

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, April 22, 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; David Gross, Deephaven; Peter Hartwich, Excelsior; Chris Jewett, Minnetonka; Steve Johnson, Mound; Bill Olson, Victoria; Kelsey Page, Greenwood; Herb Suerth, Woodland; Dick Woodruff, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Doug Babcock, Tonka Bay; Dennis Klohs, Minnetonka Beach.

Whalen stated that the City of Deephaven has re-appointed former Board member David Gross to the LMCD Board. She welcomed Gross and asked LeFevere to administer the oath of office.

LeFevere administered the oath of office and Gross was seated as a representative for the City of Deephaven.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

Jewett arrived at 7:08

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen reminded the Board that a budget work session was scheduled in the LMCD office for April 28th at 7:30 a.m.

5. APPROVAL OF MINUTES- 4/8/09 LMCD Regular Board Meeting

MOTION: Olson moved, Johnson seconded to approve the minutes from the 4/8/09 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (10), Abstained (2; Gross and McDermott); motion carried.

6. APPROVAL OF CONSENT AGENDA

Tanner requested that agenda item 6C be removed from the consent agenda.

Woodruff moved, McDermott seconded to approve the consent agenda as amended, removing agenda item 6C. Motion carried unanimously. Items so approved included **6A**, Audit of vouchers (04/16/09 – 04/30/09); **6B**, March financial summary and balance sheet; **6D, 2009 Multiple Dock Licenses**, staff recommends Board approval of renewal (without change) applications for Browns Bay, LLC (Sites 1 and 2), Chapman Place Marina, Foxhill HOA, and Seahorse Condominiums that have been paid in full; **6E, Charles and Shanda Shannon**, draft Findings of Fact and Order approving an adjusted dock use area and side setback variance; and **6F**, State of Minnesota Income Contract for the use of MN DNR Watercraft Inspection Program inspectors for 2009 boating season.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

6C. Environmental Sentry Protection, 2009 Save the Lake Grant Agreement for Internet Landing Installed Device Sensors (I-LIDS) Project.

Whalen asked Tanner to clarify why he had this agenda item removed from the consent agenda.

Tanner updated the Board on the discussions held at the April 10th EWM/Exotics Task Force Meeting on this project. The LMCD, through Save the Lake, has agreed to fund \$7,100 of the \$11,415 total costs of this project. He stated that during the meeting, there was discussion of reviewing the video sequences and whatever enforcement actions the MN DNR might consider. The Lake Minnetonka Association (LMA) has not agreed to fund the balance of this project (\$4,315) for review of the video sequences because this would need to be a decision of the LMA Board, which could take a couple of months. The MN DNR's involvement in the review and enforcement of the tapes would also greatly diminish the public access inspection program currently in place for Lake Minnetonka. He stated that in talking with his constituents, he could not support the contribution of \$7,100 of Save the Lake funds when these funds could be used for additional inspectors.

Whalen stated that this 2009 project had been discussed at length by the Save the Lake Committee, during a recent LMCD Strategic Planning Session, and again at the April 10th EWM/Exotics Task Force meeting. She solicited comments from the Board on this project, which are summarized below:

- Jewett stated the Save the Lake Committee considered many reasons for the funding of this program; one of which was the public's perception in changing boater behavior. However, in light of some of the recent developments with a zebra mussel infestation in Prior Lake, he believed that further consideration of funding this project was warranted.
- Woodruff stated that he concurred with Tanner's comments.
- Johnson stated he believed the project has produced some positive results and is a piece of the puzzle, with or without enforcement.
- Page stated that he supported the project and there should be consideration to use additional Save the Lake funds to review the video sequences captured. He expressed disappointment that the LMA would not be funding the remainder of the project costs as they have been long-time supporters, both verbally and in writing.

- Gross stated that he believed the original objective of the project was to view the tapes via a patented, recognition software program. In light of that feature not being available, he concurred with Tanner.
- Suerth stated that he recognized the current obstacles. However, believed that the project should continue based on the cameras being placed in locations where inspectors are not present and the changing of boater behavior.
- Olson stated he supported providing base funding of the project.
- McDermott stated that he would like to see the project funded for at least one more year.
- Hartwich stated that the funds should be allocated as the project is highly visible and action oriented.
- Whalen stated that she could see both sides of the story. She believed that everything possible needs to be done for the prevention of new AIS in Lake Minnetonka, acknowledging the LMA's contribution of \$10,000 for more public inspections in 2009, and believed that the project should continue.

MOTION: Tanner moved, Woodruff seconded to deny the Environmental Sentry Protection 2009 Save the Lake Grant Agreement for the I-LIDS Project.

VOTE: Ayes (2, Tanner and Woodruff), Nays (10); motion failed.

MOTION: McDermott moved, Suerth seconded to approve the Environmental Sentry Protection, 2009 Save the Lake Grant Agreement for the I-LIDS Project.

VOTE: Ayes (10), Nays (2, Tanner and Woodruff); motion carried.

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

There were no public comments.

9. PUBLIC HEARING

- **Jon Schwartzman**, new multiple dock license and dock length variance applications for the storage of five restricted watercraft on 253' of continuous 929.4' shoreline at 425 Oxford Road on Stubbs Bay.

Whalen asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 04/17/09, which summarized the applications submitted by Jon Schwartzman. The applicant proposes to maintain five Boat Storage Units (BSUs) on approximately 253' of 929.4' shoreline; providing for a conforming multiple dock site with a density of 1:51'. He reviewed five LMCD Code Sections to evaluate the applications. The City of Orono supports approval of the applications, subject to the watercraft being owned and registered to residents of the site. He recommended that the Board direct LeFevre to prepare Findings of Fact and Order for approval of the two applications for the 2009 season, subject to the following conditions: 1) watercraft moored or docked in BSUs 1 and 2 must be fully contained within the slips, 2) construction of dock structures and location of moored watercraft

must be in strict conformance with the approved site plan, and 3) that all watercraft be owned and registered to residents of the site. He entertained questions and comments from the Board.

Tanner asked if all the watercraft were owned and registered to residents of the site.

Harper believed the applicant could better address that question.

Whalen asked if the applicant was present and if he had any comments to add.

Mr. Jon Schwartzman, 425 Oxford Road, thanked the Board for their time. He stated that he was not familiar with the dock placement regulations when he originally contracted the dock to be installed by Fine Line Docks. Upon notification of non-compliance, he worked directly with Fine Line Docks and LMCD staff in the preparation of the applications currently being considered. He confirmed that all watercraft were owned and registered to him.

Whalen asked staff to clarify the LMCD Code pertaining to the placement of dock structures in shallow water areas.

Harper stated that LMCD allows the applicant to install their dock out to four feet of water, at the outer edge of the dock use area, adjusted to the 929.4' ordinary high water mark. If the lake levels fall below 928.0', the LMCD has the ability to grant temporary low water variances.

Johnson requested that the applicant clarify the two dock extensions on the proposed site plan, along with the number of watercraft that he will dock or moor.

Schwartzman stated that the two dock extensions were swim platforms. He planned on docking five restricted watercraft, two of which are personal watercrafts that will be located in BSUs 4 and 5.

Hartwich requested the applicant confirm that he received the two letters sent to him in 2007 and 2008 in follow-up the LMCD Proactive Code Enforcement Program. Additionally, he asked what he would do if the applications were not approved.

Schwartzman stated he was aware of the second letter submitted in 2008, at which time a meeting was set up with LMCD staff. Should the applications not be approved, he stated that he would have problems storing watercraft due to shallow water.

Whalen opened public hearing at 7:40 p.m.

Ms. Rebecca Holzem, 3407 Eastlake Street, stated that she was a neighboring property owner to the applicant. She had a hard time understanding why a resident would need five watercraft and asked what policies were in place to confirm continued compliance of all watercraft being owned and registered to residents of the site.

Harper stated that an annual inspection of the docking structure and watercraft storage is

performed on all multiple dock license holders. At the time of the inspection, watercraft registration numbers would be obtained and verified.

Whalen stated that LMCD Code allows sites on Lake Minnetonka to stored one restricted watercraft for each 50' of continuous lakeshore frontage. A multiple dock license is needed when a site stores five or more restricted watercraft and the applicant has documented that this site has 250' of continuous 929.4' lakeshore frontage. The requirement to have all the watercraft owned and registered to the residents of the site is in response to the City of Orono's recommendation.

Whalen closed the public hearing at 7:43 p.m.

MOTION: McDermott moved, Jewett seconded to direct LeFevere to prepare Findings of Fact and Order approving the Jon Schwartzman new multiple dock license and variance applications, subject to the conditions recommended by Harper.

Woodruff proposed a friendly amendment requesting the motion to document the docking or mooring of up to five restricted watercraft. McDermott and Jewett agreed to this.

Hartwich stated that the consideration of these applications is a good example of how the ordinances should be viewed in considering the revision of the LMCD's Vision and Mission Statements, along with the priorities currently being set. He believed it is imperative those revisions are written so that the Board and the public have a clear understanding on what is expected for the use of Lake Minnetonka.

Whalen stated that there was a difference between current LMCD ordinances and what the Board sets forth in the LMCD Vision and Mission Statements. Under current LMCD ordinances, the proposed applications comply with the procedures in place.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A. 2009 EWM Harvesting Program, staff overview of project

Whalen asked Nybeck for background on this agenda item.

Nybeck provided an overview of the 2009 EWM Harvesting Season. This included: 1) an overview of the staff and independent contractors, 2) an overview of 2009 LMCD aquatic invasive species (AIS) Programs, including a breakdown of how they will be funded, 3) an overview of plans for the 2009 EWM Harvesting Season, and 4) an overview of sealed bids recently received for trucking purposes. He recommended that the Board approve: 1) the hiring of Jeff Schmidt as Site Supervisor, at an hourly rate of \$17 (frozen from 2008), 2) the hiring of six additional seasonal positions at an hourly rate of \$11 per hour for new employees and freezing the hourly rate for returning employees as compensated in 2008, and 3) to award the 2009 EWM Harvesting Program trucking contract to Curfman's Trucking and Repair, Inc. subject

to receiving all documents.

Whalen reviewed discussion at the April 10th EWM/Exotics Task Force Meeting in which a collaborative effort was made amongst the LMCD, LMA, and the MN DNR to provide additional funding to increase the number of 2009 public access inspections.

McDermott requested Nybeck clarify the inspection schedule as it pertains to the public accesses.

Nybeck stated that there are 11 public accesses on Lake Minnetonka. Four primary accesses include Grays Bay, Maxwell Bay, North Arm, and Spring Park Bay. On Memorial Day weekend through Labor Day, inspectors will be present from 11:00 a.m. to 7:00 p.m. (Fridays) and 6:00 a.m. to 6:00 p.m. (Saturdays, Sundays, and holidays) at these accesses. There are five other public accesses in which four inspectors will rotate amongst from 11:00 a.m. to 7:00 p.m. (Fridays) and from 6:00 a.m. to 2:00 p.m. (Saturdays, Sundays and holidays). These include Carsons Bay, Cooks Bay, Echo Bay, Halsteads Bay, and Wayzata Bay. At the Lake Minnetonka Regional Park, the Three Rivers Park District will provide an in-kind service for inspections on the weekends in May and up to Memorial Day weekend. From Memorial Day Weekend through Labor Day, inspectors will be at the Regional Park seven days a week from 9:00 a.m. to 5:00 p.m.

The Board asked a number of questions in which Nybeck addressed. These included confirmation of the number of seasonal employees and their salary amounts, budgeted line items, and general harvesting questions.

MOTION: Suerth moved, Johnson seconded to 1) to authorize the hiring of Jeff Schmidt as EWM Harvesting Program Site Supervisor, at an hourly rate of \$17, 2) to authorize the hiring of the six seasonal employees at \$11 per hour for new employees or to freeze the hourly rate for returning employees at their 2008 compensation level, and 3) to award Curfman Trucking and Repair, Inc., for the trucking of EWM and other lake vegetation for the 2009 EWM Harvesting Program, subject to receiving the necessary documents.

VOTE: Motion carried unanimously.

B. Staff overview of 2009 LMCD Code Enforcement Project

Whalen asked Nybeck to provide background on this agenda item.

Nybeck reviewed his staff memo, dated 4/16/09, which provided an overview of: 1) 2009 LMCD Code enforcement priorities, 2) staff needs, and 3) the 2009 budget. He entertained questions and comments from the Board.

The Board asked Nybeck to clarify a few staffing question and speak to the effectiveness of the letters submitted in follow-up to the project, in which Nybeck addressed.

Whalen stated that an AIS inspection training session, to be conducted by the MN DNR, was currently being coordinated for the marina operators, dock installers, and lake service organizations that would like to participate. She anticipated that training would take place within the next couple weeks and suggested those that are interested to please call the LMCD staff for information.

The Board briefly discussed this opportunity in which a few comments were made; acknowledging that this is a very difficult time of the season for marina operators and others to attend such a training session. There was a suggestion that a list of attendees be kept for follow-up purposes.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:20 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary