

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, February 24, 2016  
Wayzata City Hall

**1. CALL TO ORDER**

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

**2. ROLL CALL**

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

**Members absent:** Jennifer Caron, Excelsior

**3. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**4. APPROVAL OF CONSENT AGENDA**

Jewett moved, Zorn seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A)** Audit of vouchers (2/16/16– 2/29/16) and **6B)** January financial summary and balance sheet.

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

There were no public comments.

**6. CONDUCT A CLOSED SESSION UNDER MINN. STAT. § 13D.05, SUBD. 3 (a) TO REVIEW THE PERFORMANCE OF THE LMCD EXECUTIVE DIRECTOR**

**MOTION:** Green moved, Jabbour seconded to go into closed session under Minn. Stat. § 13D.05, Subd. 3 (a) to review the performance of the LMCD Executive Director and resume in open session directly after the closed session.

**VOTE:** Motion carried unanimously.

Gilchrist stated that Nybeck had consented for the Board to go into closed session for the above noted purpose. By state statute, the closed session needed to be taped; however, he understood that the file could not be released unless under court ruling.

Green called the meeting back into open session at 6:56 p.m.

**7. CONSIDERATION OF DRAFT SEPARATION AGREEMENT AND RELEASE OF CLAIMS FOR LMCD EXECUTIVE DIRECTOR**

**MOTION:** Roy moved, Hoelscher seconded to approve the draft Separation Agreement and Release of Claims for LMCD Executive Director as submitted.

**VOTE:** Motion carried unanimously.

Green stated that, per Nybeck's request, the Board should consider one individual to work directly with Nybeck during the transition process, as well as consider a small number of volunteers to solely work in developing an Executive Director search process for the Board to consider. With that said, the following actions were offered:

Appointed Transition Contact

**MOTION:** Niccum moved, Jabbour seconded to appoint Green to work with Nybeck relative to all communication needs during the transition process.

The Board discussed Green's availability and his willingness to be appointed for this task.

**VOTE:** Motion carried unanimously.

Executive Director Search Process Working Group

The Board acknowledged Baasen, Hughes, and Zorn who had volunteered to work together in recommending the executive director search and/or policy process.

Gilchrist stated that there have been some revisions in state law relative to separation agreements and offered the following:

- The Board and Nybeck have acknowledged that the approved document is public.
- Gilchrist will prepare the document for execution and present to Nybeck tomorrow for signature (confirming Nybeck's acceptance to proceed as outlined).
- He provided the following details relative to the compensation portion of the agreement: 1) payroll will be processed as normal up to April 29<sup>th</sup> (the "leave date") and 2) Nybeck would be on paid administrative leave from April 29<sup>th</sup> through October 31<sup>st</sup> (the "termination date"). During administrative leave, Nybeck will continue to be paid his usual wages (with taxes) and receive employer contributions to PERA and insurance coverage. Payment of accrued and unused vacation and sick leave will be calculated and paid in accordance with the Personnel Policy, effective as of the leave date.
- Per prior Board discussion, he questioned if the Board would like to proceed with a formal motion to have a third party validate the funds listed within a documented entitled, "Assessment of Separation Agreement."

**MOTION:** Baasen moved, Niccum seconded to have the LMCD auditor, Abdo, Eick & Meyers, validate the assessment of payout funds.

**VOTE:** Motion carried unanimously.

Nybeck expressed his appreciation to the Board for the above action. He believed this was a positive move for both parties and that he had already spoken to Green on a proposed transitional process.

Jewett thanked Nybeck for serving the LMCD over the past 20 plus years. His service has been great for the agency, this Lake, and him personally in the time he has worked with Nybeck prior to and during Jewett's service to the Board.

Green mentioned the importance of addressing the budget and staffing levels as it relates to the upcoming transitional needs. Lastly, he solicited additional Board members that he could contact when additional needs arise during this transition process. Board members Jabbour, Niccum, and Roy volunteered for this request. Thomas acknowledged the availability of the three remaining Board officers, as well.

## 8. OTHER BUSINESS

### A) Initiate 2017 LMCD Budget process

Green stated that when the Board reviewed the various versions of the 2016 budget prior to approval, the focus was more on the bottom number and not the individual line items. He directed the Board to a memo within their packet, dated 2/18/16, which outlined a detailed timetable for review of the 2017 budget. He recommended a couple members volunteer to work in depth with himself and Nybeck for recommendations to the Board. Hughes and Jewett volunteered for this.

Nybeck stated that he had initiated work on the draft 2017 LMCD Budget, which offered the actual 2015 and projected 2016 budgets to the best of his knowledge. Feedback from the working group would be needed for: 1) Harvesting and Watercraft Inspection programs, 2) public safety, and 3) staffing levels. He recommended the Board be mindful of the timetable as some of the member cities only have one city council meeting a month.

Jabbour requested the working group bring the Board along in their progress and communicate any preliminary needs.

Gilchrist confirmed for Jewett that communication of draft budgets and solicitation of comments to the Board prior to a scheduled meeting should be submitted to staff for their distribution to the Board.

### B) Review of possible amendments to LMCD Code with legal counsel Troy Gilchrist

Gilchrist directed the Board to draft ordinance amendments within their Board packet. Based on the Board's January 27<sup>th</sup> direction, he simply removed the proposed amendments relative to Watercraft for

Hire for further Board discussion. Prior to entertaining that discussion, he solicited comments from the Board relative to the proposed code amendments. The Board offered the following comments:

Special Events, Article II (page 1) and Article VII (page 4)

- Sailing regattas should be added and individually outlined within Subd. 54 of Article II, as well as the words “wake boards” to proposed Subd. 54 h); waterskiing and wake board competitions.
- The correction of subdivision 9 to 10 in the subheading of Article VII. The heading should read, “Chapter III, Section 3.09 of the LMCD Code is hereby amended by deleting subdivisions 2 through 10 and renumbering...”
- An overview of why Subdivisions 2 through 10 are proposed to be deleted.
- The recommendation to outline the events as presented vs. simply referencing state statute 86B121.
- Consideration as to: 1) what commercial activity is appropriate, 2) whether the LMCD needed to draft a philosophy vs. an individual listing of events, and 3) how to be supportive and not overruling.
- Board consensus was to move forward with the changes noted above and consider scheduling a future agenda item for more philosophical discussion of the code in general.

Public Nuisances, Article V (page 3)

- LMCD Prosecuting Attorney Steve Tallen provided his suggested verbiage and received a draft for final review without objections.
- The Board had a brief discussion relative to proposed Subd. 23, (7), “the operation of any electronic device on the Lake for the purpose of playing music or other entertainment which is audible by any person from a distance of fifty (50) or more feet from the boat or dock on which the electronic device is located” as follows:
  - The use of the word “audible” is fairly restrictive.
  - Noise on water travels much further than on land.
  - The recommendation to consider the use of a decibel (dB) vs. audible level.
  - Hughes and Jewett believed it was too restrictive and questioned enforceability.
  - Further consideration of whether noise from a watercraft is stationary or in movement.
  - The LMCD Code does not allow amplified sound outside of a watercraft for hire cabin.
  - The need to further research Minnesota Pollution Control Agency’s regulations relative to noise (including the variations from day to nighttime).
  - Consideration of the quality of speakers as some put out more sound at a lower dB.
  - In summary, Gilchrist will further research the concerns raised above, including continued communication with both the Sheriff’s Office and Tallen.

Gilchrist was directed to bring back revised draft ordinance amendments, as discussed above, at their March 23<sup>rd</sup> meeting for further consideration.

The Board had a brief discussion on non-competitive wake boarding and whether a concern remained for not being responsible for wakes, in general, on the Lake. Jabbour provided background as to the LMCD’s definition of minimum wake and what the Sheriff’s Water Patrol Unit utilizes for enforcement; offering

inconsistencies. It was recommended that Gilchrist raise that matter within his communication, as well.

#### Watercraft for Hire

Gilchrist directed the Board to a Boats for Hire Comparison chart, dated 2/18/16, within the packet. This chart outlined the state law and LMCD ordinances relative to this matter (including a listing of issues that exist amongst them). He solicited the Board's comments as to whether they would like to continue regulating watercraft for hire and, if yes, would they like to amend the code by adopting only state law by reference or does the LMCD ordinance provide value and should be kept.

The Board had a brief discussion on this matter as follows:

- The LMCD ordinance almost exclusively addresses watercraft for hire as cruise boats and that it is difficult to try and consider the regulations outside of that realm, such as the transportation of students on a boat to a sailing school or a fishing guide business. To this end, there was a belief that two standards would have to be applied to consider such.
- Taking into consideration the liquor licenses that are associated with most of the watercraft for hire, there is a substantial amount of revenue to consider (est. \$30,000).
- If the LMCD does not license or regulate the watercraft for hire, the Board should be ready to react to a whole new set of challenges in their use on the Lake.
- The 1991 LMCD Management Plan assigned a great deal of value to the watercraft for hire as it provides for reasonable public access.
- The LMCD currently has State authority to issue liquor licenses for watercraft for hire. Should the LMCD decide not to regulate watercraft for hire, the licensees would have difficulty obtaining their liquor license.

Gilchrist informed the Board that: 1) he always welcomes the Board's input in how an ordinance, or amendment of, is authored, 2) his main goal is to present all options for the Board to consider and that in offering those options, is not being presented as a recommendation from him, and 3) although he continues to be new to this position, he is comfortable with his legal counsel and will not be shy in offering such. To this end, he believed the discussion held above clearly outlines the value in Board discussion and input as it was clearly communicated that value is offered in maintaining the LMCD's ability to regulate watercraft for hire and respective liquor licenses. He anticipated more valuable discussions such as this in the future. In closing, no further direction was provided relative to watercraft for hire ordinance amendments.

#### **C) Initiate review and updates to LMCD By-Laws**

Green stated that at the February 10<sup>th</sup> meeting, Board members Caron, Green, Jabbour, and Zorn volunteered to make up a small working group in consideration of updating the LMCD By-Laws. Based on schedule conflicts, the group was not able to meet prior to this meeting. Therefore, he focused his efforts on what he thought were functionaries of the by-laws as opposed to content with a request for the working group to review his comments and provide feedback. Circumstances did not allow for all feedback to be returned so that the Board would have a document before them to consider at this meeting. Additionally, he stated that: 1) Gilchrist had provided him examples of five other by-laws to reference and 2) the LMCD By-Laws also include Rules of

Procedure (per the enabling legislation). In thought, he questioned if the two should be considered as individual documents. To this end, he solicited the Board's feedback on the following:

- Are there any functional tasks or matters that the Board would like to see within the by-laws?

Jabbour stated that he and Green reviewed the Minnehaha Creek Watershed District policy on governance which he provided an overview of.

- Would the Board like to receive regular updates on the process and respective findings or have the working group just come back to the Board with a draft?

Niccum believed the working group should come back with a draft. Baasen recommended the Board be regularly involved as there were multiple projects currently being considered (code amendments, by-laws, and strategic planning). He believed it was important to keep all on the forefront for closure as soon as possible.

On behalf of the Board, Green extended his appreciation to Baasen for his service as Chair the last two years, which also included his work within the Save the Lake Committee. He was happy that Baasen will be continuing to serve on this Board and as Chair of the Save the Lake Committee.

Baasen informed the Board that due to anticipated early ice out, Save the Lake Boater Safety Course Instructor Jay Soule would not be able to hold the session that was previously considered for March. Soule had asked the Board to consider moving that session to June in which Monday dates are currently being considered. To this end, the committee will be meeting on March 9<sup>th</sup> at 7:30 a.m. and Baasen will keep the Board apprised of the plans. Lastly, he had stated that Mayor Whalen was unable to continue her service on the committee due to her time constraints. He extended an invitation for anyone interested in serving on that committee.

Nybeck reminded the Board that two additional meetings would also be held on March 9<sup>th</sup>; the Hennepin County Sheriff's Office/LMCD annual meeting that was anticipated to be scheduled at 5:30 p.m. and the LMCD Regular Board Meeting at 7:00 p.m. (both at Wayzata City Hall). In regards to the latter, he stated that a consultant of the Wayzata Lake Effect Project would be available to provide the Board with a brief update.

Jabbour believed the LMCD and other member cities are maintaining a substantial relationship with the Sheriff's Office. Most recently, the Sheriff's Office assisted in the drafting of an ordinance amendment that was recently passed by the City of Orono to allow only the Sheriff's Office access to the emergency public access that will be located near the Arcola Bridge.

Baasen added that the Save the Lake Committee has also been communicating with the Sheriff's Office on the development of an emergency alert application.

**9. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:03 p.m.

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James Jay Green, Chair

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Gregory J. Thomas, Secretary