

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

6:00 P.M., Wednesday, January 27, 2016  
Wayzata City Hall

**ACTION ITEMS**

**1. CALL TO ORDER**

Baasen called the meeting to order at 6:00 p.m.

**2. ROLL CALL**

**Members present:** Dan Baasen, Wayzata; Gregg Thomas, Tonka Bay; Gary Hughes, Spring Park; Jennifer Caron, Excelsior; Jay Green, Mound; Ann Hoelscher, Victoria; Gabriel Jabbour, Orono; Chris Jewett, Deephaven; Dennis Klohs, Minnetonka Beach; Bret Niccum, Minnetrista; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Greg Nybeck, Executive Director; Emily Herman, Administrative Assistant; and Troy Gilchrist, LMCD Legal Counsel.

**Members absent:** James Doak, Woodland

**3. APPROVAL OF AGENDA**

A motion was made by Roy and seconded by Jewett to approve the agenda as submitted; motion carried unanimously.

**4. APPROVAL OF CONSENT AGENDA**

Shuff moved, Thomas seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved include: **6A**, Audit of vouchers (1/16/16 – 1/31/16); **6B**, December financial summary and balance sheet, and **6C, Save the Lake**, approval of 2016 Save the Lake Funding Proposals, as outlined in 1/20/16 memo.

Baasen provided a summary of the process used and factors considered (safety and biggest impact) by the Save the Lake Committee in reviewing and making a recommendation regarding the proposals.

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

There were no public comments.

## NON-ACTION ITEMS

### 6. LMCD FINANCE AND PERSONNEL COMMITTEES

Nybeck stated that this is the first meeting held via the newly adopted [December 9, 2015] workshop meeting format for 2016. He recognized that changes could be made as the Board moved forward but reminded them that this format included the Executive, Finance, and Personnel Committees to meet at 6:00 p.m. on the fourth Wednesday of each month. To this end, he stated agenda items 6A and 6B fall within the committee's work with the remainder of the agenda items falling within the workshop setting of the Board.

#### A) Discussion of 2016 employee compensation adjustments

Nybeck stated the 2015 employee performance reviews were completed for Emily Herman and Tammy Duncan, Administrative Assistant/Code Enforcement and Administrative Clerk, respectively. He provided an overview of the LMCD's adopted Personnel Policy which documents compensation recommended by the Personnel Committee, comprised of the Board officers, for approval by the full Board (Section 5). He directed the Board to a "Proposed 2016 Hourly Rate Adjustments" worksheet which he reviewed with the Personnel Committee on January 27<sup>th</sup>. He provided the Board a detailed overview of each position's compensation range (including the vacant Administrative Technician position) based on the current compensation; the 2.5%, 2016 adopted budget recommended increase; and a proposed amended rate taking into consideration filling the vacant position. He made the following comments:

Vacant Administrative Technician and Currently Filled Administrative Assistant/Code Enforcement Positions: He recommended Herman be promoted to the vacant Administrative Technician position. This recommendation would create a need to fill the Administrative Assistant position as-soon-as possible. He provided an overview of his recommended compensation range for both positions.

Administrative Clerk Position: This part-time position is scheduled to work three days a week (budgeted for 1,248 hours annually). He recommended this position's compensation be brought up to market value (\$16 to \$20 per hour), noting that Duncan is performing a higher level of bookkeeping than what was originally anticipated when hired. He also noted that considering holidays and vacation Duncan actually works approximately 1,143 hours annually. He reiterated that Duncan works about 100 hours less than budgeted based on her vacation and holiday schedule. Therefore, her recommended 2016 amended compensation is slightly lower than the compensation approved for the 2016 budget.

Seasonal Code Enforcement: He recommended the Board consider how this 2016 budgeted position is utilized based on the Board's recent decision to suspend the 2016 Proactive Code Enforcement Program.

Eurasian Watermilfoil (EWM) Manager (Contracted): This position was originally filled by the Administrative Technician with one pay period budgeted annually. In 2016, this position was budgeted for two pay periods annually. The amended proposal would allow for a contracted EWM Project Manager at

an estimated 170 hours. He entertained questions and comments from the Board which are summarized below:

- The proposed amended compensation for Herman to fill the vacant Administrative Technician position could be considered based on qualifications and that the 2008 compensation survey had that position capped at approximately \$65,000 (recognizing that was several years old).
- The Personnel Committee recommended the Board consider and adopt the revised strategic plan prior to the assessment of staff needs. Nybeck stated that if the Board were to consider that option, he recommended they approve the 2.5% compensation adjustment, retroactive to January 1, 2016 (offered within the approved 2016 budget) at their next regularly scheduled action meeting for Herman and Duncan.
- A brief discussion was held at the Board level as to what has been provided to date relative to staff time for individual core activities, including Save the Lake Committee functions.
- Herman has earned overtime wages due to coverage of the vacant Administrative Technician position.
- Confirmation that Nybeck did present amended position descriptions, based on his 2016 proposed amended recommendations, to the Personnel Committee in December 2015.
- Confirmation by Gilchrist that the Board could take action but urged them to not do so on a regular basis during a workshop setting.
- Thomas moved to approve a 2.5% compensation increase for Herman and Duncan, retroactive to January 1, 2016. After a recommendation to consider that action under the consent agenda at their February 10<sup>th</sup> meeting, Thomas withdrew the motion on that condition.
- Discussion was initiated on the existence of the Save the Lake Fund. It was recommended that discussion be continued at a future meeting as the agenda was not amended to consider such. No further date was scheduled by the Board.

**B) Alerus Financial N.A. (formerly Beacon Bank),** discussion of reinvesting LMCD funds in Certificate of Deposit

Herman directed the Board to her staff memo, dated 9/22/16, that included the LMCD approved Investment Policy (policy) and Alerus Financial N.A. (Alerus) collateral statement for December 2015. She provided the Board an update on: 1) the purchase of Beacon Bank by Alerus, 2) an overview of three currently acquired Certificates of Deposit (CD) and the savings and checking fund balances as of 1/16/16, 3) that one of the CD's will be maturing on February 7<sup>th</sup>, 4) a review of the LMCD collateral requirements (per policy), and 5) the recommendation to invest \$100,000 into another CD with Alerus for 13 months at .60% interest.

The Finance Committee, via a motion by Thomas and Baasen, directed Herman to deposit \$100,000 in a CD with Alerus for 13 months unless Herman could obtain a two year rate that is at least 1% higher.

**7. A) Lynn & Associates,** update on 2015 performance review results for LMCD Executive Director

Dr. Jim Lynn provided a detailed overview of: 1) what was accomplished to date relative to the Executive Director's (ED) performance review, 2) a draft 2016 ED Performance Improvement Plan, and 3) a draft

2016 Performance Review form. Documents distributed for this included: an agenda; Summary of 2015 Evaluation for the ED, dated 1/5/16; a memo to the LMCD Personnel Task Force, dated 1/27/16, relative to an after action report for the 1/20/16 meeting; an LMCD 2016 Year End ED Review; and a memo to the LMCD Board, dated 1/27/16, relative to the 2016 ED performance expectations. The following summarizes Lynn's presentation and the Board's discussion:

Summary Evaluation for the Executive Director

- All 14 Board members completed a 2015 ED performance review based on 10 competencies. The results were reviewed via a rating scale from one to five.
- The report included the written comments received relative to each individual competency.
- The average rating would typically warrant working with the employee via an established performance improvement plan.
- In a scale of one to five, the rating of a one would provide for an employee "always" performing below expectations with a rating of a two providing for "sometimes" performing below expectations.
- A Board member's belief that, after review of specific written comments offered, that the Board "dropped the ball" in working with the ED; Lynn concurred.
- A Board member's belief that: 1) the data is the data which will assist in moving forward with the next step of this phase and 2) that it would not be healthy for the Board to debate the written comments.
- Removing the extreme ratings continued to provide for the need to work towards an acceptance level via adding performance expectations and a contingency plan.
- The recognition that the Board was and continues to be divided in the ED's performance. In discussing how to move forward, it was recommended that the Board come together to find the areas of expectations that can be communicated and worked on with the ED.
- Recognition by one Board member that the ED expressed concern, at the last Human Resources Task Force (HRTF) meeting, that he never had a buy-in through this process and that due to his belief that the process offered was flawed, he declined to participate.

Nybeck stated that at the December 9<sup>th</sup> Board meeting, Hoelscher asked him what he thought about the 2015 performance evaluation process being considered. At that time, he expressed the concern that it was not fair to do a retroactive performance review for 2015 when at week 50 he was informed of such and that the process involved did not represent his approved position description. Additionally, he stated the he and Lynn spoke the next day relative to completing a self-appraisal in which Nybeck declined based on his belief of a flawed process. He concurred that the process would have been fair for the year 2016 but not for 2015.

A question was raised how one provides for a 2016 appraisal that has not yet happened.

Lynn offered that typical evaluations are started *a priori* in which the Board would communicate their expectations to the ED for the year to come and evaluate his process throughout. This process eliminates the need to just come up with stuff at the last minute.

There was a belief by a few members that the competencies were very broad in nature with one member offering that the ED's choice to not participate in the 2015 process should be noted.

Lynn repeated his previous statement that it was unusual for a Board to have 14 members. With that said, when the Board evaluates an ED they are in essence evaluating themselves, as well. Additionally, he stated that the ED is what happens throughout the whole enterprise (through direction from the Board) and that he believed ED's are not managed by their job description but their global, major strategic objectives set by the Board. In closing, he said the Board should have an opportunity to review and reflect on the written comments offered within the Summary (recommended by one Board member).

Memo to Board (2016 ED Performance Expectations) and LMCD 2016 Year End ED Review

Lynn stated the subject documents were produced with the help of HRTF members. He recommended that a small task force (two or three) be chosen to work with the ED on this review process. He recognized that the ED has been undermanaged (based on having 14 bosses). This small task force would meet with the ED weekly for up to three months to evaluate his progress. To this end, he provided a detailed overview of a draft performance expectation project list that goes hand in hand with the draft 2016 Year End ED Review document that incorporated strategic initiatives the Board is currently working on. He stressed that the HRTF worked with him in editing the subject documents and that he could not take all the credit. He recognized that the ED would now be given very specific objectives to be completed within the year 2016. He believed this document was a "thing of beauty," offering that this is the first time in 12 years that the Board is offering the ED specific objectives to accomplish. This ED would be evaluated 50% on specific objectives accomplished with the other 50% on the 10 competencies utilized in 2015.

Nybeck reminded the Board that the strategic initiatives drafted in the 2016 Year End ED Review document have been drafted by staff for completion between 2016 and 2018 and that it would not be possible to accomplish it all in 2016.

Lynn stated that would be a matter to negotiate with the personnel leadership assigned to work with the ED.

Nybeck reminded the Board that the draft strategic initiatives are schedule to have initial discussion by the Board under agenda item 7B, which he communicated to the HRTF on January 20<sup>th</sup>.

A question was asked as to how the Board would handle negative results after the first quarter of the evaluation process. Lynn believed that question would fall within the discussion of the next document offered.

Memo to LMCD Personnel Task Force (After Action Report for 1/20/16 Meeting)

Lynn provided a detailed overview of his After Action Report. In response to the previous question, he referenced paragraph number three that recommended the task force work with the LMCD attorney to develop a termination agreement should that be needed after April 1<sup>st</sup> (offering it is common practice to

have such an agreement drawn up at the time of hire). A summary of comments offered for this discussion is outlined below:

- One Board member did not believe the Year End Review offered the ability for the ED to be creative; referencing a comment offered within the 2015 Summary Review (paragraph 8, page 3).
- In confirming the goals, it was important that all, including the ED, are on the same page and that they are obtainable. Lynn confirmed the goals also need to be challenging. Additionally, the Board would need to know when to manage, be supportive, and delegate.
- A few Board members discussed the various personality traits of employees. One member offered that the ED had not had a performance evaluation in many years and now is being evaluated on matters that the Board wanted him to accomplish but never told him of such. Lynn confirmed the later statement.
- This discussion was summarized by offering that the ED had not previously received fundamental structure, that the Board has an interest in the ED thinking outside the box, that the ED could move through an adopted strategic plan via the guidance of the Board, and that there was a need to re-establish trust amongst the Board and ED.
- Lynn reiterated the need to establish that small task force to finalize the 2016 objectives with the ED and work directly with him on a weekly basis for the next three months. Lastly, to work with the LMCD legal counsel in drafting a termination agreement.

Gilchrist stated that on a legal and technical standpoint, he concurred with the recommendation for the smaller working group to work with him on the drafting of the separation agreement that would provide for waivers to avoid future legal action. He confirmed that he has spoken with Nybeck who has concurred with the drafting of the separation agreement (acknowledging he was not speaking for him). Lastly, he reminded the Board that the material handed out for this agenda item falls under personnel data practices. The Board can discuss non-public data at a public meeting; however, the data itself is not public. He recommended turning in all documentation but for those wanting to keep theirs, to store such in a safe place where they are unavailable for others to read.

Nybeck stated that at the first HRTF meeting held on November 10<sup>th</sup>, Lynn laid out the following three options for the members to consider: 1) the ED was doing well and there is was not a need for an action plan, 2) matters are not going as well but some improvements have been made; offering the need for an action plan (which he believed is being proposed at this meeting although he expressed concerns regarding the process offered), and 3) there is a need for change in leadership and a recommendation was made to initiate work on a severance package. He fully supported the third option and recommended the package be drafted sooner rather than later. He stated the draft 2016 Year End ED Review document is unobtainable and that it sets him up for failure. The Board has offered three years worth of strategic initiatives to be accomplished in one year and the office is short one staff member.

A discussion was held by some Board members on the need to establish the small task recommended by Lynn to work with the ED in the development of an obtainable Year End Review that would provide for the ownership of both parties.

Nybeck reiterated that he supports the recommendation to draft up a severance package; however, he clarified that he is not resigning from his position.

Baasen solicited those interested in being on the small task force to work with the ED, via the schedule outlined within the 2016 ED Performance Expectations, on the development of an obtainable 2016 Year End Review document, as well as to work with Gilchrist on the separation agreement. Board members Green, Thomas, and Zorn volunteered.

**B) Review of possible amendments to LMCD Code with Legal Counsel Troy Gilchrist.**

Gilchrist directed the Board to various drafted ordinance amendments within their packet relative to: 1) the definition of practical difficulties, 2) special events, 3) the publication of ordinances, 4) variances, 5) public nuisances, and 6) watercraft for hire. He reminded the Board that the recently approved ordinance amendments were a priority (public safety) and that those offered within are not as high of a priority. The following overview, with respective comments, is outlined below:

Practical Difficulties: Gilchrist stated the amendments were offered to further clarify the two different standards currently provided within the LMCD Code in consideration of a variance. They were practical difficulties and undue hardship; offering that both terms are currently not defined within the Code. He reminded the Board that this was brought forward based on a recent court ruling (Johnson et. al. v. LMCD) in which the court required the Board to further define practical difficulties for a specific application. Lastly, he stated that in local government, there is a series of cases based on the use of the term practical difficulties. However, those entities are subject to zoning laws and the LMCD is not. To this end, he directed the Board to the last sentence in the proposed definition of the term (Chapter 1, Section 1.02, Subd 38a) that reflected the similar use of language for zoning laws but documents it, "... exists independently from the statute and is to be interpreted by the Board without being bound by how municipalities interpret and apply the definition in a zoning context."

Special Events: Gilchrist stated the amendments offered are presented to capture some of the events that are currently taking place on the Lake; working with the LMCD prosecuting attorney to provide further definition where needed. The Board's discussion on the proposed amendments included:

- A question as to whether the LMCD should try and fully capture individual events that are taking place or provide for broader language that would encompass any and all types of events.

Gilchrist directed the Board to paragraph "m" on the second page of the draft ordinance amendments. He believed that paragraph, which provides for a catch-all for un-contemplated events, more closely responds to the question above. He expressed concern that general descriptions sometimes provides for more unenforceable matters.

- The recommendation to consider that the ordinance simply reference Minnesota state statute 86B121 which covers events on both ice and open water.
- Concern that listing the individual types of events gives the assumption that they will be approved

for a special event when, in fact, they may not. This led into background descriptions of two recent court settlements with Red Bull and others that may be proposed.

- The removal of Subdivisions 2 through 9 relative to preventing the introduction of aquatic invasive species into the Lake.

Publication: Gilchrist stated that the ordinance amendment for this section defines when an adopted ordinance would become effective. Additionally, it provides for the ability to summarize an ordinance for publication vs. printing the entire document; title and summary with conditions.

Variance: Gilchrist stated this provides for the removal of “undue hardships” as the newly defined “practical difficulties” can be utilized on a standalone basis. Additionally, he stated the added language was directly out of state statute.

Public Nuisances: Gilchrist stated that this section primarily addressed the enforcement of electronic devices (50 foot audible limit from a boat or dock). When asked if the draft amendment was enforceable, Gilchrist stated that it was important to make sure an ordinance is not too watered down to make it un-enforceable. He offered that the language was shared with the Sheriff’s Office and that they will be provided a copy for review and comments upon final draft.

Watercraft for Hire: Gilchrist stated that the currently approved ordinance maintained some inconsistencies between what is offered within the LMCD code vs. state statute. One such inconsistency is whether to license a sailing school that is transporting students on a boat from shore to the class setting. The question remained as to whether this operation would be considered a watercraft for hire (taking into consideration safety factors and the transportation of the students by a paid employee for a paid function). A summary of this and general discussion is as follows:

- The students are getting on the boat to reach a paid destination vs. other charter boat operations whereby the ride is the event.
- The main concern offered by the yacht clubs is that they have to provide a certified pilot to transport the students to the various sailing schools.
- The question as to at what point will the LMCD go too far; risking the loss of programming to obtain the goals and objectives of set regulations.

Gilchrist stated the state expressed concern that the transportation of students via a watercraft was not licensed; assuring the safety factors of the operation. In closing, the LMCD will need to make a decision as to whether the licensing remains at the LMCD’s level.

Green questioned the licensing of fishing guides. A summary of that discussion is as follows:

- It is important to provide greater access to the Lake.
- The state does not license fishing guides nor require a pilot or captain’s license to operate unless one is on Federal waters. An example was offered that the MN Wild holds a fishing event for the Leukemia Society at Lord Fletchers. The fishing guide takes on sponsors that compensate them, as well as pay good money to the Society. Once the licensing for fishing guides is enforced, activities such as this would go away as the guides would not obtain their pilot or captain’s



licenses.

- Discussion was held as to the consideration of a “six pack” exception. One Board member stated only a handful of fishing guides has their pilot/captain’s license; therefore the matter should be left alone.
- Gilchrist stated the definition of a boat is adopting the state standard. This and the transportation of the students are matters that need to be considered by the Board.
- A question was raised as to how the Water Patrol would enforce a fishing guide operation without a watercraft for hire license.

The Board continued their discussion relative to general aspects of the watercraft for hire ordinance as follows: 1) a comment that boat rental companies are also currently not being enforced, 2) the question of whether there are any negative aspects to the LMCD should the Board consider streamlining the ordinance to be consistent with the state; negative public relations relative to the perception of forgoing safety was raised, and 3) confirmation that the LMCD does not have to hold a public hearing when considering a new or amended ordinance (offering the LMCD’s practice of waiving the second and third reading and adopting an ordinance is not required).

In closing, Gilchrist recommended he re-draft the ordinance amendment taking into consideration comments offered above, risk factors for such (very little for the LMCD relative to the practice of issuing licenses or permits), and how the fine revenue is assessed. Lastly, he confirmed that he had previously and will continue to share the proposed amendments with LMCD’s prosecuting attorney and Sheriff’s Office.

Nybeck provided an overview of the spreadsheet offered within the packet on various code sections that were discussed and considered for Chapter 3.

### C) LMCD Strategic Plan update

Nybeck directed the Board to his memo, dated 1/22/16, which summarized the process to date in updating LMCD’s strategic plan (including meetings held by the sub-committee and the Board’s last action to suspend the 2016 Proactive Code Enforcement Program). After conferring with Baasen, a decision was made to bring Strategic Planning Consultant Craig Rapp’s draft summary report to the Board for an in-depth review of staff’s proposed 2016-2018 initiatives; offering that the sub-committee’s efforts have been focused on staff’s core activities and programs with little time spent on the proposed initiatives. He recommended the sub-committee provide their comments to the Board rather than staff.

Klohs believed the proposed strategic plan is a wonderful document; however, the LMCD does not have the budget and staff to execute such. He questioned why the LMCD should spend further time on the initiatives until the core activities are established with appropriate staffing levels. He referenced prior discussion held under item 7A and concurred with Nybeck that the draft Year End document is unobtainable as written; guaranteed for failure. He believed the LMCD should consider what activities are mandated (licensing) and discretionary (Save the Lake and watercraft inspections) as Nybeck has documented to the sub-committee that staff only has about 20% of time left to expend to other initiatives

outside of what the LMCD is currently accomplishing. Lastly, he stated that the LMCD currently does not say no to any project that comes their way; providing for staff to put out fires on a day to day basis vs. establishing a high level process on items that are mandated by legislation.

The Board discussed this matter as summarized below:

- Expressed interest in providing more responsibilities on the Board members to accomplish specific tasks.
- The re-codification of the Code book as it pertained to Board assistance and the need to budget for legal services.
- Confirmation of this document is paramount in drafting a successful 2016 Year End ED Review.
- A recommendation to provide an estimate of time involved based on staff levels of two and one-half and three and one-half staff members for each proposed initiative. A revised recommendation was offered to look at that task based on the Board prioritizing the initiatives.

Nybeck reminded the Board that the ED has assumed a great deal work in the various licensing processes and core programs and activities based on the vacant position. He confirmed that the documents offered was consistent with the process and format that Rapp recommended. However, he concurred with Klohs that there was a need to establish three to five realistic initiatives as a starting point moving forward.

- The recommendation to table this document until the three member task force meets with Nybeck to establish the initiatives that can be set for 2016; with a re-evaluation in 60 to 90 days. The summary and final discussion to this agenda item included the following: 1) a handful of Board members concurred with that recommendation; with one expressing concern that the proposed strategic plan is now being tabled for a longer period of time and 2) that staff will continue to operate with two and one-half employees for the next 60 to 90 days.

## 8. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:10 p.m.

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Dan Baasen Chair

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Gregg Thomas, Vice Chair/Secretary