

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, October 8, 2008
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:04 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; Chris Jewett, Minnetonka; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Kelsey Page, Greenwood; Richard Siakel, Shorewood. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Tom Tanner, Wayzata; Steve Johnson, Mound; Herb Suerth, Woodland. The City of Excelsior has no appointed member.

3. APPROVAL OF AGENDA

MOTION: McDermott moved, Gross seconded to approve the agenda as presented.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen thanked the Board for their participation on the various, active LMCD committees. She encouraged other Board members that had an interest in serving on a committee to consider attending the LMCD Code Review Committee that will be held on Wednesday, October 15th.

5. APPROVAL OF MINUTES- None

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Gross seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (10/1/08-10/15/08); and **6B**, Draft letter to be forwarded to LMCD member cities regarding appointments for 2009.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed from the consent agenda.

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

- **Lake Minnetonka Charter Boat Association (LMCBA)**, Quiet Water Area request for channel off of Cedar Point East on Wayzata Bay

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that the LMCBA requested a Quiet Water Area for Cedar Point East channel at the March 12th LMCD Board meeting. Their request was based on the following four observations: 1) limited site lines, 2) the speed of the watercraft, 3) the overtaking of watercraft to the point of weaving, and 4) the use of inner tubes and wakeboards in this channel area. He reviewed LMCD Code Section 3.02, which outlines the process of establishing a Quiet Water Area on Lake Minnetonka, and a 1986 Quiet Water Policy Statement. Two observations were made by LMCD staff of this area on July 27th and August 1st. Based on these observations, he believed that a lot of traffic uses this channel area, primarily because of the Grays Bay public access. He believed that there were some site lines that were problematic and that the channel can become congested at times. The purpose of this hearing was to gather public input on four options that the Board might consider. These included: 1) maintain the channel as it exists today (with no changes to the buoys), 2) maintain the channel as it exists today but work with Hennepin County to make necessary changes to the buoys to improve public safety, 3) establish the channel as a Quiet Water Area and work with Hennepin County on buoy placement, and 4) close this channel and require the public to travel around the reef area to the north. Sgt. Chris Mathisen from the Sheriff's Water Patrol and Tony Brough from Hennepin County Environmental Services are in attendance to comment on these options and to answer any Board questions.

Whalen opened the public hearing at 7:13 p.m. and asked for testimony for or against the four options outlined by Nybeck.

Mr. Bert Foster, 19150 Park Avenue, stated that he was in attendance to provide comments on behalf of the Wayzata Yacht Club (WYC). He reviewed how sailboats get from Wayzata Bay to Lower Lake North during Thursday evening, Saturday morning, and Sunday (around 12 Noon) race schedules. A similar request was made to the LMCD around 15 years ago for this channel area, which he sat on the Board at that time. The LMCD Board did not approve the request at that time, which he concurred with, because the traffic in this area was not substantial. However, traffic in this area has greatly increased during peak times due to the use of the Grays Bay public access. He believed that this has resulted in a higher incidence of boater discourtesy, including wake issues created by larger watercraft. He believed that public safety has become more of an issue in this area. Two recommendations that he made were: 1) to consider establishing this channel as a Quiet Water Area, and 2) to consider widening the channel area. There has been some disagreement amongst WYC members of whether this would result in boats going around the north side of the reef area and creating congestion in that area. He did not believe that this would occur because the area in question was historically a heavy growth area of milfoil. He questioned whether there were site line issues in this area.

Mr. Hank Graef, representing Custom Charter Cruises, stated that he had been on the lake his entire life and was familiar with this channel area. He believed that this area has been dangerous

for a number of years and he was the individual to bring this matter up to the LMCBA. He believed that this channel area was dangerous because the boats coming from the Grays Bay bridge are navigating at an angle due to the buoy placement, which he reviewed how the charter boats navigate this area by squaring off with the buoys. He spoke in favor of establishing this channel area as Quiet Water because a number of the boats that use this channel area go through it wide open.

Mr. Terry Juengers, representing Lady of the Lake, stated that the LMCBA started discussing this matter about 18 months ago when a number of boats were being passed in this channel area in an unsafe manner. He spoke in favor of establishing a Quiet Water Area in this channel because he believed that this would be a step in preventing something from occurring in a proactive manner.

Mr. Tom Gehl, 3021 Lake Shore Blvd., stated that he lives in the channel between Grays Bay and Libbs Lake. This channel area is established as minimum wake; however, he questioned how effective this is unless it was properly enforced. Large wakes in this channel area, which include being created by local residents, have caused him to protect his shoreline at great expense, without assistance from any governmental agencies. Signage leading into the Grays Bay and Libbs Lake channel states "Minimum Wake or 6 m.p.h.". He believed that 6 m.p.h. creates a large wake and the m.p.h. reference should be removed from the signage. He supported establishing the Cedar Point East channel area as Quiet Water, or something similar, because this was a dangerous area and he had been passed in this channel.

Whalen asked Sgt. Chris Mathisen to comment on enforcement in the Cedar Point East channel area.

Sgt. Mathisen stated that he did not support closing this channel area because he believed the public would still travel through this area, unless a Water Patrol deputy was present. If any of these options were to be considered, he spoke in favor of a Quiet Water Area for this channel. The Water Patrol would enforce a Quiet Water designation in this area to the best of their ability. Otherwise, enforcement could be done on a complaint basis.

McDermott questioned whether verbiage of a specific speed limit was needed on a minimum wake sign.

Mathisen stated that he understood that this might be confusing, although he questioned what could be done to change this. He believed that the vast majority of boats that exceed 5 m.p.h. would be creating a wake greater than a minimum wake.

Whalen suggested that it might be clearer not to have a speed limit on these signs.

Mathisen stated that it might make it clearer, although it would not totally address the confusion. Action on minimum wake violations is usually done through observation rather than through a radar gun.

Jewett stated that one of the options being considered was to close this channel off. He questioned how this could be done and if it had been done in any other area of the lake.

Tony Brough, Hennepin County Environmental Services, stated that danger buoys, which are identified with a "diamond", would not prohibit the public from going through these areas. If the Board would like to close an area to the public, it should be identified with "Boats Keep Out" buoys. There currently are none of these buoys on Lake Minnetonka. He addressed the minimum wake sign previously testified to by Mr. Gehl. He believed that this appeared to be an old sign and he stated that he would work on replacing it with a current minimum wake sign.

Page questioned Mathisen if he had an opportunity to observe this area.

Mathisen stated that he had over 10 years of on and off experience on Lake Minnetonka. Although there have not been documented problems in this channel area, he believed that the activity has increased dramatically with the opening of the Grays Bay public access. He believed that this increased activity in this channel could create some public safety problems in the future.

Page questioned whether charter boats should be restricted from using this channel, in particular because the request has been made by the LMCCA.

Mathisen stated that he did not believe that was the answer because two larger boats could meet in this channel area.

Nybeck stated that he observed three watercraft in this area, which were traveling at a higher rate of speed within 50' to 60' on the east end of the channel. A question for the Board is whether to establish a Quiet Water Area based on accident/citation history or to identify a problematic area and be proactive in addressing this.

Page questioned whether the speed channel near Spray Island and Howards Point Marina had similar circumstances.

Mathisen stated that he believed the logistics of that channel were different and he did not believe that it was problematic.

Babcock stated that he observed charter boats using this channel area this past summer, which conflicts with the testimony this past spring that it was not used by the charter boats. This is conflicting testimony that he believed needed to be resolved.

Whalen stated there has been testimony from the public, Sgt. Mathisen, and LMCD staff that some potential problems exist at this channel area. She believed there was a need to be proactive rather than reactive. Other contributing factors that might impact this channel area include larger and faster watercraft, and the invention of the personal watercraft.

Mathisen stated that the Grays Bay public access is heavily used on the weekends, which he believed doubled or tripled the traffic that uses this channel area.

Scanlon questioned whether the channel could be widened to the north.

Mathisen stated that widening the channel would be of benefit, although he questioned how much wider it could be made.

Brough stated that the channel could be widened to the north, although he could not provide an exact distance, and lengthened to the east and west to improve site lines. These are two options to possibly address this channel area. However, he questioned whether widening the channel to the north would further encourage boats passing each other in this channel, which is currently prohibited by LMCD Code. He believed that the public would comply with navigating between red and green navigational buoys if the channel were to be lengthened.

Juengers stated that he did not recall testimony this past spring that charter boats were not using this channel area. He believed that the issue before the Board was an overall safety issue rather than a charter boat issue.

Soule stated that he made the presentation this past spring on behalf of the LMCBA. Charter boats use this channel area and he did not mean to imply that charter boats do not use this channel area. He believed that the request was made by the LMCBA because charter boats observe the activities of other watercraft when in this area on a more frequent basis.

Page stated that a number of the charter boat representatives have expressed a concern that this channel is dangerous when charter boats are in this channel. He questioned whether the LMCBA has discussed establishing a policy where charter boats would not use this channel.

Soule stated that was a good point that had not been discussed by the LMCBA. Whether there are larger or smaller boats using this channel area, he believed that the issues revolving around this channel were quite evident.

Gross stated that he was a frequent user of this channel and had been passed on numerous occasions. He reported that he had observed a few collisions where the masts of two sailboats going the opposite direction had collided. He believed that this area was dangerous and he questioned Mathisen as to whether there were any reasons not to establish it as a Quiet Water Area.

Mathisen stated that the decision on whether this channel should be a Quiet Water Area was at the discretion of the Board. However, he could not think of any reasons not to do so if that was the desire of the Board. From a Water Patrol standpoint, it did not make any difference either way.

Woodland Mayor Jean Stark stated that she was not a boater, although she had recently been with a group that consisted of a number of boaters. This group supported establishing this channel as a Quiet Water Area and she wanted to pass this on to the Board.

There being no further comments, Whalen closed the public hearing at 7:46 p.m.

Siakel stated that he believed the testimony from the LMCBA was that they were good neighbors and observed a lot of situations in this area. At this channel area, he believed that the issue for the Board to address was the degrees of convergence due to the land mass, which results in some difficulties in seeing oncoming traffic approaching. The demographics have changed in this area, in particular the Grays Bay public access and the municipal dock at this site, and he believed that it made sense to be proactive to prevent an incident from occurring. He suggested that a speed channel marked to north of the reef area, similar to the speed channel on Smiths Bay near the Arcola Bridge, might make sense if this channel were to be established as a Quiet Water Area.

Jewett stated that he was a long time user of the channel area because he is a City of Minnetonka and Grays Bay resident. He did not believe that the channel should be lengthened, although he supported widening it. He supported establishing it as a Quiet Water Area because of the frequency of boats passing each other in this channel, in particular during peak periods. He believed that the Grays Bay public access was a main contributing factor to the heavy use of the channel. He did not support a speed channel to the north of the reef area.

Babcock concurred with Jewett that the channel should not be lengthened. However, he favored widening it rather than establishing it as a Quiet Water Area. He believed that a three-buoy system, in particular along the south site line, made sense and might improve the situation. He did not support a Quiet Water Area at this time.

Whalen and McDermott concurred with the comments made by Siakel and Jewett.

Scanlon stated that he personally supported less governmental regulations, although he saw a need at times. Since there have not been any reported safety issues at this channel for over 20 years, he believed that the first step should be to widen the channel rather than further restricting it by implementing a Quiet Water Area.

MOTION: Gross moved, Siakel seconded to direct LeFevere to prepare a draft ordinance establishing the channel off of Cedar Point East as a Quiet Water Area, subject to working with Hennepin County Environmental Services on widening the channel to the north.

VOTE: Ayes (7), Nays (3; Babcock, Scanlon, and Page); motion carried.

10. OTHER BUSINESS

A. Hennepin County Sheriff's Water Patrol, Report from Sgt. Chris Mathisen on 2008 Lake Minnetonka Boating activities

Whalen asked Mathisen for background on this agenda item.

Mathisen made the following comments:

- His involvement with the Water Patrol started in 1992 through 1996 as a special deputy. From 1998 through 2002, he served as a licensed deputy. This past April, he was promoted to his current position of Sergeant.
- He reviewed enforcement conducted by the Water Patrol this summer. 77% of their time was spent on Lake Minnetonka, which he believed was a large percentage since there are 104 lakes and three rivers covered in Hennepin County.
- Based on discussion with other counties around the Twin Cities, there was a huge decrease in boating activity this past summer on the Mississippi and St. Croix Rivers, primarily because of the poorer economy. On Lake Minnetonka in 2008, the activity of the Water Patrol was actually up.
- Boating While Intoxicated (BWI) arrests are up from 38 in 2007 to 76 in 2008. He partially attributed this increase in BWI arrests in 2008 to a reduced amount of patrol times in August of 2007 due to the 35W Bridge collapse. With this increase in BWI arrests comes additional time for testifying in court and the actual processing after the arrest. He attributed this increase on Lake Minnetonka to the following reasons: First, the weather in 2008 was good on weekends with no total washouts. Second, he believed that the public was more willing to stay nearby rather than to trailer the watercraft to other bodies of water because of fuel prices. A number of these watercraft anchored during the day with the operator drinking all day. Once they pulled up anchor to go home, a number of the BWI arrests occurred.
- There was a huge increase in the faster boats, cigarette type boats with twin engines. These types of boats had a tendency to anchor and further issues arose because of noise.
- There were four boats that fled deputies in 2008. Historically, he could only remember one, although three of these four incidents resulted in arrests with the confiscation of the boat for the fourth incident. Charges are pending on all four and the boats are in the seizure process.
- There was a 50% increase in citations and verbal warnings in 2008. He attributed this to an increase in new boaters to the lake that were either not aware of the rules or did not care.
- Personal and property accident injuries were down in 2008, nine compared to 24 in 2007. He attributed this to anchoring in 2008.
- There were three fatalities on Lake Minnetonka in 2008, which alcohol played a part in all of them.
- Through August, there are 20 active special deputies with an additional 11 candidates to be sworn in during October. Interviews have recently concluded for the new class of special deputies and 12 will begin the extensive training. In 2008, these 20 special deputies have donated over 4,000 hours to Lake Minnetonka. Without them, these statistics would be much less and he questioned whether Lake Minnetonka would be as safe.
- He entertained questions and comments from the Board.

The Board asked a number of questions that Mathisen addressed. These included:

- Was the increase in citations a result of increased incidents or better enforcement.
- What were the top three violations and what possibly could be done to address them in the future.

- Were there age group trends for fleeing and BWI arrest?
- What was the probable cause for BWI arrests?

B. Al and Alma's, update from Jay Soule on possible changes to LMCD Code Section 3.01, subd. 22 that defines maximum size of watercraft on Lake Minnetonka.

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that at the September 24th Board meeting, Jay Soule from Al and Alma's had requested that the LMCD Board consider amending the LMCD Code pertaining to the maximum boat size restriction of 20' x 70'. This request was made to take into consideration the new federal regulation's proposed weight increase for passengers that would result in a decrease in current passenger capacity. At the request of the Board, Soule has researched how much the boat size would need to increase to current passenger capacity standards, which were discussed at a recent meeting with LMCD staff and Vice Chair Tanner.

Soule stated that he was present to provide an update to the Board's request. He stated that the newly proposed regulations are available for review by the Federal Register and that he offered to email the document to the Board. Summary of his findings included the following information: 1) what the maximum width would need to be to reduce the length of the watercraft, 2) what it would take to lower the center of gravity (specifically addressing the integrated hull tank and it's design), 3) the integration of bow thrusters and pilot house wing stations for safer maneuverability, and 4) whether charter boats should be subject to same size restrictions as recreational boats. He entertained questions and comments from the Board.

The Board had a number of comments and questions, which Soule addressed. These included: 1) what Al & Alma's deadline was to place their order for a new charter boat, 2) does length of the watercraft effect navigability, 3) the concern that if the Code were amended to accommodate 90' long commercial watercraft, documentation should be provided to include navigability to prevent future boats going into restricted waters with a single engine and no thrusters, 4) how height factors into the manufacturing of a new watercraft and the possibility of meeting the new regulations by balancing the ballast instead of changing the size of the vessel, 5) what the proposed date is for the adoption of the new federal regulations, 6) the possibility of drafting an ordinance amendment to specifically address recreational boats and commercial boats separately, 7) the consideration of limiting access of commercial boats in specific areas of the lake, and 8) confirmation that the larger commercial boats could be stored within their dock use area. In conclusion to the questions listed above and Soule's responses, it was the consensus of the Board for staff to work with Tanner, LeFevere, and Soule in drafting an ordinance amendment for consideration at the next Board meeting; taking into consideration the Board discussion at this meeting.

C. Appointment of nominating committee for 2009 LMCD Board Officers.

Whalen solicited volunteers to serve on the nominating committee for the 2009 Board Officers.

Babcock, Jewett, and Page volunteered to serve on the nominating committee, with a slate of recommendations to be provided for Board consideration at one of the two meetings planned for January.

- D. Discussion of possible dates for Annual Meeting with the Hennepin County Sheriff's Water Patrol.

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

Nybeck stated that Lt. Carver, based on availability of Sheriff Stanek, has recommended a meeting date of November 25th at 7:30 a.m. at the Water Patrol office in Spring Park.

The consensus of the Board was to identify another meeting date other than November 25th due to a short business week. Two other possible meeting dates, which Mathisen would bring back to Lt. Carver and Sheriff Stanek for confirmation, were December 8th and 9th.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:09 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary