

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, April 23, 2008
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:10 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; David Gross, Deephaven; Chris Jewett, Minnetonka; Steve Johnson, Mound; Jeff Morris, Excelsior; Bill Olson, Victoria; Kelsey Page, Greenwood; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Doug Babcock, Tonka Bay; Dennis Klohs, Minnetonka Beach; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Richard Siakel, Shorewood.

3. APPROVAL OF AGENDA

MOTION: Jewett moved, Tanner seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen stated that Upper Minnetonka Sailing School was sponsoring an event that the Board was invited to attend. Further information will be forwarded once it is received.

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

Ms. Margie Oxborough, 5420 Three Points Blvd., stated that she was President of the Seahorse Condominium Association. She believed that there were some discrepancies in the Board approval of the 2007 multiple dock license application last fall, in particular the amended 1987 slip size report, and she requested that discussion of these discrepancies take place at the May 14th LMCD Board Meeting.

Whalen stated that she had recently met with representatives of Seahorse Condominium Association to discuss the discrepancies referred to by Oxborough. At that time, the Association requested that this be placed on the May 14th LMCD Board Meeting agenda and Whalen stated that this request should be made under "Public Comments" at this meeting.

Gross arrived at 7:12 p.m.

Nybeck updated the Board on the communication to date with the Association. A letter was recently sent to them outlining the proper application available to bring these discrepancies forward to the Board. Nybeck reviewed the following three applications: First, there is a renewal (without change) multiple dock license application. He believed that this application was only appropriate if the

Association agreed with the Board's decision from last September. Second, there is a new multiple dock (with minor change) license application. He believed that this was not the proper application because this application requires the multiple dock facility to be in conformance with LMCD Code, which the Association does not comply with. Third, there is a reconfiguration of non-conforming multiple dock license application. This is the proper application for the Association to submit to the LMCD for the Board to consider the discrepancies. A concern has been raised about the four foot overhang restriction for slips approved through this application process. If the Board deems appropriate, there is some limited ability to potentially waive the four-foot overhang restriction, on a one time basis, if it concurs with the Association's assessment of the discrepancies.

Whalen asked Nybeck what would happen if the Association presented their concerns without an application.

Nybeck stated the Board, in the past, has generally considered changes to a multiple dock facility through some form of an application. He believed that some of the discrepancies to be raised by the Association were raised last September when the Board approved their 2007 renewal, without change, multiple dock license. At that time, staff recommended that the changes should be completed by last October 15th. Staff believed that this was adequate time for the Association to make the necessary changes to the dock and LMCD staff had concerns that the necessary changes and survey work would not be completed by the May 15th deadline established by the Board.

Oxborough stated that once the discrepancies were found, the Association was unsure of which measurements to proceed with. Additionally, the Association has concerns about their grandfathered status and the impact that the four foot overhang restriction would have on them.

Nybeck stated that communication amongst the members of the Association has proven to be a challenge because there have been numerous contacts rather than the typical one contact. There are at least two factions at the Association and he believed that the public hearing requirement associated with the reconfiguration of non-conforming multiple dock license application would be appropriate because of this.

LeFevere concurred with Nybeck's recommendation on the application process. If the Board concluded that evidence provided by the Association warrants a different application process, the Board could make the necessary adjustments at that time.

The Board discussed the application process to consider the discrepancies referenced by Oxborough. The consensus was that they agreed with Nybeck's recommendation that the reconfiguration of non-conforming multiple dock license application was the proper process. Oxborough was encouraged to work with staff on the timely submittal of this application so that it could be considered at the May 14th LMCD Board Meeting.

Gross arrived at 7:12 p.m.

6. **APPROVAL OF MINUTES-** 3/26/08 LMCD Board Planning/Workshop Session
4/09/08 LMCD Regular Board Meeting

MOTION: Tanner moved, Johnson seconded to approve the minutes from the 3/26/08 Board Planning/Workshop Session as submitted.

VOTE: Ayes (8), Abstained (1, Gross); motion carried.

MOTION: Gross moved, Jewett seconded to approve the minutes from the 4/09/08 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (8), Abstained (1, Morris); motion carried.

7. APPROVAL OF CONSENT AGENDA

Whalen stated that Nybeck had requested that agenda items 7F and 7G be removed from the consent agenda. She questioned whether the Board would like to remove any additional agenda items from the consent agenda.

Jewett moved, Morris seconded to approve the consent agenda as amended, removing agenda items 7F and 7G. Motion carried unanimously. Items so approved included **7A, LMCIT Liability Coverage-Waiver Form**, staff recommends that the Board approve a motion that the LMCD does not waive the monetary limits on municipal tort liability established by Minnesota Statutes 466.04; **7B, Audit of vouchers (4/16/08 – 4/30/08)**; **7C, March financial summary and balance sheet**; **7D, 2008 EWM Harvesting Program**, staff recommends awarding the Truck Hauling Bid as outlined in the staff memo, dated 4/17/08; and **7E, 2/8/08 EWM/Exotics Task Force Minutes**.

8. ITEMS REMOVED FROM THE CONSENT AGENDA

7F. Gary Knight, approval of draft Findings of Fact and Order approving a dock length and side setback variance at 16915 Grays Bay Blvd.

7G. Bill and Julie Rolfe, consideration of draft Findings of Fact and Order approving a dock length and setback variance at 16919 Grays Bay Blvd.

Nybeck stated that condition 2d) was included in both draft Findings of Fact and Order, which was not consistent with the Board discussion at the previous meeting. Nybeck state that he and LeFevere believed that the Board might want to consider this condition. He asked LeFevere for further clarification.

LeFevere stated the draft Findings were identical, except for the difference in outer side setbacks. Item 2d.) provides the applicants the ability to obtain consent and adjust their dock use area with the neighboring properties on the outer limits. When doing such, the applicants abandon their rights to the variance at that time and fall under normal riparian rights. He stated that this contradicted previous Board discussion and this was the reason why these draft Findings were removed from the consent agenda. If the Board does not agree with this condition, the Board could remove it from the draft Findings and not allow the applicants to deviate from the variance. He expressed concern about the Board creating an ambiguous situation.

Whalen stated that she recalled Board member Babcock's previous concerns in providing for such option was placing burden on the outer neighboring property owners.

The Board discussed dock use area examples with and without the use of the dock length and side setback variances.

MOTION: Gross moved, Page seconded to approve the draft Knight and Rolfe Findings of Fact and Order as amended, removing condition 2d).

LeFevere re-stated the options for the Board should it decide to leave condition 2d) in the draft Findings. However, if the Board approved the removal of condition 2d), he advised the Board to go one step further and document that the Findings prohibit adjustments of side setback requirements, as allowed by LMCD Code, and that docking and boat storage at both of these sites must be contained within the dock use areas as established by the Variance Orders.

Whalen expressed an interest to leave condition 2d) in the draft Findings.

VOTE: Ayes (2; Gross and Page), Nays (6), Abstained (1, Jewett); motion failed.

MOTION: Tanner moved, Morris seconded to approve the draft Gary Knight Findings of Fact and Order as submitted.

VOTE: Ayes (8), Abstained (1, Jewett); motion carried.

MOTION: Morris moved, Johnson seconded to approve the draft Bill and Julie Rolfe Findings of Fact and Order as submitted.

VOTE: Ayes (8), Abstained (1, Jewett); motion carried.

9. PUBLIC HEARINGS

A. TRBK, Inc., new on-sale intoxicating liquor license applications for the charter boats Queen of Excelsior and Queen of Excelsior II.

Whalen asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 4/18/08, which summarized a request for new intoxicating liquor licenses, with Sunday option, for the newly acquired charter boats Queen of Excelsior I and II. He recommended that the Board approve the new on-sale intoxicating liquor license applications, with Sunday option, and a full refund of the \$3,000 preliminary investigation deposit. He entertained questions and comments from the Board.

Whalen opened the public hearing at 7:53 p.m. There being no comments, she closed the public hearing at 7:54 p.m.

MOTION: Jewett moved, Morris seconded to: 1) approve the 2008 TRBK, Inc. new, on-sale, intoxicating liquor license applications, with Sunday option, for the charter boats Queen of Excelsior I and II, 2) approve a full refund of the \$3,000 preliminary

investigation deposit, and 3) approve the cities of Excelsior and Wayzata as ports of call.

VOTE: Motion carried unanimously.

- B. City of Orono**, new multiple dock license application for the installation of four docks for transient storage at Big Island Park.

Whalen asked Harper to provide an update on this agenda item.

Harper reviewed his staff memo, dated 4/18/08, which summarized the new multiple dock license application. The applicant has proposed four transient docks, with 15 proposed Boat Storage Units (BSUs), on approximately 8,400' of continuous 929.4' shoreline. He highlighted three LMCD Code Sections to evaluate the application. These included: 1) Code Section 2.03, subd. 1- outlines multiple dock license requirements, 2) Code Section 1.02, subd. 28- defines a multiple dock license, and 3) Code Section 2.01, subd. 1- outlines authorized dock use area requirements. He recommended that the Board approve the 2008 new multiple dock license application, subject to: 1) the Board being comfortable with the hand drawn site plan and 2) all watercraft must be stored within 100' from the 929.4' shoreline. He entertained questions and comments from the Board.

Gross asked Harper to confirm that all of the transient BSUs would be available for the use of the general public.

Harper stated that he understood the BSUs to be available for the use of the general public.

Mr. Gabriel Jabbour stated that he was representing the City of Orono. The Veteran's Camp was originally acquired in 1975 and considered for sale in 1984. However, that sale was not finalized until three years ago to the City of Orono, with the help of a grant from the State of Minnesota and the partnership of the MCWD. The legislature has expressed concern that the public have continued access to the Big Island Park. The City of Orono has assured access will be provided, including the use of the Minnehaha by Memorial Day. He confirmed that the Park was available for use of the general public and that no fees would be obtained. He acknowledged that the park was also identified as such in the LMCD Management Plan. He commented that this was the first multiple dock license secured by the City of Orono from the LMCD. He entertained questions and comments from the Board.

Whalen complimented the efforts of the City of Orono and Jabbour on this project.

Tanner asked Jabbour what supervision would be provided, such as a caretaker.

Jabbour stated supervision on Big Island was a challenge. There currently is not seven days a week, 24 hours per day supervision. However, discussions have taken place with the Three Rivers Park District and the Sheriff's Water Patrol to assist the City of Orono in the supervision of this site.

Suerth asked Jabbour how they would monitor the transient use.

Jabbour stated that the park would be operated similar to all other parks in the City of Orono, with

the exception that there are transient docks that would not be allowed to be used for overnight parking.

Jewett reminded the Board that the Minnetonka Yacht Club Sailing School works in cooperation with the City of Orono to provide transportation of children to an environmental camp held annually in the summer months.

Whalen opened the public hearing at 8:05 p.m. There being no comments, she closed the public hearing at 8:06 p.m.

MOTION: Gross moved, Page seconded to approve the City of Orono new multiple dock license application for the 2008 season, subject to all watercraft being stored within 100' from the 929.4' shoreline.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A. Chair update on LMCD Environmental Committee

Whalen asked Gross to provide background on this agenda item.

Gross stated that Nybeck would be presenting for him this evening.

Nybeck stated public testimony of two draft environmental ordinance amendments was received by the Board at their February 13th meeting. No action was taken by the LMCD at that time and the ordinance amendments and public comments were referred back to the LMCD Environmental Committee. A committee meeting was conducted in the LMCD office on April 17th, with the objective to discuss how to proceed procedurally from that point forward. He stated there were a number of stakeholders that attended the meeting. In response to that meeting, the committee has three recommendations for the Board to consider. These included: 1) to consider establishing a Technical Advisory Committee (TAC), 2) to consider establishing a Citizens Advisory Committee (CAC), and 3) to consider declaring a moratorium on new multiple dock license applications, which should be narrow in focus. He entertained questions and comments from the Board.

The Board discussed the three recommendations at length. Some of the comments included:

- Defining the stakeholders and how they might serve on the TAC and the CAC.
- The need to establish guidelines for both committees, as well as the LMCD Environmental Committee.
- Acknowledgement that the Environmental Committee could solicit professional and citizen input without establishing the other two committees.
- Whether concerns raised by stakeholders at the last LMCD Environmental Committee justified the need for two new committees.
- Whether there was a need for a moratorium and how the public might perceive this negatively.
- The Board makes the decisions for the LMCD, with an alternative approach to obtain technical advise and to a make a decision based on this advise.

Nybeck stated that he had received some sample information on how the MCWD establishes committees for technical and citizen input for potential rule changes. If the Board decides to establish these additional committees, he commented that administration of these committees would be time consuming and that some of the 2008 projects established earlier in the year by the Board might have to be compromised. If the Board believed that nothing would come back as a result of establishing these committees, it should consider not establishing them because of the current workload of LMCD staff.

Gross stated that the Board was being asked to consider establishing the three recommendations being proposed by the LMCD Environmental Committee. If the Board had a desire to proceed with these three recommendations, further details could be worked out by the LMCD Environmental Committee, with recommendations to be made back to the Board at a future meeting. He recommended that each Board member should then be charged with communicating to their member city.

Suerth recommended that the Board give the Environmental Committee the approval to move forward to investigate the possibility of enacting their proposed recommendations. The Board concurred with Suerth's recommendation on the basis that the committee acknowledge the discussion conducted at this meeting.

Whalen questioned whether there should be Board discussion on the consideration of a moratorium.

The Board discussed a moratorium and its possible parameters. The consensus of the Board was that LeFevere and Nybeck could possibly assist the LMCD Environmental Committee on whether there was a need for a moratorium, including possible parameters.

Gross asked that one additional Board member be appointed to the LMCD Environmental Committee since former LMCD Board member Pete Nelson used to serve on this committee. He stated that the three recommendations would be discussed at the next LMCD Environmental Committee Meeting, with more detailed recommendations planned for the May 14th Board meeting.

- B. New LMCD Board Member Orientation (The Board may vote to decide to conduct this agenda item after adjourning the Board meeting)

The Board chose to conduct this agenda item after adjourning the meeting.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated that some years ago, the Board used to conduct Workshop Sessions on the lake to get a better understanding of recently made decisions and potential issues that the Board might address. In recent years, the Board has scheduled a more social tour on a charter boat in June. He questioned whether the Board would like to re-establish the Workshop Session on the lake or continue the charter boat ride on the lake.

Whalen believed that there was merit for the Board to re-establish the Workshop Session on the lake; in particular for the new LMCD Board members.

The Board discussed this and the consensus was to re-establish the Workshop Session on the lake and continue the more social tour on a charter boat.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:43 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary