated that two and one-half inspections per hour were about average; acknowledging that many organizations shoot for less (over the course of an entire week).
- For inbound inspections, he noted a slightly lower violation rate for drain plug being in on arrival (5% to 5.5% this year vs. 6% to 7% last year). Additionally, he wanted to point out the number of launches that were denied on Lake Minnetonka due to violations. He further documented 81 of those were specifically from the LMCD's four covered accesses based on their need to have the watercraft decontaminated or that they had water within.
- For outbound inspections, he noted that those respective violations are shared with law enforcement. He could not confirm what law enforcement did with the information offered. He stated that "Same Lake Users" were about 70%, which was consistent with last year's statistics. Additionally, those that remained on the Lake less than 24 hours ranged from 90% to 98% (recognizing there are a small percentage of people that refuse to answer that question).

Jabbour stated an efficiency comparison was done for the City of Orono as compared to state-wide. He believed it was difficult to compare the metro with other areas of the state based on the difference in pay scales and expenses. Therefore, he recognized the difficulty in looking at Lake Minnetonka's inspection rate per hour as compared to other lakes in which they may not see a boat the whole day (offering it as false standards).

Green directed the Board to the Inbound Watercraft Inspections chart; specifically the 13,742 watercraft

owners who stated their last body of water was Lake Minnetonka (10.98%). He stated that many comment in such a way so that they do not have to deal with additional survey questions.

Nybeck proceeded to summarize the program via the following comments:

- Inspections have been coordinated since early 2000's, in which the inspection hours have become more comprehensive. Partnerships that have been established with the MCWD, MN DNR, and TRPD have remained consistent.
- Program challenges included: 1) Volt staffing levels (early and late season openings), 2) high turnover rates of Volt watercraft inspectors, 3) reduced quality of watercraft inspection protocol with some inspectors, 4) reduced number of car/trailer launches through public accesses (recognizing the high Lake levels from May 13th to August 3rd), and 5) inspectors did not fully hand out educational brochures at Cooks Bay due to either lack of knowledge or availability of supply.
- He believed that inspections should continue for both incoming and outgoing watercraft in 2015. However, he recommended that the Board consider LMCD's future role in this program, as well as how the inspections should be coordinated. Two possible options included: 1) the LMCD continuing to take the lead as project manager via a) seasonal employees or another public agency or b) consider alternative employee sources outside of the private sector which would improve consistency of watercraft inspection protocol (recommended) or 2) another public agency take the lead (recognizing the LMCD's primary goal to prevent zebra mussels into the Lake) and LMCD could provide them grant funding.
- He recommended the Board approve the draft report, as written or amended, so that staff could submit such to the MN DNR and MCWD (which is needed to secure the above noted funding from the MCWD).

MOTION: Lang moved, Hughes seconded to approve the draft 2014 Lake Minnetonka Watercraft Inspection Program Summary Report as submitted.

VOTE: Motion carried unanimously

Jewett asked when the Board would need to decide on the LMCD's future role for this program.

Nybeck recommended sooner than later. He pointed out that the 2015 MN DNR grant application would be due shortly (recognizing the LMCD would submit the application with the option to withdrawal at a later date).

Green stated that the decision should be made within 30 days.

Baasen stated that he believed the AIS Task Force would review the options offered above, which will be brought back to the Board for consideration.

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Hughes stated the Public Safety Committee will be meeting on January 21st (3:00 p.m. at the Hennepin County Sheriff's Water Patrol office). The committee will further study the petition for a Quiet Water Area at the north-south channel between Shadywood Point and the west end of Deering Island.

Jabbour stated that he has worked with the Water Patrol for the past 35 years, in which he had previously communicated to some members of the LMCD his concerns with the level of coverage offered on the Lake. Based on his relationship with the Hennepin County Sheriff's Office, he believed it would be extremely beneficial for this Board and the LMCD to reschedule the January 28th Board Workshop (outlined under Chair Announcements) so that he could attend and participate in the discussion. He stated that he would be in Las Vegas on January 27th and 28th for an AIS Summit relative to design and construction of boats in consideration of AIS. He further requested that the meeting be set forth in some dialog other than just being announced. In an unrelated manner, he requested the Board consider changing the agenda to add both new and old business so that matters such as his comments above could fall within such an area of the agenda.

Hughes questioned Jabbour's schedule for the January 21st Public Safety Committee meeting, in which Jabbour confirmed he did not have concerns with that meeting going forward as scheduled.

Baasen stated the Executive Committee met on January 8th to discuss: 1) preparations for the January 10th workshop and 2) continue discussions on possible code amendments with representatives from the Minnetonka and Wayzata Yacht Clubs. The latter discussion will continue once the representatives of both clubs work to establish consistent proposed changes.

Jewett stated the yacht clubs are working to present a unified document (or as close to as possible).

Baasen stated the Save the Lake Committee met on January 6th, in which they had discussed:

- The following three 2015 Save the Lake request for funding proposals: 1) Hennepin County Environmental Services (HCES) for partial funding, \$12,300, 1/3 of the estimated costs, of an electronic message sign. He stated this would be located at the Spring Park public access and provide for greater communication to the Lake users (referencing the Strategic Plan). The committee has asked HCES to clarify the partnering agencies within this proposal, 2) Mound Fire Department for a matching grant relative to public safety equipment, and 3) Hennepin County Sheriff's Office for additional staff coverage on the Lake, \$5,200 (pending further clarification).
- The annual banquet has been moved from the second week in February to the third Thursday in March (March 19th) for the purpose of making changes to the banquet activities (i.e., auction). In an effort to make these changes, he requested the Board approve up to \$5,000 in preparations costs (one of which it to offer a more formal invitation).

MOTION: Thomas moved, Shuff seconded to approve up to \$5,000 of Save the Lake funds via the established purchasing policies for 2015 Save the Lake Banquet preparations.

VOTE: Motion carried unanimously.

Baasen stated that the Personnel Committee would be working on the completion of Nybeck's annual

performance review (as well as meeting with staff for an LMCD operations overview).

Green stated the AIS Task Force will be meeting on February 13th at the LMCD office. Additionally, there was a West Metro AIS Committee meeting on January 9th.

Nybeck stated the West Metro AIS Committee meeting was well attended (estimated 15 representatives); providing for constructive informational sharing. Discussion included: 1) 2015 AIS prevention and management programs, 2) possible submittal of an Initiative Fund Grant on a regional basis, and 3) other avenues in staffing watercraft inspections (some of which previously utilized the private sector and/or Volt).

Green reviewed the Initiative Foundation grant submittal dates. He stated that he and Jabbour will be attending the AIS Summit in St. Cloud on January 20th and 21st (acknowledging that Jabbour will be a speaker, as well).

Baasen stated the Save the Lake Committee has set the first Boater Safety Education Program date for Saturday, March 14th (targeting a location at the Westonka School District). Two additional courses are planned for June (dates to be determined).

Jabbour elaborated further on the Initiative Foundation, which is the vetting body for Lessard Sams funding requests. The Foundation reviewed eight proposals this date, of which three will be recommended for approval. He believed the LMCD, as a local agency, should think about individuals in the community that could apply for these grants (which is heavily weighted on innovation). He further believed there will be substantially more demand for the \$4,000,000 in funds that are currently available. To this end, the Initiative Foundation is one of the sponsoring agencies for the AIS Summit that Green spoke of.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated that he would respond to questions of the written Executive Director report, in which there were none.

12. PENDING LITIGATION- Matt Johnson, et. al vs. LMCD

LeFevere stated the LMCD has been served with a petition for writ of certiorari to the Minnesota Court of Appeals relative to the Board's October 8th approval of the Browns Bay Marina (Site 2) 2014 multiple dock license and variance applications (acknowledging that EOF Investments owns this marina). Staff forwarded this to the League of Minnesota Cities Insurance Trust who appointed George Hoff of Hoff, Barry, and Kozar, P.A. to represent the LMCD (offering that he had done so in other cases). Mr. Hoff was in attendance to address the Board and he recommended that the LMCD go into closed session to further discuss the pending litigation (as an exception to the Open Meeting law). He stated that if the Board concurred with this recommendation, a formal motion and approval by the majority of the Board would be required. Since no formal action was being considered this date, he stated that the Board could notify the public that they would be adjourning from that meeting (providing for that section to be non-televised).

MOTION: Jewett moved, Thomas seconded to: 1) go into closed session at 8:05 p.m. to discuss pending litigation as allowed by Open Meeting law and 2) adjourn the meeting upon completion of the closed session.

Jabbour stated that he would recuse himself based on his prior participation in a presentation on this matter to the City of Orono.

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

Dan Baasen Chair

Jay Green, Vice Chair