

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, February 25, 2009
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:06 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Chris Jewett, Minnetonka; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Kelsey Page, Greenwood; Herb Suerth, Woodland; Dick Woodruff, Shorewood. Also present: Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Doug Babcock, Tonka Bay. The City of Excelsior has no appointed member.

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 made two Chair announcements. First, the February 18th LMCD Strategic Planning Meeting went very well and there is a need to schedule a follow-up meeting. The consensus of the Board was to schedule the meeting for March 18th, at 5:30 p.m., in the LMCD office. Second, she stated there were guest columns recently published in The Laker and the Lakeshore Weekly News by LMA Executive Director Dick Osgood. These guest columns discussed the implementation of public access fees for Lake Minnetonka. Due to the LMCD receiving negative feedback regarding the subject, she wanted to publically state that: 1) the statements made within the guest columns were not a position of the LMCD, adding that there seems to be some confusion that the two organizations are one in the same, 2) that the LMA is a private lake association and that the LMCD is a public agency represented by the 14 member cities surrounding Lake Minnetonka, 3) that it has not been the LMCD's policy, practice, or position to charge public access fees to Lake Minnetonka, and 4) Lake Minnetonka is an accessible public body of water and that past LMCD Boards have worked very hard to make the lake accessible to the public.

Jewett recommended that an agenda item be scheduled in the near future to discuss this matter.

Nybeck stated that he would schedule an agenda item in the near future, with an invitation to the MN DNR to lead the discussion on it.

5. APPROVAL OF MINUTES- 01/28/09 LMCD Regular Board Meeting

Whalen recommended that the third paragraph on page 10 be deleted and that the following be inserted in its place "The consensus of the Board was for the applicant to work with representatives of Lord Fletchers and the City of Spring Park to see what could be worked out regarding the drainage issues and to have Scanlon, as Spring Park representative, assist in the matter."

MOTION: McDermott moved, Scanlon seconded to approve the minutes from the 01/28/09 LMCD Regular Board Meeting as amended, inserting the change as proposed by Whalen.

VOTE: Ayes (11), Abstained (1, Jewett); motion carried.

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Olson seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (02/01/09 – 02/15/09) and (02/16/09 – 02/28/09); **6B**, January financial summary and balance sheet; **6C, Sailors World**, draft Findings of Fact and Order approving variance application to amend adjusted Authorized De-icing Area approved in 2006; **6D, Resolution 119**, a resolution designating appointments for 2009; **6E**, 12/14/08 EWM/Exotics Task Force Meeting Minutes, and **6F, 2009 Multiple Dock Licenses**, staff recommends Board approval of renewal (without change) multiple dock license applications for Crane Island Association, Herzog Acres Assoc., Gideons Point HOA, Dr. Glen Nelson, and Ridgewood Cove POA that have been paid in full.

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 public comments.

9. PUBLIC HEARINGS

There were no public hearings scheduled.

10. OTHER BUSINESS (7:17)

- A. Minnehaha Creek Watershed District**, presentation of 2008 Water Quality Sampling Program by Dr. Udai Singh.

Whalen welcomed Dr. Singh on behalf of the Board and asked for an overview of the 2008 Water Quality Sampling Program.

Dr. Singh made the following comments:

- He acknowledged the assistance of MCWD staff members on this project, including Kelly Slattery who was in the attendance.
- He provided the Board with a summary of 2008 hydrological data within the MCWD. This

included:

- Precipitation measurements at eight locations within the Watershed District, including new maintenance upkeep on the monitoring gauges.
- Stream flow monitoring and water quality sampling at 11 locations on Minnehaha Creek and 29 locations in the Upper Watershed, covering all flows in and out of Lake Minnetonka.
- The use of a state-of-the-art Flow Tracker device to measure stream flows.
- The measuring of water temperature (Temp), dissolved oxygen (DO), Phosphorous (pH), and conductivity via a YSI multi probe meter.
- Water quality samples were collected at various intervals for total phosphorous (TP), soluble reactive phosphorous (SRP), total suspended solids (TSS), total nitrogen (TN), and chloride/fecal coli form. Chloride was added in 2008 as the Minnehaha Creek was recently listed as in impaired body of water for chloride.
- Bi-weekly water quality samples were also collected on Minnehaha Creek for E. coli analysis in June and October (weekly in July, August, and September).
- Lake water quality was measured for 36 lakes within the MCWD, including 26 sites on Lake Minnetonka. He summarized the following 2008 hydrological data for Lake Minnetonka:
 - All 26 sites were monitored bi-weekly.
 - YSI probe measurements for DO, Temp, pH, and conductivity were taken at each meter depth.
 - Water quality samples from one meter below water surface, as well as one meter from the bottom of the lake, were analyzed for TP, SRP, total dissolved phosphorous, TN, total dissolved nitrogen, NO₃/NO₂, and NH₃. To study the ecosystem of the lake, Phytoplankton and Zooplankton were recently added.
 - Chlorophyll-a analysis was carried out only for one meter below water surface samples.
 - Review of Secchi disc measurements were taken at each monitoring site.
- The collection of weekly water level data for 18 different lakes within the MCWD. Other than the Grays Bay Dam monitoring site, Lake Minnetonka received three more monitoring devices at different locations during the 2008 season, with the addition of two more for the 2009 season, for a total of six locations. The Minneapolis Park and Recreation Board (lower watershed lakes), the Metropolitan Council (via the Citizens Assistant Monitoring Program), and the Three Rivers Park District work in coordination with the program to provide for other bodies of water to be tested. All data is submitted to the MN DNR. 2008 provided for 30% less precipitation, which resulted in the closing of the Grays Bay Dam earlier than normal.
- A review of 15 lake grades and their water conditions that have been monitored for three years. As of 2009, the MCWD will initiate testing on 15 more lakes for another three years. In regards to Lake Minnetonka, most bays showed improvement in water quality by one grade level, with the exception of Halsted, Jennings, and Stubbs Bays. Those three bays are receiving a high level of monitoring emphasis.
- Provided an overview of many other MCWD projects, some of which included the following: 1) stream stage monitoring at nine locations, 2) the continuation of perfecting the Telemetry-Remote Data Access Project, 3) Bathymetric Mapping Project, 4) the

herbicide treatment of curlyleaf pondweed on Gleason Lake, 5) the partnership with the Minnetonka Yacht Club for the placement of a new weather station that will be available on-line, and 6) other monitoring projects provided through a MCWD/MWMO Joint Watershed Research Grant.

- He entertained questions and comments from the Board.

Whalen asked two questions of Singh. First, she questioned whether the MCWD had started a Total Maximum Daily Load (TMDL) analysis for Halsted and Jennings Bays. Second, she asked Singh whether he was familiar with a machine being marketed that filters phosphorous from lake water.

Singh stated that the TMDL analysis would be coordinated by the Minnesota Pollution Control Agency (MPCA) because they are the funding agency for that project. He believed that this project would commence in 2009 because these two bays are listed on the impaired waters list. He believed that the MPCA would be contracting with a separate contractor for this project, although the MCWD would assist the contractor's needs in water quality data. With regards to the filtering machine, he was not familiar with such a device. The MCWD targets the tributary sites that contribute to the phosphorus levels of the Lake; working with programs to lesson those areas of contamination.

Scanlon stated that he would prefer to see funding be directed towards programs that result in an upgrade in water quality for the various bays. A few years ago, he believed that there was a project on Claussen Creek to improve water quality leading into Stubbs Bay.

Singh stated that the dredging project on Claussen Creek has been completed, although the water quality impacts on Stubbs Bay will be analyzed in the near future. Two other CIP projects are planned for Claussen Creek, although they are on hold at this time. He offered to update the Board next year on a list of CIP Projects, including the results of the data.

Whalen suggested that with the update on the CIP Projects next year, Singh should provide data on how many pounds of phosphorous the specific CIP Project anticipates reducing and the results of the projects.

Tanner asked how Wayzata Bay received a water quality grade of A when the swimming area was closed twice in 2008, presumably for presence of E coli.

Singh stated the MCWD does not monitor for E Coli. He communicated that he would continue to advocate for testing at least at the beach locations; however, at this point that testing is up to private residents. The current monitoring of the MCWD is specifically for Chlorophyll-a, Secchi disc, and TP, which are then averaged for the year.

Olson asked Singh what the difference was in water quality monitoring between the Upper Lake and the Lower Lake.

Singh stated that Lake Minnetonka was a dynamic body of water. The water quality on Halsted and Jennings Bays is not good because of creeks that flow into these bays, which have higher

levels of phosphorous. As the water moves from west to east, the water quality generally improves and those bays serve as a means of filtration. He hoped that the bathymetric study will provide a better means of determining how the water flows on Lake Minnetonka.

Whalen thanked Dr. Singh for his presentation.

- B. WYC (Sites 1-3) and WCSC (Site 4), 2009 renewal (without change) multiple dock license and district mooring area (DMA) applications.**

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that renewal (without change) applications were received for two legal, non-conforming facilities (WYC- Site 1 and WYC- DMA) and three legal, conforming facilities (WYC – Sites 2 and 3 and WCSC- Site 4). The three conforming facilities are in conformance with LMCD Code because of special density licenses approved for each site in 2008. These five renewal applications were received in November, with comments received from the City of Wayzata in early December based on the submittal of municipal zoning certificates for their signature. Concern was raised by the City of Wayzata regarding two of the public amenities approved at WCSC- Site 4. Typically, these applications are approved through consent agenda; however, it was deemed appropriate to bring these applications forward to the Board off of the consent agenda to allow for discussion. He believed that there were three options for the Board when considering these applications. First, the Board could approve the 2009 applications, subject to the amenities being provided at Sites 2-4. Second, the Board could grant the City of Wayzata's request to table the applications to an unspecified date to allow them to meet with WYC & WCSC representatives. If this is the option the Board would prefer to consider, the WYC and the WCSC would need to agree to sign a consent form to the 60-day rule. Third, the Board could schedule a hearing and prepare draft Findings of Fact and Order for denial of these applications. Three possible reasons include: 1) the inability to provide a public amenity because of non-compliance with local zoning ordinances, 2) Code Section 2.03, subd. 5, Construction and Maintenance Standards, and 3) certain subjective criteria in Code Sections 2.03 and 2.05. He entertained questions and comments from the Board.

Whalen stated that when the applications were approved for Sites 2-4 in 2008, there were a number of issues recognized that needed to be resolved between the City of Wayzata and the WYC/WCSC. She believed that 2.03, subd. 5 would make it difficult for the Board to approve these applications because of non-compliance with municipal zoning ordinances. She recommended tabling these applications, subject to the applicants agreeing to sign a consent form to the 60-day rule, to allow them to resolve outstanding questions for compliance to the municipal zoning ordinances prior to the Board taking action on these applications. She asked Mr. Bert Foster, representing the WYC and the WCSC, whether he was agreeable to tabling the applications, as proposed by the City of Wayzata, and signing a consent form to the 60-day rule.

Jewett questioned why the Board should consider tabling the processing of these applications until the Board has a better idea of the issues that are of concern to the City of Wayzata.

Mr. Bert Foster, representing the WYC and WCSC, stated that the issues raised by the City of

Wayzata are allegations. He documented a letter that was submitted to the City of Wayzata in the summer of 2008 addressing the issues and the various communication responses that had transpired. He believed that the City of Wayzata's issues are a misunderstanding as it pertains to the storage of a LMCD harvester and the inability to meet a parking amenity for the WCSC, which he spoke in depth on. He requested that the Board move forward and approve all five 2009 renewal (without change) applications.

Whalen asked when the WYC and WCSC activities begin.

Foster stated the activities begin when the ice is out. In follow-up to Nybeck's comments, he believed that the applicants were meeting the public amenities as required by the approved special density licenses. He reviewed the approved amenities and communicated how the WYC and WCSC plan on providing them. He believed that it has been a tradition of the LMCD and other governing bodies that one cannot hold an applicant hostage in getting a license until another government license permit is provided.

Whalen stated that based on her experience, cities do approve licenses contingent upon other licensing or permit needs. Compliance with approved public amenities can easily be confirmed once a full season has transpired. However, it was her understanding that the City of Wayzata asserts the applicants are in violation with a Conditional Use Permit (CUP) and asked Tanner to provide further background on this.

Tanner concurred with Foster that the applicants have been cooperative by offering to meet and discuss the issues with the City of Wayzata. To resolve these issues, he requested that the WYC and the WCSC agree to tabling the 2009 renewal (without change) applications and to agree to sign an extension form to the 60-day rule.

Whalen re-stated her concern about the Board approving these applications until the WYC and the WCSC have resolved the CUP issues with the City of Wayzata, citing LMCD Code Section 2.03, subd. 5.

Page reviewed the information provided by the City of Wayzata. He believed that the issues raised are based on the public amenities to be provided by WYC and WCSC, based on the approved special density licenses, and allegations of non-compliance with municipal ordinances. However, no action has been taken by the City of Wayzata for non-compliance with municipal ordinances, placing the burden of verifying compliance on the LMCD.

MOTION: Jewett moved, Page seconded to: 1) approve the 2009 renewal (without change) multiple dock license applications for WYC (Sites 1-3) and WCSC (Site 4), and 2) the 2009 renewal (without change) for the WYC DMA application.

VOTE: Ayes (8), Nays (4; Klohs, McDermott, Tanner, and Whalen); motion carried.

C. Chair update of 2/13/09 EWM/Exotics Task Force Meeting

Whalen asked for an update on this agenda item from Suerth.

Suerth stated that the meeting was well attended and the discussion focused on the 2009 EWM Herbicide Project. A number of members on the Task Force expressed their disappointment because the Lake Minnetonka Association (LMA) received only one bid for this project. He believed that the next step in the process was that LeFevere was preparing a draft Grant Agreement for the use of 2009 Save the Lake Funds, which will need to be approved by both the LMCD and the LMA. The Task Force raised concern that the public was having problems assessing the success of the herbicide application. He believed that underwater photography, before and after the herbicide treatment, would be another means of evaluating the project. One possible contractor that could possibly conduct this work was Steve McComas. He stated that Nybeck had checked further into this and that this would be discussed at a special EWM/Exotics Task Force Meeting in March, with a recommendation on whether this should take place in 2009. The LMA representatives were not involved in this discussion as they needed to leave the Task Force meeting early.

Whalen stated that the estimated cost for this project in 2009, including project management expenses, would be over \$200,000.

Klohs asked what the costs were in 2008.

Nybeck stated that he believed the total costs were in the mid \$170,000's.

The Board discussed the increase in project costs from 2008 to 2009, primarily the guarantee; the funding commitments of the LMCD for 2009; and the fundraising strategies of the LMA, which they will be responsible for the balance of necessary funds. It was clarified that the financial contributors in 2008 were the LMCD Save the Lake Fund; the MN DNR; the cities of Minnetrista, Mound, and Shorewood; and the participating abutting property owners.

D. Staff update of 2008 LMCD Code Enforcement Project

Whalen asked Herman for background on this agenda item

Herman provided the Board background on the 2006 and 2007 Code Enforcement projects, with a detailed overview for the 2008 project. In 2008, staff continued with the same four enforcement priorities utilized in 2007, with the project being conducted in conjunction with the 2008 Shoreline Inventory Project. She reviewed the methodology used in 2008. Total project costs in 2008 were \$14,423.04, with a total of 802 hours for this project. An overview of the three-part communication and documentation process was provided, including correspondence for problematic sites that might require the LMCD prosecuting attorney's attention (Code Section 2.02, subd. 8). She provided a statistical review of the 2008 Code enforcement priorities, which are outlined in the Report dated 2/20/09. She asked for Board feedback on four topics. First, she believed that there was a need to provide staff 2009 LMCD Code enforcement priorities. Second, she believed that there was a need to re-evaluate Code Section 2.02, subd. 8 because this process was too time intensive. Third, she asked the Board whether they were concerned about residential sites storing their watercraft on land to come into compliance with the LMCD storage ordinances. Fourth, she asked whether staff should proceed with submitting the first

and second letters to the three and four boat documented sites. She entertained questions and comments from the Board.

The Board discussed this and the consensus was to discuss these four topics at the March 18th LMCD Strategic Planning Session.

E. Staff update of 2009 Solar-Light Program

Whalen stated that a generous contribution from Tom Brislin Memorial Fund had recently been received, with a request that these funds be spent on solar-lights. She asked Harper to provide an update on this agenda item.

Harper stated that LMCD installs solar-lights on red and green navigational buoys in high traffic channel areas. This program has been continually funded through Save the Lake Fund, with the Save the Lake Committee expressing an interest in expanding this program. 38 solar-lights were installed in 2008, with a proposed increase in expanding the solar-lights by 26 in 2009. He reviewed where expansion of the solar-light program would take place in 2009, including a pair of solar-lights in Spring Park Bay leading into Black Lake to address concerns recently raised by Jack Evans at a LMCD Board Meeting. He recommended the purchase of 34 additional solar-lights for 2009.

Whalen stated that the purpose for these solar-lights is to improve public safety during nighttime traffic. She asked Harper whether the Sheriff's Water Patrol and Hennepin County had been consulted on this expansion.

Harper stated that he would contact the Sheriff's Water Patrol and Hennepin County Environmental Services prior to purchasing these additional solar-lights.

The Board briefly discussed how many additional red and green navigational buoys would remain unlit and whether it made sense to consider the use of solar-lights on minimum-wake, point, and danger buoys.

Harper stated that he did not believe that either the Sheriff's Water Patrol or Hennepin County Environmental Services would support the lighting of those types of buoys at this time.

Mr. John Evans, 2025 Arbor Lane, thanked the Board for lighting the channel leading into Black Lake from Spring Park Bay. He offered to purchase the center-point buoys in Black Lake because the point of demarcation is confusing during the evening hours.

Whalen stated that she believed that staff had recommended focusing solar-lights for red and green navigational buoys rather than minimum-wake buoys because of the precedent that would set on a lakewide basis. She believed that Mr. Evans was referring to minimum-wake buoys.

The Board discussed whether minimum-wake signage leading into Black Lake was feasible and directed staff to check further into this. They further directed staff to proceed accordingly in the purchase of additional solar lights as proposed by Harper.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:25 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary