

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, July 22, 2015  
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; Gregg Thomas, Tonka Bay; Gary Hughes, Spring Park; David Gross, Deephaven; Ann Hoelscher, Victoria; Gabriel Jabbour, Orono; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; Rob Roy, Greenwood; and Deborah Zorn, Shorewood. Also present: Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** Bret Niccum, Minnetrista and Sue Shuff, Minnetonka

**3. APPROVAL OF AGENDA**

Green requested the Board add an agenda item at the end of the meeting (possibly going into closed session) to discuss "LMCD Personnel/Board communication issues."

Baasen asked if this matter could be addressed under item 13A, "New Business," based on possibly similar personnel issues that may be discussed during the course of the meeting.

Green recommended the agenda item be added should the matters discussed by Baasen not cover his concerns.

**MOTION:** Jabbour moved, Green seconded to approve the agenda as amended, adding agenda item 13A as noted above.

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS**

Baasen reminded all of the next Strategic Planning session that will be held on August 12<sup>th</sup>. He stated that "Targeted Outcomes for Strategic Issues and Priorities" will be the main topic of discussion.

**5. APPROVAL OF MINUTES-**

- 6/24/15 LMCD Regular Board Meeting
- 7/8/15 LMCD Special Board Meeting
- 7/9/15 LMCD Special Board Meeting

**MOTION:** Green moved, Morris seconded to approve the 6/24/15 LMCD Regular Board Meeting minutes as submitted.

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

**MOTION:** Hughes moved, Green seconded to approve the 7/8/15 LMCD Special Board Meeting minutes as submitted.

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

Zorn requested the spelling of her first name (provided under Members absent) be corrected within the 7/9/15 LMCD Special Board Meeting minutes.

**MOTION:** Hughes moved, Morris seconded to approve the 7/9/15 LMCD Special Board Meeting minutes as amended, making the change noted by Zorn above.

**VOTE:** Ayes (10); Abstained (2, Green and Zorn); motion carried.

## 6. APPROVAL OF CONSENT AGENDA

Thomas moved, Zorn seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**) Audit of vouchers (7/1/15 – 7/15/15) and (7/16/15 – 7/31/15); **6B**) June financial summary and balance sheet; and **6C**) **Woodland Cove, LLC**, staff recommends Board approval of proposed channel buoy plan as outlined in 7/15/15 staff memo.

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

Mr. Rich Anderson, owner of North Shore Marina on Browns, Maxwell, and Smiths Bay, stated that he recently met with one of the LMCD Board members, in which he discussed the following:

- Excess costs that were incurred to the City of Orono taxpayers relative to a petty detail on the timing of presenting facts to the attorney representing “Friends of Tanager Lake.” He recognized that this act did not cost the LMCD a dime based on the fact that the LMCD was sued for something “Friends of Tanager Lake” did not think was right. He voiced his concern about the LMCD proceeding with a motion to the District Court, Court of Appeals, and Supreme Court, in which he believed that each court denied each motion. He believed that each action was ridiculous as it incurred costs on a commoner when it did not cost the LMCD a dime based on insurance coverage.
- Concern that the Chair did not allow anyone but the owner of Tonka Paparazzi from the public audience that attended the July 9<sup>th</sup> Special LMCD meeting relative to public safety issues (specifically on July 4<sup>th</sup>) to speak. However, it was his credibility that was getting lambasted by an ambulance driver and he was never given a chance to rebut; acknowledging that was ridiculous. He and other Lake Minnetonka stakeholders received a letter from the custodian of Big Island. He did not discuss what was in the memo; however, he expressed concern about the questions that the Board was asking within the meeting (alcohol related incidents) rather than admitting the LMCD had a problem. He compared that discussion to an intervention one would have with an alcoholic. The custodian (Gabriel Jabbour) who had the most to lose and the one to take all the trash in that area away, was

having an intervention with the LMCD but the Board could not line up behind him because the Board could not admit they had a problem.

- He stated there were no problems except for those that are in the trenches (North Shore Marina [Smith Bay], the Water Patrol, Lafayette Club, and Jabbour).
- He referenced a Lakeshore Weekly News article featuring Sheriff Stanek. Within that article it was documented that the July 4<sup>th</sup> incidents included 17 transports for alcohol-related medicals, 73 calls for service, and four other medical emergencies. In follow-up to these incidents, Sheriff Stanek, Orono City Councilmember Walsh, and Jabbour (LMCD Orono representative) have reached out to him since that date to discuss solutions for the July 4<sup>th</sup> weekend from this point forward. Not one other representative from the LMCD has reached out to him, which he believed was because the LMCD does not think there is a problem.
- North Shore Marina is willing to do their part but he was not willing to do it all. He asked what the LMCD has done since the July 9<sup>th</sup> meeting was held.
- The LMCD has turned into a bunch of talkers/philosophers. He compared this comment as an opposite to what his son-in-law is currently doing as an Elder in the church (actively removing a chimney for someone).
- He asked the following questions:
  - Why is the LMCD not out there with a harvester cleaning up the beach?
  - How come the safety lanes were not kept open?
  - How can the LMCD effectively manage the Lake if the Board is not actively out there helping?
  - What is the LMCD's value?He stated it would have been nice for someone to provide a little manpower on July 4<sup>th</sup>.
- He thanked the Board for this opportunity to vent and left the meeting.

Baasen stated Anderson's concerns relative to the July 4<sup>th</sup> weekend is a matter scheduled to be discussed under item 9E, including the meeting of discovery held on July 9<sup>th</sup>. After offering a list of names as to who were in attendance, he stated that the meeting was not a mission to solve the problems but a mission to find out what the LMCD needed to do to take action. He confirmed the July 4<sup>th</sup> event had not been dismissed by the Board and entertained questions and comments.

Gabriel stated he believed it was customary to receive public comments and not rebut them.

Baasen did not believe he was rebutting Anderson's comments but to offer further education in this matter.

## 8. PUBLIC HEARINGS

There were no public hearings scheduled.

## 9. OTHER BUSINESS

- A. **Ordinance Amendment**, draft ordinance amending LMCD regulations relating to qualified yacht clubs and sailing schools

Baasen asked Nybeck for an update on this agenda item.

Nybeck stated that at their June 24<sup>th</sup> meeting, the Board approved first reading of an amended draft ordinance; waiving the second and third readings. However, prior to adopting the ordinance, the Board requested the offered amendments be placed in writing for one more review. He directed the Board to the highlighted, amended ordinance within their packet for consideration of adoption.

**MOTION:** Jabbour moved, Green seconded to adopt the draft ordinance relating to Qualified Yacht Clubs and Qualified Sailing Schools as submitted.

Thomas recommended any representatives present from the yacht clubs or sailing schools be offered a chance to comment.

Mr. Jonathon McDonagh, Rear Commodore representing the Wayzata Yacht Club, stated the draft ordinance looked great. He thanked the Board for their time in working with them on this matter.

**VOTE:** Motion carried unanimously.

**B. Electric Shock Drowning Prevention Association**, presentation by Ed Lethert on electric shock drowning

Baasen welcomed Ed Lethert and invited him to present on Electric Shock Drowning (ESD).

Mr. Ed Lethert made the following comments:

- He thanked Nybeck, Hughes, and the remaining Board members for this opportunity. Additionally, he thanked Cpt. David Rifkin and Kevin Ritz for permission to utilize portions of Electric Shock Drowning Prevention Association (ESDPA) materials for this presentation.
- Based on his background, he refers to himself as an unofficial ESD safety specialist. He is a volunteer with the ESDPA and member of the Minnetonka Power Squadron.
- Almost all that he has spoken with were not aware of ESD or whether the circuit that powered their electrically operated boat lift was protected by a ground fault circuit interrupter. His objective was to answer the following questions: 1) what is ESD, 2) conditions that can cause ESD, 3) can water leakage currents or voltage gradients be detected or measured, 4) are there serious danger thresholds, and 5) are there standards, policies, and procedures for minimizing the risk of ESD.
- An overview of the applicable installations/facilities that should be aware of this danger.
- An outline of five factors that provide cause for this concern.
- An overview of the known ESD victims and the ESDPA list that has been compiled.
- The possibility that ESD existed wherever shore-powered AC electrical equipment is located in, over, or near the water.
- An overview of the National Electrical Code.
- How an electrical current can enter a body from the water which can provide for possible paralyze causing drowning to occur (offering the various levels of alternating current that can affect various levels of muscle control).
- The dangerous levels of leaked current flow in the water that provides for the following two conditions:

First, the existence of an electrical fault (hot to ground) in the AC system. This provides for a low level fault current which is not enough to trip a circuit breaker. Second, there must be a failure in the shore power bonding (grounding) system.

- An overview of the terms “safe,” “degree of risk,” and “very low risk.”
- How to check the shore system wiring and various prevention actions.
- Complying with various codes and standards (referencing National Electric Code (NEC) Article 555 which covers marinas and boat yards)
- Recommended actions during an ESD event.
- He entertained questions and comments from the Board, as well as offered to remain after the Board meeting for further questions.

Hughes stated that he has known Lethert for 40 years. He stated there are four ESD cases documented in Minnesota in which he named their ages. Additionally, he had documentation from a former Board member who spoke to him about a potential wiring mishap. He has learned a great deal in reading about the known events and urged all to do the same.

Morris asked if a device existed to test the water.

Lethert stated there are two devices in existence (running in the thousands of dollars). They operate as a monitoring and alarm system. One concern relative to this type of system is that if an alarm goes off, one could already be in the water. Therefore, the ESDPA's position is for one not enter the water when equipment is running. He referenced the hydro sweeps that are currently being manufactured (a product that circulates the water and keeps the lake bottom clean around a dock area). The manufacturer of this product recommends the use and regular testing of a ground fault circuit interrupter (GFCI). As of this date, all GFCIs are required to be self-checking. This is a big step in making a site safer as GFCIs could fail and continue to allow electrical current to enter the water without warning. Lastly, he stated that since 2011, the NEC required marinas and boat yards to have ground fault protection on the service for all new or altered work. At this time, it is at 100 milliamps; however, a 2017 approved proposal will drop that to 30 milliamps.

Jabbour questioned if a commercial GFCI would exceed the danger level if it trips.

Lethert offered various scenarios for the use of adjustable GFCIs to different levels of feeders (offering the receptacles trip at five milliamps which is half of the documented danger level). He thanked the Board for this opportunity.

Baasen thanked Lethert for his time in researching and educating all on this important matter.

Hughes referenced the ESDPA's recommendation to not swim off of a dock or boat in which electrical current is running. He asked what his opinion was for boats that utilize gas powered generators.

Lethert confirmed that there is not a problem swimming around a boat with a generator inverter. He did point out a concern existed when there is rafting between two boats with an extension cord that is ran between them. That type of scenario creates the same concern as if they are in the marina or utilizing shore power. He was

unaware of the policy for Lake Minnetonka marinas; however, many such businesses do not allow the use of inverters or generators when the boat is tied to the slip.

Baasen stated that education on ESD is paramount.

Lethert directed all to the back of the room where a stack of brochures and his business card could be found. Additionally, he presents to groups free of charge.

A question was raised in the audience as to whether any ESD events occurred on Lake Minnetonka, in which Lethert stated not that he knew of. He stated it was common to document a death of drowning even though water was not present in the lungs (offering a specific case in mind), which initiated the need to educate on this topic.

### C. Discussion of littering on Lake Minnetonka

Baasen stated that this matter was brought to the Board's attention at their June 24<sup>th</sup> meeting. Specifically, Nybeck's acknowledgement of a letter the LMCD received from Ms. Sareena Katz. At that time, Nybeck questioned whether staff should respond to Katz based on current LMCD Code or if the Board would prefer to schedule an agenda item for further discussion, in which the Board chose to move this forward for discussion at this meeting. He received a call this date from Lake Minnetonka Association (LMA) Executive Director Melissa Waskiewicz who had invited the LMCD to partner, in some manner, on this matter. In this conversation, Waskiewicz expressed an interest in not working against each other but to partner as much as possible. She stated the LMA had an active volunteer force and that she was interested in the LMCD's ability to consider further enforcement via ordinance amendments, as well as funding for needed materials. He offered LMA President Tom Frahm, who was in the audience, the opportunity to comment. Frahm deferred to comment until after Board discussion. He directed the Board to their packet in which a number of documents were offered for this agenda item and entertained discussion by the Board.

Green clarified that this matter was originally brought to the Board after the 2014 July 4<sup>th</sup> holiday, in which the Board did not act on. He recognized the LMCD had ordinances in place which allowed the Sheriff's office to enforce littering. However, he looked at the regulations the same as aquatic invasive species (AIS) regulations. Specifically, he compared paying the misdemeanor fines and tipping a dock attendant \$100 at Lord Fletchers one in the same. To this end, he believed the LMCD needed to think outside the box. As an example, he stated that rafting at Big Island is like a giant tailgating party that utilizes social media to bring people out to the location. He believed the LMCD needed to utilize that same concept to get the message out for everyone to show a personal responsibility towards the prevention of littering (i.e., bring a bag with you – leave the environment the way you found it). The LMCD can assist in coordinating cleanup projects and funding materials; however, the LMCD must also look at preventing this problem and other acts that have presented itself via evidence found within the trash collected. He recommended the Board not miss the boat this year.

Gross concurred with promoting the prevention of littering. In referencing cleaning up litter after the fact, he provided examples of various agencies that have programs in place (e.g., a city public works department

overseeing parks or volunteers within an Adopt a Road program). He recognized the LMCD does not have a public works department but questioned if the LMCD could take a leading role in the coordination of resources (volunteers or paid staff) to handle the cleanup projects.

Green expounded on Gross' comment by adding that the LMCD could offer grants to agencies already doing the work.

Jabbour made the following comments:

- He had previously addressed the Board on littering and the need to increase the fines, in which he was totally dismissed and no actions were taken. To this end, he went to the LMA and Minnetonka Power Squadron who now coordinate a litter cleanup program.
- The Board needs to be a part of the solution which would require them to get on the Lake and have a visual aspect to the problems that exist. The LMCD would not want to take credit for other agencies work. A program that includes the coordination of volunteers is already in place.
- He confirmed there is a garbage problem and that Red Bull should not have held their event two years ago (offering he believed the LMCD is oblivious to what is going on). He acknowledged the events will only be growing; therefore, concrete solutions are needed.
- He referenced the key players in the current cleanup program and the quick action that was offered to address his concerns. He urged the Board to get out on the Lake and consider programs (including recognition) that would be of assistance to the program that is currently in place.
- The rafting area at Cruiser's Cove covers about 1,200 feet of over 10 feet high of bluff shoreline. Receptacles cannot be placed on shore in this area and that the rafters would not make an effort to take the trash to shore if they were in existence.
- He believed that the Board needed to do less pontificating and more doing vs. giving direction to staff without actually being on site to observe. One cannot speak of education unless they were present to observe what is going on. He knows that the LMCD is needed but was unsure as to what capacity. He expressed concern that no action was taken for tougher fines when he previously presented this program.
- He recognized the Sheriff's Department contacted the Minnesota Department of Natural Resources (MN DNR) and their watercraft inspectors are going to hand out literature. Additionally, they are going to utilize electronic signage at public accesses to get the message across. Knowing that 50% of those that received emergency treatment over the July 4<sup>th</sup> holiday were residents of the Lake, he recommended one of those electronic signs be placed on Highway 15 where the speed limit goes down to 45 miles per hour. This kind of involvement is going to make a profound difference.

Roy referenced his observation that underage drinkers do not want to be confronted by their parents when bringing their trash back home. He expressed an interest in researching the use of receptacles.

Jabbour stated that he did not foresee the rafters making an effort to get the trash to the receptacles (offering it is so crowded that it took 10 minutes to get an individual that needed medical treatment to a nearby police boat). Additionally, some of the products being utilized out there are illegal; therefore, the user clearly would not make the effort to utilize the receptacle.

Hoelscher concurred with all comments offered. She stated public education would assist (referencing how times have changed in that people do not toss trash out there car windows) and that people, in general, do want to do the right thing given the opportunity. She believed there was a way to provide some receptacles (offering what is provided on the Apple River) and that the LMCD does need to partner on this matter and assist where needed (offering ideas such as permitting Cruiser's Cove, granting funds, passing out maps, etc.).

Jabbour stated that: 1) the safety lanes must be changed, 2) special events out at Cruiser's Cove are so consistent that the Water Patrol could be present at that time, 3) the use of park rangers requires little orientation; however, the rafter in the water will tell them to "pound sand," 4) the garbage collected was caked with zebra mussels, 5) there are two accesses near Tonka Bay Marina; one managed by the Hennepin County and the other by the MN DNR. The county provides a dumpster but the MN DNR does not (offering mattresses and bathtubs are commonly found in the dumpster that exists), and 6) the veterans had provided funds for 10 functioning stalls at Orono Park, in which vandalism has prevented them to continue their existence.

Green referenced the floating trash cans provided while rafting down the Apple River. He recommended utilizing the concept of taking that opportunity directly to the user.

Thomas recognized this matter is a problem; however, he has not heard a silver bullet. He stated that if a task force is created (which would include representatives from other partnering agencies), he recommended the members provide tangible, action oriented, and quick recommendations; offering the focus be on prevention and not cleanup.

Baasen stated that in talking to Waskiewicz, he recommended a "fast task" be created that would include representatives of all partnering agencies. Additionally, Baasen mentioned that the LMCD Save the Lake Committee would be taking applications for 2016 Save the Lake funds in October.

Thomas expressed an interest in tackling the solutions needed prior to considering how the solutions would be funded.

Mr. Tom Frahm, President of the LMA, stated that he has lived on the Lake for over 40 years and has been regularly involved in the prevention of aquatic invasive species (AIS). He stated education will not work based on a high percentage of people that do not "give a rip." He recommended extravagant fines (including jail time). He did not concur with warning tickets and commented that there is not enough patrol to control the matter. Lastly, he believed that funding for cleanup could be addressed through a Lake Minnetonka User Fee for boats.

Gross stated that the matter of littering is being referenced as a Lake Minnetonka problem and he did not believe it was. As an example, he stated Carson and Robinsons Bay are becoming more populated on Sunday afternoons; however, no one is talking about a trash, excess drinking, etc., in those bays. He asked what is different with Cruiser's Cove and recommended that the Board consider closing down Cruiser's Bay and its common form of recreational use at that area (offering it as one small part of the Lake).



Baasen stated that trash is a concern for the whole Lake; referencing trash floating up on his shore daily.

Gross questioned if that trash is excessive as compared to Cruiser's Cove, in which Baasen stated he does not have 800 people rafting in front of his home.

Thomas believed the closing of Cruiser's Cove would just move the problem to a different area of the Lake.

Jabbour stated the only agency that can levy a license on a boat is the MN DNR (offering it is impossible to get an AIS surcharge with the MN DNR). He offered the possibility of no anchoring with 150 feet of shore and expressed an interest in preserving the Lake Minnetonka experience (offering it is important for the Water Patrol to be present early on to set the tone).

Hughes outlined other areas dealing with the same concern (Mardi Gras, spring break, Key West, etc.). He believed the LMCD needed to curtail excessive drinking by everybody. Those cited with underage drinking in Key West have to do jail time with service (beach cleanup). In regards to trash, he has whisky bottles and beer cans that regularly end up in his shore.

Klohs directed the Board to the LMCD's prosecuting attorney's comments within their packet (referencing the challenges of catching one in the act for prosecution and addressing fines as a revenue generator). He stated the Board generally knows where the concern exists and believed that designated garbage boats made sense (picking up the garbage and keeping the driving lanes open). However, catching one in the act and raising fines to generate revenue is just not going to happen.

Jabbour stated that a boat with fishing net to catch the garbage has been tried and this process worked. However, he wanted the Board to know this is not a July 4<sup>th</sup> problem. As of today, they have taken five, 55 gallon bags off of the water. To this end, it is an on-going problem and that this type of setup could not physically get in the middle of a July 4<sup>th</sup> gathering. There needs to be physical presence to correct the behavior.

Morris believed a multiple prong solution needed to exist. He believed there was no reason why the LMCD could not increase the fines and carry a big stick. He concurred with Green and someone should be present to collect the trash. To this end, provide better presence, keep the lanes open, and support the partnering agencies as needed.

The Board had a brief discussion on the coordination of a meeting relative to this matter.

LeFevere stated that the Board cannot increase the fines because the highest level of prosecution is a misdemeanor. He further stated that the maximum fine is set by statute but once it is charged, it is in the hands of the courts, who establish the fine schedule. As noted by the prosecuting attorney, it would be very difficult to change the court's mind as to the fine for littering. To this end, one cannot control the courts that are clogged and understaffed.

Morris asked LeFevere how White Bear Lake can assess a \$700 fine for littering.

LeFevere stated the state statute is the same for all. He reiterated that it is the judge who collectively decide what a fine will be (offering that they would not send one to jail for 30 days for littering).

Zorn questioned the use of cameras for enforcement purposes (similar to traffic cameras utilized in Minneapolis).

LeFevere stated that is more of a question for the prosecutor. However, if the use of such stood up in court, the LMCD could not still impose a higher penalty.

Zorn questioned the idea of enacting a peer citizen reporting mechanism that the LMCD could then send a warning letter from (offering the idea to build peer pressure).

Frahm questioned the rules on community service.

LeFevere stated it would be up to the judge to impose. Most cities express concern as they would have to provide supervision and the needed staff to oversee the service imposed.

It was a consensus of the Board to schedule an LMCD Special Board Meeting for 8:00 a.m., on Monday, July 27<sup>th</sup> at the LMCD office. Staff would post the meeting and invite member city and partnering agency representatives to participate in this discussion.

**D. 2015 EWM Harvesting Program Mid-Season Report**

Baasen asked Harper for an overview of his report.

Harper stated that the harvesting equipment was launched on June 10<sup>th</sup>, seasonal employees were trained on June 15<sup>th</sup>, and the program commenced on June 16<sup>th</sup> (Old Channel and Lafayette Bays). As of July 10<sup>th</sup>, the program has provided for 11 working days. He provided an overview, via a PowerPoint presentation, of key statistical data, bays and areas harvested, as well as a financial assessment of the program to date. He entertained questions and comments from the Board.

Green requested Harper comment on the following: 1) he asked what Hennepin County charged for launching the harvesters this year, 2) background relative to calls received for the harvesting of Carmans Bay, and 3) any program needs.

Harper offered the following response: 1) that Hennepin County is going to charge an estimated \$1,000, 2) he received one call from a person upset that the LMCD was harvesting in Carmans Bay with multiple calls from residents wondering when the LMCD was going to harvest within the bay. He stated that many of the residents are new to Carmans Bay and are not familiar with the program since the LMCD had not harvested in that bay for so many years (due to coordinated herbicide treatments). The bay had heavy Eurasian Watermilfoil (EWM) growth and was in need of harvesting. To this end, the LMCD worked with the City of

Orono to utilize Lydiard Beach as an off load site and 3) just this week one harvester was taken out of commission for a hydraulic pump issue. Staff is currently assessing to see if the harvester should remain out of commission for the year; however, the pump can be repaired at anytime.

Zorn asked: 1) if the LMCD received calls from residents that were not happy with the harvesting (due to fragments washing up on shore) and 2) what percentage of the cut EWM is not picked up.

Harper did not think one could measure what is left behind. He stated that a great majority of the cut EWM is picked up with the head conveyor. The paddle wheels offer the harvester the ability to navigate through matted areas and that the turbulence of the paddle wheels can cause some fragments. Additionally, staff adjusts their harvesting areas taking into consideration wind directions. Additionally, the crew typically returns to the cut areas the next day to pick up any remaining fragments.

Baasen stated that in all fairness the LMCD harvesters did not enter Wayzata Bay until last week. However, the entire shoreline has had fragments wash up on shore since the middle of June from multiple sources (boats, traffic, and wind).

Gross stated that Carson's Bay was previously treated with herbicides and residents were very unhappy with the results. Therefore, they asked the LMCD to harvest the bay, which was done just last week. He has heard nothing but good comments and offered kudos to Harper.

Harper thanked Gross and stated that staff worked directly with the LMA to accommodate that harvesting.

#### E. Chair update on July 9<sup>th</sup> Special LMCD Board Meeting

Baasen stated that a July 9<sup>th</sup> LMCD Special Board Meeting was held to take discovery of what transpired over the July 4<sup>th</sup> weekend relative to public safety. The result of which confirmed a problem existed. It was reported that there were 10 boats manned with two peace officers each. Additionally there were two special deputies on staff. The activity present that day prevented the Water Patrol from providing adequate enforcement. He outlined the following problems (not offered in full) that he took from the meeting: 1) trash, 2) emergency access (safety lanes at Cruiser's Cove and emergency off load). Sheriff Stanek had indicated his first choice is not to purchase a site for emergency access but to have one secured in some manner, 3) alcohol (including enforcement due to density), and 4) private transportation to Big Island from shore for a fee (deferring to Jabbour relative to his prior comment that people were found stranded on the Island at the end of the day).

Gross understood, from the meeting, that the problem was not the Lake as a whole but Cruiser's Cove and only Cruiser's Cove.

Jabbour stated that he feels for the emergency professionals delivering the services that day. Those individuals have to be very careful in providing an account of that day. Many years ago the Water Patrol building was under construction; therefore, he gave the unit his building on Tonka Bay for one year at no charge. They had a very hard time with the LMCD providing approval for the Water Patrol's 10 boats to be

stored at this site (offering that they had to get rid of 10 customers). Moving forward, Tom Skramstad chaired the LMCD and an ordinance was adopted that provided for the storage of an emergency watercraft to not count against the density of a multiple dock licensed site. He took that ordinance a step further and provided for the storage of a Water Patrol and fire boat at Sailors Worlds (with Bret Niccum providing a complementary dock). Based on the commotion of the July 4<sup>th</sup> events, the fire boat and dock were removed. He understands that Rich Anderson (who spoke under public comments at this meeting) did not have any intention to allow those boats back to the marina he now owns. It is not a dock issue but a land issue; expounding that there is no physical space on the land to handle all the emergency vehicles in order to reach the emergency fire boat (including parking on the shoulder of County Road 15). He stated this is not just a July 4<sup>th</sup> weekend problem as emergency crews were at his [Anderson's] site for one month for recovery efforts of a person who drowned. On top of the concerns listed above, Anderson also dealt with people coming on to his land and urinating in the parking lot. He stated they utilized his site [Jabbour's] for more less time sensitive calls as the Tonka Bay site adds 20 minutes of transportation to the hospital; referencing Sailors World is three minutes to the 50mph speed limit and 10 minutes from any major hospital. Under Jabbour's scenario, he had four MN DNR officers accompanying the call. To this end, 100% of the resources were being utilized to handle injuries at Big Island; placing others who may need them at risk. He stated he tried to get North Memorial staff to put that statement in writing. In closing, he believed that stakeholders who have grown up on this Lake are starting to shy away from the LMCD.

Baasen concurred that the concerns offered above are not just a Big Island or a July 4<sup>th</sup> problem and that the Board did identify this safety concern as a number one priority. He believed the LMCD needed to meet with the Sheriff and other Hennepin County representatives to see how the LMCD can assist in securing a site for emergency use. In regards to the enforcement concerns, he was thankful that the Water Patrol, MN DNR, and all other public safety agencies were on the Lake to assist. To this end, he recommended he and Jabbour initiate this meeting, including working with Hennepin County on their recommendations for the buoy placement at Big Island. Therefore, he will work with Jabbour off line on this.

Morris stated that securing the public safety "evacuation" site should be the utmost priority. He had a concern with one site that is currently being discussed; therefore, he would like to be a part of the process in securing such.

Thomas questioned if the Board, after securing the emergency access site and addressing the buoy placement at Big Island, should also consider an ordinance amendment that would allow the Water Patrol to enforce disorderly conduct of passengers of the boat (e.g., relieving themselves from the boat, etc.).

Baasen reaffirmed that need by documenting someone that witnessed a woman relieving herself from a boat moored in front of the Broadway docks; acknowledging it is a Lake issue. He reiterated that education would play an important part of addressing this matter.

Hughes recommended representatives from the fire department and ambulance services be involved in the discussions to secure an emergency access site; offering different travel response scenarios in how they currently respond to an emergency.

## 10. UPDATE FROM STANDING LMCD COMMITTEES

Green stated an Aquatic Invasive Species (AIS) Task Force meeting is scheduled for August 14<sup>th</sup>.

Baasen stated the Save the Lake Committee will be meeting in August, which will offer follow-up to the Boater Safety Education Program. Additionally, the Executive Committee will be meeting August 6<sup>th</sup> in follow-up to some financial and personnel matters (review of Executive Director Action plan). It was confirmed that the Board did not see the final 2014 performance review of the Executive Director; therefore, he will make that available to the Board.

Klohs stated the Ordinance Review Committee will be forwarding a plan unit development for the clustering of municipal docks to the Board for review at their August 26<sup>th</sup> meeting.

## 11. EXECUTIVE DIRECTOR REPORT

Nybeck reported on the following two matters: First, that the Lake level on this date was 929.11' (as compared to 930.33' at this time last year). Second, in follow-up to Jabbour's expressed interest to take the Board out on the Lake for a tour of various sites, he recommended staff initiate the coordination of this event sometime in August. The Board concurred with that action and Nybeck would be in touch with the proposed dates.

Jabbour recommended staff utilize Doodle calendar.

## 12. OLD BUSINESS

There was no old business

## 13. NEW BUSINESS

### A. Board Communication Regarding Staffing Personnel

Baasen asked Green if this is a matter for closed session.

Green stated he was riding the fence as specific names would be offered within the discussion

Jabbour stated the Board owes it to the employees to have this in closed session; referencing the press is currently present in the audience and the Board has the right to do so by statute.

LeFevere stated that if the Board will be discussing a performance evaluation of personnel, then the Board would have the ability to request this discussion be held in closed session. The individual that would be the subject of the review could insist that the discussions be held in open public meeting.

Green asked LeFevere how broad is the term "evaluation."

LeFevere stated he was unsure if he could answer that question; however, offered if the discussion was based off a performance review or the evaluation of an employee, the meeting could be closed.

Green stated he would like to have a discussion with both the Board and staff relative to an assessment, observation, and problem. He further stated it is a Board problem and a staff problem and he would like to bring it to light.

**MOTION:** Green moved, Zorn seconded to go into closed session

Nybeck stated that he believed this discussion would include him; therefore, he wanted the discussion to be held open; offering his right to do so per LeFevere.

Baasen confirmed this would mean the press was invited, etc.

Nybeck stated sure; that was good.

Baasen asked Green if that is what he wanted.

Green stated he did not have a problem with that; he was just trying to be respectful.

LeFevere stated that although Nybeck has requested the meeting be held in open discussion, Green has not listed which staff member would be named within the discussion.

Green confirmed, via a head nod in Nybeck's direction, that the discussion referenced the Executive Director. He proceeded, in open meeting, to state that he will make this short and sweet. He believed the following comments should have been brought to light sooner and apologized for not doing so.

- That Jabbour has, over the past couple years, taken me around the Lake to meet different people; minimizing that time in getting trust and building those relationships, which has been very educational.
- As per all of the discussion held this evening, Jabbour is the Lake.
- He referenced an email that he recently sent to the Board (thanking them for not responding).
- He stated that as the LMCD goes through the strategic planning process and moving forward, the LMCD has to have relationships with key people around the Lake and he is sitting right over there [pointing to Jabbour].
- He stated this agency has a problem; referencing the email regarding the trash problem that was provided from Jabbour last year and other matters in which he has been dismissed because of his approach or whatever reason.
- His belief that the Executive Committee and Nybeck owe Jabbour an apology.
- His belief that the LMCD needs to mend those fences.
- He referenced Harper's prior report that the LMCD expended an estimated \$1,000 to launch the harvesters and that no one thought to ask why Jabbour was not doing this free of charge as per prior years. To this end, the LMCD is incurring additional costs because the LMCD has a problem. He believed that problem needs to be addressed and dealt with today.

- He stated either the LMCD is going to work with Jabbour or not. If not, he stated Jabbour would be working against the LMCD; recognizing that he does not always agree with Jabbour but that the LMCD seems to be side stepping the need to amend the relationship. Therefore, the Board needs to deal with repairing this relationship.
- In pointing to Nybeck, he stated that when the two of them talk, sometimes it is not a problem and sometimes it is. However, he reference that he used to see Nybeck down at the marina and now he only sees him in the office.
- He reiterated that key people (Executive Committee and Nybeck) need to repair this relationship and move forward because the LMCD is not going to move forward without Jabbour in the LMCD's court.
- To this end, he wanted to get this out on the table; stating what the LMCD wants to do about it he was unsure of.

Zorn believed the Executive Committee needed to meet more frequently (confirming the May meeting should not have been cancelled). She stated the committee is behind in delivering the three month progress report for the Executive Director.

Baasen stated the committee is not behind as the three months are not up until after the end of this month.

Zorn continued to state that according to the Executive Director's action plan [with Jabbour referencing that Zorn wrote the plan] a response date of July 28<sup>th</sup> was offered. She interpreted that to mean the Board, as a whole, would have an opportunity to have insight and feedback so that the Board could contribute to the assessment portion of the document (providing for it being delivered on the 28<sup>th</sup> and not discussed on the sixth and delivered sometime after that date). Based on the peak time of this season, she believed the Board is lacking leadership. She did not know what that entailed; however, she believed the email Green had sent (referenced above) was a great step in initiating discussion of those concerns. Otherwise, the Board will continue to be divided and the strategic planning process will not be effective.

Jabbour made the following comments:

- He was unsure the Board was giving Nybeck enough direction.
- He did not believe communication has gone anywhere; referencing he felt it was eroded. He believed the Executive Director is solely communicating with the Chair.
- He referenced the Executive Committee is comprised of four members; however, he believed the Vice Chair is not receiving a large percentage of the communication based on his [Jabbour's] communication he brings to the Vice Chair that was received by the City of Orono and Green's reaction of surprise.
- He would like to know why the Board has a Vice Chair; questioning if it is a ritual or a democracy.
- That the Mayor of Orono had requested that all information pertaining to their city be forwarded to her directly.
- That on July 10<sup>th</sup>, Minnesota Public Radio (MPR) requested the LMCD's presence for an interview on July 16<sup>th</sup>; specifically asking if he [Jabbour] should be the individual to be interviewed.

- That on July 15<sup>th</sup>, he received communication from the Chair asking if he would like to join him in this interview. He confirmed that it is more than appropriate and a must that the Chair be present in this interview. He proceeded to dress up as he was informed the interview would be taped on camera. He proceeded to make arrangements to ride with Frahm (representing the LMA) as he was unaware of where he needed to go. To this end, the interview was not taped but provided for live discussion and the LMCD did not send his name in; therefore, he could not participate. This aggravated him; however, he knew that his comments could continue to be heard via a call-in representative.
- That he spoke with Klohs the night before the interview who expressed his opinion as to what should be the important issues to bring forward within the interview.
- He believed the Chair should have been informed as to what type of meeting he was going into (what the format was, what questions he would be asked, who would be there, etc.).
- He believed staff has failed the organization.
- To function as a Board representative, he needs all communication being sent to him. He wanted to know why: 1) he did not receive an LMCD email that pertained to a matter within his represented city (which is 35% of Lake Minnetonka), 2) the Mayor of Orono, who requested all copies, did not receive that email, and 3) he did not get a heads up from staff that a reporter was calling all the Board members for information.
- He believed that communication has decreased, information is being filtered, and the Board is not receiving proper communication.
- That he asked LeFevere for a document outlining what he is required of him for document retention.
- He expressed concern that the Chair has consulted a professional in personnel management relative to handling the Executive Director's review process. He does not believe the Chair could have legally done so based on the laws offered.
- In offering communication to the LMCD last year, he was told he would not get a response from the Executive Director because he is perceived as a bully. He stated he is a bully with rights. One cannot fire citizens.
- That the LMCD received a letter from a resident about garbage and the LMCD held a special meeting. He was the Paul Revere last year and told you the matter was coming forward.
- He believed a great deal of credit is due to the Chair for establishing the current position with the Sheriff's office relative to coverage on the Lake. However, he senses a great deal of hostility with the LMCD (in contrast to his relationship with thousands of people from many different agencies). Therefore, because of the envy and paranoia, he is unable to advance this agency. He is finding himself drifting away from the LMCD.
- That he has asked a couple people to investigate the structure of this agency. He wanted to know how the Executive Committee received the authority over the personnel as he did not see it in the minutes.
- That he personally registered Save the Lake; stated that "he owns Save the Lake." He does not believe the LMCD did the necessary work to document that they have ownership of that title (offering he has an American Express with "Save the Lake" on it).
- He believes the LMCD needs quite a bit of housekeeping.



Baasen, in speaking for himself, stated that he came to Jabbour last week not because he was reluctant to appear or represent this agency within the MPR interview but because he believed Jabbour had vested interest (speaking to him with that in mind). Additionally, he believed it was his responsibility to represent the LMCD [Jabbour acknowledging that he believed that]. He further noted that when he found out that Jabbour could not be interviewed, he offered to give him his spot. Although Jabbour did not accept that invitation, Baasen stated that he felt embarrassed and apologized for whatever he put him through. He stated that one matter may be the tip of the iceberg; however, in all honesty, he believed the delivery in which matters are raised (on both parts) causes issues for this Board. He hoped not; however, if that is a concern for him, he will try to correct it. He wants Jabbour to represent this matter fairly as he had a conversation with him prior to and was just as surprised as he was in MPR not allowing Jabbour to be interviewed.

Jabbour stated it is not Baasen's fault as he should have been equipped to be fully prepared to represent this agency prior to the interview. He did recognize that Baasen approached him. The concern in this is that MPR did not have his name on the roaster; acknowledging it would have been wrong for him to take the Chair's place in the interview.

Baasen was comfortable in the position at hand and wanted to correct the record.

Morris stated that Jabbour is a serious part of Lake Minnetonka; acknowledging that the LMCD needs to work with him or it will not bode well for the agency. This does not mean the LMCD has to always agree with what he says. To this end, the LMCD needs to be engaged with him (whether he is serving on the Board or not) as he is a partner that is intimately involved in all aspects of the Lake. He referenced the quality relationships/partnerships documented within the current strategic planning process. He too does not always agree with Jabbour; however, there is no doubt he has the knowledge of the Lake. He stated that if concerns are a staff issue, he recommended they be resolved as the Board is expending a lot of energy on things that need to get resolved. He would like to hear Jabbour praise staff and direct energy towards non-personnel matters.

Baasen did not believe that anyone on this Board has intended to be disrespectful to Jabbour.

Roy pointed out a few communication concerns by referencing a two year old incident (that took place under different Chair leadership) in which he found out about through his neighbor. More recently, he referenced the question from Baasen above as to whether the Board received a copy of the Executive Director's 2014 evaluation, in which he personally did not.

Green stated that the Board needs to look down the road. Jabbour and other partners are not going to always be here; therefore, the Board must educate others to be the stewards of the Lake when we are gone.

Morris would like to receive all information relative to the Lake from LMCD staff vs. communication by Jabbour. If the LMCD is going to manage the Lake, then staff needs to know what is going on around the

Lake.

Jabbour referenced an incident last year in which he and other stakeholders assisted in multiple sail boats that tipped over. This incident could not be addressed by the Water Patrol as, at the same time, they had challenges in accessing their own boats and were not able to respond. In presenting this matter to the Orono City Council, they were assured that staff would get back to them as to what happened. To date, the City has not received that response. He questioned why the Board did not question what happen or, at the very least, recognize those that were active in the rescue (acknowledging one person was 82 years old and had hypothermia). He had mentioned to Baasen when he became Chair that if he was chair, he would want to know when a bird made a dropping. The incident with the overturned boats terrified him. To this end, it is his perception that the Chair should have full knowledge of all that is going on (via staff's communication). He believed that everything the LMCD deals with is after-the-fact and reactive (not proactive). He is not asking anything more than what he asks his family. He would like to hear from the rest of the Board and recommended the Chair call on all.

Baasen stated that comments are not a command performance and that he welcomes comments from all that would like to speak.

Jabbour asked the Executive Committee why they did not do their job and inform staff that they had an obligation to react to communication offered by all citizens of this country; referencing a historical email that he was told staff had no intention of responding to because he [Jabbour] was presented as bullying. In referencing the Board, he stated that all his concerns are being placed on record for future reference.

Baasen appreciated Jabbour's comments. He did not have an answer for him and welcomed other comments from the Board.

Klohs stated that this matter is being dealt with within the current strategic planning process and that the LMCD has a focus issue due to budget constraints and limited staffing. Furthermore, he believed that the LMCD is scattered all over as the agency is trying to be all things to all people; offering the LMCD is failing in a lot of fronts because the agency cannot follow through with everything on the wish list due to lack of resources (never saying no to anyone). He believed one of the absolute primary goals for the Board is to tell people what the LMCD does and does not do. The LMCD does not have the budget, staff, or expertise; offering the perception that we are failing. As long as we continue in this path, the LMCD will continue to be misunderstood and criticized in the public.

Baasen stated he is trying to take all comments in. He believed the information that he receives is not singular in direction as most are very constructive comments about the LMCD and the direction the agency is taking from a variety of agencies and municipalities. He believed that the strategic planning exercise is the most important priority the Board can address this year, as well as the public safety concerns. He does not believe the glass is half empty but half to three quarters full. He does not believe this agency is as dysfunctional as being perceived this evening. He referenced the University of Minnesota Carlson School of Management's recent survey of the LMCD. The singular most negative comment was AIS, even though the Lake currently has zebra mussels and EWM. He did not believe that

was the LMCD's biggest problem but that is what the public thought. He recognized other issues that were documented and did not want to provide disrespect to the survey process. He stated that we can all improve as the LMCD is not executing at 110%. He believed the Board needs to regroup and move positively vs. in a dividing way. In referencing documentation offered through the strategic planning process, it appears the biggest threat is from within.

Jabbour stated that all the stuff the LMCD takes credit for is being forced upon the agency from external forces. He referenced a meeting he had in October of 2014 when he met with three of the LMCD representatives and the former chair. He brought to their attention a strategic plan they didn't even know existed. A representative from the City of Shorewood requested it, in which the Executive Director had told them that they really did not want it as it is too old. Additionally, a matter arose in dealing with the historical high water levels in 2014. He had raised concern with the Board and was told the matter would be addressed within a couple weeks. He then called the Sheriff and told him he had to evoke quiet waters now.

Baasen did not concur with Jabbour's latter comment; offering a rebuttal to how the LMCD handled the Declaration of High Water (offering the need for all to be accurate in their statements).

Hoelscher offered that: 1) she concurred with a lot of comments made by Baasen; that all the members are dedicated to this Lake and were present to volunteer their time; 2) that the strategic planning process will assist the LMCD to be a better agency, 3) she concurred that Jabbour is a huge part of this Lake and that the LMCD needs to work with him and his insights and 4) that she is hearing there are staff issues and they are currently being dealt with through the Personnel Committee where this is an appropriate place to deal with this.

Jabbour believed that the LMCD should have a grievance process.

Hoelscher stated the LMCD should move forward together and get better.

Thomas concurred with Hoelscher. The performance issues were brought to the Personnel Committee's attention, in which those meetings were posted. A process was set in place to rectify the concerns; providing a brief overview of. He believed that process, with specific expectations, was a reasonable approach for a staff member that has offered a long history of employment.

#### **14. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:20 p.m.

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Dan Baasen Chair

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Gregg Thomas, Secretary