

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, June 24, 2009
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:00 p.m. She stated that Mary Tietjen of Kennedy and Graven was in attendance as LMCD Counsel in LeFevere's absence.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; David Gross, Deephaven; Peter Hartwich, Excelsior; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Herb Suerth, Woodland; Dick Woodruff, Shorewood. Also present: Mary Tietjen, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Doug Babcock, Tonka Bay; Chris Jewett, Minnetonka; Kelsey Page, Greenwood; Bill Olson, Victoria. Also absent was Charles LeFevere, LMCD Counsel.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen asked Nybeck to provide the Board with lake tour work session dates for the Board's consideration, in which Nybeck provided. After a brief discussion by the Board, the sessions were scheduled for Wednesday, July 15th and August 12th, at 5:30 p.m. Staff was directed to coordinate the follow-up details.

5. APPROVAL OF MINUTES- 5/27/09 LMCD Regular Board Meeting

MOTION: Gross moved, McDermott seconded to approve the minutes from the 5/27/09 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Tanner moved, Johnson seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (06/16/09 – 6/30/09); **6B**, April and May financial summary and balance sheets; **6C, Marine Max**, approval of special event application for "Boat In Theater" planned for Friday, July 24th; **6D, Excelsior HOA**, Findings of Fact and Order approving a non-conforming, non-multiple dock permit application for the storage of four Boat Storage Units on 131.6' of

shoreline at 120-126 West Lake Street on Gideon Bay; **6E**, 3/13/09 and 4/10/09 EWM/Exotics Task Force Meeting Minutes; **6F, 2009 Multiple Dock Licenses**, staff recommends Board approval of renewal (without change) applications for Big Island, Inc., and A.F. Rossberg that have been paid in full; **6G, AI & Almas**, staff recommends that the Board refund \$2,985 of the \$3,000 preliminary on-sale intoxicating liquor license investigation deposit for the charter boats, Allante and Bella Vista; and **6H**, Approval of 2010 LMCD Budget.

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. LMA REPORT

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

Richard Glidewell, representing LMA, provided an overview of the LMA's current activities by highlighting the following:

- He thanked the LMCD for the Save the Lake fund contribution to the 2009 Herbicide Treatment Program. He stated that Carmans Bay would not be treated this year due to a shortfall in funding. Phelps and Grays Bay were treated and doing well with no milfoil documented. The LMA is handling questions and comments as they arise; along with initiating plans for the 2010 project.
- The 8th annual Lake Clean-Up Event was held on June 13th, in which an estimated 50 divers participated. This year provided for educational activities for children, along with entertainment. Divers were instructed to look for zebra mussels, in which none were found.
- He provided the following updates in regards to the prevention of aquatic invasive species (AIS):
1) that the LMA has deployed 10 zebra bobbers throughout Lake Minnetonka in which they are checked for attached vegetation on a regular basis, 2) a review of other State AIS regulations, enforcement, and funding efforts on the west coast, 3) that LMCD and LMA representatives recently met to discuss a 2010 AIS Prevention Plan, in which a draft version is currently being discussed, and 4) that the Minnesota Waters Association released an AIS Policy Statement, which recommended aggressive funding and policy changes.
- The 3rd annual LMA Golf Classic will be held Monday, August 10th at the Minnetonka Country Club.
- He entertained questions and comments from the Board.

The Board asked a few questions, or made various comments, in which Glidewell or Nybeck responded to. Some of those questions or comments included the following: 1) whether Carmans Bay would be treated with herbicides in 2010, 2) how far the fundraising efforts by the LMA fell short in 2009 on Carmans Bay, 3) whether another bay would be considered in 2010 should the treatment of Carmans Bay not continue, 4) the funding of advertisements for the prevention of Emerald Ash Borer vs. the prevention of AIS, and 5) the Army Corp of Engineer's pre-treatment survey and its availability.

10. PUBLIC HEARING

- A. **Presbyterian Homes on Lake Minnetonka**, new multiple dock license application to reconfigure the conforming multiple dock facility on Black Lake.

Whalen asked Harper to provide background on this agenda item.

Harper reviewed his staff memo, dated 6/17/09, which summarized the request from Presbyterian Homes on Lake Minnetonka to reconfigure the conforming multiple dock structure. He reviewed the current configuration of the dock structures and stated that the applicant has proposed the following three changes: 1) re-orient the main dock so all slips are lake opening, 2) increase the sizes of the 11 BSUs, and 3) widen some of the dock walkways. He highlighted two LMCD Code sections to evaluate the application. These included: 1) Code Section 2.03, subd. 7- outlines the multiple dock license process, and 2) Code Section 2.01, subd. 1- outlines authorized dock use area requirements. He recommended Board approval of the application for 2009, subject to no overnight or transient watercraft mooring on the west fishing dock. He entertained questions and comments from the Board.

The Board asked a few questions, in which Harper responded to or recommended being addressed by the applicant. Those questions included: 1) how the applicant would control the inability to dock or moor watercraft on the fishing dock to the west, 2) clarification of the hand rail at the fishing dock, and 3) how the Boat Storage Units (BSUs) are allocated.

Whalen invited the applicant to address the Board and to clarify the purpose for the proposed changes.

Mr. Rob Lahammer, representing Presbyterian Homes, responded to the questions asked by the Board. He stated that the hand rail on the fishing dock would go around the entire dock structure. The configuration of the dock structure was being changed to: 1) allow for navigational purposes into deeper waters due to shallow waters with existing vegetation, and 2) provide easier accessibility for handicap use by changing the current wood dock structure to a wider and sturdier metal dock structure. The BSUs are allocated by providing residents and their families first choice, with employees provided second choice. Additionally, there are two pontoons stored that are owned by Presbyterian Homes. He entertained questions and comments from the Board.

Tanner recommended that a sign be placed on the fishing dock stating that no boat storage be allowed.

Lahammer concurred with Tanner's recommendation.

Whalen opened the public hearing at 7:39 p.m. There being no comments, she closed the public hearing at 7:40 p.m.

MOTION: Gross moved, McDermott seconded to approve Presbyterian Homes on Lake Minnetonka new multiple dock license application for the 2009 boating season, subject to: 1) no overnight storage or transient watercraft mooring on the west fishing dock, and 2) appropriate signage communicating this.

VOTE: Motion carried unanimously.

11. OTHER BUSINESS

A. Discussion of Regulation of Sale and Service of Alcoholic Beverages on the Ice.

Whalen stated that this agenda item was in follow-up to the March 11th LMCD Board Meeting. She asked Tietjen to provide an update on this agenda item.

Tietjen reviewed LeFevere's memo, dated 5/22/09, which provided an overview of the LMCD's authority with respect to the issuance of liquor licenses and various liquor sale options available. This matter was addressed in response to a request by the Bayview Event Center in which they proposed an ordinance amendment to allow for the sale and service of liquor on the ice. A summary of her comments are as follows:

- She reviewed the existing legislation authorizing the LMCD to issue licenses for the sale of alcoholic beverages for watercraft that are underway. She stated LeFevere did speak with a supervisor from the Minnesota Liquor Control Division who confirmed that the LMCD's enabling legislation would not authorize the sale of alcoholic beverages on the ice; requiring newly approved legislation.
- She reviewed, in detail, two options available by the State of Minnesota that would allow for the sales or service of alcoholic beverages on the ice. These included: 1) a Consumption and Display Permit, and 2) the use of a Caterer's Permit.
- She reviewed three regulatory options available to the LMCD that were outlined by LeFevere. These options included: 1) to not authorize the sale of alcohol on the ice and not pursue new Regulation (allowing for the continuance via a caterer's permit as currently being done), 2) to regulate the control of the sale of alcoholic beverages via the special event process, or 3) to impose regulations directly on dispensing alcoholic beverages with a caterer's permit. Should the Board wish to consider the later option, she stated LeFevere had outlined regulatory considerations to that affect within his memo.
- She entertained questions and comments from the Board.

Nybeck directed the Board to a flow chart that was provided within LeFevere's memo in which Tietjen offered to review at the Board's request.

The Board discussed this matter at length, in which the following comments summarized the discussion:

- A question of whether initiating special legislation to regulate this activity would be a good use of taxpayers dollars or provide a lakewide benefit.
- Confirmation that the current State law provides for the sale and service of alcohol on the ice under a licensed caterer's permit, provided the sales or service of alcohol was incidental to the service of a prepared meal.
- The consideration of provisions to regulate such activity.
- Confirmation as to why the matter was before the Board when such activity is allowed under current State law.

Harper stated that LMCD staff had observed a tent on the ice in past winters in the vicinity of Bayview Event Center. Staff has had questions about what types of activity have occurred in this tent, including the sales and service of liquor and if it is associated with Bayview. This was checked into further with Bayview when a number of agencies met this past winter to discuss a separate pond hockey event that took place on Excelsior Bay. It was noted at that time that a special event permit had not been issued for this tent in previous years and that an inspection needed to take place by the Excelsior Fire District. Bayview communicated to LMCD staff that the sales and service of liquor was occurring in the tent for corporate events. LMCD staff investigated and questioned whether Bayview was complying with LMCD Code or the requirement that the sales or service of liquor was incidental to the service of a meal if Bayview was utilizing a caterer's permit from the State of Minnesota. At that time, Bayview made the request for the proposed ordinance amendment.

Whalen asked the Board if they would like to consider any special regulations or conditions to regulate the sale and service of alcohol on the ice through the special event permit process should they not want to consider pursuing special legislation to restrict such activity.

Woodruff stated that he was in attendance at the March 11th Board meeting in which this matter was initially discussed. He believed that the State of Minnesota has taken it upon themselves to act as the licenser for the sale and service of alcohol on the ice through the caterer's permit. He did not have a concern with such an activity and did not believe that there was a need to further regulate it.

Whalen stated that Bob Ziton from Bayview Event Center was in attendance and would like to make a few comments to the Board.

Mr. Bob Ziton stated that he would like to clarify a few comments. The original request for an ordinance amendment was made when he was informed by the LMCD office that this activity could not be done through the caterer's permit. Since it has been found that the caterer's permit does allow for such a service, he would like to withdraw his request for an ordinance amendment because Bayview Event Center has been legally providing alcohol on the ice for the last three years. To place the sale of alcohol on the ice in perspective, he stated that three ice events were held last winter which provided for \$13,592 in revenue (\$940 of which was the sale of alcohol). As food has always been served in the tent, he believed that \$940 was incidental to the sale of food. He expressed the importance of noting the intent of the caterer's permit regulations in which he confirmed through State of Minnesota employees that the sale of food has been adequate to meet required regulations. He confirmed that a permit was obtained by the MN DNR for the use of the tent utilized on the ice, that special event permits were issued by the Hennepin County Sheriff Water Patrol and the City of Excelsior, and that there was an approved inspection by the Hennepin County Health Inspector.

Nybeck commented on the likelihood of other similar events taking place on the ice. In recent years, there have been two similar requests from the City of Shorewood for a wine tasting event and the recently approved pond hockey event on Excelsior Bay. Currently, the LMCD has delegated its authority to permit special events in the winter months to the Sheriff's Water Patrol through a Resolution. If the Board deems that it would like to permit these events through the special event permit process, the LMCD could review them on a case by case basis.

MOTION: Woodruff moved, Johnson seconded to: 1) terminate discussion of licensing for the sale and service of alcohol on the ice of Lake Minnetonka, and 2) to evaluate winter special events taking into consideration public safety through the special event application process.

McDermott proposed a friendly amendment to include the consideration of public safety for all special events, not only winter. Woodruff and Johnson accepted the friendly amendment.

VOTE: Motion carried unanimously.

B. Review of draft LMCD Strategic Plan.

Whalen directed the Board to a draft LMCD Strategic Plan that was in their packet. She stated that the Board originally considered creating the Plan to establish a series of goals and objectives for the purpose of maintaining a clear vision and strategic plan for the LMCD. This will provide for a working document to assist staff and the Board in setting the annual priorities, projects, and budget. She further believed that the Plan would assist in evaluating staff performance. She reviewed the proposed vision and mission statement, acknowledging the various objectives and goals outlined within the Plan. She stated that once the Plan is approved, staff will proceed in creating a work plan outlining the tasks involved to meet the goals and objectives for future Board consideration.

Johnson asked if the goals could be changed.

Whalen stated the Plan is for a five year period. However, it is proposed that it be reviewed and updated annually by the Board.

MOTION: McDermott moved, Woodruff seconded to approve the Vision, Mission Statement, Objectives, and Goals as submitted.

VOTE: Motion carried unanimously.

Whalen thanked Tonka Bay City Councilmember Gerry De La Vega for his professional assistance to the Board on this project.

C. Discussion of 2009 Lake Levels.

Whalen asked Nybeck to provide background on this agenda item.

Nybeck reviewed his staff memo, dated 6/18/09, in response to recent public inquiries that have arisen due to the lower than normal water levels in 2009. He provided a summary of current and historical lake levels with respect to the MCWD's policies and procedures; along with a review of specific LMCD Code Sections as it pertains to the Board's ability to declare a temporary low-water emergency. He entertained questions and comments from the Board.

McDermott asked what processes are in place should the Board need to consider a temporary low-water emergency prior to a regular Board meeting.

Nybeck stated the Chair has the ability to call a special Board meeting to consider such an emergency, or the Board could hold off such consideration until the July 22nd meeting. Nybeck believed it was more appropriate to consider temporary low-water emergencies during the early spring. He further stated that declaring such an emergency is a great deal of work for both the Board and staff.

12. EXECUTIVE DIRECTOR REPORT

Nybeck directed the Board to a Report for the week of June 22nd for the 2009 EWM Harvesting Program. He provided a brief overview of when the harvesting equipment was launched, the primary objective for this program, a summary of where harvesting has been done, and a summary of where it is planned for the upcoming week. Similar Weekly Reports will be on the LMCD's website for the balance of the 2009 season.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:33 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary