

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, May 13, 2009
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:05 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; Peter Hartwich, Excelsior; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Dick Woodruff, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Chris Jewett, Minnetonka; Steve Johnson, Mound; Kelsey Page, Greenwood; Herb Suerth, Woodland.

3. APPROVAL OF AGENDA

MOTION: Tanner moved, Gross seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made three Chair announcements. First, she stated that the Freshwater Society will be sponsoring a Water Quality Seminar on Thursday, May 21st, at 7:00 p.m. Second, she directed the Board to an invitation in their handout folder from Al & Alma's Supper Club, Inc., for the dedication of their new vessel; Belle Vista. Third, she and Tanner will be meeting with the Lake Minnetonka Association representatives on Friday, May 15th and will report on those discussions at the next Board meeting.

5. APPROVAL OF MINUTES- 4/22/09 LMCD Regular Board Meeting

MOTION: McDermott moved, Olson seconded to approve the minutes from the 4/22/09 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

Babcock arrived at 7:10 p.m.

6. APPROVAL OF CONSENT AGENDA

Tanner moved, McDermott seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (05/01/09 – 05/15/09); **6B**, Jon

Schwartzman, draft Findings of Fact and Order approving new multiple dock license and dock length variance applications at 425 Oxford Road on Stubbs Bay; **6C, 2009 Multiple Dock Licenses**, staff recommends Board approval of renewal (without change) applications for Seton Twin Homes and Upper Minnetonka Yacht Club that have been paid in full; **6D, Harborage HOA**, staff recommends Board approval of 2009 new multiple dock license (minor change) application as outlined in 5/7/09 staff memo; and **6E, AI & Alma's (Site 2)**, staff recommends Board approval of 2009 new multiple dock license (minor change) application as outlined in 5/6/09 staff memo.

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)

Ms. Wendy Morical, 3942 Enchanted Lane in Minnetrista, stated that she represented the Upper Minnetonka Yacht Club (UMYC) and thanked the Board for approving their 2009 renewal, without change, multiple dock license under the consent agenda. However, she was in attendance to request the Board's consideration in accepting a lower insurance limit (\$1,000,000, of the date specific required limits of \$1,200,000 and \$1,500,000) as needed for the UMYC's special event application to hold their annual events; first of which was the following weekend. She requested this on the basis of the Club's history of not having a single liability incident in the 25 years they have been in existence, that they are a small group of volunteers that work to provide back to the community, that increasing their insurance to the required amount would cost the Club an additional \$1,300, and that their notification of this increase was only recently received. She questioned what other events are being required to meet the higher insurance limits and confirmation as to what the liability exposure is.

Whalen thanked Morical for her comment; however, she stated that it was difficult for the Board to provide immediate answers to requests provided under "Public Comments". She assured her that all requirements for special event applicants are unified and asked LeFevere to expound on this matter; including what the LMCD's liability is for applicants that do not meet the required insurance liability limit.

LeFevere stated Chapter 466.04 of the Minnesota Statutes places a cap on municipal liability and does not specify the level of insurance a public body has to carry. That cap is \$1,200,000 prior to July 1st and \$1,500,000 from July 1st forward, which is the most that one could file suit for in multiple claims arising out of a single occurrence against a public body. Those limits are what the LMCD and most municipalities require; noting that the LMCD Code requires the applicant to provide evidence of appropriate insurance in applying for the special event permit. That protection covers the public and the LMCD by adding the LMCD as additionally insured; providing for any claim against the LMCD that is awarded would be paid by the applicant's insurance carrier and would not be documented against the LMCD's claims experience resulting in a higher deductible, etc. If the applicant provides less than the required amount and a claim is awarded, the LMCD's potential exposure is utilizing the LMCD's insurance to cover the difference in insurance liability not provided by the applicant's coverage. He recognized the likelihood of a claim to exist, that the LMCD be named in a suit, or that the claim is even awarded is progressively small. Should the LMCD be required to pay on an awarded claim, that payment would fall to the public at large as the LMCD's insurance is provided by tax payers at large around the State of Minnesota.

Whalen asked LeFevere to confirm whether the LMCD could be drawn into a lawsuit if adequate insurance is provided by the applicant to cover the LMCD's liability exposure.

LeFevere confirmed the LMCD could be sued for any reason and should a claim be awarded, the LMCD would need to respond appropriately. He confirmed that the insurance requirement is unified for all applicants and that currently other applicants have already provided the required insurance limit and have been issued their 2009 special event permit.

Whalen asked Gross what the Minnetonka Yacht Club (MYC) has done to meet the insurance requirements.

Gross stated that as a yacht club, the MYC's insurance is covered by U.S. Sailing (the national body of sailing in the United States). He questioned if the UMYC had evaluated the U.S. Sailing insurance coverage.

Morical stated that she was unsure of the Club's insurance coverage and would look into that matter as an option.

Whalen solicited the Board's consideration is assisting the UMYC on a short-term basis for this weekend's event.

Babcock stated the goal of the LMCD is to treat all applicants fairly and to minimize the taxpayer liability. He believed the UMYC should provide for the required insurance limit and questioned the reason for the applicant's short-term notification.

Herman stated that the special event applications, which documented the increased insurance limits, were mailed in late March. As the applications were received, verbal communication was made for many of them to meet the required insurance limits. The UMYC's application was received in the LMCD office in early May.

Whalen urged Morical to further communicate with her insurance agent for coverage on a one-time basis while researching the possibility of obtaining US Sailing insurance coverage. She concurred with Babcock's comments to provide unified treatment of all applicants and welcomed further discussion on this matter at a later date.

9. LMA REPORT

Whalen stated that Richard Glidewell was in attendance to provide the LMA Report and welcomed him on behalf of the Board.

Mr. Richard Glidewell, representing the LMA, thanked the Board for this opportunity. He provided an overview of the LMA's current activities by highlighting the following:

- He stated that he and Tanner have met regularly to keep each organization apprised of their activities.
- He acknowledged that the prevention of aquatic invasive species (AIS), specifically zebra mussels, has been on the forefront. He reported that a watercraft had arrived at a local yacht club with zebra mussels attached and that the employees properly handled the situation. He commended those

employees for their action and believed that that the AIS alert level is appropriate and that a zero tolerance needs to be maintained.

- Two training seminars for the prevention of AIS have been held to date at Howards Point Marina and Dock and Lift, Inc. He thanked both organizations for their efforts in sponsoring the seminars and confirmed more sessions will be held as the stakeholders' time becomes available.
- He stated that a Policy Statement, with Executive Summary, produced from a recent Minnesota Waters conference was recently distributed via email. He encouraged the Board to read the Executive Summary that outlines important information.
- The eighth annual LMA Lake Clean Up will be held on June 13th at the Bayview Event Center and the LMA Golf Classic will be held on August 10th at the Minnetonka Country Club (specifics for those events can be found at www.lmassociation.org).
- He believed that all three bays (Carmans, Phelps, and Grays) will be participating in the 2009 herbicide treatment project, with an estimated June start date.
- He confirmed successful coordination of extra inspectors being provided by the MN DNR and encouraged the Board to start thinking about what actions are needed should Lake Minnetonka become infested with zebra mussels.
- An Adopt-a-Launch Program is moving forward with positive responses and will be aggressively pursued for the 2010 season.
- He stated the LMA Board has considered their involvement in the I-LIDS project; specifically providing funding for the review of the videos captured. The Board has chosen to not entertain that option at this time, noting enforcement as a higher priority.
- He entertained questions and comments from the Board.

Whalen stated that she and Nybeck had initiated preliminary discussions regarding a comprehensive AIS Plan for Lake Minnetonka, which could include what to do if Lake Minnetonka becomes infested with zebra mussels. This will most likely be discussed at upcoming EWM/Exotics Task Force meetings.

Hartwich asked if the LMA had talked to Wisconsin governing bodies, which currently oversee zebra mussel infested waters, as to what they may have done differently prior to their infestation.

Glidewell recommended that LMA Executive Director Dick Osgood address that question.

Osgood stated that Lake Minnetonka is unique to other lakes in that it offers a multitude of bays and tributaries. If, for example, Grays Bay becomes infested with zebra mussels and it is isolated only to that bay, a discussion might be needed on whether to restrict boat traffic to that bay.

Tanner asked Osgood if there was discussion of additional funding for the prevention AIS at the recent Minnesota Waters conference.

Osgood stated the MN DNR did not discuss additional funding; however, reported on the current AIS prevention budget and activities. The recent Minnesota Waters Policy Statement recommends adjustments in funding for AIS prevention projects.

The Board briefly discussed the need to continue educating the public on AIS prevention awareness and to initiate communication with the Prior Lake community on what they are currently doing with the infestation of zebra mussels.

10. PUBLIC HEARING

There were no public hearings.

11. OTHER BUSINESS

- A. **Charles and Shanda Shannon**, discussion of proposed site plan to verify compliance with recently approved side setback and adjusted dock use area variance at 3800 Sunset Blvd.

Whalen asked LeFevere to provide background on this agenda item.

LeFevere stated that the Board approved a side setback and adjusted dock use area variance on April 22nd for the Shannon's, with documented hardships of converging lot lines and shallow water. The approved variance provided for a defined dock use area for the placement of watercraft and dock structures, which included a zero foot setback on the west side and that all other requirements of the LMCD Code be met. Subsequent to that approval, the Shannon's have provided a proposed dock plan for staff's review and consideration to verify compliance with the approved Variance Order. The proposed site plan has raised the question at staff level of whether the proposed dock should be considered side opening, which has greater side setback requirements. He was not comfortable with staff interpreting this without the Board's assistance. He reviewed the placement of the proposed dock and the possible impacts that it could have on the dock use areas of the abutting properties, in particular 3806 Sunset Drive. If the Board is comfortable with the proposed site plan for a side opening dock, he recommended that the approved Findings of Fact and Order should be amended to allow for this to occur, as well as any other changes that the Board deems appropriate.

The Board initiated consideration of this matter by discussing the following:

- Confirmation that the approved Variance Order does not currently limit a specific watercraft density limitation.
- Under the current Variance Order, the variance would continue should the dock use area be dredged or not; providing for the ability to store various sizes of watercraft within LMCD Code provisions.
- The documented hardships for the approved variance and whether they have changed based on the proposed relocation of the applicant's dock.
- Review of water depth measurements in the applicant's dock use area.

Nybeck provided the Board with an overview of the applicant and abutting neighbor's dock use areas, along with the layout of the lagoon area through a series of photos. Additionally, he stated that the applicants had submitted a survey of the lagoon area and the current dock installations of the abutting neighbors.

LeFevere stated that based on the survey submitted by the applicants, the abutting neighbor to the west (3806 Sunset Drive) does not comply with side setbacks on the west side of their dock use area.

However, the current dock placement and boat storage is allowed through mutual consent. Should this consent be removed in the future, the abutting neighbor's dock would most likely need to be moved to the east, which could have an impact on the applicant's dock use area. However, this dock could not impair access to the applicant's dock use area, which is a judgment call for the LMCD. For this reason, staff requested the Board's review of the proposed side opening slip as to what is reasonable use of the lagoon area.

The Board and staff continued consideration of this matter by making the following comments:

- That LMCD Code does not always properly address for docking and boat storage in confined spaces, such as this, when it comes to lots with right angles and the consideration of a side opening slip.
- Currently, there are too many boats stored in the confined space provided within the lagoon.
- Most, if not all dock plans, could be considered side opening.
- A review of what setbacks were previously considered and what the approved Order provides for.
- A review of current ordinances and their purposes; along with examples of other dock structure placement for consideration of reasonable lake use.

Whalen invited the applicant to address the Board.

Mr. Charles Shannon, 3800 Sunset Drive, stated that he was not proposing any more of an encroachment to the westerly lot line than what was originally planned. Their dock use area was not taken into consideration when the abutting neighbor to the west was allowed to install their current dock configuration. He reviewed the current use of his dock use area, via photographs, and offered how the proposed dock plan would be of less encroachment to the abutting neighbor to the west.

The Board discussed at length what was reasonable use for the placement of dock structures and boat density within the applicant's dock use area, how the applicants would be able to use the south side of their dock, as documented in the proposed site plan, when the structure would be installed up the extended side site line, and necessary adjustment to the platform nearest to shore to comply with LMCD Code.

Babcock made a motion to direct LeFevere to amend the approved Variance Order by adding the proposed site plan as Attachment One, subject to not allowing boat storage on the south side of the dock. The motion failed due to the lack of a second.

Klohs made a motion to direct LeFevere to amend the approved Variance Order by adding the proposed site plan as Attachment One, with no restrictions on boat density storage. The motion failed due to the lack of a second.

The Board discussed suggestions of what is considered reasonable use of the lake, i.e., watercraft density, setback options, the applicant's needs, possible compromises to the current ordinance, and how to provide for less restrictive navigability of watercraft for all involved.

MOTION: Klohs moved, McDermott seconded to direct LeFevere to amend the approved Variance

Order by adding the proposed site plan as Attachment One, with no restrictions on boat density storage.

Whalen proposed a friendly amendment that would clarify that the abutting neighbors to the west would have the ability to utilize their entire dock use area along the common extended side site line, which could have impact on the applicant's ability to store a watercraft on the south side of the proposed site plan because of navigational purposes. Klohs and McDermott accepted the friendly amendment.

LeFevere stated that the platform nearest to shore exceeded eight feet in both dimensions, which is prohibited by LMCD Code. He stated that this could be resolved by adjusting the platform 90 degrees on the proposed site plan.

Shannon agreed to turn his platform 90 degrees to comply with LMCD Code, with the submittal of a revised survey documenting this.

Babcock requested that the abutting neighbors be notified of the Board's consideration of the amended Variance Order.

VOTE: Ayes (9), Nays (1, Babcock); motion carried.

The meeting was recessed at 9:05 p.m. and reconvened at 9:10 p.m.

B. Stuart Bonniwell, review of draft 2008 LMCD audit.

Whalen asked for an overview of this agenda from Bonniwell and welcomed him on behalf of the Board.

Bonniwell provided an overview of the various sections of the draft 2008 LMCD audit, including the auditor's report. He reported that net assets exceeded liabilities by around \$730,000, which is delineated throughout the fund accounts. He reviewed the balances of the individual funds, which included the General Fund, the Save the Lake Fund, the Aquatic Invasive Species Management Fund, and the Equipment Replacement Fund (used for equipment replacement for the EWM harvesting Program). The General Fund reserve level as of 12/31/08 was \$99,651, representing 23.5% of the operating budget for 2009. He recommended that the General Fund should have a reserve between 30% and 50%. He reviewed the footnotes offered and statement of operations within the Audit report; making comments where warranted. He entertained questions and comments from the Board.

Scanlon requested that Bonniwell provide the LMCD with a monthly cash flow and expenditures chart for the purpose of reviewing the General Fund balance on a regular basis; soliciting a suggestion as to what that fund balance amount should be.

Bonniwell offered researching that question and providing both a response and a usable chart as requested by Scanlon.

Babcock stated that the LMCD established 50% reserve level for the General Fund and a 100% reserve level for the Aquatic Invasive Species Management Fund a number of years ago after negotiations with the 14 LMCD member cities. The financial summary letter provided a recommendation to maintain a reserve level; however, a suggested percentage was not offered. He asked Bonniwell if those historical reserve level percentages are on target or would he recommend re-negotiations with the member cities to establish another targeted reserve level because the LMCD's only ability to raise additional funds is through a special levy or private fundraising.

Bonniwell stated that he would research and provide a recommended Reserve Fund percent level as part of the cash flow chart project requested by Scanlon.

Scanlon commended Nybeck for his financial oversight on LMCD financial matters.

MOTION: Babcock moved, Woodruff seconded to accept the 2008 LMCD Audit Report.

VOTE: Motion carried unanimously.

C. Review of draft 2010 LMCD Budget

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that the budget consists of three components. This includes: 1) one page that outlines the city-by-city levy allocation, 2) pages of budget details, and 3) Appendix A that provides budget assumptions and details for specific line-items.

Babcock stated that draft budget was prepared for a zero percent increase in levy to the member cities. However, some cities proposed levy for 2010 may increase or decrease because of changes in their percentage of net tax capacities. He requested that staff provide an additional spreadsheet that documents the increase or decrease in the percentage of net tax capacities for all 14 cities from the adopted 2007 LMCD Budget to the draft 2010 LMCD Budget.

Nybeck stated that he would prepare such a spreadsheet. He continued his presentation by making the following comments:

- He provided an overview of the 2010 LMCD Budget process. This included: 1) an initial review by the Board at a Work Session that was held on April 28th in the LMCD office, 2) the full Board's first review at this meeting, 3) review of the draft budget with the LMCD member cities on May 21st, 4) second review by the LMCD Board at its June 10th meeting, with possible conditional approval, and 5) a final review and adoption by the LMCD Board at its June 24th meeting. By state statute, the adopted budget needs to be to the 14 LMCD member cities by July 1st.
- He stated that the LMCD is proposing a zero percent increase in levy to the member cities compared to 2009. This proposed levy is well below the maximum levy allowed by state statute, which is over \$535,000. He highlighted three items that were contributing to the zero percent increase. These included: 1) a MN DNR grant of \$40,000 for the EWM Harvesting Program, 2) a \$30,000 transfer from the AIS management reserve to help offset the costs to the cities, and 3) a freeze in wages that has been proposed for office staff.

- He highlighted four items that were not included in the draft 2010 LMCD Budget. These included: 1) the funding of the Boat Count and User Attitude Survey, which has been postponed since 2004, 2) a limited amount of funds (\$5,000) to increase the General Fund reserve closer to the agreed upon 50% level, 3) no funds have been budgeted for the equipment replacement for the EWM Harvesting Program, and 4) there is only a slight increase (\$5,000) for funding of AIS prevention programs, which have generally been spent on public access inspections.
- He believed that there were three Board action items needed at this meeting. These included: 1) preliminary approval of the draft 2010 LMCD Budget to distribute for review and comments 2) to direct staff to work with Treasurer Scanlon on a cover letter to be sent out to the member cities with the draft 2010 LMCD Budget, and 3) to schedule a meeting for Thursday, May 21st, at 11:00 a.m., to review the draft 2010 LMCD Budget with the cities.
- He entertained questions and comments from the Board.

The Board discussed questions and comments relative to the 2010 draft budget, in which Nybeck responded to. Some of those comments included: 1) the suggestion to provide the member cities with an explanation on funds that will be expended in 2009 and 2010 as it pertains to specific projects that will be funded for the prevention of AIS, 2) review and discussion of the historical and current taxable market values and net tax capacities, and 3) discussion on budgeting concerns for EWM Harvesting Program equipment depreciation.

MOTION: Gross moved, McDermott seconded to provide preliminary approval of the 2010 LMCD Budget for submittal to the 14 member cities for review and comments.

VOTE: Motion carried unanimously.

D. Ordinance Amendment, first reading of an ordinance relating to watercraft density, amending LMCD Code Section 2.02.

Whalen asked for background on this agenda item from Nybeck.

Nybeck stated the proposed ordinance amendment is in follow-up to time-intensive concerns raised by staff in meeting current LMCD Code standards for the purpose of defining watercraft storage at residential sites. The Board discussed this matter at a recent LMCD Strategic Planning Session, in which staff was directed to work with LeFevere to amend the ordinance. He reviewed the minor changes made from the current ordinance and recommended that the Board approve first reading, waive second and third readings, and adopt the proposed ordinance amendment.

MOTION: Babcock moved, Woodruff seconded to approve the first reading of the ordinance amendment as submitted, to waive second and third readings, and to adopt it.

VOTE: Motion carried unanimously.

11. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First the lake level as of May 8th was 928.9', with a discharge of 20 c.f.s. Second, the solar lights for the 2009 project were recently installed by May 1st under Harper's supervision, with the assistance of a seasonal employee.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:42 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary