

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, April 13, 2016  
Wayzata City Hall

**1. CALL TO ORDER**

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

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL**

**Members present:** Jay Green, Mound; Gregg Thomas, Tonka Bay; Dan Baasen, Wayzata; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Gabriel Jabbour, Orono; Chris Jewett, Deephaven; Fred Meyer, Woodland; Bret Niccum, Minnetrista; Rob Roy, Greenwood; and Sue Shuff, Minnetonka. Also present: Greg Nybeck, Executive Director and Troy Gilchrist, LMCD Legal Counsel.

**Members absent:** Jennifer Caron, Excelsior; Dennis Klohs, Minnetonka Beach; Deborah Zorn, Shorewood.

**4. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**5. CHAIR ANNOUNCEMENTS**

Gilchrist administered the Oath of Office to Chris Jewett and Fred Meyer who were recently re-appointed to the Board. They represent the Cities of Deephaven and Woodland, respectively.

**6. APPROVAL OF MINUTES-** 3/9/16 LMCD Special Meeting (Hennepin County Sheriff's Office)  
3/9/16 LMCD Regular Board Meeting  
3/23/16 LMCD Regular Board Meeting

**MOTION:** Shuff moved, Thomas seconded to approve the 3/9/16 LMCD Special Meeting as submitted.

**VOTE:** Motion carried unanimously.

**MOTION:** Shuff moved, Thomas seconded to approve the 3/9/16 LMCD Regular Board Meeting minutes as submitted.

**VOTE:** Motion carried unanimously.

**MOTION:** Thomas moved, Hughes seconded to approve the 3/23/16 LMCD Regular Board Meeting minutes as submitted.

**VOTE:** Motion carried unanimously.

## 7. APPROVAL OF CONSENT AGENDA

Green removed 6A, Audit of vouchers (4/1/16 – 4/15/16) from the consent agenda.

Baasen moved, Jewett seconded to approve the consent agenda as amended, removing item 6A. Motion carried unanimously. Items so approved included: **6B)** February financial summary and balance sheet; **6C) Three Rivers Park District**, 2016 agreement with LMCD to provide watercraft inspectors at selected public accesses on Lake Minnetonka; **6D) 2016 EWM Harvesting Program: 1)** Approval of the hiring of Tom Elmer as Site Supervisor, as detailed in 4/6/16 memo and 2) **Curfman Trucking and Repair**, approval of agreement to serve as fleet mechanic; and **6E) Hennepin County Sheriff's Office**, draft agreement approving the use of 2016 Save the Lake Funds for additional Water Patrol coverage hours on Lake Minnetonka

Green directed the Board to the Audit of vouchers; specifically check number 20818 to the League of Minnesota Cities Insurance Trust in the amount of \$10,997.27. He stated this payment represents the LMCD's portion of litigation costs in the settlement of LMCD vs. Matt and Susanne Johnson, et.al. More specifically, the amount represents 15% of the total litigation costs plus the \$250 deductible.

**MOTION:** Roy moved, Shuff seconded to approve item 6A, Audit of vouchers (4/1/16 – 4/15/16) as submitted.

**VOTE:** Motion carried unanimously.

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

Mr. Dave Powers, 1870 52<sup>nd</sup> Avenue E, Inver Grove Heights, expressed an interest in starting a mobile dock washing business on Lake Minnetonka. This would include the use of a pressure sprayer via a mounted water tank on a pontoon. He was directed by staff to LMCD Code Section 3.01, Subd. 18, "Commercial Sales on the Lake" and was informed the business would be prohibited by code. He believed it was more personable to approach the Board in person vs. sending an email to all as he continues to have interest in this business and understood that the Board would be further considering this ordinance. He believed his proposed business offered a needed service (including periodical cleaning checks on public access docks). In closing, he was open to exceptions relative to the use of the proposed watercraft.

Green thanked Powers for his comments. He too struggled with the fact that the proposed business was more of a service than commercial sales. He requested confirmation from Gilchrist.

Gilchrist believed there was potential to consider addressing services under item 10C of this agenda. Based on past Board discussion and what would take place at this meeting, he had planned on bringing forth an amended ordinance for consideration at a later meeting.

Powers added that although state law does not require such, he did receive his Lake Service Provider certification with the Minnesota Department of Natural Resources. In responding to a question as to whether he operates this business at other locations, Powers stated that he has not. However, he is a marine

mechanic and regularly pressure sprays the docks that he works on, as well as his parent's dock that live on the Lake.

Jabbour stated there is a profound difference between sales and service and that a variety of services are currently being offered by boat on the Lake. He spoke in favor of services that provide for a need to the stakeholders.

Meyer, Green, Hoelscher, Thomas, and Baasen, respectfully, concurred with Jabbour's comments (all offering further examples).

Gilchrist was hesitant to offer a solid answer until he had a chance to review the code section and the particular request. He recognized the direction of the Board has changed in areas such as this. He recommended the opportunity to review this request and return to the Board with comments.

Jabbour believed that this particular code section was not meant for the Board to consider individually outlined businesses as they arose. However, he believed that it was not to prevent needed services from being denied.

Retired Colonel Jim Hay, from Dassel, MN, addressed the Board relative to his proposed business, "Looney Island." He made the following comments:

- It was his belief that agenda item 10C was to approve or deny his business proposal he had addressed with LMCD staff. He described "Looney Island" as a family fun, safe activity [water based play structure].
- He proposed his business to Nybeck and Lt. Vnuk in which Nybeck has confirmed that LMCD Code prohibits such.
- He stressed that he is a simple person that has spent many years defending the United States Constitution in which he referenced Article 1, Section 8, Clause 3, "The Commerce Clause."
- That he read the LMCD statutes and spoke with senators and house of representatives in which he believed they were all befuddled to not find where in the statute it provided the LMCD the authority to exert the Constitution of the United States.
- That the LMCD could not stop commerce on public property. He offered that Lake Minnetonka is a public lake supported by state and federal taxes in which he pays.
- He outlined what he believed the LMCD could regulate.
- That United States Uniform Commercial Code was adopted by all 50 states.
- He summarized his request and thanked the Board for their time.

## 9. PUBLIC HEARING

**PaddleTap, LLC**, new 2016 non-intoxicating malt liquor license application for the charter boat, Sara.

Nybeck directed the Board to his staff memo, dated 4/7/16. He offered the following comments:

- Ryan Jaeger, owner of PaddleTap, LLC, placed his first charter boat on the Lake in 2015 (Serenity). He is currently seeking to place a second charter boat on the Lake (Sara) with consistent licensing; a watercraft for hire (approved at staff level) and a non-intoxicating malt liquor license (approved at

Board level). With approval of the latter, the applicant will obtain a Consumption and Display permit at the state level.

- Background investigations were conducted by the Hennepin County Sheriff's Office in which it came back satisfactory.
- Proposed ports of call include: 1) Excelsior City Dock, 2) Lafayette Club, and 3) Lord Fletchers of the Lake. The LMCD has secured all municipal certification authorizing for their use.
- Staff recommendation: 1) to approve the liquor license, 2) listed ports of call, and 3) a full refund of \$500 for the preliminary investigation deposit.

Green invited the applicant to address the Board.

Ryan Jaeger, owner of PaddleTap, LLC thanked the Board for this opportunity. He offered that: 1) the business had a good first year with Serenity, 2) zero accidents and complaints, and 3) that two employees are on Board at all times (licensed captain, typically himself and a deck mate, typically his brother).

Meyer questioned if the proposed liquor license is for 3.2% beer.

Jaeger stated that he does not sell any alcohol but by state law, he must obtain a minimum license in order to have a consumption and display permit which allows him to provide mixes for the liquor that is carried on by passengers.

Green opened up the public hearing at 7:26 p.m. Seeing no comments offered, he closed the public hearing at 7:27 p.m.

**MOTION:** Jabbour moved, Jewett seconded to approve PaddleTap, LLC Non-Intoxicating Malt Liquor License, respective ports of call, and a refund of \$500 for the preliminary investigation deposit.

**VOTE:** Ayes (10), Abstained (1, Baasen); motion carried.

## 10. OTHER BUSINESS

### A) Abdo, Eick, & Meyers, review of draft 2015 LMCD Audit

Mr. Steve McDonald, Managing Partner of Abdo, Eick, & Meyers, provided the following comments relative to the 2015 LMCD draft audit:

- Financial operations were in compliance with State of Minnesota standards, which met the goal of an "unmodified" opinion within the audit process (meets objective).
- No legal compliance issues existed.
- A review of Governmental Accounting Standard Board (GASB) 68. This standard requires the LMCD to take a portion of Public Employee Retirement Association (PERA) liability (the unfunded liability PERA has at the state level) and places it on the LMCD's books. This does not affect the budget or cash flow; simply a required accounting standard. To this end, there was a liability of \$181,000 documented on the government-wide financial statements.

- One internal control significant deficiency was noted (preparation of financial statements). He explained that the accounts receivable portion of finances is well segregated. However, the LMCD provides for the Executive Director (one employee) who has ultimate responsibility for the financial statements (working closely with the treasurer). He stated this is common in a small office setting. He believed Nybeck has taken full responsibility for this task, in which he asks very good questions and keeps the auditor accountable; offering good compensating control measures.
- Performing the audit provided for no disagreements or difficulties. All materials requested were received and in compliance.
- The General Reserve Fund provided for (\$72,264); (\$35,000) budgeted /\$37,264 variance. This was mainly a result of less fine and forfeit revenues (\$21,026 under budget). A Fund balance of 38% of the 2016 budget was maintained (complying with the LMCD's Fund Balance policy of maintaining 30% to 50% of what is scheduled to be expended the following year). Although this percentage is at the lower end, the policy has been maintained for a number of years.
- The Aquatic Invasive Species (AIS) Fund provided for (\$30,211); (\$204) budgeted/\$30,007 variance. This was mainly a result of expenses that were under budget; primarily a decrease in other charges related to less mechanical harvesting. A Fund balance of 111% of the 2016 budget was maintained (exceeding the 30% to 50% AIS Fund balance policy).
- The Save the Lake Fund provided for (17,231); (12,967) budgeted/\$4,264 variance. This fund continues to maintain a healthy balance reserve.
- The Equipment Replacement Fund, which provides for future capital equipment purchases, was at \$102,800. He referenced a harvester that was purchased in 2012 that brought the Fund balance significantly down. Additionally, a boat lift was purchased in 2014. Transfers at the end of the year have resulted in the increase to current date.
- The LMCD is financially strong; hitting the fund balance reserves with a budget performance of as expected or monitored. He entertained questions and comments from the Board.

The following questions and respective responses were offered:

In response to Jabbour's questions, McDonald: 1) confirmed that the risk of having to fund GASB 68 (\$181,000 in 2015) was minimal. The greatest risk is the percentage of contributions may go up slightly and that it is market dependent (good performance removes the unfunded portion) and 2) in considering a budget that provides for or anticipates grants as revenue, it is common for auditors to utilize a graph that compares fund balances to expenditures (based on expenditures offering more consistency). He referred the Board to the slide entitled, "General Fund – Fund Balance as a Percent of Next Year's Budget."

Green stated that, at times, he had documented the equipment fund transfers within the numbers offered by that respective chart; providing for his belief of masking the performance.

McDonald was unsure if he could agree with Green; however, he offered to meet on the matter.

Baasen recommended McDonald also keep an eye out for red flags when looking at the reserves as it relates to the 2016 overlay of the budget; offering that the budget was reduced last year.

Green referenced the General Reserve Fund of (\$72,264) for 2015 and noted that \$35,000 of that was for equipment replacement. He asked what made up the remaining portion of \$37,264.

McDonald stated that revenues came in \$30,000 less than anticipated. Of that \$21,000 was a result of less fine and forfeit revenues. He referred the Board to page 28 of the draft audit report for a more detailed picture of that breakdown. He confirmed that staff would be in a better position to answer questions such as this than he would be.

Jabbour believed that the LMCD should present their budget practices to the auditor prior to performance of one, in which McDonald offered to discuss that opportunity.

**MOTION:** Baasen moved, Jewett seconded to accept the draft 2015 LMCD audit.

**VOTE:** Motion carried unanimously.

**B) City of Wayzata, update on Wayzata Lake Effect Project**

Mr. Andrew Mullin, Wayzata City Councilmember, thanked the Board for their time. He and Director of Planning and Building Jeff Thomson are present to provide an overview of the Wayzata Lake Effect Project, solicit questions from the Board, and inquire as to the level of LMCD participation. He invited Thomson to address the Board.

Thomson provided the following update:

- The Lake Effect Framework for this project was adopted by the city council in 2014; providing for their community's reconnection to their greatest asset, Lake Minnetonka.
- An implementation strategy was created that brought multiple projects from the framework into what is known as the Signature Project (a design of the city's lakefront).
- In 2015 a design consultant by the name of Civitas was selected (offering a community driven process). This includes a Steering Committee (city policy makers, including Baasen) and a Technical Advisory Committee (respective public agencies' staff, including Nybeck).
- He directed the Board to a two-page draft schematic plan within their packet and provided a detailed overview of proposed development.
- Timeline include a community forum in April with some level of city council approval in May.
- Next steps include organizational development, phasing plan, and funding.
- In closing, he stressed: 1) the phased plan that will be subject to finer changes based on logistics and funding, 2) the city is committed to working with the LMCD, 3) they anticipate the initiation of an environmental assessment worksheet (EAW) in the near future that will engage the LMCD, other public agencies, and the general public; after which, they will consider design development and permitting (LMCD engagement). He anticipated the first phase being initiated in 2018.

Mullin assured the Board that this is a planning exercise and that a project will not be before the Board for some time as the funds must be secured prior to submitting proposals. He entertained questions and comments from the Board, including feedback on the project itself and how they would like the city to

work with the LMCD.

The representatives responded to the follows questions:

- The phased plan is offered at the experience of the consultant and how the city would be in the best position to raise the needed funds. It was not approved to date based on what is advisable and able to be permitted.
- Whether more than one EAW will be needed is undetermined; offering Phase 2 is the most aggressive and complex. There is a need to assure all in existence works better.
- It was not anticipated to add any more floating docks than were approved and in use at this time.

Baasen stated that this project has resulted in a tremendous amount of input from the public. He stressed how early the city is in this project and that much of this depends on the funds raised.

Green thanked both representatives for their time.

**C) Clarification of LMCD Code Section 3.01, Subd. 18, "Commercial Sales on the Lake" from LMCD Civil Attorney Troy Gilchrist**

Gilchrist directed the Board to his memo, dated 4/6/16, which was written in follow-up to the Board's request to consider the current LMCD code as it relates to commercial internet sales and delivery on the Lake. He believed the current ordinance clearly prohibited direct sales from a watercraft on the Lake. However, there could be an argument that the simple delivery of products is not prohibited by the ordinance. Therefore, he recommended clarifying that the sale and delivery of items as part of a commercial transaction are prohibited. He provided examples offered within his memo and recommended, if it was the direction of the Board, to direct him to amend the ordinance that would offer further clarification in prohibiting commercial sales on the Lake via internet transactions.

Hoelscher made the following comments: 1) she believed the current ordinance did not prohibit any services; providing for the ability to operate the proposed business of washing docks (outlined under Public Comments) and 2) there was a need for the Board to have further discussions relative to commerce on the Lake. She stressed that safety should be the main focus in this consideration.

Jabbour stated that he spoke to the State Health Department and they informed him the delivery of food to watercraft on the Lake would be prohibited. He recommended the Board consider the ordinance, as well as others, during a re-codification process of the LMCD Code of Ordinances.

Green expressed concern in offering a blank approval for services as some do pose a safety concern, such as fuel delivery.

Hoelscher believed that the current code would not prohibit any services, including the delivery of fuel on the Lake.

Gilchrist made the following comments: 1) he concurred that the current ordinance does not expressly

consider services. He recognized that taking a look at potential commercial sales, or for any matter in that regard, on a broader scale is difficult and expends a great deal of time, 2) he believed it made sense to take a look at requests on a case by case basis, 3) he would be coming back to the Board in the near future with other ordinance amendments that have been previously considered by the Board, and 4) he stressed that establishing the process for re-codification of the code is just as important as the consideration of its expense.

Nybeck stated that he and Lt. Vnuk from the Hennepin County Sheriff's Water Patrol (Water Patrol) met with Mr. Hay and his business partner regarding the proposed business (outlined under Public Comments). Vnuk had communicated that the placement of "Looney Island" would require a special event permit. Although the LMCD has delegated the issuance of special event permits to the Water Patrol, the code does allow the executive director to also bring one forward to the LMCD Board. Therefore, he recommended that the future executive director consider this.

**D) Working group update on recruitment for Interim Executive Director**

Green provided an update on the process involved in selecting an interim executive director in which four candidates expressed interest. Eight Board members were in attendance to interview three selected candidates; after which, a recommendation was made to hire Jim Brimeyer. At this time, the working group is working with Gilchrist and Meyer to draw up an agreement. In the interim, Gilchrist drew up a resolution, within their packet, that would allow the Board to establish a temporary interim executive director position and make the appointment.

Gilchrist stated that he is currently working on an employment agreement that would designate the hiring of Brimeyer as a temporary employee (confirming he is not acting as an independent contractor or a volunteer). In the interim, he highlighted the key terms offered in the draft resolution that will be outlined within the agreement (reading them into the record). He entertained questions and comments in which he offered the following responses: 1) being an at-will employee does not prevent one from filing for workman's compensation, 2) Brimeyer would be exempt from receiving PERA contributions based on the term of the agreement, 3) the agreement will further clarify that that the hourly rate of \$37.50, charged for work outside the office, does not include Lake-based visits and meetings (simply home office hours).

Concern was expressed by some Board members that they were not hiring an interim executive director on an independent contract basis.

Gilchrist stated that he was not aware if the other candidates were independent contractors but offered that as an option should they not proceed with the approval. Additionally, he provided information as to the laws involved in being defined as an independent contractor.

Green had asked those not present during the interview process if they had any questions relative to the candidates interviewed.

Jewett expressed concern for not realizing Brimeyer was not acting as an independent contractor at the

last minute; placing the matter out of the Board's control and possibly expending additional funds.

**MOTION:** Roy moved, Jabbour seconded to adopt draft resolution establishing a temporary interim executive director position and making an appointment to the position.

**VOTE:** Motion carried unanimously.

Appreciation was expressed to the working group for all their work.

#### E) Review of draft 2017 LMCD Budget

Green stated that the budget work group (Green, Hughes, and Jewett) provided the Board with an initial overview of a draft 2017 budget at their March 23<sup>rd</sup> meeting. At that time, they were asked to bring forward one budget option for the Board's consideration. He directed the Board to the draft budget within their packet, as well as various bar charts that highlighted historical trends via a PowerPoint presentation. The following was offered:

- A budget vs. actual performance review of both the Administrative and Aquatic Invasive Species (AIS) budgets over the last nine years (including license fee and court fine revenues).
- Comparison of the 2016 approved budget vs. projected expenses which included: 1) AIS programs and projected reserve needs, 2) unbudgeted expenses, adjusted revenue, and unused personnel funds (administrative technician position), and 3) ending projected administrative budget and respective reserve needs.
- A review of 2017 proposed budget for the Administration, AIS, and Equipment Replacement Funds. This included: 1) proposed levy increase, 2) a list of revenue sources and proposed expenses, and 3) staffing allocations.
- A review of the 2017 Reserve Fund analysis.
- The recommendation to provide the following approval: 1) preliminary approval of the 2017 draft budget with a 6.3% increase in the member city levy, 2) the ability to submit the draft budget with a cover letter to the member cities, and 3) to schedule a member city budget review session for June 2<sup>nd</sup>.
- Final Board approval will be considered at the Board's June 8<sup>th</sup> meeting.
- He entertained questions and comments from the Board.

Jabbour expressed concern with the separation of the Administrative and AIS budgets, which he provided historical overview of.

Jewett and Hughes provided their perspective in how they worked through this process.

Green was to check to see if the contract services line item was duplicated within the draft budget. Additionally, he recommended a quarterly presentation of the budget to the Board.

**MOTION:** Baasen moved, Shuff seconded to provide preliminary approval of the 2017 draft budget and direct the working group to draft and submit a cover letter with draft budget to the member cities (inviting them to a budget review session on June 2<sup>nd</sup>).

**VOTE:** Motion carried unanimously.

## 11. UPDATE FROM STANDING LMCD COMMITTEES

Baasen stated that the Save the Lake Committee will be meeting on Wednesday, May 11<sup>th</sup> to discuss: 1) Boater Safety Education, 2) consideration of a banquet, 3) solar light project, and 4) spring solicitation letter.

Green made the following comments:

- He has been working with Eurasian Watermilfoil (EWM) Site Supervisor, Tom Elmer, in preparing for the harvesting season. To date, they: 1) have been working to increase the fuel capacity on Harvester #8 (working with Jabbour) so that the tank can be filled up once a week vs. more frequently, 2) are scheduled to pick up the truck and enclosed trailer from winter storage, and 3) will be reviewing and scheduling interviews.
- In regards to the Watercraft Inspection Program, the Three Rivers Park District contract was approved at this meeting and he is working with the City of Mound to re-establish inspections at Cooks Bay.
- Next LMCD AIS Task Force meeting will be held on May 13<sup>th</sup> at the LMCD office.
- There are Minnesota Department of Natural Resources (MN DNR) policy bills currently being considered to: 1) allow lake service providers the ability to transport watercraft to and from accesses without going through the decontamination process (pilot project through 2018 on Lake Minnetonka), 2) language that documents dead AIS is not transferable, and 3) garbage haulers that would be able to legally transport weeds.
- The State AIS Director has resigned and former Three Rivers Park District Director of Natural Resources John Barten is heading up the advisory search committee for that position.
- He attended a seminar at the Minnehaha Creek Watershed District by Dr. Sorensen and his team at the University of Minnesota on the study of carp within Six Mile Creek.

Jabbour expressed the importance that the Board understands all that Green discusses at the state level is initiated by the two of them so that the Lake stakeholders are served appropriately.

## 12. EXECUTIVE DIRECTOR TRANSITION PLAN UPDATE

Green directed the Board to the transition list offered within his packet. He and Nybeck confirmed matters were appropriately being addressed.

## 13. OLD BUSINESS

There was no new business.

**14. NEW BUSINESS**

Green stated that the City of Orono passed a resolution that would allow a dock being placed at the emergency public access near the Arcola Bridge to exist and Jabbour provided an update on the logistics involved in the placement of that dock.

**15. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:40 p.m.

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James Jay Green, Chair

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Gregory J. Thomas, Secretary