

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, March 26, 2014
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Doug Babcock, Tonka Bay; Kent Carlson, Deephaven; James Doak, Woodland; Ann Hoelscher, Victoria; Anne Hunt, Minnetrista; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: None

3. APPROVAL OF AGENDA

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

Babcock proposed a friendly amendment that the minutes reflect staff's recommendation that approval of the 2014 liquor licenses (agenda item 6C) is subject to receipt of the Port of Call approval forms from the respective cities. McDermott and Hughes agreed to this.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Vice Chair Baasen

Baasen made the following two announcements: First, Gedney Tuttle passed away last week. He was a valuable member to the Lake community and was a long time member of both the Lake Minnetonka and Bryant Lake Associations. Second, there is a need to reschedule the cancelled March 26th Board workshop relative to the commercial marinas' submitted proposal. This was cancelled at the commercial marinas request and Baasen recommended rescheduling the Board workshop for April 9th (5:30 p.m. at Wayzata City Hall). There were no objections to rescheduling the Board workshop to April 9th.

Babcock and Zorn stated they would not be present that evening, in which Baasen asked them to submit any comments they would like brought forward to Nybeck.

Baasen stated the Executive Committee met on March 25th, at which time they discussed the proposal from the commercial marinas. He stated that a follow-up meeting is scheduled for April 3rd at 4:30 p.m. in the LMCD office, in which he invited the Board to attend.

Hoelscher asked if there was any consideration in scheduling an Ordinance Review Committee meeting prior to the April 9th workshop to review the proposal.

Baasen stated the committee will be involved at the appropriate time (once the specific path in considering the proposal was set).

Hoelscher believed it made sense; however, she was cognizant that this request be moved forward in an efficient manner.

Baasen provided further detail of the March 25th Executive Committee meeting (acknowledging the need to adhere to the Open Meeting law).

Babcock thanked Baasen for adhering to the Open Meeting law. He asked if there was some mechanism that prevented the remainder of the Board from receiving the Executive Committee's posted agenda when discussing ongoing matters that involve the Board as a whole. He stated that as a resident of the Lake Minnetonka community, he could send a letter (per state statute) requesting he be notified of such. However, as a Board member, he had hoped that he would not have to take that additional step. Furthermore, he stated he had a similar conversation with staff within the last 30 day.

Baasen stated that Babcock's comments were duly noted and, at this time, he reiterated his announcement to the Board of the scheduled April 3rd Executive Committee meeting (held at the LMCD office at 4:30 p.m.). He asked staff to email that notice to the Board.

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

MOTION: McDermott moved, Shuff seconded to approve the minutes of the 3/12/14 Board Workshop and Regular Board Meetings as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Hughes directed the Board to an amended Audit of vouchers within their handout folder, in which he stated check #19904 was added for the deposit of \$200,000 in a 13 month Certificate of Deposit at Beacon Bank (rate of .70%).

McDermott moved, Roy seconded to approve the consent agenda as amended, making the change noted by Hughes above. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (3/16/14 – 3/31/14); **6B**, February financial summary and balance sheet; and **6C, 2014 Liquor Licenses**, staff recommends approval of renewal (without change) applications as outlined in 3/20/14 staff memo.

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. **D.R. Horton**, new multiple dock license and variance applications for 10 Boat Storage Units (BSUs) on 679 feet of non-continuous shoreline on Jennings Bay in the City of Minnetrista.
- B. **Ridgewood Cove POA**, reconfiguration of non-conforming multiple dock license and variance application for seven BSUs on 42 feet of continuous shoreline at 5480 Ridgewood Cove on Jennings Bay in the City of Minnetrista.

Baasen asked Nybeck for an update on both agenda items.

Nybeck directed the Board to his staff memo, dated 3/21/14. He provided a visual overview of the applicants' sites via an aerial photograph. Furthermore, he provided detailed overview of the above noted applications (referencing his original staff memo, dated 3/6/14, and the March 12th public hearings). He stated that both public hearings were opened and closed at that time, as well as tabled for further Board consideration to this meeting. The following update was provided for each respective applicant:

D.R. Horton

- At the March 12th public hearing, the Board requested further clarification on the ownership of the east shoreline and the size of the proposed dock (overall size, impairment to navigation, and infringement of the adjacent dock).
- He directed the Board to an amended proposal from the applicant (who he acknowledged was in attendance), in which he provided the following overview of:
 - The 10 Boat Storage Units (BSU) will be maintained; however, they reduced the size from 12.5' x 24' to 11.5' x 24';
 - The width of five of the fingers were reduced from 3.5' to 2';
 - Maximum length of dock from 929.4' was reduced from 195.1' to 179.3'; and
 - The adjusted northerly extended side site line was reduced from 20° to 18° to the west.
- In regards to the clarification of ownership of the east shoreline, the following was offered:
 - Acknowledgement of LeFevere's memo, dated 3/18/14, in which he believed there is no reason to question the ownership of the shoreline based on the information provided to the LMCD.
 - Review of City of Minnetrista Attorney Ron Batty's memo, dated 3/21/14, in which the proposed land development was considered at the March 24th Planning Commission meeting. Mr. Batty's memo provided similar feedback to LeFevere's memo with regards to ownership of the east shoreline. Additionally, he stated the LMCD is in receipt of a large document from City Planner David Abel, dated 3/25/14, in which Nybeck offered to provide that electronically to those that request it.
- In regards to the number of BSUs, he stated the applicant could qualify for 10 BSUs on the north shoreline and four BSUs on the east shoreline. The applicant proposes to transfer six BSUs from

the north shoreline to the east shoreline (a 28% reduction from maximum possible BSUs- 10 vs. 14).

- The applicant has proposed to reduce the sizes of the BSUs to 11.5' x 24' (continuing with the proposed 4' overhang allowance).
- The applicant has proposed to reduce the size of the footprint of the proposed dock by 17.5'. Staff believes that this adequately addresses the concern raised at the March 12th public hearing (the question as to whether the proposed dock infringed within the channel area).
- Staff supports the concept of a cluster dock on the east end of the property (minimizing the environmental impacts). He referenced historical aerial photographs that were provided by the Wallace family (in which D.R. Horton represents) at the March 12th hearing. He recognized that most properties in the area have grown significantly over the years (which were assisted via some level of dredging).
- In regards to the adjacent tax forfeited property, he confirmed that the city documented the site was "exclusively for preservation of wetlands and wildlife area." Any proposal, other than that, for the use of such land required Hennepin County's approval or the land would be reverted back to the state. He re-directed the Board to Batty's memo, in which he documented the legal opinion that, although the proposed dock would be located in the area of the tax forfeited property, he did not think the property would revert back to the state as the dock was not originating from that respective shoreline (but should be checked into). Should the Board consider approval of this application, a recommendation was made to acknowledge this as a condition in the Findings of Fact and Order.

Ridgewood Cove POA

- No amendments have been proposed by the applicant and there are no additional staff comments from the 3/6/14 memo.
- He directed the Board to a letter, dated 3/24/14, from Ridgewood Cove POA President Chris Johnson. Johnson, who was in attendance at this meeting, has respectfully requested approval of their applications, as well as documented their support of the D.R. Horton applications.

Staff recommended approval of both applicants' variance applications. With respect to the individual variance applications, he recommended the Board direct LeFevere to prepare Findings of Fact and Order for these applications (subject to the following conditions):

D.R. Horton

- Dock installation must be installed consistent with the approved site plan. To ensure this, an as-built survey must be submitted within 60 days after the dock installation is finalized;
- Watercraft can be stored only at the 10 authorized BSU locations;
- Boat lifts with covers are allowed (no Lake Minnetonka canopies as defined by LMCD Code);
- The north shoreline must be left in a natural state (no docks, watercraft storage, or any other water structures are permitted from this shoreline); and
- All prerequisite approvals and permits must be secured from the City of Minnetrista, Hennepin County, Minnehaha Creek Watershed, and all other governmental agencies having jurisdiction over Lake Minnetonka.

Ridgewood Cove POA

- The relocation of BSU #1 from shore to the north of BSU #7 is authorized. Watercraft storage is allowed only at authorized locations; and
- All prerequisite approvals and permits must be secured from the City of Minnetrista, Hennepin County, Minnehaha Creek Watershed, and all other governmental agencies having jurisdiction over Lake Minnetonka.

He entertained questions and comments from the Board.

Nybeck confirmed the following:

1. D.R. Horton had provided a dock layout, which was not proposed, of what a combined (D.R. Horton and Ridgewood Cove POA) dock could look like, which concluded there was not a lot to be gained. He stated there is expressed interest in both applicants having separate docks.
2. D.R. Horton's proposed dock would be seasonal; however, it would be installed 12 months of the year.
3. Ridgewood Cove's dock is currently an existing permanent dock (per LMCD Code).
4. That the LMCD Code would allow for de-icing at both docks (without a permit) after March 15th.

Hunt stated that she was comfortable with the applications for both sites. She expressed her appreciation to D.R. Horton for working so well with Ridgewood Cove POA. She reiterated the importance of D.R. Horton checking with Hennepin County on the conservation easement that existed on the tax forfeited property.

Babcock questioned whether a condition was merited for low water situations.

Nybeck stated that a process was in place relative to dock extensions during the declaration of low water (evaluated on a case by case basis). The Board historically, for some variances, has documented this as a condition on some approved Findings of Fact and Order.

Babcock concurred with Nybeck's assessment and recommended that preparations of Findings of Fact and Order to approve the variance applications include this as a condition.

Hunt requested clarification if other docks within the proposed area are subject to the same condition.

Babcock believed the other surrounding sites were not subject to this condition based on their license being approved prior to what the current code offers. Although the water depths would not provide for the applicants to extend their docks out further, in which Hunt pointed out, it does not preclude the Board from setting that expectation.

McDermott and Nybeck concurred with that comment (based on the fact that the applicant could always apply for an exception).

Babcock directed the Board to the subjective criteria for the D.R. Horton multiple dock license

application. He expressed concern about extending the proposed D.R. Horton dock in front of the City of Minnetrista's tax forfeited property (based on the existence of a conservation easement, the size of the proposed dock structure, and being inconsistent with some of the subjective criteria outlined in LMCD Code Section 2.03, subd. 3).

Hunt stated that Hennepin County, upon their review, would be able to document any noted concerns. Furthermore, the city's attorney has documented his belief that the proposed dock structure (not crossing over the land portion of the easement) would not violate the conditions of such.

Babcock stated it is a matter of policy (based on his decision as an LMCD Board member and not the reasoning of others) in not supporting a structure that would infringe upon a documented conservation easement. Lastly, he thanked LeFevere for clearing up his questions on ownership of the east shoreline.

Hoelscher pointed out a member of the audience that appears interested in addressing the Board.

Baasen stated that the public hearing portion in considering the applications were opened and closed at the March 12th Board meeting.

Babcock stated that the Board (historically) has consider comments outside of a public hearing when an applicant's proposed application changed significantly from the original presentation during such hearing.

Baasen did not solicit public comments based on his belief that the applications have not significantly changed.

MOTION: McDermott moved, Green seconded to direct LeFevere to prepare Findings of Fact and Order for the D.R. Horton variance application, subject to the conditions outlined above by staff, as well as the additional condition that would require the applicant to apply for dock extensions during a low water declaration.

VOTE: Ayes (11), Nays, (3; Babcock, Hughes, and Zorn); motion carried.

MOTION: McDermott moved, Hunt seconded to direct LeFevere to prepare Findings of Fact and Order for Ridgewood Cove POA variance application, subject to the conditions outlined by staff, as well as the additional condition that would require the applicant to apply for dock extensions during a low water declaration.

VOTE: Motion carried unanimously.

C. Abdo, Eick, & Meyers:

- Review of draft 2013 LMCD Audit
- LMCD Resolution 136 – a resolution committing revenue sources for specified purposes in special revenue funds
- LMCD Resolution 137 – a resolution committing fund balances for specified purposes
- Fund Balance Policy

Baasen welcomed Steve McDonald and invited him to provide an overview of matters listed under agenda item 9C.

Mr. Steve McDonald, Managing Partner of Abdo, Eick, & Meyers, made the following comments:

- Financial operations were in compliance with State of Minnesota standards, which met the goal of an “unqualified” opinion within the audit process.
- One internal control deficiency was noted (preparation of financial statements). He explained that the account receivable portion of finances is well segregated. However, at the end of the year, it is the Executive Director (one employee) who has ultimate responsibility of the financial statements (working closely with the treasurer), which is common in a small office setting. He believed Nybeck takes full responsibility for this task (asking very good questions and keeping the auditor accountable, which is a good compensating control measure).
- Performing the audit provided for no disagreements or difficulties. All material requested was received and in compliance.
- The General Reserve Fund budget planned for a decrease of \$45,000. The actual decrease was \$59,000 (mainly a result of unanticipated moving expenses approved by the Board after the budget was adopted). Overall, good performance was documented for this fund. The ending fund balance was at 52% of planned expenditures (the LMCD has a 50% General Reserve Fund balance policy).
- The Aquatic Invasive Species (AIS) Fund was over \$31,000 from what was budgeted. This was driven by: 1) additional funds received from other public agencies to increase watercraft inspections beyond the adopted budget, and 2) expenses were under budget due to a one week suspension of the harvesting program in June and a slight reduction in inspection hours. The ending fund balance was 77% (the LMCD has a 50% AIS Reserve Fund balance policy).
- The Equipment Replacement Fund balance increased \$25,143 from the year-ending 2012 balance. He acknowledged the purchase of a harvester in 2012 and the transfer of \$25,000 from the General Reserve Fund in 2013.
- The Save the Lake Fund balance increased \$25,330 from the year-ending 2012 balance (\$176,246 to \$201,576). He provided a brief overview of this fund balance (primarily due to a detailed budget not being approved in 2013).
- He acknowledged the Board's consideration of draft resolutions 136 and 137, as well as a Fund Balance Policy within their packet. He stated those documents are being presented to the Board for approval to comply with the Government Accounting Standards Board (GASB) statement #54, which commits: 1) revenue sources for special revenue funds and 2) fund balances for specific purposes. He recommended the Board approve both resolutions which document the Aquatic Invasive Species and Save the Lake budgets as special revenue funds. In not designating such, the two funds would be documented under the General Revenue Fund. Additionally, this change also gives more contexts to the fund balance, in which he provided an overview of (non-spendable, restricted, committed, assigned, and unassigned).
- He entertained questions and comments from the Board.

Babcock stated that although the LMCD reports the AIS budget separate from the General Fund, he did

not view it as restricted as it is funded through the same levy received by the member cities. He viewed restricted funds as those that are over and above the levy limits documented within the enabling act. He concurred with the designation of the Save the Lake Fund, as well as consideration of the Equipment Replacement Fund (dedicated funds for a specific purpose).

McDonald did not disagree with Babcock's recommendation (acknowledging it would only change the format presented within the annual report).

MOTION: Babcock moved, McDermott seconded to accept the draft 2013 LMCD audit.

VOTE: Motion carried unanimously

Hoelscher concurred with Babcock relative to not restricting the AIS Fund. She asked why the Board should consider restricting the Equipment Replacement Fund.

Babcock stated those funds are designated annually for a specific purpose (to purchase harvesters).

Nybeck provided an overview of the historical purchase of harvesters, as well as their useful life expectancy.

MOTION: Babcock moved, McDermott seconded to adopt Resolution 136 and 137, subject to the following changes (offered with LeFevere's assistance):

Resolution 136

- Removal of AIS (including listed purpose) as a committed fund;
- Addition of Equipment Replacement Fund as a committed fund; and
- Adding "Provides Funding for Equipment Replacement" as its purpose

Resolution 137

- Removal of AIS (including listed purpose) as a committed fund;
- Addition of Equipment Replacement Fund as a committed fund; and
- Adding "To provide ongoing funding for AIS equipment" as its purpose."

VOTE: Motion carried unanimously.

MOTION: Babcock moved, Roy seconded to adopt the draft Fund Balance Policy as submitted.

VOTE: Motion carried unanimously

D. Timetable for 2015 LMCD Budget Process

Baasen asked Nybeck for an overview of this agenda item.

Nybeck directed the Board to the staff memo, dated 3/20/14, which outlined the proposed timetable for the 2015 budget process. He made the following comments:

- Staff is currently obtaining market values and net tax capacity figures from both Hennepin and Carver counties. He prefaced that the levy is set by a specific percentage of the total taxable market value.
- The LMCD typically initiates this process by holding a workshop session in the office; recommending this be scheduled between April 10th and April 16th.
- The first formal review by the LMCD Board is planned for April 23rd. At this meeting, a budget is typically received and staff is directed to distribute such to the member cities for their review and comments. He reminded the Board that some member cities only have one city council meeting per month.
- A meeting is planned for June 5th in the LMCD office to review and discuss the budget with member city officials.
- Review and approval of the budget is planned for the June 11th Board Meeting. This meeting is typically scheduled to allow for a back-up date should future quorum issues exist. If needed, a final review is possible at the June 25th Board Meeting.
- Per state law, the approved budget must be received by the member cities by July 1st.
- He entertained questions and comments from the Board.

Babcock provided further details as to why the Board considers approval of the budget prior to the last meeting in June, which accommodates for the lack of quorum should one not be present at the latter meeting.

10. UPDATE FROM STANDING LMCD COMMITTEES

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

Morris stated the AIS Task Force met on March 14th, at which time they discussed: 1) a draft brochure Green is working on for use by the watercraft inspectors within the City of Mound (providing for more educational material and effective tips specific to Lake Minnetonka), 2) a Lake Vegetation Management Plan (LVMP) presented by the Minnesota Department of Natural Resources for North Arm Bay, and 3) bad operational habits that affect Lake Minnetonka (i.e., various violations such as doing circles around fishing boats, personal watercraft, riding on the gunwales, etc.). Tony Brough from Hennepin County is updating the Lake Minnetonka map for 2015 and he is requesting feedback on this topic.

Green encouraged residents that treat or harvest milfoil or other aquatic vegetation to obtain the appropriate permits from the MN DNR, as well as properly dispose of the vegetation. He stated that those two topics will be presented in the upcoming LMCD newsletter. He thanked Gabriel Jabbour for sponsoring the March 18th AIS roundtable discussion at the Lafayette Club, as well as the 45 who were in attendance (member city mayors; Dr. Sorenson, University of Minnesota [U of M]; Doug Jensen, Minnesota Sea Grant; Larry Meddock, Water Sports Industry Association (developer of a more efficient AIS friendly water sport filter); and a representative from the State of Colorado). He found it interesting that the State of Colorado provides \$4,000,000 annually for watercraft inspections for private water bodies (no public waters). All listed were again present for a Minnehaha Creek Watershed District AIS Symposium the following day, at which time

Senators Klobuchar and Franken presented via video conferencing (with Klobuchar recognizing Meddock for his filtering system). He stated that system can fill up and drain a wake board boat's ballast without reducing fill time. Lastly, he attended a recent State of Minnesota AIS Committee, in which they discussed a recent tax bill for \$10,000,000 from the general fund for county aid that specifically addresses AIS shielding prevention efforts (based on the number of bodies of water, access, parking spaces, etc.).

Hughes provided an overview of the Finance Committee's signature policy in depositing funds into Certificate of Deposits (reiterating the recent deposit approved within this meeting's Audit of vouchers). Furthermore, he stated that the Public Safety Committee will be meeting prior to the upcoming boating season.

Baasen stated the Save the Lake Committee will be meeting at 7:30 a.m. on April 7th. Preparations are underway for the first of three Boater Safety Education Program sessions in 2014 (the first scheduled for April 26th). The Minnetonka Community Center is currently being considered for this session, in which Babcock suggested the Shorewood Community Center and Hunt offered a meeting room at the City of Minnetrista as alternatives.

11. EXECUTIVE DIRECTOR REPORT

Nybeck directed the Board to work being done for the 2014 Eurasian Watermilfoil (EWM) Harvesting Program. He stated that staff has previously met with Board members Green, Morris, and Roy to discuss plans for the 2014 EWM Harvesting Program. One of those goals was to hire the program's site supervisor. Staff interviewed six of the eight applicants (two of which were called back for a second interview with Harper and Green). Staff recommended the Board approve the hiring of a Mr. Tom Elmer at the rate of \$16 per hour, without benefits. Elmer had previously worked for the Three Rivers Park District and provided supervisory, mechanical, and watercraft operation experience.

Shuff stated that she would recuse herself from the vote as Elmer was a family member.

MOTION: McDermott moved, Morris seconded to approve the hiring of Tom Elmer as the 2014 EWM Harvesting Program Site Supervisor at a rate of \$16 per hour (without benefits).

VOTE: Ayes (13), Abstained (1, Shuff); motion carried.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:22 p.m.

Dan Baasen, Chair

Andrew McDermott, Secretary