

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, March 28, 2012
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Andrew McDermott, Orono; Kelsey Page, Greenwood; James Doak, Woodland; Gary Hughes, Spring Park; Anne Hunt, Minnetrista; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Sue Shuff, Minnetonka; and Mark Sylvester, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director, Judd Harper, Administrative Technician, and Emily Herman, Administrative Assistant.

Members absent: Dan Baasen, Wayzata; Steve Johnson, Mound.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

There were no Chair announcements.

5. APPROVAL OF MINUTES – 3/14/12 LMCD Regular Board Meeting

Olson recommended the following two changes: 1) In the last bullet point on page 6, which carries over to page 7, the word “Rice” should be changed to “Wright” and 2) The two sentences in the second bullet point in the middle of page 7 should be changed to read, “He confirmed the ROV verifies if there is a victim, in which a diver would then be sent down immediately.”

MOTION: McDermott moved, Page seconded to approve the minutes from the 3/14/12 LMCD Regular Board Meeting as amended, making the changes noted by Olson above.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Babcock directed the Board to an amended audit of vouchers in the handout folders (item 6A). This new voucher includes the addition of check #19361, in the amount of \$1,263.73, to Action Mailing Services, for postage in processing the Spring/Summer 2012 LMCD Newsletter.

Page asked for clarification as to why 5th Street Ventures was requesting a refund (item 6D).

Harper stated that in 2010 5th Street Ventures made application for a new multiple dock license, with public hearing. The base fee for this application is \$500, compared to a base fee of \$50 for a renewal, without change, multiple dock license application. In 2011, 5th Street Ventures mistakenly was charged a \$500 base fee for a renewal without change application and the refund of \$450 would correct this error.

Olson moved, Hunt seconded to approve the consent agenda as amended, including the updated audit of vouchers noted by Babcock above. Items so approved included: **6A**, Audit of vouchers (3/16/12-3/31/12); **6B**, January financial summary and balance sheet; **6C, 2012 Liquor Licenses**, staff recommends approval of renewal (without change) Intoxicating Liquor License applications as outlined in 3/22/12 staff memo; and **6D, 5th Street Ventures**, staff recommends Board approval of a \$450 refund for overpayment of 2011 renewal (without change) multiple dock license application.

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

Mr. Chuck Levake, representing Lakewinds Association, stated that he would like to comment during the Board discussion on agenda item 9A. He solicited the Board's approval to reserve his comments until such time, in which Babcock granted his request.

8. PUBLIC HEARINGS

There were no public hearings.

9. OTHER BUSINESS

A. Staff update on current Lake Minnetonka water levels

Babcock asked Nybeck for background on this agenda item.

Nybeck made the following comments:

- This matter was originally discussed at the January 25th Board meeting, at which time he documented the last lake level reading in 2011 (927.83'). The Board briefly continued this discussion at their February 8th and 29th meetings, in which a press release was sent out on March 8th. He provided more details on the press release; documenting that the Board would consider this matter at the March 28th meeting.
- Discussions at this meeting would include: 1) consideration of the lake level readings that were initiated by the MCWD in mid to late March, 2) projected April precipitation, and 3) a review of the LMCD Code pertaining to dock extensions during defined low water periods.
- A review of annual high and low water elevations from 1980 to 2010 (specifically reviewing 2000, 2009, 2010, and 2011). The late 1980s documented lower water levels; an estimated two feet lower than current water levels.
- He provided an overview of the Lake level readings taken from February 7th to March 28th. Additionally, he reviewed historical first readings after ice-out from April of 1997 to March of 2012; providing for similar first readings in 2000 and 2009.

- He directed the Board to three documents within their handout folders. First, an email from Paul Douglas of WeatherNation that provided April and 90-day trend precipitation maps. Second, an outline of “Normals, Means, and Extremes” for Minneapolis. Third, an excerpt of the LMCD Code relating to temporary dock extensions for non-licensed and multiple dock licensed sites on Lake Minnetonka. He provided a brief overview of the Code if the Board were to declare “Low Water”.
- Lake levels are currently fluctuating slightly above and below 928.0’ and he believed there are three options for the Board to consider. First, a “wait and see” approach that would allow further monitoring of 2012 water levels at the April 11th LMCD Board Meeting. Second, the Board does not need to take any action at this meeting. Third, the Board could declare “Low Water”, which would require the approval of a resolution and an ordinance amendment since the current lake level is slightly above 928.0’ trigger point.
- He entertained questions and comments from the Board.

McDermott questioned what the termination procedures would be if the Board declared “Low Water” and the water levels rose.

Babcock stated that he believed approval of any resolution declaring “Low Water” would allow for continuation of temporary dock extensions until the end of the current boating season. He reviewed the ordinary high water mark for Lake Minnetonka (929.4’), the MCWD’s operation policy of the Grays Bay Dam (including historical actions taken), and concurred with the “wait and see” option (noted above). He invited Chuck Levake from Lakewinds Association (Lakewinds) to address the Board.

Mr. Chuck Levake stated that he believed that typical spring water levels provide for it being at 929.0’ when the docks are installed (the current level is at least one foot below normal readings). He reiterated, per his comments at the March 14th Board meeting, the concern that if the water levels drop any more than what is currently provided, the watercraft at their location would be turning up sand. He commented that the almanac is projecting less precipitation than more. He stated that a member of their association sells watercraft, in which he documented 36” for a motor that is in the down position, as well as 19” when trimmed up (providing for most watercraft to be in the 32” to 36” range). He believed that a dock extension of 30’ would provide the members some relief and solicited the Board’s consideration in declaring a “Low Water”.

Mr. Brett Niccum, owner of Niccum Docks, reminded the Board that the LMCD had previously expressed an interest in protecting the littoral zone. He believed that prop wash (based on the current water levels) would provide for twice as much damage to the Lake bottom if the Board does not declare “Low Water”. He believed that it was wrong for the Board to not take action on this matter at this meeting because one half of the docks will be installed by the time the Board continues this discussion at their April 11th meeting.

Hunt asked for an estimate as to how many residents are scheduling installation of their dock.

Niccum estimated that he had received 100 calls.

Nybeck stated that the comment made by Mr. Niccum relating to protection of the littoral zone was in

reference to recommendations made by an Environmental Technical Advisory Committee (TAC) a couple of years ago. The TAC was chaired by former LMCD Board member David Gross, who coordinated a public forum in February of 2010 on the TAC's recommendations. Based on the feedback at this public forum, which included dock installers, there was an expressed interest in not implementing new rules to protect the littoral zone. Therefore, he recommended that the Board make a decision on whether to declare "Low Water" independent from the TAC's recommendations.

A summary of the Board's general discussion on this matter was as follows:

- Confirmation from Brett Niccum that docks installed prior to the declaration of "Low Water" would require them to be completely re-adjusted.
- Potential drawbacks in implementing "Low Water" (in particular staff time and the greater use of the Lake's surface area).
- Confirmation that the current water level reading (928.06') does not trigger declaration of "Low Water" by the LMCD Code.
- Discussion of a possible ordinance amendment that would allow the Board to declare "Low Water" based on various scenarios (i.e., declaring "Low Water" at this meeting should a level reach the trigger point or specifying other variations of trigger points).

Mr. Tom LaVoie stated that he was a resident of Lakewinds and in attendance to present information on historical weather patterns. Much of the Board discussion has been centered on the 1990 weather patterns. He documented (via a graph map) the slow precipitation comeback pattern during that period of time (below normal snow fall; followed by below normal precipitation). He recommended the Board not base their action on possible future precipitation. He asked what the penalty would be should Lakewinds proceed in extending their dock without the declaration of "Low Water".

LeFevere stated that a violation of the Code would be a misdemeanor, in which one could be charged multiple times for continuation of the violation. Additionally, the violation(s) could be grounds for revocation of their multiple dock license.

Babcock stated that if one holds a license from the LMCD, it is the license holder's responsibility to be in compliance of the law. This provides for all parties being treated fairly and equally.

Niccum recommended streamlining "Low Water" dock extension permits through the dock installer. This would allow a company to obtain one permit for multiple customers.

A summary of continued Board discussion on this agenda item included the following:

- Page stated that the Mayor of Greenwood has communicated concern for their 18 multiple dock license slip holders. He concurred that it looks like there could be a problem; however, he believed the decision to declare "Low Water" could wait until the April 11th Board Meeting. If residents are concerned about water levels, he recommended they not install their dock until such time.
- Kask stated that the average ice out date is April 15th and he supported waiting until the next Board meeting to consider declaration of "Low Water" as it puts us closer to the average ice out date.

- Hughes stated that he was intrigued by the offer from Lake service providers to streamline the application process.
- Babcock stated that the dock extension process used in the past is not cut and dry. This resulted in many sites violating the length regulations, which resulted in a great deal of staff time to bring them back into compliance with the Code.
- Morris concurred with waiting until the next Board meeting to consider whether to declare "Low Water".
- Babcock believed it was too early to declare "Low Water"; acknowledging that this could also be done as late as July.
- Sylvester expressed an interest in pre-approving a resolution for "Low Water" at this meeting (documenting a trigger point for specific Lake levels). He believed that a Board decision on this would be appropriate at the April 11th Board Meeting.
- Nybeck stated that staff was open towards a streamlined application process, possibly through the dock installers. However, Lakewinds (or any other multiple dock license holder) would not fall within that streamlined process because they would need approval by the Board.

Mr. Paul Robinson, representing Locust Hills Development, stated that his organization has studied water level effects over the years (exposing the findings to their residents). He expressed concern in the Board highlighting the water level of 928.0' as within normal range limits, in which he believed it was not.

Babcock solicited the Board's consensus of this matter, in which this agenda item will be rescheduled for the April 11th Board Meeting.

Hunt expressed an interest in pre-approving a resolution; providing for trigger points (as noted by Sylvester above).

LeFevere stated that the Board is not required to declare "Low Water" even if its water levels go below the trigger point. Additionally, he stated that hydrologists say climate change is causing more severe rain (providing for heavier downfalls).

B. Review of draft 2011 LMCD Annual Report

Babcock asked Nybeck for background on this agenda item.

Nybeck stated that 2011 provides for the third year that a LMCD Annual Report has been prepared. The draft Report, which is a product of the Board, was based off of the approved Strategic Plan. It outlines the goals, objectives, and tasks detailed in the adopted Work Plan for that year and is typically distributed just prior to the following year's budget process (currently being initiated). He solicited the Board's interest in: 1) reviewing a prepared PowerPoint presentation, which is also available for the Board's use in presenting to their member city, 2) providing any comments or revisions to the Report, and 3) approving the Report as presented or amended (acknowledging staff has a few minor changes pending). He reviewed the typical distribution of the approved Report, which was scheduled for the next day. He entertained questions and comments from the Board.

Hughes suggested providing the Board one week (April 4th) to review and comment on the draft Report.

MOTION: Olson moved, Hunt seconded to provide preliminary approval of the draft 2011 LMCD Annual Report, subject to: 1) allowing for minor changes deemed necessary by staff, and 2) allowing for Board feedback to staff by April 4th.

VOTE: Motion carried unanimously.

C. Lake Minnetonka Watercraft Inspection Program, consideration of draft Agreements:

- **Minnesota Department of Natural Resources (MN DNR)**, 2012 Joint Powers Agreement (JPA) for AIS Prevention and Management
- **Volt Workforce Solutions (Volt)**, 2012 Watercraft Inspection Program Agreement

Babcock asked Nybeck for background on this agenda item.

Nybeck stated that there was two draft Agreements for Board consideration in conjunction with the 2012 Watercraft Inspection Program. The first Agreement is a JPA from the MN DNR for 2012 AIS Prevention and Management. He provided an overview of the Agreement; which allows the MN DNR Commissioner to delegate authority for inspectors (including Volt inspectors) to inspect and restrict, if necessary, watercraft from entering the Lake. He recommended approval of the draft Agreement.

MOTION: Olson moved, Shuff seconded to approve the 2012 MN DNR JPA for AIS Prevention and Management as submitted.

McDermott requested clarification on the procedure offered when an inspector documents the presence of an invasive species.

Nybeck stated that the inspectors in 2012 will be considered level 1 inspectors (compared to volunteers in year's prior). He believed that McDermott's question will be covered in an upcoming MN DNR training session for these inspectors and that he will be in a better position to respond to that question after the training session.

VOTE: Motion carried unanimously.

Nybeck stated that the second draft Agreement was for watercraft inspections to be conducted by Volt in 2012. The details of this Agreement are consistent with the Board discussion on this topic at their March 14th meeting. There were two areas on page 1 of the Agreement that need to be completed. The words "the date of the last signature set forth below" should be inserted in the first paragraph. Second, "Joe Martinez" should be inserted as the secondary contractor for Volt in the second paragraph. He recommended approval of the draft Agreement with these two changes.

MOTION: Olson moved, Page seconded to approve the Service Agreement Between the LMCD and Volt for 2012 Watercraft Inspections as amended, making the changes noted above by Nybeck.

VOTE: Motion carried unanimously.

10. Update from standing LMCD Committees:

Babcock asked for an update from the Chair, or designated representative, of each committee.

Page stated that the next AIS Task Force meeting was scheduled for Friday, April 13th.

Olson provided a sample of a draft campaign mailer that will be distributed by Lake Minnetonka commercial marinas. This campaign will focus strictly on the solar light and remotely operated vehicle (ROV) fund drives. Additionally, he stated the committee will be looking for a volunteer(s) from the Board to head up a large scale fundraising campaign (with bay captains) over the next one and one-half years.

11. EXECUTIVE DIRECTOR REPORT

Nybeck commented on the upcoming mailing of the Spring/Summer LMCD Newsletter. He thanked the efforts of Chair Babcock, Save the Lake Chair Olson, and staff in getting this newsletter out earlier than in recent years. He hoped to continue this in future years.

Shuff asked for the distribution of the newsletter, in which Herman provided an overview of.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:01 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary