

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, February 10, 2016
Wayzata City Hall

1. CALL TO ORDER

Vice Chair Thomas called the meeting to order at 7:00 p.m.

2. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Gary Hughes, Spring Park; Jennifer Caron, Excelsior; James Doak, Woodland; Jay Green, Mound; Ann Hoelscher, Victoria; Gabriel Jabbour, Orono; Dennis Klohs, Minnetonka Beach; Bret Niccum, Minnetrista; 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: Dan Baasen, Wayzata; Chris Jewett, Deephaven; and Rob Roy, Greenwood

3. APPROVAL OF AGENDA

MOTION: Green moved, Shuff seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. VICE CHAIR ANNOUNCEMENTS

There were no Vice Chair announcements.

Nybeck stated representatives from the Hennepin County Sheriff's Office were available Wednesday, March 9th at 5:30 p.m., to attend the annual meeting with the LMCD. The Board confirmed availability and directed Nybeck to schedule the meeting.

5. APPROVAL OF MINUTES- 1/13/16 LMCD Regular Board Meeting
 1/27/16 LMCD Regular Board Meeting

MOTION: Shuff moved, Caron seconded to approve the 1/13/16 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

MOTION: Shuff moved, Caron seconded to approve the 1/27/16 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (9), Abstained (1, Doak); motion carried.

6. APPROVAL OF CONSENT AGENDA

Jabbour moved, Niccum seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A)** Audit of vouchers (2/1/16– 2/15/16) and **6B) Personnel Committee**, 2016 compensation adjustments for LMCD employees as outlined in 2/3/16 memo.

Zorn arrived at 7:05 p.m.

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 scheduled.

9. OTHER BUSINESS

A) Wayzata Yacht Club (Site 1), approval of draft Record of Decision and LMCD Resolution 143 ordering a negative declaration on the need for an Environmental Impact Statement (EIS) for the Mandatory Environmental Assessment Worksheet (EAW) document

Nybeck provided a brief overview of the State's EAW process that was triggered by Wayzata Yacht Club's new multiple dock license application. The application outlined proposed changes to their dock structure that would exceed 20,000 square feet (including maneuvering space). He stated the completion of this process is required prior to scheduling a public hearing. He directed the Board to the supporting documentation within their packet and solicited approval of the draft Record of Decision and LMCD Resolution 143 (ordering a negative declaration of the need for an Environmental Impact Statement).

MOTION: Jabbour moved, Green seconded to approve the Record of Decision and LMCD Resolution 143 ordering a negative declaration on the need for an Environmental Impact Statement (EIS) for the Mandatory Environmental Assessment Worksheet (EAW) document.

VOTE: Motion carried unanimously.

B) Staff update on Board member terms that expired in January

Nybeck directed the Board to his staff memo, dated 2/4/16, in which he provided an overview of seven members' terms that expired on January 31st and respective city appointments made. He offered that all seven were re-appointed to the LMCD Board. However, he recognized that three of the cities that the LMCD requested they extend the term of the appointment greater than one year remained unchanged. Therefore, he requested the Board members continue to encourage their city council to appoint for a greater length of term so that a large portion of the members' terms would not expire the same year (eight of the 14 members in 2017).

C) Nominating Committee recommendations for 2016 LMCD Board Officers

Caron stated the Nominating Committee (Caron, Jabbour, Jewett, and Shuff) met three times in consideration of the 2016 LMCD Board Officers. It was the committee's recommendation to nominate the following members (as per the LMCD By-Laws and enabling legislation) to hold specific officer positions in 2016: Chair- Jay Green; Vice Chair- Deborah Zorn; Secretary- Gregg Thomas; and Treasurer- Chris Jewett.

Thomas thanked the committee for their efforts in this endeavor. He stated that Caron had worked with Gilchrist on the recommended procedure in considering this process. He provided an overview of that process which was followed via the following actions:

Thomas solicited any further nominations from the floor.

Shuff nominated Baasen for Chair.

Thomas, after confirming no further nominations, called for a motion and a vote on the remainder of the recommended slate of officers that remained unchallenged.

MOTION: Hughes moved, Caron seconded to approve the following 2016 Board officer positions that remained unchallenged: Vice Chair- Deborah Zorn; Secretary- Gregg Thomas; and Treasurer- Chris Jewett.

VOTE: Motion carried unanimously.

Thomas stated that the nominees for Chair (Baasen and Green) would be voted on individually after each, or other representative, were allowed up to three minutes to provide background on the candidate and why that person either had interest in serving as chair or why that person should serve.

Shuff nominated Baasen as chair as she believed he performed masterfully in recognizing all the different points and multi-layered discussions the Board held while synthesizing the basic points of various opinions; bringing closure to the Board's lengthy discussions. She recognized his ability to move ahead on the strategic plan and the various initiatives of the Board. She stated Baasen has a very nice, calm demeanor about him that brings fairness to all. To this end, she would like to see him continue as chair for another year.

Green stated that he submitted his reasons for expressing interest in serving as chair to the committee. In summary, he believed his qualifications would lead this agency into the future as the Board goes through all the changes being considered.

Jabbour recommended Caron read, at a minimum, both Baasen and Green's letter that each provided to the committee in support of their interest in serving as chair. He believed that process would provide the Board with a better understanding of how the committee came to their nomination.

Hoelscher believed it was awkward to consider Baasen's interest in his absence. She questioned if the Board could table this discussion until both members were present.

Gilchrist recommended that once a nomination process was started it should continue until finished. With that said, he acknowledged it was the will of the Board to decide.

Thomas stated he was comfortable knowing that Baasen had expressed an interest in continuing to serve as chair. Therefore, if he were to be voted in as such, he believed that action would not present a future concern. He believed the Board should continue this process.

Caron stated the committee discussed the fact that the Board members have all served for many months; therefore, they have a good understand of both candidates. She did not believe that having both candidates present would make a difference as to the vote. She read both letters verbatim and entered them into public record.

Zorn requested the committee add their comments as to why they put forward the recommended slate of officers.

Caron, in speaking for the committee, stated that one of the four committee members was in support of Baasen. The other three supported Green based on: 1) a two year term for the position of chair, and perhaps any officer, was appropriate, 2) it was a good time and would be a positive move for the LMCD that, after two years of service, to have fresh leadership, 3) the time Green has to expend to the LMCD during this year of transition would be positive, 4) the committee was impressed with Green's dedication to aquatic invasive species, and 5) their expressed interest to have newer members of the Board move into officer positions. With that said, the four members provided all positive (zero negative) comments regarding both candidates. Caron entertained further comments from the committee in which there were none.

Gilchrist recommended that a vote for chair via a show of hands be held for each nominee.

Vote for Baasen: 5, (Doak, Hoelscher, Hughes, Shuff, and Thomas).

Vote for Green: 6, (Caron, Green, Jabbour, Klohs, Niccum, and Zorn).

On behalf of the Board, Thomas congratulated the 2016 Board Officers; Chair- Jay Green; Vice Chair- Deborah Zorn; Secretary- Gregg Thomas; and Treasurer- Chris Jewett.

The Board briefly discussed the positive aspects of the nominating process that was utilized. A recommendation was made to formerly adopt this process via resolution that Nybeck and Caron would

draft for consideration in March.

D) LMCD Resolution 144, draft resolution designating appointments for 2016

Nybeck directed the Board to an amended draft resolution within their handout folders; removing Lisa Whalen from the proposed Save the Lake Committee based on her time constraints. He provided a brief overview of the appointments and offered that the Board may want to remove the Executive, Finance, and Personnel Committees for further discussion, combining such with discussion of the updated By-Laws, and approve the resolution as amended.

MOTION: Green moved, Niccum seconded to approve Resolution 144 as amended, making the change outlined by Nybeck above.

VOTE: Motion carried unanimously.

Nybeck solicited the Board's interest in bringing forward previously drafted By-Laws for the Board's consideration of this and the continuation of the Executive, Finance, and Personnel Committees future discussion.

Jabbour stated that he had reviewed both the White Bear Lake Conservation District and Minnehaha Creek Watershed District's By-Laws and recommended that the Board include consideration of those and other agencies' by-laws.

Green recommended the Board appoint a few members to research and provide additional documentation and recommendations for the Board's consideration at their February 24th meeting.

Nybeck offered that he did receive by-law examples from Kennedy and Graven, which were considered at the time he and Gilchrist drafted the initial update. He would be happy to provide those documents to the Board or the smaller working group for their review.

Thomas solicited volunteers to create a small working group in consideration of updating the LMCD's By-Laws. The Board recognized volunteers Caron, Green, Jabbour, and Zorn.

E) Staff update on 2015-2016 deicing inspections

Nybeck provided an update on the deicing inspections via a PowerPoint presentation. His comments were as follows:

- The inspection of the multiple dock and deicing sites was a task outlined within the currently adopted strategic plan (providing for updates and education to the Board).
- There were 34 deicing licenses issued; all of which were inspected on January 26th and 29th.
- Inspections consisted of verifying compliance with: 1) authorized deicing area (ADA) requirements, 2) fencing, 3) placement of "Thin Ice" signs, 4) lighting, and 5) approved variance orders (including conditions).

- There were 28 sites that passed on first inspection (minor deficiencies noted), two require re-inspection, and four were not deicing (of the four, some anticipated by the end of February).
- Inspection reports were sent to all licensees that deiced with summarized results and corrective action, if needed. Limited re-inspections are planned for the remainder of the year.
- ADA regulations were adopted in August of 2005. He provided a detailed overview of this regulation which included: 1) fencing, 2) containment of open water and weakened ice, including the shutting off of the device(s) and installation of temporary fences for non-compliant sites, 3) signage, and 4) lighting.
- An overview of sites that have approved variances to the ADA: North Shore Marina (Smiths Bay) and Curly's Minnetonka Marina-Caribbean (Echo Bay).
- Browns Bay Marina (Browns Bay) combined their deicing site with North Shore Marina (Browns Bay). North Shore Marina voluntarily agreed to place a deicing curtain along the north side of their dock. This overview provided for specific comments with respective pictures from the inspection.
- He entertained questions and comments from the Board.

The Board had a brief discussion on North Shore Marina (Smiths Bay) site as it pertained to their variance (including current and past conditions), the pros and cons of their fencing placement, and the future use of the abutting public access.

F) Update from Board members Green, Thomas, and Zorn relating to 2016 Executive Director Performance Improvement Plan

Thomas stated that Green, Zorn, and he met with Nybeck on February 5th. The majority of the time spent was to talk about the logistics involved in the drafting of a separation agreement and minimal time was spent communicating on a draft Performance Improvement Plan (PIP). The draft PIP was delivered to Nybeck for his review and future discussion. He stated that Nybeck felt strongly that the separation agreement be considered by the Board at their February 24th meeting and that the above members: 1) have been working with Gilchrist in the drafting of that agreement and 2) sought a limited human resources consultant proposal from Lynn and Associates should there be a need to utilize his services. He directed the Board to the draft proposal from Lynn and Associates and a respective consultant services agreement drafted by Gilchrist and solicited their approval. He did not believe there would be a need for such but that it would be available.

Green stated that although the consulting agreement would be in place, he personally did not believe it would be needed and preferred not to use it.

The following comments were offered within open discussion:

- Nybeck acknowledged the many years of dedicated service to the LMCD. He believed that proceeding with a separation agreement was mutually beneficial for both parties and that he offered to stay on for a short period of time based on the current staffing levels.
- This agency owed Nybeck immensely and that employees should always leave an agency with dignity.
- Confirmation that work will simultaneously continue on the PIP and the drafting of a separation

agreement.

- The Board should honor Nybeck's decision and initiate a search for his replacement as a top priority.

MOTION: Jabbour moved, Niccum seconded to approve the human resources consultant services agreement with Lynn and Associates for utilization if necessary.

VOTE: Motion carried unanimously.

Zorn stated that Dr. Lynn had offered additional services should there be a need for an executive director search process. She stated that service is not currently offered within the approved agreement but something the Board could consider if needed.

Thomas deferred to Green as to his thoughts on a future search committee.

Green stated that should the LMCD reach that stage, he anticipated the following two groups be formed during a set transition period: 1) those that will need to learn all that is possible within the LMCD itself, at the same time not allowing matters to fall through the cracks and 2) an executive director search criteria group with the possibility of appointing an interim director (with assessment of staffing needs).

10. UPDATE FROM STANDING LMCD COMMITTEES

Green offered the following comments:

- The Aquatic Invasive Species (AIS) Task Force will be meeting Friday, February 12th.
- He recently attended a Minnesota Department of Natural Resources (MN DNR) Roundtable in which representatives from a diversified area of resources meet with the MN DNR to discuss current matters of interest. This meeting provided for a presentation from the conservation director of Berkeley Institute who offered that, "one does not get the natural resources they deserve but those that are fought for."
- He recently attended a MN DNR meeting in St. Cloud that addressed plant management, including the topic of harvesting. During discussion of program funding, he represented both the AIS State and LMCD Task Force committees in which he serves on. He stated that in listening to other agencies' programs, he learned that many were removing their harvesters. Other information received from this meeting is currently being assessed and will be discussed at this Friday's AIS Task Force meeting.
- Per the Board's direction, he is putting together data (last four years of financials and harvesting data) for a potential Request for Proposal document in consideration of contracting out the harvesting program.

Jabbour stated that Green was re-appointed to the MN DNR AIS Advisory Committee; with Green confirming he is serving as a representative for Anglers for Habitat.

11. EXECUTIVE DIRECTOR REPORT

Nybeck provided the Board the following updates: First, that he attended a January 26th Wayzata Lake Effect Technical Committee meeting to assist in interpreting the LMCD Code relative to the proposed placement of structures within the water. Based on past LMCD Board discussion, he submitted a summarized email to them on January 28th and informed the Wayzata Lake Effect consultants that some members of this Board have expressed an interest in receiving regular updates on this project. The consultants stated that more detailed information would be offered after the February 23rd meeting as they are preparing to offer a draft proposal to their city council in the near future. He will keep the Board apprised of this matter. Second, the fieldwork for the 2015 audit was completed and that the Board will be considering the draft audit at their March 23rd meeting. This process is much more streamlined based on the LMCD performing bookkeeping in-house. Third, a public hearing would be scheduled for the Board's March 11th meeting to consider the Wayzata Yacht Club (Site 1) new multiple dock license application. Fourth, he will work with Green in initiating preparations for the draft 2017 budget process, which will be discussed by the Board at their February 24th meeting.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

Jabbour offered two comments: First, he is continuing to work with representatives in finalizing the plans for a public emergency transport access located near the Arcola Bridge. He is working with the engineers on dock placement and lighting needs, the Minnehaha Creek Watershed District on rip rapping, and the City of Orono relative to the need to amend an ordinance to provide for Sheriff's use only. Second, he and Green planned to attend a water summit hosted by the Governor in which discussion was held about a movement to privatize water; offering that Shell Oil and BP are two companies that are currently purchasing water options. He spoke of the billions of dollars lost for any reservoir that was infested with AIS.

Thomas publically thanked Gary Hughes for his service as Treasurer of the Board since 2013.

14. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:30 p.m.

James Jay Green, Chair

Gregory J. Thomas, Secretary