

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, June 11, 2008
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay (arrived at 7:08 p.m.); David Gross, Deephaven; Chris Jewett, Minnetonka; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Kelsey Page, Greenwood; Richard Siakel, Shorewood; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Bill Olson, Victoria.

3. APPROVAL OF AGENDA

Whalen stated that a request has been made to table agenda item 10B.

MOTION: McDermott moved, Gross seconded to approve the agenda as amended, removing agenda item 10B from the agenda.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen stated she would like to conduct a Board Workshop/Planning Session prior to the June 25th LMCD Board Meeting to discuss two issues, provided it could be well attended by the Board. Based on the feedback, Whalen stated that she would schedule a Board Workshop/Planning Session for 5:30 p.m. on June 25th.

5. APPROVAL OF MINUTES- 05/14/08 LMCD Regular Board Meeting

MOTION: McDermott moved, Gross seconded to approve the minutes from the 05/14/08 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (12), Abstained (1, Tanner); motion carried.

6. APPROVAL OF CONSENT AGENDA

Whalen stated that she would like to remove item 6B from the consent agenda. She questioned whether the Board would like to remove any additional agenda items from the consent agenda.

Jewett moved, Suerth seconded to approve the consent agenda as amended, removing agenda item 6B. Items so approved included: **6A**, Audit of vouchers (6/1/08 – 6/15/08); **6C**, **Libbs Lake Boat Club**,

staff recommends Board approval of 2008 renewal (without change) multiple dock license application that has been paid in full; and **6D**, Approval of draft Lakeland Boat Storage letter.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

6B. Minnetonka Beach (Dock Site 10), approval of draft Findings of Fact and Order approving a dock length and side setback variance.

Whalen stated that further communication had transpired on agenda item 6B and she asked LeFevere to provide an update.

LeFevere directed the Board to a letter in their handout folder from Peter Beck, legal counsel representing Bill and Anastasia Hoeft. Additionally, the City of Minnetonka Beach and the LMCD have received notice that Dr. William Hite and Lisa Smith have sought a temporary restraining order. The restraining order for the LMCD would have prevented the LMCD from approving the Findings of Facts and Order presented at this meeting. As of June 10th, the Court denied the Restraining Order against the LMCD and LeFevere advised the Board that there are no legal reasons why the Board could not approve the Findings of Fact and Order. He reminded the Board that these draft Findings were prepared by LMCD staff at the Board's direction; therefore, the Board should feel comfortable with them and could make any changes deemed appropriate.

Nybeck stated that word "boatlifts" should be inserted after the word "dock" in condition 2.

McDermott asked why the draft Findings did not require the gas line to be marked.

LeFevere stated that there was Board discussion at the May 28th Board meeting to contact Gopher One to locate the gas line. As testimony documented the gas line is visible and lying on the lake bed, he did not believe a specific condition to determine the location using Gopher One was needed.

Page stated that he understood, from prior discussion, that the gas line was to be marked with buoys for other reasons as noted in condition 5 of the draft Findings.

Klohs stated the marking of the gas line had been done.

Jewett stated that he understood prior Board discussion required a qualified professional from Centerpoint Energy to be contacted to advise the Board on the safety of the gas line for liability purposes. He did not agree with the proposed draft Findings that would allow the dock to extend 120' from the 929.4' shoreline.

Nybeck stated that there was a friendly amendment to the motion that was approved at the May 28th Board meeting requesting that a contact be made to Gopher One. Minnetonka Beach city council member Tom Seuntjens indicated that Minnetonka Beach had similar previous conversations with Gopher One. Therefore, LMCD staff did not follow-up with Gopher One and he offered to make further contacts, should the Board feel it is warranted.

The Board briefly discussed specifics as to the marking of the gas line. The consensus was that it should be marked within the authorized dock use area for Dock Site 10.

LeFevere summarized the two changes that have been proposed to the draft Findings. These include: 1) to add the words "boatlifts" in condition 2, and 2) to add the following words at the end of condition 5 "by a qualified professional and install buoys to mark the location of the pipeline within the dock use area."

Babcock stated he would not support the draft Findings because the four foot water depth standard for dock length variances was at 100' at Dock Site 10 rather than 120'. However, he stated that he would support the storage of two watercraft at Dock Site 10, which would not need further variance from LMCD Code for dock length.

MOTION: Siakel moved, McDermott seconded to approve the draft Findings of Fact and order for Minnetonka Beach (Dock Site 10) as amended, with the two changes that were summarized by LeFevere.

VOTE: Ayes (8), Nays (5; Babcock, Jewett, Johnson, Page, and Tanner); motion carried.

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

There were no comments from the public on subjects not on the agenda.

9. PUBLIC HEARINGS

- A. Wayzata Yacht Club (Site 2),** new multiple dock license, special density license, and variance applications for the installation of 42 BSUs and the construction of a bridge.
- B. Wayzata Yacht Club (Site 3),** new multiple dock license and special density license applications for the installation of 27 BSUs.
- C. Wayzata Community Sailing Center,** new multiple dock license, special density license, and variance applications for the installation of 16 Boat Storage Units (BSUs) and the construction of a bridge.
- D. Wayzata Community Sailing Center & Wayzata Yacht Club (Site 2),** bridge application between these two sites.

Whalen stated that all public hearings would be conducted at the same time as the applications are for the Wayzata Yacht Club and Wayzata Community Sailing Center. She asked Harper for background on these agenda items.

Harper reviewed his staff memo, dated 6/6/08, which summarized the applications submitted by the applicant for the Wayzata Yacht Club and Wayzata Community Sailing Center. He highlighted seven LMCD Code Sections to evaluate the applications. These included: 1) Code Section 2.03, subd. 7- new multiple dock license and public hearing requirements, 2) Code Section 2.01, subd. 1- authorized dock use area requirements, 3) Code Section 2.13, subds. 3 and 4e- bridge requirements, 4) Code Section 1.07- outlines the variance from LMCD Code process, 5) Code Section 2.02- subd. 7- straight-line measurement requirements, 6) Code Section 2.05- subd. 11- outlines exceptions to density requirements for special density licenses for unrestricted watercraft stored on land, 6) Code Section 2.02, subd. 1- outlines the 1:50' General Rule, and 7) Code Section 2.05, subd. 2- outlines special density allowances and public

amenity requirements. He reviewed Environmental Quality Board rules and mandatory Environmental Assessment Worksheet (EAW) requirements, pointing out that none of the three sites triggered the need for a mandatory EAW. He reviewed comments received from the MN DNR, MCWD, and the City of Wayzata per MN DNR General Permit 97-6098. He believed that draft Findings of Fact and Order could be prepared for the special density license applications, subject to finalizing the public amenities. He also believed that draft Findings could be prepared for approval for the variance applications, subject to defining hardships and difficulties. He stated that if the Board was inclined to approve such variances, staff believed that the countable shoreline at both Sites 2 and 4 need to be reduced. He believed that the decision on the variance application would dictate approval on the bridge application. He entertained questions and comments from the Board.

Nybeck stated that there was a residential mooring buoy installed in front of Site 4. He has discussed this with Bert Foster and he has agreed to removed it, pending Board approval on the applications.

Whalen asked how many additional new slips and slides were being proposed.

Harper stated that the applicant was proposing an additional 59 slips and slides at Site 2, 3, and 4.

Tanner stated that when the application was made for the Wayzata Sailing School, parking was requested. As part of that request, the City of Wayzata required that the parking would have to be grated and resurfaced with a drainage system. The neighbors filed a petition with Wayzata to prevent parking. Based upon city staff review of the project, it was not possible to continue with the application process without the parking being resurfaced. As Chairman of the Wayzata Planning Commission, Tanner had asked Wayzata staff if the parking could be broken up so that the Sailing Foundation could have the conditional use permit for the sailing school. He was addressing Wayzata conditional use permit requirements when he was interrupted by a power outage.

Whalen recessed the meeting due to the power outage. She reconvened the meeting at 8:15 p.m., although the power outage still existed. She recommended that the agenda item for the Wayzata Yacht Club and Wayzata Sailing Foundation be tabled to the June 25th LMCD Board Meeting. However, she believed that Board action was necessary on agenda items 10C and 10D at this meeting.

MOTION: Babcock moved, Siakel seconded to table the Wayzata Yacht Club and Wayzata Community Sailing Center applications to the June 25th LMCD Board Meeting, including public hearings.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A. City of Deephaven, discussion of representation on LMCD Board of Directors.

MOTION: McDermott moved, Gross seconded to table discussion of this agenda item to a future LMCD Board of Directors meeting.

VOTE: Motion carried unanimously.

B. Review of draft 2009 LMCD Budget.

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that a meeting was conducted in the LMCD office on May 29th with representation from a number of the 14 LMCD member cities. In addition, a number of LMCD Board members were in attendance. Some the comments received included: 1) a concern about the proposed 18.3% increase from 2008, 2) a 3.9% levy limit imposed on municipalities with a population over 2,500, 3) whether \$30,000 should be included in the budget for a coordinated herbicide treatment program, and 4) whether \$20,000 was too much to include in the budget to increase the LMCD's General Reserve Fund. He provided three different spreadsheets for Board discussion on reductions to the overall levy to the 14 LMCD member cities. These included: 1) a \$30,000 decrease, which would result in a 8.9% levy increase from 2008, 2) a \$40,000 decrease, which would result in a 5.8% levy increase from 2008, and 3) a \$45,000 decrease, which would result in a 4.2% levy increase from 2008.

MOTION: Gross moved, Klohs seconded to approve the draft 2009 LMCD Budget as amended by: 1) eliminating the \$30,000 line-item for a coordinated herbicide treatment, and 2) to reduce the line item for the General Reserve Fund from \$20,000 to \$10,000.

Babcock proposed a friendly amendment to maintain the General Reserve Fund line-item at \$20,000 rather than reducing it to \$10,000. Gross and Klohs did not accept this.

Gross and Klohs withdrew their motion.

MOTION: Babcock moved, Johnson seconded to approve the draft 2009 LMCD Budget as amended by eliminating the \$30,000 line-item for a coordinated herbicide treatment project.

Gross proposed a friendly amendment to also decrease the line-item for the General Reserve Fund from \$20,000 to \$10,000. Babcock and Johnson did not agree to this.

VOTE: Ayes (2; Babcock and Scanlon), Nays (11); motion failed.

MOTION: Gross moved, Klohs seconded to approve the draft 2009 LMCD Budget as amended by: 1) eliminating the \$30,000 line-item for a coordinated herbicide treatment, and 2) to reduce the line item for the General Reserve Fund from \$20,000 to \$10,000.

Babcock proposed a friendly amendment that the draft 2009 LMCD Budget would be approved and certified if a quorum were not present at the June 25th LMCD Board Meeting. Gross and Klohs agreed to this.

VOTE: Ayes (12), Nays (1, McDermott); motion carried.

D. South Lake Office Building, approval of draft office lease.

Whalen stated that she and two other LMCD Board Officers had recently visited a few potential sites to relocate the LMCD office later this summer. Based on these on-site visits, the consensus was to enter into discussion with the South Lake Office Building on a potential office lease for the LMCD. She asked Nybeck for further background.

Nybeck reviewed his staff memo, dated 6/6/08, that provided further background on the current LMCD lease and criteria used in locating potential new LMCD office space. He reviewed a rent assessment spreadsheet comparing proposed expenditures to budgeted expenditures. In 2008, he believed that there would be a surplus of approximately \$1,700, which could be used for moving expenses. In 2009, actual expenditures would be within 0.6% of budgeted expenditures. A draft office lease has been finalized and he believed that there was a need to approve it this evening since the new office space would involve a build out and the current lease expires at the end of August.

LeFevere clarified that the terms of the second five-year lease would be the same as the first. This includes: 1) a three percent adjustment annually on the base rent, and 2) a maximum adjustment of three percent annually on the property taxes and common area maintenance (CAM). This is not properly reflected in Exhibit E and would need to be amended if approved by the Board.

MOTION: Babcock moved, McDermott seconded to approve the draft office lease agreement with South Lake Office Building as amended, subject to including terms for years six through 10 in Exhibit E for the base rent and property taxes/CAM as discussed by LeFevere.

LeFevere updated the Board on two provisions with the draft lease agreement. These included cross indemnity and limitations on the landlord for claims against the LMCD.

Page stated that he would vote against approving the lease agreement because he did not have the ability to review it prior to this meeting.

VOTE: Ayes (12), Nays (1, Page); motion carried.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:54 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary