



**MOTION:** Thomas moved, Hughes seconded to approve the 9/9/15 LMCD Regular Board Meeting minutes as submitted.

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

## 6. APPROVAL OF CONSENT AGENDA

Jabbour moved, Green seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included **6A)** Audit of vouchers (9/16/15 – 9/30/15); **6B)** August financial summary and balance sheet; and **6C)** Save the Lake, Announcement of Funds available for 2016.

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

There were no public comments.

## 8. PUBLIC HEARINGS

- **Robert Sabes**, 2016 new multiple dock license application for seven Boat Storage Units at 1450 Eastman Lane on Wayzata Bay.

Baasen asked Harper for an overview of this agenda item.

Harper directed the Board to his staff memo, dated 9/17/15, and provided an overview of this agenda item via a PowerPoint presentation. Mr. Bert Foster, representing Robert Sabes, has submitted a new Multiple Dock License for 1450 Eastman Lane in Wayzata with 529 feet of shoreline measured at the 929.4 foot ordinary high water level (OHW). The applicant has proposed a watercraft density of 1:75 feet that would include: 1) seven boat storage units (BSU) consisting of two, three-sided slips; 2) a slip that would store two personal watercraft; and 3) three BSUs via the use of tie-ons or lifts. The proposed dock would extend approximately 83.5 feet from the shoreline. Harper provided an overview of the relevant code sections pertaining to this application (2.03, subd. 1; 1.02, subd. 28; 2.02; 2.01, subd. 1, and 2.03, subd. 3). He directed the Board to an email from City of Wayzata Planner Eric Zweber, dated 9/17/15, that was offered within the packet and referenced within the staff memo. Harper provided an overview of the following comments offered by Zweber: 1) the shoreline within the right-of-way (ROW) should not be counted for this request and 2) the zoning ordinance does not allow the commercial use of this dock. Zweber documented the property as being zoned R-2 and quoted such ordinances within. Harper did not believe the confirmation as to who has ownership or control of docking rights of the portion of shoreline within the ROW was warranted until such time the applicant applies for more than seven BSUs; acknowledging only 326 of the 529 feet of shoreline is required for the seven BSUs currently being proposed. He recommended the Board approve Sabes new multiple dock license application for the 2016 season, subject to the docks being installed in strict conformance with the proposed site plan and all watercraft being moored within authorized BSUs. He entertained questions and comments from the Board:

Baasen requested clarification on the dock structures overall length and whether the respective middle finger went beyond 100 feet.

Harper confirmed that the total length of the dock was 83.5 feet from the 929.4 foot OHW; confirming the middle finger did not go beyond 100 feet.

Jabbour directed staff to the proposed site plan and questioned if County Road 16 was a part of the parcel.

Harper stated that it appeared the road was a part of the parcel; possibly for easement purposes.

Jabbour stated that: 1) Hennepin County (county) is on record with the court that they have never claimed shoreline for docking purposes when there was a dividing road and 2) if that section of the parcel did not belong to Sabes, it could belong to the adjacent property if the street dissected it (offering that he was not speaking for the county). He stated that if the county could claim shoreline for docking purposes that would "open up a can of worms" along Highway 15. He further stated that the LMCD encourages the clustering of docks (referencing the recently adopted municipal ordinance). He asked if this site would continue to need a multiple dock license if it provided for the clustering of watercraft on one structure for four adjacent properties.

Harper confirmed a multiple dock license would be required. However, he stated the Board has adopted an ordinance that offers an abbreviated process for specific situations, e.g., two 50 foot lots that have four boats each that are all owned and registered to the individual site residents that could cluster their watercraft on a common dock without requiring a public hearing.

Niccum asked why it was less complicated to obtain a multiple dock license for four properties wanting to cluster their watercraft vs. the issuing of a license for one site; offering the question of whether the process should not be the same.

Harper stated there are approximately 10 single family dwelling properties that have obtained a multiple dock license through the same process as this applicant was doing. He further stated his belief in this process is to obtain enough documentation to show the site owner has the shoreline footage to support their boat density at the 1:50' General Rule. The abbreviated multiple dock license process allows adjacent residential properties to have a common dock using the four boat rule for each property. The four boat rule allows a site with a single family dwelling to have up to four restricted watercraft; however, they have to all be owned and registered to residents of the site.

Thomas was not opposed to the consideration of simplifying applications; however, in reviewing the supporting documentation to this application, he did not believe the process was too onerous for the property owner.

Jabbour provided examples of applicants that did not get along with the neighbors and the time and costs that were incurred to approve such.

Harper confirmed that the renewal application costs are reduced to a \$50 base plus \$7.50 per water storage unit (WSU) vs. the \$500 new application base plus \$7.50 per WSU. Additionally, a site with a multiple dock license that abuts a non multiple dock licensed site requires a double side setback;

providing for another reason to require a proposed site plan with the process.

Baasen opened the public hearing at 7:18 p.m. There being no comments, he closed the public hearing at 7:19 p.m.

**MOTION:** Jabbour moved, Niccum seconded to approve Robert Sabes new multiple dock license application for the 2016 boating season.

**VOTE:** Motion carried unanimously.

## 9. OTHER BUSINESS

### A. Chair update on contracting with a Human Resources Specialist

Baasen stated that, per the Board's direction, he obtained a referral for a human resources consultant. This referral came from the LMCD's strategic planner Craig Rapp and his name is Dr. James Lynn of Lynn & Associates. He had met with Lynn and provided him an update as to Nybeck's 2014 performance review. Lynn confirmed he would be submitting a proposal for the Board's consideration to clarify 1) what the process should be so that the LMCD does not find them in this situation again and 2) the role of the Executive Committee and the Board as it relates to personnel matters. Baasen solicited the Board's approval to schedule a presentation by Lynn at their October 14<sup>th</sup> meeting, at which time he anticipated the Board consideration and approval of his proposal; no comments were offered by the Board. Baasen continued to state he was encouraged by Lynn's ability to cut to the chase, as well as his confirmation that the process currently utilized was not bad but needed to be cleaned up; offering the need for it to be specific and measurable. Lynn has expressed an interest in meeting with Nybeck directly. Lastly, he stated Lynn's professional experience included working with Rapp and multiple cities both in and around the area, e.g., Minnetrista and Wayzata to name two.

Zorn requested clarification that the Board is pursuing consultation for the following two options: 1) high level (as outlined by Baasen above) and 2) to wrap up the 90 day performance review. In closing, she stated she did not want to stop the review process by backing up to define the LMCD's process.

Baasen stated he could not respond to what Lynn would deliver within his proposal but that the consultant expressed an interest in covering not only the process that was delivered but the review itself to assist in the Board's stalemate.

### B. Appointment of two Board members to Selection Committee for 2016 LMCD Civil Attorney

Baasen asked Nybeck for an update on this agenda item.

Nybeck stated the Request for Proposal (RFP) to solicit an LMCD civil and legal services attorney for 2016 was submitted in accordance with the discussion held at the Board's September 9<sup>th</sup> meeting. The Board also approved the selection committee for this process; made up of the Executive Committee, Nybeck, and two additional members that were to express their interest to Nybeck for approval at this meeting. As of this date, Board members Hoelscher and Zorn have expressed interest in serving. He entertained a motion to consider the appointments or discussion to an amended process.

Jabbour stated that he too had expressed interest via an email to Nybeck.

Nybeck stated that he did not receive that email; however, the Board could certainly increase the additional appointed members to three.

Baasen did not have a concern with appointing three as long as the committee does not get too large.

Morris expressed an interest in Jabbour serving on this committee based on his experience.

**MOTION:** Niccum moved, Gross seconded to approve Board Members Hoelscher, Jabbour, and Zorn to the Selection Committee for the 2016 LMCD Civil Attorney.

**VOTE:** Motion carried unanimously.

## 10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen stated the Save the Lake Committee met today, at which time they: 1) welcomed Niccum as a new member; offering room for a couple more members, 2) reviewed the announcement of funds available (approved for distribution under item 6C above), 3) agreed that the Boater Safety Education Program should continue (reducing the sessions down from three to two but increasing the attendee numbers), and 4) had an initial discussion relative to next year's banquet. The next meeting is scheduled for November 4<sup>th</sup>.

Green deferred to Morris relative to the last Aquatic Invasive Species (AIS) Task Force meeting as Green was not able to attend.

Morris stated the AIS Task Force met on September 11<sup>th</sup>. The members received an update from the Minnesota Department of Natural Resources (MN DNR) on the invasive species Starry Stonewort. He directed the Board to a Fact Sheet within their handout folders on this form of algae. He stated that this was recently discovered in Lake Koronis and could possibly be more dominant than Eurasian Watermilfoil (EWM). The Task Force members believed this matter warranted the need to raise awareness in the prevention and future management of its possible arrival. Lastly that the MN DNR announced grant funding for harvesting of EWM, and possibly watercraft inspections, will be reduced in 2016 but could not confirm to what levels.

Green made the following three comments: First, he and Jabbour will attend the State AIS Committee meeting tomorrow, at which time the members will receive a presentation from MN DNR representative Chip Welling on Starry Stonewort. Committee members have been informed that the reduction in MN DNR grant funds for harvesting could range from none to as low as \$3,000 vs. the \$30,000 the LMCD has included in their approved 2016 budget. Second, the Initiative Foundation, in which he and Jabbour serve on, met to review the Lessard-Sames Outdoor Heritage Council AIS funds that the Foundation distributes. At that time they reviewed nine proposed projects. He will be able to provide a detailed overview of what projects were awarded funds at the Board's next meeting. Third, Jabbour and Jeff Forester of the MN Lakes & Rivers Advocates are coordinating a meeting next week with a group of sportsmen and other interested parties in an effort to discuss and engage more groups in the area of AIS.

Jabbour stated that a lobbyist for Minnesota resorts will be present; providing for the stakeholders and

legislature to move in the same direction.

Baasen made the following three comments. First, he thanked Green, Jabbour, and Morris for their passion and work relative to AIS and welcomed others to consider work in this regard. Second, the Executive Committee is scheduled to meet on October 13<sup>th</sup> at 4:00 p.m. Third, he referenced a Minneapolis Star Tribune article published on September 22<sup>nd</sup> edition entitled, "Minnesota's Lakes: Leave them be so that they may last." He believed the article was worth reading.

## **11. EXECUTIVE DIRECTOR REPORT**

Nybeck reported on the following two items: First, he reminded the Board that there are five Wednesdays in the month of September; therefore, the next Board meeting is in three weeks on October 14. Second, he has or will be attending the following events: 1) the Minnesota AIS Research and Management Showcase, September 16<sup>th</sup>; 2) the Conservation Minnesota litter clean up event, September 19<sup>th</sup> (with Board member Morris); 3) a Mound City Council meeting, September 22<sup>nd</sup>; 4) the Minnehaha Creek Watershed District (MCWD) Heroes Award Banquet, October 1<sup>st</sup>; and 5) the Hennepin County Sheriff's Foundation (HCSF) annual special deputy appreciation banquet, October 2<sup>nd</sup> (that he attends annually). Nybeck urged the Board members that are able to attend the last two events to contact staff who would assist in their reservation.

Baasen stated that he would be out of town and would not be available to attend the last two events. However, he concurred with Nybeck and encouraged the Board to attend; offering background on the recognition of the special deputies and the LMCD's expressed interest in supporting partnering agencies.

Nybeck stated that staff is putting together the first draft of strategic initiatives of the action plan for discussion at a sub-committee meeting on September 30. This document will be complemented with a list of current core programs and activities and staff recommendations for 2016. The sub-committee is comprised of Board members Hughes, Klohs, Shuff, and Zorn. Nybeck believed that staff, in working with the sub-committee, will be fine tuning the document for Board review in December.

Baasen asked the sub-committee to keep in mind the ability for the Board to again work with the strategic planning facilitator should they believe this was a necessary step in finishing the final document.

## **12. OLD BUSINESS**

Jabbour stated that the Bob Speltz Land-O-Lakes Chapter of the Antique and Classic Boat Society held an event at Lord Fletchers last Saturday. He had requested the Society allow the Minnesota Department of Natural Resources and Hennepin County Sheriff's Office to hold a booth during this event and the Society agreed to do so. He further stated that there were three events simultaneously being held at Lord Fletchers and that the interaction with the two agencies (up to eight deputies present), as well as he and Green walking around talking with people, was very positive. He reported that many questions fielded pertained to the use of the Lake during the winter season. To this end, he wanted to recognize the Society and those that work on behalf of the Lake. Lastly, he stated the Minnetonka Power Squadron held a land-based litter cleaning event for the two Islands in the Upper Lake that are owned by the Three Rivers Park District, as well as Big Island; another example of people working on behalf of the Lake.

### 13. NEW BUSINESS

There was no new business.

- 15. PENDING LITIGATION.** Update on Minnesota Court of Appeals Ruling relating to James Nils Andersen, File Number 27-CR-13-22946 (Note: Board may vote to discuss this agenda item with its attorneys in the closed session under the attorney-client privilege as permitted by Minn. Stat. § 13D.05, subd. 3(b)).

Baasen asked LMCD Prosecuting Attorney Steve Tallen to provide an overview of this agenda item.

Tallen requested the Board go into closed session for an attorney/client privilege discussion relative to the James Nils Andersen case. He solicited Gilchrist's concurrence with this action.

Gilchrist concurred with Tallen's recommendation and offered, for the record, State Statute 13D.05, Subd 3(b) for this purpose.

**MOTION:** Green moved, Jabbour seconded to: 1) go into closed session at 7:43 p.m. to discuss pending litigation as permitted by State Statute § 13D.05, Subd. 3(b) and 2) reopen the session for continued general discussion.

**VOTE:** Motion carried unanimously.

Baasen called the meeting to open session at 8:25 p.m. He entertained a motion from the Board on this matter.

**MOTION:** Hoelscher moved, Shuff seconded to not authorize the LMCD prosecuting attorney to appeal the Minnesota Court of Appeals ruling relating to the James Nils Andersen case to the Minnesota Supreme Court.

**VOTE:** Motion carried unanimously.

### 14. OPEN MEETING LAW TRAINING

Baasen invited Gilchrist to present on the Open Meeting Law.

Zorn stated that she would not be able to stay through the full training session based on a family matter and left at 8:35 p.m.

Gilchrist handed out an outline on the Data Practices Act and directed the Board to the following documents that were in their packets, an outline of the LMCD Open Meeting Law Presentation and a copy of the Quick Reference Guide to the Minnesota Open Meeting Law for Town and City Officials. He provided a detailed overview of the following discussion points and responses to various Board questions:

Open Meeting Law: What it is and its purpose, who must comply, when it applies and for what meetings, the required notice, issues that may arise, penalties for violating such, and lessons learned.

Data Practices Act: What it is, what qualifies as government data, what is the Records Retention Act, and what is a Litigation Hold.

In closing, Gilchrist offered the Board original copies of the Quick Reference Guide offered within their packet for a more efficient reference.

## **16. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:19 p.m.

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Dan Baasen Chair

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Gregg Thomas, Vice Chair/Secretary