

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, September 9, 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; Gregg Thomas, Tonka Bay; Gary Hughes, Spring Park; Ann Hoelscher, Victoria; Gabriel Jabbour, Orono; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bret Niccum, Minnetrista; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; and Judd Harper, Administrative Technician.

Members absent: Jay Green, Mound; David Gross, Deephaven; and Fred Meyer, Woodland.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

Zorn arrived at 7:01 p.m.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

Baasen commented on the recent "Lake Minnetonka Zero Waste Challenge." He believed that this was a nice start; however, not the end of coordinated efforts on this topic. He complimented the efforts of staff, in coordination with a number of partners and asked for further comments from Nybeck.

Nybeck stated that the efforts of staff were coordinated primarily by LMCD Administrative Assistant Emily Herman. In particular, a press release was sent out on August 28th (with coverage from Lakeshore Weekly News, September 1st; The Laker and KSTP Channel 5, September 5th; and Minneapolis Star Tribune, September 6th). Board member Jabbour assisted Three River Park District staff in E. coli sampling at Big Island on September 3rd and 8th, in partnership with the LMCD. He stated a copy of that report is attached to the Executive Director's Report. He believed the LMCD may want to call a Special LMCD Meeting in the near future with the various partners.

Baasen stated that Conservation Minnesota has a Lake Minnetonka Clean-up event scheduled for Saturday, September 19th. Registration starts at 9 a.m. at Lord Fletchers of the Lake and the event runs until 4:00 p.m. He believed it was a worthy event and encouraged Board members to be visible and participate.

Hoelscher questioned whether the LMCD had a link to this event on the website.

Jabbour questioned whether the link on the LMCD's website would be appropriate because this is a private, for profit, event.

LeFevere stated that the link on the LMCD website would not be illegal; however, the Board should decide whether to start down this path for these types of events.

Nybeck suggested that Board members consider forwarding the link, which was e-mailed to the Board earlier in the week, to interested members from the public.

Baasen asked Nybeck for the proposed change to the Board meeting schedule in November.

Nybeck stated that the only meeting scheduled for November is on the 11th, which is Veteran's Day. He proposed that this meeting be rescheduled for Wednesday, November 4th, in the Mound City Council Chambers. The Wayzata Community Room is not available on that date because of a scheduled city council meeting.

Roy stated that he would not be able to attend a LMCD Board meeting on November 4th due to a Greenwood City Council Meeting.

MOTION: Thomas moved, Shuff seconded to re-schedule the Regular LMCD Board Meeting to November 4th (7:00 p.m. at the Mound City Council Chambers).

Zorn questioned what the status of the November 25th Regular LMCD Board Meeting would be.

Nybeck stated that the Board has typically cancelled the second Board meeting in November (due to the Thanksgiving holiday).

VOTE: Motion carried unanimously.

5. APPROVAL OF MINUTES

Baasen stated that draft minutes from the August 26th LMCD Board Meeting had not been finalized for review at this meeting (primarily due to work on other projects). Two sets of draft LMCD Board meeting minutes will be prepared for Board review on September 23rd (August 26th and September 9th meetings).

6. APPROVAL OF CONSENT AGENDA

Nybeck stated that amended draft Findings of Fact and Order for Driftwood Shores Association (minor changes) were e-mailed to the Board earlier in the day with a copy provided in their handout folders. Should the Board have an interest to approve both of the consent agenda items, it should include the amended Driftwood Shores draft Findings (agenda item 6B).

Baasen requested that agenda item 6B be removed from the consent agenda to allow staff to provide background of the proposed changes.

Roy moved, Shuff seconded to approve the consent agenda as amended, removing agenda item 6B. Motion carried unanimously. Item so approved included **6A)** Audit of vouchers (8/31/15 - 9/15/15).

6B, Driftwood Shores Association, draft Findings of Fact and Order approving 2016 new multiple dock license (minor change) and variance applications to reconfigure the multiple dock facility on Harrison's Bay

Baasen asked Harper to provide the background of the proposed changes

Harper reviewed the following proposed changes:

- In the first paragraph on page one: 1) delete the words "property at 1769 Lafayette Lane" and insert the words "Outlot 1 and Outlot 2" and 2) insert the words "on Lafayette Lane" after "Harrisons Bay."
- In the third paragraph on page one, delete the words "dated July 15" in the third sentence and insert the words "received on July 14" in its place.
- In paragraph four on page one, insert the words "as it facilitates a reasonable use of the existing BSUs" at the end of sub-paragraph (c).
- In the second paragraph on page two, insert the words "that is unique to the Site and which" between the words "land" and "was" in sub-paragraph (e).
- On page two, added sub-paragraph (h) that states, "The adjacent riparian property owners submitted a letter agreeing to the proposed variance and the modifications of the existing docks."
- On page three, change the third paragraph so that it reads, "The variances granted herein includes approval of the proposed modifications to the existing docks on Lots 1 and 2 in Block 3, and Lot 3, Block 2 as shown on the Site Plan."

Jabbour asked the applicant for comments on the changes proposed by Harper.

Mr. Chuck Auger, representing Driftwood Shores Association, stated that they were okay with the proposed changes.

MOTION: Baasen moved, Niccum seconded to approve the Driftwood Shores Association Findings of Fact and Order as amended.

VOTE: Motion carried unanimously.

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. Bean's Greenwood Marina, review and consideration of draft mandatory Environmental Assessment

Worksheet (EAW) document

Baasen asked Harper to provide background of this agenda item.

Harper stated that Bean's Greenwood Marina has submitted a new multiple dock license application. Because the dock structure and maneuvering space for the proposed expansion exceeds 20,000 square feet, a mandatory Environmental Assessment Worksheet (EAW) needs to be prepared. He directed the Board to the draft EAW for the Board's review and consideration. He reviewed a proposed timeline to process the application submitted by Bean's Greenwood Marina should the Board be comfortable with the proposed EAW and direct staff to proceed with such. He entertained questions and comments from the Board.

Baasen requested clarification that the action for the Board at this meeting is to direct staff to initiate the EAW process, in which Harper confirmed that was correct.

Morris asked when the last EAW document was prepared for a commercial marina.

Harper stated that an EAW was prepared for T & T Boatworks Marina, LLC last spring.

Morris asked what the last EAW document was prepared before that.

Harper stated that an EAW was done for Wayzata Yacht Club prior to this, with a group of additional EAW's prepared prior to this in the early 2000's. One of the contributing factors to this trend of conducting mandatory EAWs more frequently is the adoption of the Qualified Commercial Marina ordinance, which allows grandfathered facilities to expand in some instances. Most of these sites are well over the 20,000 square foot threshold to conduct a mandatory EAW and the proposals in some instances are extending the length of the approved dock (as well as the size of the slips).

Morris asked what occurs if an agency or organization expresses a concern about the proposed changes.

Harper stated that comments are sent back, with additional information, when comments are received from other organizations. He further stated that eventually, at the end of this process, the LMCD Board would need to decide whether there is a need to prepare an Environmental Impact Statement, which is a more in depth environmental review process.

Morris stated that this is the fourth phase of dock reconstruction at Bean's Greenwood Marina and he questioned why an EAW was not prepared for the first three phases.

Harper stated that the first three phases provided for reconstruction of docks within the established envelope and approved square footage for the approved Boat Storage Units (BSUs).

Jabbour clarified that the EAW process is required by state law, not the LMCD. With regards to proposed expansion, the application would be primarily expanding the amount of square footage allowed per the LMCD Code.

Harper concurred that the increase in square footage was a result of a longer dock and some larger BSU's, in some instances.

Morris stated that he had received numerous complimentary comments on the previous phases of dock reconstruction made by Bean's Greenwood Marina.

Baasen concurred with the comments made by Morris.

MOTION: Niccum moved, Jabbour seconded to direct staff to proceed with the submittal of the EAW to the Environmental Quality Board.

VOTE: Motion carried unanimously.

B. Ordinance Amendment, draft ordinance relating to municipal docks, amending the LMCD Code by adding Section 2.14

Baasen asked Harper for background of this agenda item.

Harper stated that the Ordinance Review Committee (ORC) has been working on a municipal planned unit development (PUD) ordinance for certain situations. This was reviewed by the LMCD Board on August 26th, in which the first reading was approved. At that time, staff was directed to reschedule this agenda item for this meeting; offering a public meeting for comments by the municipalities and other interested stakeholders prior to further Board consideration. To summarize the proposed ordinance amendment, a meeting notice was prepared in coordination with ORC Chair Dennis Klohs, which was sent out to the municipalities, the Lakeshore Weekly News, and other interested parties. The intent of the proposed ordinance would allow for municipal docks to extend out to 200 feet from shore, provided docks are clustered and at least 50 percent of the shoreline in the PUD area is left alone (through a new licensing process). This PUD license would be a sub-set of the overall municipal multiple dock license.

Nybeck stated that there were two city managers in attendance that may want to testify on the proposed ordinance amendment.

Mr. Dana Young, Deephaven City Manager, stated that the city council reviewed the proposed ordinance amendment and they do not have any specific objections. A question the city council raised is what the ordinance is designed to do. It appears to be limited in scope and would benefit only a few of the municipalities.

Baasen stated that the proposed ordinance was not for one specific city. He believed the physical characteristics of Carsons Bay being self contained might be self limiting for a 200 foot long dock. A couple of cities that may benefit from the proposed ordinance include Excelsior and Minnetonka Beach, which he expounded on.

Klohs confirmed that the scope of the proposed ordinance was narrow to encourage clustering in certain situations. He encouraged the City of Deephaven to make requests of additional changes to the LMCD Code for particular needs if they so desire.

Young stated that Deephaven was working under the assumption that there would be further discussion with the municipalities; similar to what was done with the marinas and yacht clubs/sailing schools. He asked if the proposed ordinance amendment was the culmination of this process.

Klohs stated that the process was on-going.

Young asked if there was a timeline with regards to a meeting with the municipalities.

Klohs stated that he believed this could work both ways. It might be more efficient for a municipality to suggest a change to a specific ordinance.

Jabbour stated that he believed that changes to the LMCD Code for municipalities had been discussed for the past 18 months. He cautioned the municipalities not to assume that they will get all changes to the LMCD Code just because they make a request. He believed that one possible contributing factor to Deephaven was the rotating Board member appointment status.

Young stated that he appreciated Jabbour's comments, noting Deephaven understands the limitations of the Board member status. There was a perception that a letter from the LMCD to municipalities inviting them to a meeting to discuss the various municipal docking program was pending.

Jabbour encouraged Deephaven to have a discussion on this with their appointed Board member. He believed the proposed ordinance amendment will improve areas for passive enjoyment and protect environmentally sensitive areas (littoral zone).

Baasen concurred with Klohs that municipalities can request specific changes to the LMCD Code for their docking programs; however, this does not necessarily mean the requested change will be adopted.

Ms. Kristi Luger, Excelsior City Manager, thanked the Board for drafting the proposed ordinance amendment. The ordinance is important to the City of Excelsior; however, she was not sure whether the new concept would be implemented by the city. The important part is that the city would have the ability to do so. Should the city proceed with a request to the LMCD in the future, there will be a public process (including hearings) where the city will get feedback from the public on their desires. One advantage of the proposed ordinance would allow for existing docks to get longer rather than constructing a sixth dock structure along the Excelsior Commons. Additionally, more concerns are being raised about water depths near shore for the existing five docks.

MOTION: Jabbour moved, Niccum seconded to approve the second reading as submitted, to waive third reading, and to adopt the ordinance amendment.

VOTE: Motion carried unanimously.

C. Review and consideration of draft 2016 LMCD Civil and Legal Services Attorney Request for Proposal (RFP)

Baasen asked Nybeck for background of this agenda item.

Nybeck stated that LeFevere provided the Board an update on his pending retirement and schedule for the

balance of 2015 at the Board's August 26th meeting. Staff communicated that a draft Request for Proposal (RFP) would be provided at this meeting for review and consideration. He reviewed the draft RFP via a PowerPoint presentation, with a summary of his comments as follows:

- Sample RFPs Used: Cities of Dayton, East Bethel, Floodwood, Scandia, Twin Valley, and Victoria. The RFP from the City of Victoria was prepared in 2014 and was secured via an e-mail to the 14 LMCD member cities. The remaining five RFP's were secured through the League of Minnesota Cities (LMC).
- Anticipated Timeline: 1) Board approval of the draft RFP at this meeting; 2) distribute and advertise the RFP by September 14th; 3) an RFP submittal deadline of October 9th at 3 p.m.; 4) evaluation of submitted RFP's by a pending established Selection Committee by October 21st; 5) proposal interviews by the committee by October 28th; and 6) Board consideration and approval of a proposal on November 4th.
- Selection Committee: Proposed to include the 2015 LMCD Executive Committee, two additional appointed Board members, and the Executive Director. This is similar to what the municipalities established for the review of their RFPs; however, the establishment of the committee is up to the Board and he solicited their feedback on the recommended or an amended process. He offered another consideration for the Board and that was to conduct interviews by the entire Board, rather than an established committee, on November 4th.
- Proposed RFP Distribution List: 1) an LMC Market Place Ad, 2) the LMCD website, and 3) a direct mailing to law firms offered by the City of Victoria through their RFP process, which he expounded on.
- LMCD Board Action: 1) approval of the draft RFP (as proposed or amended), 2) Board approval of the Selection Committee (as proposed or amended), and 3) to direct staff to send out the approved RFP (to the proposed or amended distribution list).
- He entertained questions or comments from the Board.

The Board had a brief discussion of the proposed committee and their role in reviewing proposals submitted and conducting interviews. One option offered for that for the committee is to make a recommendation on one or more law firms and to allow the Board to consider this recommendation or to allow these firms to make a proposal to the entire Board.

MOTION: Roy moved, Shuff seconded to: 1) approve the draft RFP as submitted, 2) approve the Selection Committee as proposed (with the need to appoint two additional Board members), and 3) direct staff to send the RFP to the proposed distribution list.

VOTE: Motion carried unanimously.

Nybeck asked what the process was to appoint the two additional Board members to the Selection Committee.

Baasen requested Board members that have interest in serving on the committee notify Nybeck, with approval of the committee planned for the September 23rd Board Meeting.

D. Chair update of 9/2/15 LMCD Executive and Personnel Committees Meeting

Baasen stated that the purpose of this meeting was to discuss the action plan for the Executive Director. The consensus at this meeting, which included committee and some Board members, was that there was a need to

contract with a human resources specialist to review the 2015 process and to establish a process for 2016; allowing the process of evaluating the Executive Director to move forward. He stated a recommendation was to contact Craig Rapp about a possible human resources specialist, which has been done. Rapp referred Jim Lind of Lind and Associates. Baasen has made the initial contact and he hoped to meet with Lind in the next week (to define scope and financial obligations). He hoped to provide the Board an update on this at the September 23rd meeting. The consensus of those in attendance at the committee meeting was that there was no consensus on the Executive Director Action Plan for Nybeck. He proposed extending the six-month review from October 31st to November 30th to allow the consultant time to review the process.

MOTION: Baasen moved, Shuff seconded to extend the action plan in place for Executive Director Nybeck to 11/30/15 to allow for consideration of contracting for a human resources specialist.

Jabbour stated that there is a six-month action plan that is currently in place. At the August 26th LMCD Board Meeting, the committee recommended approval of a three-month (90 day) update on this action plan, which the Board did not approve. He stated that he wanted the record for this meeting to reflect this and he questioned whether the Board was working on consensus.

Zorn stated that she believed there was adequate feedback from the Board to complete the 90-day progress report on the action plan. She attended the September 2nd committee meeting and expressed her disappointment that another document was not prepared for the Board to discuss at this meeting. She voiced concern about the document offered to the Board on August 26th because there were inconsistencies between the detailed document and the roll up document.

Baasen stated that he recognized there was disagreement amongst the Board as it relates to the status of the three month update on the action plan. He recommended that the Board vote on the motion (recognizing that some Board members will be unhappy depending on the outcome of the vote).

VOTE: Ayes (6), Nays (5; Jabbour, Morris, Niccum, Roy, and Zorn); motion carried.

Roy clarified that he voted against the motion because the Board is doing a disservice to Nybeck by dragging this process on and on. He did not believe this process would have happened in our businesses (the entire Board).

Thomas stated that his interest, and the interest of the committee, is to provide a fair review to Nybeck (including clearly defined expectations and allowing Nybeck adequate time to achieve them). Based on discussion at recent meetings, it is apparent to him that the Board needs professional assistance to bring closure to this (not to drag this out).

Jabbour took exception to Thomas' comment. He stated that he previously communicated to Thomas and Baasen that the Board was failing on this project and needed professional assistance. He expressed concern about engaging professional assistance six months after he made such recommendation. He believed that this has become a problem at the 11th hour (similar to the need to conduct a RFP for the LMCD Civil Attorney).

Hoelscher stated that Jabbour also talked to her a few months ago about needing professional assistance on

this topic. She believed that there was a need to get this right moving forward (although it could have been done in a timelier manner). She hoped that Board could support the approval because the Board is going in the right direction and doing things appropriately so that it is fair to all parties involved.

Jabbour stated he was troubled because he believed an Open Meeting Law violation occurred prior to this meeting.

Thomas stated that he recognized at the September 2nd committee meeting that the concept of contracting for professional assistance was Jabbour's idea.

Baasen stated that he believed there was frustration by the Board on both sides of this topic.

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Nybeck stated that an Aquatic Invasive Species (AIS) Task Force Meeting was scheduled for September 11th (8:30 a.m. at the LMCD office). The primary agenda item will be an update from the Minnesota Department of Natural Resources (MN DNR) on recent starry stonewort infestations in Meeker and Stearns County lakes.

Jabbour updated the Board on the following two topics:

- At the recent MN DNR AIS Advisory Committee Meeting, it was announced that grant funding for AIS management efforts will be reduced from approximately \$700,000 in 2015 to \$200,000 in 2016. This fund is greatly depleted (primarily because of legislation to add on an additional \$3 charge to the watercraft registration fee over three years was not passed by the legislature). This will have a profound effect on the LMCD for mechanical harvesting and watercraft inspections.
- He was working with another company from the private sector, the MN DNR, and the University of Minnesota Research Center on a three-year research project. The project will focus on how veligers are transported through bilge water. He expounded further on the public-private project.

Klohs stated that he believed the next topic for the Ordinance Review Committee (ORC) was how to define undue hardships associated with variance requests, which he expounded on.

Nybeck stated that the briefs from legal counsels relating to Browns Bay Marina (Site 2), as well as further research by staff, is planned for discussion at the October 14th LMCD Board Meeting.

Klohs stated that he believed the ORC will take this matter up for discussion sometime after the October 14th LMCD Board Meeting.

Jabbour stated that the ORC will need to prioritize proposed ordinance changes that it would like to consider (e.g., pending requests from the Hennepin County Sheriff's Office and changes to personal watercraft allowances).

Klohs concurred that there is a need for the LMCD to better prioritize (either at the Board or the ORC level).

Baasen stated that the Save the Lake Committee was scheduled to meet on September 23rd (7:30 a.m. in the LMCD office). Additionally, he hoped to get the littering task force back together sometime in the near future.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated that the Lake level as of this date was 929.00 feet, in which comparables for this date were included from 2010 through 2014. The last day of the added Water Patrol deputy in 2015 was Labor Day, in which there will be statistical follow-up and most likely an agenda item from Lt. Vnuk in the near future (possibly including Major Storms). He stated that a draft of the LMCD Strategic Plan was e-mailed to the Board last week. Further work is needed by staff on LMCD strategic initiatives and recommendations on on-going LMCD programs and activities. He hoped to work with staff on this in the near future and will be targeting a meeting with Board members Hughes, Klohs, Shuff, and Zorn on this for the last week in September.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

There was no new business.

14. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:16 p.m.

Dan Baasen Chair

Gregg Thomas, Vice Chair/Secretary