

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, January 23, 2013
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:01 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; James Doak, Woodland; Jay Green, Mound; Gary Hughes, Spring Park; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; 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: Anne Hunt, Minnetrista; Rob Roy, Greenwood; Sue Shuff, Minnetonka.

3. APPROVAL OF AGENDA

Babcock stated that a request had been made to move agenda item 9D ahead of 9B.

MOTION: Hughes moved, McDermott seconded to approve the agenda as amended, moving agenda item 9D ahead of 9B.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock made the following three Chair announcements: First, he commented on ice safety on Lake Minnetonka; emphasizing the need to understand that ice is never 100% safe and for all to utilize ice safety practices (stay on established paths, enable yourself for self rescue, etc.). Second, he reminded all of the 46th Anniversary "Save the Lake" Recognition Banquet that will be held on Thursday, February 21st (to be held at the Lafayette Club, with social hour starting at 6:00 p.m.). Third, he stated that the City of Woodland has appointed James Doak to the LMCD Board of Directors. He asked LeFevere to administer the oath of office, in which he did. Doak was seated as representative for the City of Woodland.

5. APPROVAL OF MINUTES – 01/09/13 LMCD Regular Board Meeting

MOTION: McDermott moved, Baasen seconded to approve the minutes from the 01/09/13 Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Doak seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (1/16/13-1/31/13); **6B**, December financial

summary and balance sheet; and **6C, LMCD Resolution 133**, a resolution designating appointments for 2013.

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.

9. OTHER BUSINESS

A. Three Rivers Parks District (TRPD), proposed Urban Waters Restoration Program.

Babcock welcomed representatives from the TRPD; inviting them to address the Board.

Mr. Alex McKinney (Recreation Supervisor) introduced Megan Kelzenberg (Recreation Specialist) and thanked the Board for the opportunity to present an Urban Waters Restoration Program being considered by the TRPD. In particular, a Five Star and Urban Waters Grant and a proposed partnership with the LMCD. They made the following comments:

- The TRPD Recreation Program engages people in life-long outdoor activities (in which he reviewed); serving an estimated 25,000 people per year.
- The Five Star and Urban Waters Grant (grant) is sponsored by the National Fish and Wildlife Foundation for the purpose of improving water quality and accessibility in watershed districts throughout the United States. Additionally, a one to one match is recommended, which would include in-kind services.
- Competitive elements for this grant include urban forest restoration, education and training, storm water management and monitoring, and outdoor recreation, as well as how a watershed district can improve the livability of a neighborhood (increasing public health, economics, and reaching out to underserved populations).
- The TRPD is proposing the purchase of a pontoon (11 seats/licensed captain) that would be used on Lake Minnetonka; acknowledging compliance with the LMCD Code. The pontoon would be utilized in conjunction with the outdoor programs with an LMCD educational component (including conservation). Lake Minnetonka Regional Park would be the port of call for its storage, with consideration of other public access usage at Grays Bay and Big Island.
- A proposed partnership with the LMCD would include combined resources. They respectfully requested the following: 1) a letter of support from the LMCD (supporting the program and its mission), 2) exposure of the program by the LMCD (web site, newsletter, etc.), 3) documentation on what Lake projects are worthy of the program participants' knowledge, and 4) program partnering (offering LMCD staff time, when deemed appropriate, to enhance the program).
- The TRPD would provide the following components: 1) funding for the purchase of the pontoon, 2) promotion of the program, and 3) maintenance of the pontoon and all its appropriate needs.
- Other confirmed partnerships include the Minnehaha Creek Watershed District (MCWD) and the City of Minnetonka. Partnerships provide a common mission to protect and preserve the Lake's

natural resources, educating local citizens on efforts to fight aquatic invasive species, and help citizens create a connection to preserve the Lake.

- They entertained questions and comments from the Board.

The Board asked a few questions, in which the following responses were offered:

- The largest portion of the annual costs of the program would be staffing (\$2,000 to \$3,000 per year), which is covered within the TRPD's general budget. Other operational costs are incorporated within the program fees (estimated \$1,000 - \$2,000 per year).
- Confirmation that they would provide for handicap accessibility for embarking and debarking from the watercraft (including reaching senior and therapeutic recovery populations). Babcock stated that the Wayzata Yacht Club is handicap accessible and he recommended a possible port of call partnership with them.
- They anticipated a two hour program time slot and would be happy accomplishing 200 hours in a season; targeting 80% youth and 20% adults. They anticipated costs of \$100 for three to 11 people; recognizing that scholarships are available.
- The City of Minnetonka would be assisting in community outreach (including working with their Parks and Recreation Department, which includes their senior programs). The MCWD will be providing their research findings and the use of their educational program components (including the possibility of utilizing volunteers from their shoreline enhancement program). Additionally, the Minneapolis School District is providing educational components, as well.
- The propose grant would go towards the purchase of the pontoon.

Babcock believed the TRPD request was consistent with support the LMCD had previously provided for other programs that have promoted public access to the Lake.

MOTION: Baasen moved, McDermott seconded to direct staff to: 1) submit a letter of support from the LMCD relative to the above noted request and 2) find ways to assist and promote the proposed program.

VOTE: Motion carried unanimously.

D. Staff update on Bow-Fishing Ordinance Concept.

Babcock asked Nybeck for background on this agenda item.

Nybeck stated that he had prepared a revised draft letter to be sent to the member cities, in consultation with Public Safety Committee members Hughes and Kask. Revisions to the draft letter took into consideration discussions on this matter at the January 9th Board Meeting. The purpose of the letter is to obtain feedback from the member cities relative to this subject; reviewing the options noted within the letter (page 2). He recommended the Board consider either approval of the draft letter provided within their packet or an amended version.

Hughes stated that the documentation provided from the member cities, to date, had been somewhat limited and offered by single point representation (not their collective city council that is directly

representing the residents). He acknowledged that he worked with Nybeck on the drafting of the letter; with the goal to keep it short and concise.

Kask referenced the prior concerns expressed in documenting jurisdictional boundaries that extend into the Lake. However, he stated there are maps that do exist; providing for those extended boundary lines. Additionally, he acknowledged the desire to respect individual rights to bow-fishing as per state law. However, he pointed out the contrast that one may be able to discharge a bow and arrow on the Lake but within a few feet from that location (standing on shore, a dock, or in a boat moored to a dock) one cannot. In speaking for the City of Deephaven, it would be extremely unlikely (minus formal action) that they would allow for such activity either on water or land; acknowledging their possible interest in a outright prohibition.

Hughes reiterated the objective of the committee addressing bow-fishing was to provide for clearer direction to the enforcement personnel (Water Patrol and Minnesota Department of Natural Resources) in regulating state law pertaining to bow-fishing.

Babcock offered the following minor revisions to the draft letter: 1) make it shorter and clearer (request for city councils' action outlined on the first page), 2) document that any further action would be more restrictive than state law, and 3) request documentation on their respective ordinances.

Nybeck directed the Board to documentation within the draft letter offered for consideration (reflecting most of the above concerns). He stated that if the Board moves to proceed in obtaining member city feedback, he believed each representative should address their respective city council under a scheduled agenda item (offering his assistance).

Klohs believed the only uniformity offered would be a total prohibition.

Babcock stated that enforcement is carried out differently from land to water and that the LMCD is not asking them to change their land ordinances (but to develop an ordinance to be carried out on the water). He offered the possibility of utilizing zoned areas in which the enforcement personnel could utilize the LMCD Code to enforce. He disagreed with a total prohibition.

Baasen concurred that the draft letter needed to be short and concise; offering the member cities an opportunity to state their interest and provide the LMCD with direction on how to proceed with this matter.

Nybeck asked the Board to keep in mind that the focus of this letter has changed from the original draft provided at the January 9th meeting. At that time, the committee had expressed an interest in doing nothing and letting state law prevail should the member cities not have interest in drafting a single ordinance to regulate bow-fishing. This letter, based on Board direction, does not specifically offer that recommendation.

Hughes stated the objective is to find out, once and for all, from the member cities: 1) if a single ordinance is of interest, 2) what ordinance(s) do they currently have on record, and 3) what is each of their collective city council's comments relative to this matter.

MOTION: Baasen moved, McDermott seconded to direct staff to revise and submit the draft letter, taking into consideration comments provided at this meeting.

VOTE: Motion carried unanimously.

B. Draft Comprehensive Eurasian Watermilfoil and Curly-Leaf Pondweed Plan for Lake Minnetonka (public hearing conducted on 12/12/12).

Babcock stated that the purpose of this agenda item is to consider approval (as is or amended) of the draft public hearing report provided within their packet. He stated the Executive Committee has previously met to discuss the draft Plan; taking into consideration comments received to date. Since then, he stated he had made some revisions as provided in the Board's handout folder. In considering the revisions offered for the draft Plan, he did not ask for action from the Board at this meeting but to review it for consideration at an upcoming meeting.

MOTION: Kask moved, Morris seconded to approve the public hearing report from the 12/12/12 Draft Comprehensive Eurasian Watermilfoil and Curly-Leaf Pondweed Plan public hearing as submitted.

VOTE: Motion carried unanimously.

Babcock reiterated the need to review the revisions offered to the draft Plan for future consideration, after which it will be moved forward for consideration by the member cities. He asked if the Board had any further discussion on this agenda item, in which there were none.

C. Staff update on 2012 LMCD Proactive Code Enforcement Program.

Babcock asked Herman for background on this agenda item.

Herman directed the Board to her staff memo, dated 1/17/13, in which she highlighted the following information:

- The Program was initiated in 2006 for the purpose of enforcing watercraft storage ordinances at residential sites on Lake Minnetonka.
- The primary enforcement efforts included: 1) identifying and/or re-inspecting sites storing five or more restricted watercraft that do not have a multiple dock license and 2) sites storing three or four larger restricted watercraft that do not comply with the 1:50' General Rule.
- She reviewed the process involved, including communication, in accomplishing the program.
- A review of the 2012 enforcement priorities, which included: 1) resolve violations that require specific communication, 2) document only new flagrant violations, 3) continue with compressed two-part communication process, 4) continue to re-inspect and define (per LMCD Code) sites; working with the LMCD prosecuting attorney when warranted, and 5) keep the Board apprised of prosecuting matters.
- An overview of the 2012 Code Enforcement Program findings.

- A general overview of the LMCD prosecuting attorney and his typical settlements that have been offered to date. Additionally, she provided an update on the 2011 and 2012 filed prosecuting complaints (four and 11, respectively); acknowledging that one 2011 complaint is pending settlement via the use of a special prosecutor in Anoka County due to a conflict of interest with Tallen.
- In conclusion, she documented the following:
 - Priorities for the 2013 season will be offered in the spring, which would include continuation of the compressed communication process.
 - The presentation of a more detailed personal watercraft inventory count (attached to report) based on prior Board discussion of their storage and usage patterns. Staff provided this for information only and not to re-consider their use.
 - She solicited the Board's thoughts in submitting an educational flyer in the spring, separate from the LMCD newsletter, to more proactively communicate the LMCD watercraft storage ordinances (based on violations being documented in 2012 whereby the site owner was previously prosecuted for the same reason).
 - Staff provided possible LMCD Code amendments to Nybeck, per his request, for future consideration.
 - Staff is pending the completion of the remaining 2012 initial and second correspondence.
- She entertained questions and comments from the Board.

Herman responded to the following questions and comments made by the Board:

- The complaints filed are from the LMCD to the prosecuting attorney.
- Some Board members believed sending a friendly reminder directly to individuals that are repetitively documented as being out of compliance with LMCD Code relative to watercraft storage was more cost effective than sending a separate flyer to all lakeshore owners. Additionally, finding a way to thank those that adhere to the regulations, as well.
- LeFevere stated that it was his understanding Tallen's conflict of interest in the prosecution of one of the filed 2011 complaints (noted above) was not based on an ethical or legal conflict but rather the involvement of a district court judge, in which Tallen has to appear in front of from time to time; providing for a judgment call from Tallen.
- A request was made for Herman to bring back statistical findings of how many complaints have been filed from 2006 forward; providing for a better understanding of activity offered. Baasen pointed out that although the 2012 complaints filed were high compared to 2011, they were not considered high compared to the amount of lakeshore owners; acknowledging the season may have been busy but not statistically documented.

E. Staff update on Board member terms that expire in January.

Babcock asked Nybeck for background on this agenda item.

Nybeck directed the Board to his staff memo, dated 1/17/13, in which he stated there was the potential for a high percentage of turnovers (11 of 14 Board members' terms expire at the end of the month). He referenced the member city appointments listed on the first page of the memo, in which he reviewed. He

recommended the need to better stagger Board members' terms to avoid the possibility of high turnovers. However, the appointments made for 2013 offer another possibility of high turnovers in 2014.

Babcock reviewed the LMCD's enabling legislation that calls for Board members to be appointed for a three-year term (providing for one third of the Board members to be appointed each calendar year). He stated that this requirement has not been fully met over the years and recommended the annual October correspondence to the member cities (provided as an attachment to Nybeck's staff memo) be revisited with the above noted state statute being referenced first and foremost.

F. Nominating committee recommendations for 2013 LMCD Board Officers.

Babcock asked Kask for an update on the nominating committee's recommendations.

Kask stated he, Sue Shuff, and Gary Hughes served on the nominating committee for 2013 LMCD Board Officers. Recommendations from the nominating committee include: Chair- Doug Babcock; Vice Chair- Dan Baasen; Secretary- Andrew McDermott; and Treasurer- Gary Hughes. These individuals, when contacted, indicated their willingness to continue to perform the duties as currently held or proposed; all conveying their appreciation to be considered for these appointments. On behalf of the nominating committee, he expressed thanks for the support they received from all contacted and sincere appreciation for the members' dedication and involvement in the LMCD.

Babcock opened the floor for other individual nominations to serve in a 2013 LMCD Board Officer position. Seeing none, he closed the floor and entertained a motion to approve the recommendations of the nominating committee.

MOTION: Kask moved, Klohs seconded to approve the recommendations from the nominating committee for 2013 LMCD Board Officers.

VOTE: Motion carried unanimously.

G. Chair update of 1/9/13 Executive Session to discuss the performance of Executive Director Greg Nybeck

Babcock stated that the Board met on January 9th in an Executive Session to discuss Nybeck's performance for 2012. He provided a summary of the Session's discussion, which included positive feedback, a few offered suggestions, and compensation ranges (currently being compared with other member cities). He stated he will meet with Nybeck in a more formal setting to provide for his annual performance review and compensation. He anticipated consideration of such at the Board's February 13th meeting. Additionally, this agenda item will not be considered by the Board as a consent agenda item. He solicited further comments or questions, in which there were none.

10. Update from standing LMCD Committees:

Babcock asked for an update from the Chair, or designated representative, of each committee (Save the Lake, AIS Task Force, Finance, Personnel, Public Safety, and Ordinance Review). He stated that the

Executive Committee is meeting directly following this meeting to discuss a number of topics, one of which is the low-water ordinance.

Nybeck stated the Aquatic Invasive Species (AIS) Task Force will be meeting on February 8th at 8:30 a.m.

Hughes stated that he believed a Public Safety Committee meeting would be scheduled in the near future to discuss ice safety on Lake Minnetonka (in particular the car that recently attempted to drive through the Halstead/Priest Bay channel). Another agenda item was a proposal for a flag system on Lake Minnetonka.

Nybeck stated he recently met with the Director of Hennepin County Emergency Management who is proposing the use of a flag system that could be used to identify inclement weather during the summer months. He recommended this proposal, along with discussion of ice safety, be forwarded to the Public Safety Committee for further consideration.

No other committee reports were offered.

11. EXECUTIVE DIRECTOR REPORT

Nybeck made two comments. First, the Board directed staff, at their January 9th meeting, to submit a MN DNR grant application for Level 1 watercraft inspectors (maximum \$7,750 grant). The grant application was submitted on January 10th. Shortly thereafter, Board member Olson contacted him, on behalf of the Minnehaha Creek Watershed District (MCWD), recommending the LMCD not only pursue Level 1 but Level 2 inspectors (providing for greater authority and requiring decontaminating equipment). After consulting with the MN DNR, he amended the grant application for both Level 1 and 2 Inspectors (\$32,750). He directed the Board to an attachment within their handout folders, which provided for some ideas as to how the program could be carried out. Additionally, he will be bringing forward to the Board, at their February 13th meeting, a draft MCWD grant request to fund the following: 1) watercraft inspectors and 2) the purchase of decontamination equipment. Second, staff had recently completed de-icing inspections (briefly commenting on one non-compliant site in particular off of County Road 15). An update on the inspections conducted is planned for the February 13th Board Meeting.

Babcock mentioned that many of the fences had fallen down due to the recent high winds, in which Nybeck concurred.

12. ADJOURNMENT

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

Doug Babcock, Chair

Andrew McDermott, Secretary