

**LAKE MINNETONKA CONSERVATION DISTRICT**  
**BOARD OF DIRECTORS**  
7:00 P.M., March 22, 2017  
Wayzata City Hall

**WORK SESSION**

**6:00 p.m. to 7:00 p.m.**

Green called the meeting to order at 6:05 p.m.

1. Prosecuting Attorney Annual Update

LMCD Prosecuting Attorney Steve Tallen provided the following update to the Board:

- He provided the Board with a 2016 billing and fine revenue allocation handout. Billing totaled \$37,745 (\$6,584 of which is conflict prosecution billing) and fine revenue totaled \$32,597.
- He provided an overview of the offenses that occur on the Lake that he prosecutes, as well as the respective charges (petty, misdemeanor or gross misdemeanor). All prosecution is based on LMCD Code of Ordinances.
- Petty misdemeanors are the vast majority of cases whereby defendants simply pay fines.
- Drunken boating arrests are down probably due to education. However, it is also dependent on weather.
- A long-standing agreement (est. 25 years) is in place with the Hennepin County Attorney's office whereby Tallen prosecutes the boating and snowmobiling while intoxicated gross misdemeanors as that is not strictly covered within the LMCD's enabling act. This agreement provides for the LMCD to receive the fine revenues.
- He spoke in favor of the draft underage drinking/social host ordinance amendment scheduled for Board consideration under the Formal session of this meeting. He provided examples of how this ordinance would assist in prosecuting cases. In short, he will not need to prove that the adult provided the liquor for the minors; simply the place that violations occurred.
- Most of the cases settle; there was one trial in 2016 for a drunken boating case.
- He has historically been reporting on the constitutional legality of the implied consent advisory, which is the form the police read to the suspect (defendant). This matter went to the Supreme Court; Minnesota cases basically upheld it. The Supreme Court stated that the form was good in terms of breath tests for alcohol, but not for blood or urine tests for drugs as those were searches that needed a warrant to obtain the sample or it is considered a violation of due process.
- Proactive Code Enforcement cases almost complete where only one case is pending.
- He entertained questions and comments from the Board.

Cook asked Tallen to expound on his reasons for supporting the drafted social host ordinance. Tallen stated that currently if police stop a boat with someone over 21 years of age that have five drunken teenagers, they can only charge the provider of the alcohol based on the minor's statement as to who gave them the alcohol. However, in many cases, after a period of time after the charge is made, the teenager will write a letter stating that they were drunk when they made that statement and that they brought their own alcohol on to the boat.

Prest thanked Tallen for his service and asked him how many cases he handles annually for the LMCD. Tallen stated he enjoys serving the LMCD. The Lake offers a community environment and he hopes he has made a difference. He stated many citations are written by the Sheriff and are cleared without the need for prosecution because the defendant pays the fine. He estimated 150 cases make it to his desk such as drunken boating (100%), assaults, thefts, etc. Some are joint jurisdictions and may be charged under both the LMCD Code and other statutes of authority; therefore, he cannot prosecute them. Normally the case is handled by the jurisdiction that has the most serious charge; less serious charges would most likely be dismissed. Prest asked if he could bring those statistics to his annual presentation next year. I.e. total number of cases, total tried in Court, how many managed by Tallen's office, etc.

## 2. Save the Lake Discussion

Schleunig initiated discussion of the Save the Lake Fund by reviewing typical program analysis processes. This process helps an organization to move forward strategically with various programs that can apply to Save the Lake. She reviewed current or past activities that support the goals of the organization (solar light program, boater safety classes, grant requests from different organizations, twice a year solicitation drives, banquets, promotion of the lake and its use, and event participation). She directed the Board to a memo within their packet, dated 3/22/17, from Gilchrist that further clarified the LMCD's legal authority of the Save the Lake Fund. She asked Gilchrist to provide an overview of this matter.

Zorn arrived at 6:40 p.m.

Gilchrist provided an overview of the legal aspects associated with receiving donations, how donated funds may be used, and principals of engaging in fundraising activities. He stated the LMCD's authorizing statute does not address activities to the degree other statutes do for cities and towns. As an example the Open Meeting Law, Data Practices Act, etc., do not specifically mention the LMCD's existence. However, historically, the LMCD has treated itself as subject to such laws. With that in mind, he provided a detailed overview of each section of his memo summarized below:

### Receiving Donations

Gilchrist recommended following Minnesota Statutes, Section 465.03 and the key points outlined within the memo.

### Use of Donated Funds

When the Board acts to accept donated funds, they become LMCD funds that may only be used for authorized LMCD purposes. Additionally, if the Board accepts a donation made under the express terms that the funds are used for a particular purpose, the Board may only use the funds for that purpose.

### Fundraising

The position of the State Auditor's Office is that because there is no express authority in the statutes for cities to engage in fundraising activities, they lack the authority to undertake such activities. The same could apply to the LMCD. However, Gilchrist believed that the issue of authority in this case was not that black and white. He also stated he understood that many cities do receive and accept donations. He expounded on this matter

in detail within the memo.

In closing, he stated a question was raised over whether the LMCD was subject to the charitable solicitations requirements in Minnesota Statutes, Sections 309.50 to 309.61. Those provisions prohibit a charitable organization from soliciting contributions without first filing with the Attorney General's office. Gilchrist did not see that the LMCD qualifies as a "charitable organization" engaged in "soliciting" contributions as those terms are defined in those statutes and, therefore, the filing requirements do not apply to the LMCD.

He entertained questions and comments from the Board in which the following was offered:

- Confirmation that the difference between the LMCD and the Lake Minnetonka Association is that the LMA is a 501c3.
- Confirmation that the issuing of grants comes down to a public purpose analysis; it is within the authority of the LMCD's powers. Gilchrist believed intergovernmental grants carried a greater level of authority than grants issued for private purposes. He stated that privately issued grants require a clear documentation of the authority at hand.
- Save the Lake funds are not legally restricted so may be spent on items that may not be for an assumed advertised direction. In other words, the Board is not restricted to spending contributions on objectives not covered by levy sources. However, it could create other public relations concerns. He reiterated that the LMCD is free to spend the Save the Lake funds on any item that is within the LMCD's authority and not specifically accepted with restrictions. Thomas stated that he has reviewed many historical documents that have communicated that thread of spending the funds on projects over and above the general budgets. He did not see a concern in continuing in a different way, but would add to the communication thread the LMCD's authority and how the funds could be spent.
- In responding to whether the LMCD can use levied funds to fund the additional Sheriff's Office Water Patrol personnel during the summer months, Gilchrist stated the Board could spend Save the Lake Funds for such if not enough levied funds. He would not have any legal concerns with the LMCD funding the additional water patrol deputy with levied or Save the Lake funds.

Baasen offered a historical overview of what the LMCD has been funding with contributions, the effects of the projects, how they determined the use of future funding, and the interagency participation in some cases. All these items have been voted on by the Board. The committee is an advisory committee to the Board and does not have the authority to formerly act. Thomas stated the advisory committee was created in 1974.

Schleuning provided a brief overview of the financial aspect of the Fund. Currently there is \$170,000 in reserves. From the year 2000 to 2016, \$660,000 was received in contributions. She listed the number of contributions estimated each year and acknowledged that many of those that donate are repeat contributors, a very loyal customer base. Additionally, she addressed: 1) the important aspect of branding the LMCD's Save the Lake Fund (offering many examples), 2) the need to structure a package to promote the Fund, 3) and testimonials of some of the contributors. She asked the Board to further consider the following questions:

- Do you like Save the Lake?
- Is it valuable?
- What areas can be enhanced?
- What is not working?

- How do you get the message out?
- How do we make sure the advisory committee resources are not burned out?
- Do you find value in the Fund?
- What should we be looking at for ways to move forward?
- These items and more will be discussed as part of the continued strategy discussion.

Due to time constraints, Green directed staff to schedule continuation of this agenda item and consideration of the Social Media Policy Revisions (WS Item 4) on the April 12<sup>th</sup> Work Session.

## **FORMAL BOARD AGENDA**

**7:00 p.m. to Adjournment**

### **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; Ann Hoelscher, Victoria; Chris Jewett, Deephaven; Dan Baasen, Wayzata; Bill Cook, Greenwood; James Doak, Woodland; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Gregg Prest, Excelsior; Sue Shuff, Minnetonka; and, Deborah Zorn, Shorewood. Also present: Vickie Schleuning, Executive Director; Emily Herman, Administrative Assistant; and Troy Gilchrist, LMCD Legal Counsel.

**Members absent:** David Rahn, Orono

The City of Minnetrista did not have representation present.

### **4. APPROVAL OF AGENDA**

Green requested item No. 10(A) be removed from the agenda [per email dated 3/19/17 within packet]

**MOTION:** Shuff moved, Thomas seconded to approve the agenda as amended.

**VOTE:** Motion carried unanimously.

### **5. CHAIR ANNOUNCEMENTS**

There were no chair announcements.

### **6. APPROVAL OF MINUTES- 3/8/17 LMCD Regular Board Meeting**

Green referred to the work session minutes under AIS Budget Review. He clarified the following to amend the minutes:

- Page 1, first bullet point; that the one harvester was down with mechanical issues but is now operational. The sentence would read, "... and that one harvester was down in 2016 with mechanical issues but is now in working order."
- Page 2, second to last sentence, fewer violations were found on Lake Minnetonka as compared to the same lake in other years (not other lakes within the state). The sentence would read, "...fewer violations were found at Lake Minnetonka than other years."

**MOTION:** Doak moved, Thomas seconded to approve the 3/8/17 LMCD Regular Board Meeting minutes as amended.

**VOTE:** Motion carried unanimously.

## 7. APPROVAL OF CONSENT AGENDA

Green requested item Nos. 7(B) and 7(D) be pulled from the Consent Agenda because they should be voted on separately.

**MOTION:** Hoelscher moved, Zorn seconded to approve the consent agenda as amended. Items so approved included: **7A)** Audit of Vouchers (3/16/17 – 3/31/17); **7C)** 2017 Alcoholic Beverage Licenses; and, **7E)** Letter in support of Lake Improvement District for Carman Bay.

**VOTE:** Motion carried unanimously.

### 7B) LMCIT Liability Coverage Waiver Form

Green stated he pulled item No. 7(B) from the Consent Agenda because it was not clear in the staff memo which action should be taken. Schleuning advised staff recommended the Board not waive the monetary limits with the LMCIT Waiver.

**MOTION:** Thomas moved, Cook seconded to not waive the monetary limits on municipal tort liability established by Minnesota Statutes, Section 466.04.

**VOTE:** Motion carried unanimously.

### 7D) AIS Watercraft Inspections Cost-Share Agreement with Minnehaha Creek Watershed District (MCWD)

**MOTION:** Thomas moved, Shuff seconded to approve the 2017 AIS Watercraft Inspections Cost-Share Funding Agreement between the LMCD and the MCWD.

**VOTE:** Motion carried unanimously.

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

There were no public comments.

**9. PUBLIC HEARING**

There were no public hearings.

**10. OTHER BUSINESS**

**A)** Removed - under Approval of Agenda

**B)** Amendment to Chapter 5, Subd. 5.30 Regarding Alcoholic Beverages and Underage Drinking (Social Hosting)

Schleuning directed the Board to her staff memo, dated 3/22/17, and provided the following information regarding the proposed Amendment to Chapter 5, Subd. 5.30:

- The purpose of the amendment is to help deter the consumption of alcohol by underage persons and to hold those individuals responsible who promote underage drinking.
- The State law deals more with civil liability and it does not translate into what actually happens on the lake. The County does not have an ordinance dealing with underage drinking. This proposed amendment was requested by the Hennepin County Sheriff's Office Water Patrol and LMCD prosecuting attorney.
- It addresses a gathering or an event on the lake. This may also include boats, ice houses, and snowmobiles.
- Subd. 9 of the proposed amendment provides immunity from prosecution if a person seeks help for someone in need of medical assistance.

Gilchrist stated some of the changes made to what is already in the ordinance were done to align it more closely with the State statute. There is also an added definition section for clarity. The social host ordinance has been adopted by many communities and affects over five million Minnesota residents. The ordinances are similar in wording, but the LMCD ordinance has some differences because of the focus on the lake. He referred to Subd. 8(b), and inquired if the Board was comfortable with someone being criminally charged for organizing the event, but not in attendance of the event.

Prest inquired what the offense would be. Gilchrist responded it would be a misdemeanor.

Gilchrist referred to Subd. 9, the immunity provision. He stated this is not in all ordinances, but they wanted to add it in order to prevent discouraging people from calling 911 for fear of getting themselves in trouble.

Klohs referred to Subd. 8(b), and inquired who was responsible if someone organized an event, but someone else attending the event provided alcohol to minors. Gilchrist pointed out that in order to be culpable, they have to meet all the criteria listed. It will be determined by the Sheriff's department if the offender knew of the intent to serve alcohol, or if they did not.

Cook inquired why there must be three people in order for this to be enacted. He supports citing everyone involved for violation of the ordinance, but not criminalizing bad parents. He does not support this ordinance because he is troubled by an entity not present being liable and would like the definition of an off-site host clarified.

Zorn inquired if they looked at immunity for people who have a non-medical emergency. Gilchrist responded the language in the ordinance refers to alcohol that is being consumed or with the intent to consume it. Other than trying to capture the lake aspect in the ordinance, the language is verbatim of what other jurisdictions have adopted. They are trying to be specific enough so people understand what is prohibited, but not so specific where it becomes unenforceable. He is open to editing it as needed.

Klohs commented the way it is written, it does not encourage people to be a Good Samaritan and help kids out if they are in trouble. Gilchrist stated that if a person wants to help kids out, the language in the ordinance should not deter them from doing that.

Thomas stated he does not think the ordinance states that parents should be cited if they are gone and the kids get into the liquor cabinet. It shows that they would have to organize or allow the event. Gilchrist responded the parent would need to have reason to know about the event and the use of alcohol in order to be cited.

Thomas inquired if this ordinance had been reviewed by the Sheriff's office and prosecuting attorney. Gilchrist stated it was sent to them. Schleuning stated they favored it. She suggested they include more language regarding a Good Samaritan provision.

Green referred to item 8(b), and commented he is uncomfortable with the host not being present at the event. He also inquired if people who rent ice houses would need to go around and check to make sure minors are not drinking. He stated he does like the immunity part of the ordinance to encourage people to do the right thing.

Jewett referred to item 9(a), and pointed out that it seemed aggressive to say unless you call 911, you are subject to penalty. Gilchrist stated immunity is meant for people that are already violating ordinances and it applies to either the host or the underage person.

Shuff commented that other cities and the Sheriff's department have these ordinances on land and now they are creating one for the water. Gilchrist stated Hennepin County does not have an ordinance like this one, but several cities in the County do have a similar ordinance.

Hoelscher commented the intent of the statute is great, but it does not seem to read exactly how it is intended. She expressed concern with the definition of host, and commented it could be a potential problem to have them liable if they are not present. She inquired if a person is released from liability if they put a sign on their boat that states no one under 21 can possess or consume alcohol.

Gilchrist commented a sign alone is not enough. If there are intoxicated underage people on the boat and it is obvious they have been drinking, a person will most likely be cited.

Cook stated it adds a level of complication by calling it social hosting. If a person is underage and drinking in a boat, they should be cited. If there is an adult in the boat they should also be cited.

Gilchrist stated the term social hosting is used as a way to put responsibility on the person hosting the event. Simplifying it would make those that have nothing to do with an event responsible as well. Cook commented a good choice of language and the tests in the ordinance could address the responsibility issues.

Green commented the word "event" implies something is planned or organized.

Gilchrist stated the changes may need to be made since these events happen on the lake and not on land.

Green inquired whose event it is if two separate families pull up for a picnic on Big Island.

Doak referred to item Subd. 8(c) and inquired if the prohibition in paragraph (a) should also apply to the State limitations. By adopting a portion of the State ordinance, they have prohibited possession and consumption, but not provided the exclusions that State law provides. He suggested the prohibition paragraph include the social host topic, but also the reiteration of the State law that is part of the ordinance. Gilchrist stated he understood the concern.

Gilchrist stated he will take another look at the proposed amendment and bring it back for Board review before actions to adopt.

Thomas agreed the lake environment is different than land, but if they make the ordinance too different, it may be difficult for the police to determine which ordinance to apply if something is happening on a dock versus somewhere else. There is a balance between consistencies among jurisdictions versus having specific words included in the ordinance.

## **11. UPDATE FROM STANDING LMCD COMMITTEES**

Aquatic Invasive Species Committee/Taskforce: Green commented there are some funding issues at the Federal level that may have some impacts on AIS. The Great Lakes Restoration Initiative has been cut along with other programs.

Budget Workgroup: Green advised they will meet on April 4 at 8:00 a.m. at the LMCD office and encouraged Board members to attend.

Recodification Workgroup: Gilchrist stated they are still trying to identify the individual residential license/permit issues, and he will begin working on municipal licensing.

Save the Lake Committee: Baasen commented they have not met since the last meeting. They are encouraged to be discussing Save the Lake options and are looking for direction from the Board. There is a boater safety class scheduled for June 19. They have received inquiries and hope to place an ad, with the Board's permission.

Strategic Plan Subcommittee: Zorn stated she was unable to be at the planning meeting. Schleuning offered there was a draft sent out and are looking for comments from the subcommittee next week.

## **12. EXECUTIVE DIRECTOR UPDATE**

Schleuning stated they received calls about the ice out and have updated information on Facebook and Twitter. They have learned that the standards for determining ice out throughout the state are not consistent. Since 2014, ice out on Lake Minnetonka has been determined by Hennepin County Water Patrol and Freshwater when a boat can navigate through the channels and all areas of the lake.

Schleuning advised there is a final draft of the PowerPoint that highlights the LMCD organization within their handout folders. She requested members check with their cities to see if they would like some information or presentation. They had a request from one of the cities for a quarterly report, which will be put together soon.

Schleuning stated they have had a lot of inquiries regarding residential docks and they are revising the residential dock and watercraft storage handout.

Baasen commented even though there has not been an official ice out, docks are going in. He inquired about the levels of the lake. Schleuning stated Grays Bay dam is open, so the levels must be a little higher.

Prest requested an update on what has been spent on recodification and if they are on budget. Schleuning confirmed she will provide this.

## **13. OLD BUSINESS**

Green stated at the last meeting, the Lake Minnetonka Association (LMA) Executive Director Eric Evenson commented that they wanted to put displays for Eurasian Watermilfoil, etc., at the public accesses. They have since requested the LMCD contribute to that project. He told the LMA he would get back to them.

Schleuning announced the level of the water is 929.30 (discharging at 150 feet cfs).

## **14. NEW BUSINESS**

There was no new business.

## **15. ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:53 p.m.

---

James Jay Green, Chair

---

Ann Hoelscher, Secretary