

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

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

**1. CALL TO ORDER**

Whalen called the meeting to order at 7:00 p.m.

**2. ROLL CALL**

**Members present:** Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; Peter Hartwich, Excelsior; Chris Jewett, Minnetonka; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Kelsey Page, Greenwood; Dick Woodruff, Shorewood. Also present: Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** Keith Kask, Deephaven; Herb Suerth, Woodland. Also absent was Charles LeFevre, LMCD Counsel.

**3. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Whalen**

Whalen made a number of Chair announcements:

- First, she stated the City of Excelsior has recently appointed a new representative to the LMCD Board. She welcomed Peter Hartwich to the Board and administered the oath of office in LeFevre's absence. He was seated as representative for the City of Excelsior.
- Second, she directed the Board to an email in their handout folders, dated 3/23/09, from Mr. Martin Wellens, a Shorewood resident. Wellens originally requested that the Board publically read a letter attached to the email for the record; however, he was notified that a copy of the email and letter would be included in the Board handout folders and that he would have the ability to read the letter himself under "PUBLIC COMMENTS". Mr. Wellens is in opposition to charging public access fees and restricting use of public accesses.
- She stated that the next EWM/Exotics Task Force Meeting was scheduled for Friday, April 10<sup>th</sup> at 8:30 a.m., in the LMCD office.
- She stated that a number of LMCD and LMA Board members met on March 24<sup>th</sup> at the Lafayette Club for a breakfast meeting hosted by Gabriel Jabbour. A list of those in attendance were individually read and noted on a handout provided in the Board handout folders. She stated the handout documented the purpose of the meeting; specifically to discuss the prevention of zebra mussels into the Lake and to strengthen the relationship between the LMA and the LMCD, along with initiatives that were agreed upon between the two organizations. One specific initiative was to

add a standing agenda item to future LMCD Board meetings entitled, 'LMA Report,' to be presented by a LMA representative.

- In an effort for the LMCD to individually meet with member cities and their representatives, two meetings were recently held; one with the City of Minnetonka and the other with the City of Spring Park. Jewett and Nybeck joined Whalen for the City of Minnetonka meeting. She stated the meetings were productive and she expressed her interest in meeting with all member representatives.

**5. APPROVAL OF MINUTES-** 2/25/09 LMCD Regular Board Meeting  
3/11/09 LMCD Regular Board Meeting

**MOTION:** Woodruff moved, McDermott seconded to approve the minutes from the 2/25/09 LMCD Regular Board Meeting as submitted.

**VOTE:** Motion carried unanimously.

Woodruff directed the Board to a correction noted in their handout folder adding the vote tally to item 6C, Minnetonka Beach, on page 3 of the minutes.

**MOTION:** Woodruff moved, McDermott seconded to approve the minutes from the 3/11/09 LMCD Regular Board Meeting as amended, making the change noted by Woodruff.

**VOTE:** Motion carried unanimously.

**6. APPROVAL OF CONSENT AGENDA**

Woodruff moved, McDermott seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included **6A**, Audit of vouchers (03/16/09 – 03/31/09); **6B**, February financial summary and balance sheet; **6C**, 2009 Liquor Licenses, staff recommends Board approval of renewal (without) change, Intoxicating Liquor, Wine, and Non-Intoxicating Liquor License applications as outlined in 3/19/09 staff memo; **6D, 2009 Multiple Dock Licenses**, staff recommends Board approval of renewal (without) change applications for Cedarhurst Assoc., Minnetonka Portable Dredging, Smithtown Bay Assoc., Willow Woods Corp., and Wayzata Bay Management that have been paid in full; **6E, 2009 EWM Harvesting Program**, staff recommends Board approval of the Maintenance Proposal from Curfman Trucking and Repair, Inc; **6F, Minnetonka Beach (Dock Site 10)**, draft Findings of Fact and Order amending dock length and side setback variance; **6G**, 2/13/09 EWM/Exotics Task Force Meeting Minutes, and **6H, 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.

**7. ITEMS REMOVED FROM THE CONSENT AGENDA**

There we 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.

Babcock arrived at 7:12 p.m.

## 9. PUBLIC HEARING

- **Hennepin County**, 2009 reconfiguration of non-conforming, multiple dock license application on Spring Park Bay

Whalen asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 3/20/09, which summarized a request from Hennepin County for a reconfiguration of a non-conforming multiple dock license application to address inconsistencies in past dock installations and watercraft mooring locations compared to the approved site plan. He outlined six specific changes addressed in the staff memo that the applicant had proposed. He reviewed the Hennepin County application with LMCD Code Section 2.015. He recommended that the Board approve the application for the 2009 season, subject to complying with the following conditions: 1) watercraft moored within all overnight BSUs must comply with the 4' length overall overhang restriction, 2) watercraft moored at overnight BSUs 1 & 2 must not encroach on the 15'6" side setback as depicted on the 3/5/09 proposed site plan, 3) no overnight mooring allowed at the 40 transient BSUs, and 4) construction of dock structures and location of moored watercraft must be in strict conformance with the approved dock plan. He stated Jessica Galatz was in attendance representing Hennepin County. He entertained questions and comments from the Board.

A number of questions were asked by the Board that Harper responded to. In particular, the Board and Harper discussed the reconfiguration of certain Boat Storage Units (BSUs) and their designated use (transient vs. overnight vs. private). Some of discussion included:

- Whether the applicant was aware of the four-foot overhang restriction.
- Specific construction styles and use of various BSUs.
- The reason for the 28' restriction (these BSU's are approved for 24' in length, with allowance for a four foot overhang with all equipment in normal operating position).
- Questioning the advantage of knowing which BSU goes with which property.
- The confirmation that all 40 transient slips have routinely been utilized.
- The purpose for expanding the length of BSUs 15, 16, and 18 to 88'.

Whalen asked the applicant to provide further comments on the application.

Ms. Jessica Galatz, representing Hennepin County, stated that although she manages the site, she was not familiar with the specific use of the individual BSUs and introduced a local resident, Martha Mayer, who was in attendance to address the Board in answering their specific questions.

Ms. Martha Mayer, 5 Shoreline Place, stated that she was a resident of the Streater's Park Waterfront Association. The Association that she represents utilizes a part of the overnight BSUs and, due to proximity, BSUs for the Tonka Grill. She stated the BSUs beyond their proximity are the old Minnetonka Mist (Mist) BSUs. She stated that the configuration of the proposed site plan is the same configuration that has been utilized for the past eight years, with the exception of the "U" shape structure on BSU 2. The application is being presented to come into compliance with the formerly approved site plan as they were not previously

aware they were subject to construction of dock structures via a specific site plan.

Babcock stated that Hennepin County has ownership and control of the subject parcel of land and that it is their responsibility to maintain the license within the LMCD's rules and regulations. He stated that past Board members were very careful not to get involved with the individual use of the specific BSUs but rather that the structures are in compliance with the approved site plan.

Galatz stated that Hennepin County receives its annual multiple dock license renewal application from the LMCD. Hennepin County then sub-permits these BSUs to the various entities utilizing the BSUs. She concurred with Babcock in that it is the County's responsibility to confirm compliance of the license and follow-up with Harper's previous inspection findings.

The Board talked at length on the BSU's that are marked as "Public" on the proposed site plan, and should they be designated as such with signage. There was also discussion of the various uses of the overnight and transient BSUs, including that the 40 transient BSUs are not utilized as overnight storage for the condominium association.

Galatz stated that the County has clearly communicated to management of the Mist that the transient BSUs are not to be utilized for overnight storage.

Harper stated that the proposed site plan labeling of public, private, etc., was superimposed from a prior drawing and that the BSUs may not be truly designated as such.

Scanlon questioned rather BSUs 32 to 65 would be fully utilized during the 2009 season.

Galatz confirmed that she had spoken to management at the Mist who communicated that they may not be installing the docks to their full potential this season.

Page expressed concern for the changes to the dock structures in past years without LMCD approval. One possible contributing factor is what appears to be a lack of annual supervision by the County. A similar situation arose with another LMCD multiple dock licensee, which is also one of the 14 LMCD member cities. Within these discussions, the licensee provided the LMCD with a plan as to how they were going to comply with their license on an annual basis. He asked Galatz what their explanation was for allowing the sub-permit holders to expand their BSU's without authority and how they were going to assure the new site plan was going to be conformed to.

Galatz stated that she took over the supervision of the license three years ago and in the transition has not previously policed the site's conformance. She was not aware of the prior need to do so; however, the resources are available to increase the supervision of the license.

Whalen opened the public hearing at 7:42 p.m.

Mr. Michael Mason, 3950 Del Otero Avenue, requested confirmation on the restriction of 28' long watercraft as there may be a watercraft that could not comply with that restriction.

Babcock stated that prior to the current application, the BSUs were designated as 24' long. However, they were not subject to a length restriction. With the current application being considered, the applicant is invoking the envelope ordinance, which requires a length overall overhang restriction to be applied.

Mayer stated that she had spoken to the boat owner utilizing the 28' BSU and that he could comply with length overall.

Mason expressed concern that the "U" shape structure, BSU #2, would encroach on the use of the BSU to the east and that it would be more appropriate for that permit holder to make arrangements with the neighbor prior to installation.

There being no further public comments, Whalen closed the public hearing at 7:47 p.m.

**MOTION:** Babcock moved, Woodruff seconded to approve the 2009 Hennepin County reconfiguration of non-conforming multiple dock license, subject to 1) staff recommendations, 2) that the slips be designated on the site plan as overnight and transient, and 3) that Hennepin County verbally report back to the LMCD on an annual basis confirmation that the dock installation is in conformance with the site plan.

**VOTE:** Motion carried unanimously.

## 10. OTHER BUSINESS

- **New copy machine for LMCD office**

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that generally this matter would be brought up under the consent agenda; however, it was placed as a separate item due to the purchase not being a budgeted line item. He stated that staff had previously directed funds under Capital Equipment during an historical budget planning process. However, the Board directed staff to remove that allocation and purchase the copier with Administrative Reserve Funds when needed. Due to the recent reduction of Administrative Reserve Funds, the Board's direction has become more problematic. He stated that the time has come to purchase a new copier, in which the purchase will be off of the State contract. He directed the Board to his staff memo, dated 3/19/09, in which he outlined the cost of the annual maintenance agreement, stating that staff has reduced that line item from \$1,140 down to \$787.80 annually (60 months). He entertained questions and comments from the Board.

The Board asked a few brief questions in which Nybeck and Herman responded to.

**MOTION:** Scanlon moved, Johnson seconded to approve the purchase of the Xerox 5638P copier for the price not to exceed \$5,643.25 with a maintenance agreement of \$787.80 annually, with the approval to adjust as needed.

**VOTE:** Motion carried unanimously.

#### **11. EXECUTIVE DIRECTOR REPORT**

There was no Executive Director Report.

Whalen provided a brief update on the last Strategic Planning Session that was held on March 18<sup>th</sup>. She stated that there was a need to schedule another meeting to finalize the strategies to meet the goals set. The consensus of the Board was to schedule the meeting for April 15<sup>th</sup>, at 5:30 p.m., in the LMCD office.

#### **12. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:00 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary