

LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 P.M., March 14, 2018
Wayzata Council Chambers

WORK SESSION

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

Members present: Bill Cook, Greenwood; Jay Green, Mound; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Andrew Punch, Excelsior; Chris Rich, Woodland; Sue Shuff, Minnetonka; Gregg Thomas, Tonka Bay; and Deborah Zorn, Shorewood.

Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Matthew Cook, Environmental Administrative Assistant.

Members arriving later: Dan Baasen, Wayzata; and Jake Walesch, Deephaven.

1. **View Options for New LMCD Outlook Email.** Schleuning demonstrated user interface setup options and other features of the Board's new Outlook Email service.

Green asked how long the Board must retain LMCD emails according to data retention policy.

Gilchrist responded that he would read up on data retention as it pertains to emails and whether multiple copies – sent and received versions of the same email, for instance – must be kept.

Hoelscher asked if a Director would be exposing their private email accounts to risk of search by linking them with LMCD emails, which may be subject to a public data request or court ordered search in the event of a lawsuit.

Gilchrist responded that though the risk was very slight, in theory, a Director's private email, if linked to an LMCD account, could be subject to a court ordered search. He stated that he and staff would review the legal extent to which certain connections of email accounts would expose Directors' personal accounts.

Punch inquired as to the recovery services provided by Office 365.

Schleuning responded that she believed deleted items could be reclaimed for up to two weeks. She added that staff may back up such data locally, as well, in the future.

2. **2018 AIS Program Options.** Schleuning reviewed the tentative budget for the 2018 Harvesting program. She stated that the program resources could either be focused to reduce nuisances or maximized to cover more area.

Zorn noted that the remainder of the Harvesting program budget beyond staffing was largely dedicated to the cost of vegetation disposal after harvesting. She asked if additional costs, namely harvester repairs and maintenance, would likely add to program expenses.

Schleuning stated that repairs and maintenance was a significant cost. The extent to which mechanical failure would generate expense in the future is unknown. However, the equipment is aging. She also stated that the budget for 2018 for harvesting was primarily based on 2016 information based on the timing of the LMCD budget process.

Hoelscher inquired as to whether the Board would consider having a discussion regarding the viability of chemical treatment as an alternative to harvesting.

Green noted that chemicals used for treatment are themselves very expensive and would require further exploration to determine whether the small-scale chemical treatment that the LMCD could feasibly accomplish would be a viable option for lake-wide vegetation control.

Cook underscored that the Harvesting program costs have been rising as the budgeted funding and available grant funding has been declining. He noted that additional budget stressors – such as the potential funding of watercraft inspections or additional Water Patrol officers – could further strain the AIS program budgets. Cook cautioned that using reserves to close the AIS program budgets would only work for a short time, and the Board ought to discuss the future of these programs in earnest in the next year or two.

Baasen entered the meeting at approximately 6:30 p.m.

Molitor and Shuff expressed support for focusing the Harvesting program resources on the maximization of area harvested.

Walesch entered the meeting at approximately 6:35 p.m.

Schleuning asked for the Board to confirm that she has the flexibility to augment staffing structure for the 2018 Harvesting program within budgeted limits.

Green stated that the AIS Program discussion would continue during the regular meeting under item 11(A). AIS Prevention Programs – Harvesting and Watercraft Inspection.

The Work Session adjourned at 7:00 p.m.

REGULAR SESSION

7:00 p.m.

1. CALL TO ORDER

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; Bill Cook, Greenwood; Dan Baasen, Wayzata; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Andrew Punch, Excelsior; Chris Rich, Woodland; Sue Shuff, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

Members absent: None.

4. APPROVAL OF AGENDA

Green requested the following item be added to the agenda:

- Item 11(B) Summary of Conclusions Regarding the Executive Director's Evaluation for the LMCD Board of Directors.

MOTION: Baasen moved, Zorn seconded to approve the agenda.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 02/28/18 LMCD Regular Board Meeting

MOTION: Thomas moved, Shuff to approve the 02/28/18 LMCD Regular Board Meeting minutes as presented.

VOTE: Ayes (11), Abstained (3, Zorn, Hoelscher, and Baasen); Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Shuff moved, Walesch seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (03/01/2018 – 03/15/2018); **7B)** January and February Financial Summary and Balance Sheets; **7C)** LMCIT Liability Coverage Waiver Form; and, **7D)** Watercraft Inspection Report.

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) LMCD Prosecuting Attorney Annual Report (Tallen and Baertschi, Attorneys at Law)

Steve Tallen, from Tallen and Baertschi Attorneys at Law, reported they had a non-consequential season. There seemed to be a much bigger emphasis on underage drinking issues. As a general rule, they give the underage offender the opportunity to keep it off of their criminal record by requiring them to work for five days on the work squad with Sentence to Service. They pick up garbage, which makes a greater impact on them than if their parents pay the fine. Financially, the fine revenue outweighed the cost of prosecution by \$53,581 in 2017.

Kroll inquired about the fines, and how the revenue got to be \$53,000.

Mr. Tallen responded if a person simply pays a fine, the State court system gets 20 percent of it. If there are prosecution costs, the LMCD gets the full amount of the fine. Underage consumption is on the payable list, which gives the Conference of Chief Judges the power to make this a petty misdemeanor offense. This makes it not a crime, with a fine of only \$300. Last year, there were some cases where they had several offenders who would have lost their jobs if convicted. For first time offenders, the option to pay higher fines and other public service was an option for the offense. This is negotiated for certain cases where they would have received the same punishment as if they were convicted for drunken boating, but they avoid the conviction, which allows them to keep their job.

Kroll stated he does not object to this. He inquired if there is a statutory limit to the fine, or if it can be negotiated.

Mr. Tallen responded if it is a gross misdemeanor, the maximum penalty is \$3,000 and with a misdemeanor, it is \$1,000. The fines that were paid by the offenders previously described were negotiated, and one of them paid \$10,000. He noted these offenders also may have jail time instead of home monitoring. He tries to be fair and the intent is not to make money for the LMCD. There will be some years where the prosecuting fees outweigh the revenue.

Green inquired what years the offenses occurred where there were negotiated fines.

Mr. Tallen responded the fines collected are generally from cases that settled last year or sometimes earlier. Usually by now, last year's cases are complete. He anticipates that the 2018 cases will be resolved by January or February 2019. They collected \$11,381 in fines in March. There are fewer citations than he used to see, and this could be due to education, enforcement and the weather.

Green stated in the past, they have changed the code to address things that were problems, such as lighting on boats. He inquired if there was anything they should consider changing.

Mr. Tallen responded he will let them know if something comes up. He noted quiet waters is defined several different ways throughout the code and it would be nice to have one definition.

Kroll inquired what the reason was for the \$10,000 check from the offender.

Mr. Tallen responded he did have an offender write that it was a donation. However, he wrote to the IRS and the offender's lawyer to clarify that it was not a donation. The offender plead guilty to careless boating.

11. OLD BUSINESS

A) AIS Prevention Programs – Harvesting and Watercraft Inspections

Schleuning reported they need to make some decisions regarding the 2018 watercraft inspections. During the 2018 budget process, they had to make some choices largely due to declining grants. They recently received a grant for \$10,000 from Hennepin County Community Services for watercraft inspections. They have also submitted a cost-sharing request to the Minnehaha Creek Watershed District (MCWD) for additional funding up to 35 percent of LMCD costs beyond those covered by the Hennepin County grant. She presented the costs for two, three, and four days of watercraft inspections. With the grant from Hennepin County, and if they get the grant from the MCWD, the net cost to the LMCD would be \$16,276. If they do not get the MCWD grant, the cost to the LMCD would be approximately \$25,000. An option for funding would be from the AIS or Save the Lake reserves, and there may be some grants that come up later in the year. She does not recommend they come from the General Fund reserves due to the reserve policy. She asked for board feedback.

Green inquired if taking the money out of reserves is the right thing to do and if there were other funding options. They could consider only having inspections at two accesses in an attempt to save on costs.

Molitor commented they budgeted for \$0. Boat launches can happen 24/7, this is proposed to be a two, three, or four-day program, and he questions the effectiveness of it. With the limited budget, he preferred focusing on a few things and doing them well. Lakeshore owners still bear the cost because they are paying the taxes that fund the LMCD. AIS is often spread by boaters who do not live on the lake and this should be funded at a different level. He supports spending \$0 on watercraft inspections with more focus on harvesting.

Kroll inquired if they had any statistics on the effectiveness of the program. He inquired if the point of the inspections is the potential threat to people or if they are actually finding something. He also inquired when they last found a new bad species.

Green responded they have not found a new species in 15 years. The inspection point is a point of contact for education and an opportunity to catch someone that is coming in with zebra mussels from another lake or leaving the lake with something attached. For the three accesses last year, a little over two percent of people show up with their plug in the boat and Statewide it was lower. It has been a State law for over 10 years to have the plug pulled.

Hoelscher commented Lake Virginia has a multicolored sign at its public access that tells people how to put boat in and out. This would be an inexpensive option to educate and remind people.

Green noted the DNR statistically does not think these signs make a difference. North Arm will be installing a CD3 Cleaning Station for people to take the opportunity to clean their boats. Last year, the DNR had 100 interns statewide to do inspections and this year they will have only 46. They cover Spring Park, North Arm, Grays, and Maxell on Lake Minnetonka, but will have reduced manpower.

Zorn inquired if they know when they will hear back on grant request with MCWD. She has witnessed people who specifically target coming off the lake when inspections are not at the location.

M Cook reported to Schleuning that the grant request may be considered this week; Schleuning said we would need to confirm the date.

Green stated it is statistically impossible to capture everything because there are an estimated 5,000,000 boat launches per year in the State. The DNR and local government units inspected around 800,000 boats statewide last year. He supports the inspection program because the educational piece has some merit. They must do something to prevent AIS. He is particularly concerned about starry stonewort, which would do well in Lake Minnetonka if infested. The program has been effective because nothing new has been introduced.

Rich stated the program is good but is concerned with going into reserves to cover it. It only takes one boat to come in when inspectors are not there. He believes signage may help people understand the importance of properly cleaning off their boats.

Green commented there are some holes in the system, even with the inspectors out there. There are plenty of places to launch a boat, and docks and lifts do not come through the accesses. Many of the lakes infected in the State have not been from boats. He suggested they do an educational piece with the public on other ways the lake can be infected. He inquired if the money from the County was specifically for inspections or for AIS programs.

Schleuning responded it is specifically for inspections.

Klohs inquired what the DNR's expectations were if they plan to cut their program in half and if there is any net loss statewide with all the other programs in place.

Green responded the DNR has always been the inspection force and counties around the State have raised funds and incorporated inspection programs. On Gull Lake, he was inspected by a local police officer more often than he was a local inspector. Inspections are growing significantly, but the DNR program has no funding. They were forced to pay all their inspectors more money, which took away from their budget. They were unable to get the boat permit fee changed, which would help fund AIS programs. The DNR has been given more things to do, but no money to do it with.

Zorn noted that in the legislation, one statutory authority is to regulate the types of boats permitted to use the lake and set service fees. She inquired how this could be applied to inspections.

Green responded they must figure out what direction they are going to take.

Kroll inquired if they are legally able to charge for a Lake Minnetonka sticker.

Gilchrist stated he believed they would run into issues and would essentially be working in an area the DNR controls. He believes it would not be successful if it were legally challenged.

Green suggested it be a marketing program as a way for people to support the AIS inspection program.

Gilchrist stated if it is a voluntary program, it would be okay.

Kroll inquired who would have the standing incentive to challenge the fee.

Gilchrist stated there are people on the lake that have more than enough resources to challenge it and he would advise they not do it because it is in violation of the law.

Thomas noted they try to provide a lake for all people, not just the riparian owners and a \$50 requirement would be a restriction to some. He stated the DNR and Three Rivers Park District still plans to do their inspections on the lake and inquired if they would pick up the slack if the LMCD dropped its inspections.

Cook commented there is adequate balance in the reserves to do this. He cautioned this discussion will take place again next year and the reserves will be less. They could theoretically fund a 24/7 inspection plan for one to two years. Then they have more time to consider other significant revenue sources if they are planning to continue an inspection program.

Thomas felt that this is what the reserve fund is for and he believes the education component is worthwhile.

Baasen agreed with Thomas that it is good if there is an education piece to this. It seems inspections may not be effective if they are cutting the program from four days to two days. Even at four days it is not effective because there are three days they are not inspecting. If they are not effective it does not make sense to use reserves for one or two years, especially since they will be reducing their effectiveness. He would rather see them do one of the two AIS projects well than do two of them poorly.

Molitor pointed out the reserve fund is for years when the cost of prosecution outweighs the fine revenue received and any other type of contingent expenses.

Klohs inquired how much more they would receive by charging their full levy amount.

Green responded they are at 60 percent of their maximum levy. If they raised it, there would be a lot of angry people.

Schleuning explained the expectation with the \$10,000 grant from Hennepin County is that it would be used toward a program that is similar to last year and cover some of the higher-use bays. However, she will talk to the agencies and discuss options.

Green noted they did a three-day program on the weekends last year. He is also hesitant to use reserves to fund this program. He suggested to Three Rivers that they conduct inspections during the high traffic times. Three Rivers thought it would be hard to hire staff for this versus hiring for an entire season.

Hoelscher stated they should use the \$10,000 on the days and areas where they have the most people coming in.

Green noted the LMCD previously ran the inspection program until a contract was negotiated with Three Rivers Park District and they could put their own inspectors out there during specified times. However, this would provide an additional burden on staff to manage it.

Zorn inquired how long three-day inspections have been going on and inquired if there is data on how it compares to two-day inspections.

Green responded they did two-day inspections until about five years ago, when it was increased to three-day inspections. They reason they went to three-day inspections was because 85 percent of the traffic comes on Friday, Saturday, and Sunday. At Carson's Bay, they require them to live in the neighborhood to park there and they did 2,500 inspections last year. Several of their repeat violators get caught at that access several times over the summer.

Walesch clarified there is now public parking for people who do not live in the neighborhood.

Zorn suggested they do a year of two-day inspections to see how the numbers are affected.

Green responded they could generate those numbers based on history and would not have to go through a season of two-day inspections. He suggested they use the \$10,000 in the best way they can.

Shuff agreed with Green. She understands it could be hard to find staff for the specific inspection times and suggested they use the harvesting staff to do the inspections.

Cook commented they need to be careful and sometimes the best thing they can do with a grant is not accept it. They will have to train three or four people and shift schedules around. They should consider when they want to pivot from inspections. They should do it relatively quickly, but they may not be ready to make a decision tonight.

Green noted it took a long time for the County to provide monetary support and he is hesitant to walk away from it.

Schleuning stated they may lose the money if they cannot make a decision. She inquired if the Board can agree an amount to use from the reserves.

Hoelscher noted the grant is for watercraft inspections. She inquired if there are parameters on it that can be used for or if they could rethink the program for this year and use it for signage and education.

Schleuning responded it needs to be used for physical inspections and for services similar to previous years. It

seems that they hear measures must work in its entirety or don't use it. However, sometimes delaying the introduction of new AIS may save significant amount of money and may allow science to make strides in its management. Further, in some cases, they have found that some species do not survive to the extent they once thought they would with small introductions. The County does not want to lose the preventions that currently exist and is why they are supporting this program.

Zorn suggested they stay with a two-day program to secure the funds they have and minimize the funds on their reserves.

Schleuning stated she believes the funds from the County and MCWD will proportionally decrease if they go down to two-day inspections. She will research what options are available.

Green noted he would like to explore what options are available and possibly find another source of revenue for inspections. The season runs from Memorial Day through Labor Day and the DNR begins their program a little earlier. It can be tricky because the DNR interns are still in school at the beginning of the season and leave to go back to school at the end of the season and no one is available.

Schleuning commented bringing the inspection staff back under the LMCD would be labor intensive for staff and she is unsure if they could effectively implement it this year. It may be a better option in future years if desired. She agreed to further inquire about what options are available with the grants.

B) Summary of Conclusions Regarding the Executive Director's Evaluation for the LMCD Board of Directors.

Gilchrist referred to the summary he provided to Board members. He reported the Board concluded the Executive Director meets or exceeds the expectations of the competencies evaluated. It also concluded it is in the best interests of the LMCD to ensure that the Executive Director is incentivized to stay with the organization through increased pay and the grant of additional vacation.

MOTION: Kröll moved, Zorn seconded to approve the Summary of Conclusions regarding the Executive Director's Evaluation by the LMCD Board of Directors.

VOTE: Motion carried unanimously.

12. NEW BUSINESS

A) Update Aquatic Invaders Summit III 2018

Cook reported he attended the summit and they presented research on ways to control starry stonewort, spiny water fleas, and transportation models between the lakes. They are starting to develop good control strategies with starry stonewort, but they are not eradication or prevention strategies. They did not address lake protection versus lake management. There were vendors that had decontamination equipment and making presentations. It seems the whole group was struggling with how to prevent things and what management techniques they should be using. There will be an audio of the session available in a few weeks and he will upload it to the website if people are

interested in listening to it.

13. TREASURER REPORT

Cook reported they 2017 Audit is currently underway, and preliminary numbers show they had a net fund balance of \$9,000 and the budget projected an \$11,000 shortfall. The 2018 budget is a neutral budget. It is silent about a couple of major expenses they have had in the past and lowers the AIS budget from previous years. The final audit should be available for the next meeting.

14. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- It may be another busy year with sales on the lake because they are receiving many requests regarding what is allowed. Boat access and dockage has a significant impact on sales and property values.
- The Wayzata Lake Effect Conservancy requested the LMCD be part of their Spring Splash event on May 19 from 10:00 a.m. to 1:00 p.m. It would be a great opportunity for the LMCD to show what they do. She inquired if the Board was interested in participating and who would help occupy the booth. She will send out details to the Board when it is available. Baasen volunteered to help out with this event.
- They have a new meeting agenda format and she requested feedback from the Board.
- The Boater Safety Class has been cancelled for March 17 and they will look at other options. There was interest but the time seemed to conflict with some potential participants.
- The AIS survey results were included in the meeting packet and she had hopes for higher participation. They will be putting together more information on what is happening regarding AIS on the lake and will make it available on the website.
- This year has been more typical weather and ice conditions for deicing operations. There will be some changes to the deicing requirements in March and this will be included on the website. One change is that a license is not required for deicing equipment after March 1, but the warning signs are still required. Anyone who initiates deicing between March 1 and 15 can also enclose the area. It is important to manage the ice with pets and kids because it become very unpredictable this time of year and we don't want to see people or pets in danger.
- The website seems to be getting more attention. Staff was contacted by the U.S. Coast Guard who provided feedback on the webpage and the National Law Enforcement Museum in Washington DC would like to include Lake Minnetonka and its history with the water patrol.

15. STANDING LMCD COMMITTEE/WORKGROUP UPDATE

Aquatic Invasive Species Committee/Taskforce: Green reported they met on Friday and discussed having a coalition of entities for harvesting this year. Hennepin County will be doing a flowering rush inventory and zebra mussel detection. The University of Minnesota was invited to submit a full proposal for its zebra mussel EarthTec study in St. Albans Bay for treating veligers.

Budget Workgroup: Cook reported they must have their budget to the cities around July 1. They are working through it now and specific items will be addressed at upcoming work sessions.

Communications Workgroup: Thomas reported they met last week and are making progress. They will meet again on April 3 at the LMCD office.

Recodification Workgroup: Gilchrist reported the code is being review by the LMCD office. Schleuning noted it will be ready next week for the permit/license review.

Save the Lake Committee: Baasen reported in 2016 they raised \$21,000 and in 2017 they raised \$31,000. This increase is due to the solicitation letters being delivered in a timely manner and to more people. They had selected March 17 for their Boater Safety class but realized it was St. Patrick's Day and the beginning of spring break for a lot of schools. They had 14 people signed up and decided to pick another date. Last June they had 35 to 40 people in attendance with a waiting list. He also reported the LMCD's 50th anniversary creates a great opportunity to increase its visibility. He suggested that instead of holding their own celebration event, they participate in events that already take place around the lake. They could put together a meeting in a box that includes promotional materials for the LMCD. He referred to page 85 of the meeting packet and highlighted the suggested steps for Board participation. The could include items to either sell or use as a promotional incentive for a donation. He requested the Board consider if they are comfortable with the Committee pursuing this option, which would include an approximate budget of \$2,500. He noted they like the throwable cushion because every boat must have one. Their next meeting will be on April 10 at 5:00 p.m. at Minnetonka Community Center.

Thomas inquired if the Board would be willing to represent the LMCD at the respective City's celebrations. He noted this will require some enthusiasm from the Board or they may have to find another way to celebrate their 50th anniversary.

Shuff responded she has already contacted her City and they suggested an event that takes place in the fall.

Thomas stated he and Shuff have been at the Tonka Bay event in the past and it was fun.

Baasen suggested the Board provide Schleuning with the dates of their City's event. The 50th anniversary is a good catalyst to increase their exposure, which needs to happen for them to obtain more revenue.

Hoelscher commented it is a great idea.

Zorn stated she likes the idea of having a calendar of events to see where she can help out. Shorewood has a winter fest, but no events in the summer

Baasen stated Rich also suggested they also have donation boxes in marinas, stores, and at these festivals. He stated if members are uncomfortable with participating in their City's event, they should find someone who can help out.

Strategic Plan Subcommittee: None.

16. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:45 p.m.

James Jay Green, Chair

Ann Hoelscher, Secretary