

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, January 13, 2010
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:02 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Tom Scanlon, Spring Park; Andrew McDermott, Orono; Peter Hartwich, Excelsior; 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: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Doug Babcock, Tonka Bay

3. APPROVAL OF AGENDA

Whalen recommended the following two amendments to the agenda: 1) the tabling of item 12C per Board member Babcock's request to be present when considering the draft ordinance amendment and 2) that items 6D and 6F be removed from the consent agenda for discussion purposes.

MOTION: Tanner moved, McDermott seconded to approve the agenda as amended; making the change recommended by Whalen.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made two Chair announcements. First, she informed the listening audience that appointments to the LMCD Board run from February through to January 31st; providing for one more meeting prior to the end of Board terms. Second, she reminded all that the Save the Lake Recognition Banquet is scheduled for Thursday, February 11th at the Bayview Event Center. The keynote speaker will be author and historian Bob Williams.

**5. APPROVAL OF MINUTES – 11/18/09 LMCD Regular Board Meeting
12/09/09 LMCD Regular Board Meeting**

MOTION: Johnson moved, Woodruff seconded to approve the minutes from the 11/18/09 and 12/09/09 LMCD Regular Board Meetings as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Olson seconded to approve the consent agenda as presented. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (12/16/09–12/31/09) and (1/1/10–1/15/10); **6B**, November financial summary and balance sheet; **6C, MN DNR**, 2010 AIS Prevention Program Grant Application; **6E, Kurt Wehrmann**, draft Findings of Fact and Order approving side setback and adjusted dock use area variance at 444 Lafayette Avenue; **6G**, Authorization to advertise for vacant part-time Administrative Clerk position.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

6D, Save the Lake Committee, Board approval of 2010 Save the Lake Funding Proposals, as outlined in 1/7/10 staff memo.

Whalen stated that Board member Olson chairs the Save the Lake Committee and that she asked Olson to provide an overview of the committee recommendations.

Olson stated that committee members utilized both a grading methodology and review/discussion process to evaluate numerous funding proposals; consistent with the funding criteria set forth by the LMCD. He provided an overview, via a PowerPoint presentation, of the proposals recommended by the committee for approval. These proposals benefit the public at large and serve within the categorization of public safety, environmental, or public service/education. His comments were as follows:

- Solar Buoy Light Program (Public Safety)- \$2,000 be allocated for the placement of solar lights on key red and green channel marker buoys currently not being serviced. The Lake Minnetonka Charter Boat Association (LMCBA) has provided for one-half of that funding, with the LMCBA offering to volunteer their time and watercraft for the installation and removal of the solar lights.
- Water Patrol Safety Equipment (Public Safety)- \$3,526 be allocated for the purchase of: 1) four fire hoses with nozzles (including some new fire fighting hose sections) and 2) 10 LED Streamlight flashlights with chargers. The equipment will assist the Water Patrol as first responders.
- Public Access Inspection Program (Environmental)- No funds have been allocated for this program because it is proposed to be funded from the 2010 Aquatic Invasive Species Management Budget. Approval of all of these recommendations would result in a balance of \$6,238 of funds available for other 2010 projects. These funds may be needed to pay for additional public access inspectors, which the committee supports.
- 2010 Herbicide Treatment Program (Environmental)- \$10,000, or 25% of the commercial herbicide application costs (whichever is less), be allocated per bay for the continuation of the five-year pilot project; subject to review and recommendations of the EWM/Exotics Task Force.
- Minnehaha Steamboat Restoration (Public Service/Education)- \$15,000 be allocated in the restoration of the Minnehaha. The Museum of Lake Minnetonka offers the only non-profit, public access boat service on the lake. He stated that the Museum's public passenger usage has increased by 8,000 (2,000 passengers documented in 2006); with a goal to increase passenger usage to 20,000 per year.

- He stated that based on the committee's rule of maximum expenditure (25% of annual fund reserve), the fund is expending more money than what is being received. In an effort to fund more projects, the committee has been actively involved in the consideration of various marketing concepts. To proceed with the planning of those concepts, the committee is soliciting the Board's direction via their attendance at a proposed Workshop/Planning scheduled for January 27th at 5:00 p.m. prior to the Board meeting scheduled for that evening.
- He entertained questions and comments from the Board.

A few questions were asked of Olson, in which he responded to. Those questions are summarized as follows: 1) further clarification on the committee's recommendation for the funding of the 2010 Herbicide Treatment Program, and 2) confirmation that the 2010 herbicide treatment of Carmans Bay was listed within the LMA's funding proposal, with McDermott confirming that private funding is currently being raised.

MOTION: Woodruff moved, McDermott seconded to approve the 2010 Save the Lake Funding Proposals, as outlined in Chair Olson's 1/7/10 staff memo.

Suerth stated that although he believes the restoration of the Minnehaha is a wonderful project in which he has personally contributed to, he does not concur with allocation of Save the Lake funds to a non-profit organization.

Page concurred with Suerth's comments. Furthermore, he did not concur with the expenditure of funds for the Sheriff's Water Patrol equipment as the department has their own budget for such needs.

Whalen stated that the evaluation for the funding of the Water Patrol's safety equipment and the restoration of the Minnehaha were based on: 1) the use of the equipment being specific to Lake Minnetonka and 2) the Minnehaha providing for a benefit to the public at large for a nominal fee (compared to providing for a specific group's usage). She stated that a second public safety proposal was received; however, the committee did not believe that it met the funding criteria.

McDermott spoke in favor of the City of Spring Park's proposal for silt and sedimentation filtration; expressing interest in funding projects such as this on a grander scale.

Olson stated that the committee believed in the idea of the filtration proposal. However, the committee expressed an interest in obtaining recommendations to expand the proposal to serve the entire lake vs. one specific site.

Whalen stated that the committee discussed the possibility of implementing various environmental education programs as an initiative to future projects such as this.

Scanlon concurred with McDermott's comments. The requested funding is only a percentage of the \$20,000 estimated project costs; noting that matching funds were being provided by the City of Spring Park and the MCWD. On behalf of the city, he expressed his appreciation for the committee's review of the proposal and stated that the project will be going forward without Save the Lake funding.

VOTE: Ayes (10), Nays (3; Johnson, Page and Suerth); motion carried.

6F, 2010 LMCD Meeting Calendar.

Whalen recommended approving the draft 2010 LMCD Meeting Calendar without the second Board meeting in November and December (November 24th and December 22nd) as they are typically cancelled due to the holiday season.

MOTION: Whalen moved, McDermott seconded to approve the 2010 LMCD Meeting Calendar as amended, making the changes recommended by Whalen.

VOTE: Motion carried unanimously.

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

There were no public comments.

9. UPDATE FROM STANDING LMCD COMMITTEES-

- EWM/Exotics Task Force
- Save the Lake
- Technical Advisory Committee (TAC)
- Ordinance Review Committee

Whalen asked for an update from the Chair of each committee, with Nybeck providing the TAC update in Gross' absence.

EWM/Exotics Task Force

Suerth stated the EWM/Exotics Task Force recently met to discuss the draft AIS Prevention Plan for Lake Minnetonka. The Task Force is interested in initiating educational programs and the MN DNR's initiative to provide for the maximum amount of services possible. He asked Nybeck for additional background on pending projects.

Nybeck stated the Task Force recently reviewed the draft Request for Proposals document prepared by the LMA for the 2010 Herbicide Treatment Program, which he believed would be sent out shortly to the licensed herbicide applicators by the LMA. The next Task Force meeting is scheduled for February 12th, at which time the draft AIS Prevention Plan is scheduled for continued discussion, along with the review of handouts on the use of weevils for the control of AIS as presented by Mark Washa at the December 9th Board meeting.

Save the Lake

Olson solicited the Board's availability for the January 27th Workshop/Planning Session as outlined under agenda item 6D.

The consensus of the Board was to schedule the Board Workshop/Planning Session for January 27th as recommended by Olson.

Kask recommended that an agenda item be scheduled in the near future to discuss the priority of funding for future Save the Lake proposals.

TAC

Nybeck stated that Chair David Gross would be returning from out-of-town in the next couple of weeks, at which time a Public Forum would be scheduled within the first two weeks of February to discuss the committee recommendations.

Ordinance Review Committee

Tanner stated that he will communicate with Harper on the scheduling of a February meeting.

Whalen stated that Babcock was chairing the nominating committee for 2010 LMCD Board Officers and would be making recommendations at the January 27th Board meeting. Additionally, she recommended that Board members communicate to Nybeck on committee(s) that they would have interest in serving on for 2010.

10. LMA REPORT

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

Glidewell thanked the Board and provided the following overview of the LMA's current activities: The LMA continues to focus on the following two 2010 goals: 1) a 2010 AIS Prevention Plan and 2) the 2010 Herbicide Treatment Program. In regards to the Prevention Plan, he acknowledged the assistance of Jay Rendall from the MN DNR and anticipated a final approval at the February 12th Task Force meeting. He stated the 2010 Herbicide Treatment Program is moving forward and provided further details on an individual bay basis. The LMA's objective is to have a bay captain for every bay of Lake Minnetonka by 2010, which will provide for an efficient communication process. He entertained questions and comments from the Board.

Whalen asked Glidewell to provide background on other initiatives of the LMA Board, including how they would like to expand the role of bay captains in the prevention of new AIS.

Glidewell stated that the prevention of new AIS is the Board's top priority for 2010. Along with the finalization of the draft AIS Prevention Plan and 2010 Herbicide Program, the Board acknowledged the need to educate commercial vendors and the public on the risks of other potential AIS contaminated sources (such as the placement of used water garden plants and equipment, motor boats, and docking structures). Additionally, the Board believed that the bay captains could play an important role in the prevention of new AIS with the establishment of various watch programs. He confirmed that the establishment of a volunteer AIS inspection program was not a priority of their Board due to lack of response and the MN DNR costs in educating the volunteers.

Nybeck stated that he did not want to give up on the use of volunteers for AIS public access inspections, as a compliment to paid inspectors, because he questioned the financial viability of expanding inspection hours only through paid inspectors.

11. PUBLIC HEARINGS

There were no public hearings.

12. OTHER BUSINESS

Whalen requested moving agenda item 12B in front of 12A, which LMCD Prosecuting Attorney Steve Tallen was not troubled with.

- B. Charles & Shanda Shannon**, discussion of current dock installation as compared to 5/27/09 side setback and adjusted dock use (DUA) area variance.

Whalen asked Nybeck to provide background on this agenda item.

Nybeck stated that the Board approved a DUA and side setback variance for the Shannon's this past May. Hardships for this approval included converging lot lines and shallow water. He reviewed the approved site plan and the five conditions of the approved Variance Order, which were outlined in his 1/8/10 staff memo. Since the approval of the Variance Order, the Shannon's have dredged their DUA (somewhat remedying their hardship of shallow water), installed dock and canopies, and had an as-built survey completed; which was a requirement of the approved Order. The as-built survey was not consistent with the approved site plan, which he detailed in the 1/8/10 staff memo. He believed that there were two options for the Shannon's to resolve these discrepancies. First, they could comply with the approved Order by moving the canopy in towards shore. Second, they could request clarification from the LMCD Board on the approved Order, which would require slight amendments to the approved Variance Order. After meeting with Board member Scanlon, the Shannon's have chosen the second option. Although the Shannon's have obtained indefinite consent from the abutting property owner to the north to retain the existing dock and canopy structures, he recommended that the Board amend the approved Variance Order rather than relying on consent should the Board desire to approve the current installation. He did not have a recommendation for the Board. However, if the Board was inclined to require the Shannon's to bring the existing structures into compliance with the approved Order, he recommended a date for such be established. Otherwise, if the Board was inclined to amend the approved Order, the Board would need to direct LeFevere to amend the Findings of Fact and Order accordingly, which would then need to be considered at a future meeting. He entertained questions and comments from the Board.

The Board discussed both options outlined by Nybeck at length; considering the reconfiguration and placement of various dock structures while receiving input from staff. Comments made included the following:

- Confirmation that the Board could not replace the approved site plan (Attachment One) with the as-built survey without amending the approved Order. Specifically, the slight encroachment

(4.1') from the approved 5' setback from the adjusted north extended side site line. Board concerns were expressed in allowing for this encroachment on a mutual consent basis.

- Comparison of the approved conditions with the approved site plan (Attachment One).
- Confirmation from the applicant, via Scanlon, that moving the dock structure closer to shore would be difficult due to the recent dredge.
- Interest in requiring the placement of the dock structures and canopy be in strict conformance with the approved Order, based on logistics of the area, including frequent property sales and the approval of the canopy in a small DUA.

Whalen asked the applicants whether they had additional comments they would like to provide the Board.

Mr. Charles Shannon, 3800 Sunset Drive, spoke on behalf of he and his wife. He understood the Board's interest in requiring an applicant to come into strict conformance with an approved Order. However, he asked for the Board's leniency based on providing what he thought was his best efforts in coming within six inches of the approved Order, the current expenditure of over \$25,000, and what it would cost for him to bring the structures into conformance.

Nybeck stated that he believed the current installation of the dock structures and canopy is very close to the approved Variance Order. If it is the Board's intent to allow for the slight deviations, he recommended amending the Order and to allow for the as-built survey to be substitute for Attachment One rather than allowing for the slight encroachment through mutual consent.

The following comments were made by the respective Board members:

- Whalen compared the violation of six inches to the big scheme of things; noting the lack of impact on the environment and neighboring property owners.
- McDermott acknowledged the consent that was obtained from the property owner to the north.
- Tanner and Klohs believed the applicant has made every effort to comply and recommended amending the Order.
- Page believed the applicant needed to be held accountable to comply with the approved Variance Order, believing that the Shannon's have pushed the limit on complying with the conditions.
- Hartwich questioned if the LMCD is charged with being a resource or Code conformance manager. He believed the applicant needed to accept some ownership in being out of compliance and that the storage of watercraft is too many and too large for the designated area. Although he has mixed feelings in considering this item, he is going to error on the side of resource manager and vote to amend the variance.

MOTION: Scanlon moved, Tanner seconded to: 1) direct LeFevere to prepare draft Findings of Fact and Order amending the approved Shannon DUA and side setback variance by allowing for a 4.1' side setback variance for structure and canopy from the adjusted north extended side site line and 2) to allow for the as-built survey to replace Attachment One as the approved site plan.

VOTE: Ayes (11), Nays, (2; Page and Woodruff); motion carried.

A. Tallen & Baertschi, update on LMCD prosecution matters by Steve Tallen

Whalen welcomed Tallen on behalf of the Board and asked him to provide an update on prosecution matters.

Tallen introduced himself and provided an update on the 2009 prosecution matters, which were highlighted as follows:

- Boating While Intoxicated (BWI) arrests, which constitute a large percentage of the LMCD's expenditures, were 105 in 2009. This is up from 75 BWI arrests in 2008. However, there was little difference in prosecution costs between the two years (\$54,555.41 in 2009 compared to \$51,634.12 in 2008).
- He reviewed the LMCD's 2009 court fine revenue budget, in which the first 10 months equated to \$68,643.55. He anticipated another \$20,000 in revenue for the months of November and December and believed that the increase in revenues was due to the additional BWI arrests, whereby first offenders negotiated a plea.
- He updated the Board on the current legal challenges at the Minnesota Supreme Court on the use of breath testing machines for BWI arrests. He looked forward to the resolution of this matter as agencies he represents were required to go to blood and urine testing over breath testing; in which urine testing is now being challenged at the county level.
- He provided an update on the prosecution of various cases submitted to his office in 2009 under the LMCD's Code Enforcement Program for the storage of watercraft at residential sites. He stated the process is on-going and that many of the cases have been resolved. However, there are going to be some cases that are going to go to trial. He believed that residents will be coming to the Board for consideration of a non-multiple, non-conforming watercraft storage permit. He stated his position is to try and settle the cases with continuance for dismissal, with staff reviewing the storage during the 2010 boating season.
- He entertained questions and comments from the Board.

The Board asked a few questions, in which Tallen responded to. The following are responses to those questions: 1) that other citations are handled by his office (i.e., Quiet Water Area violations, insufficient amount of life jackets, etc.); however, the percentage of his time on these citations is insignificant as most individuals resolve the matter by paying the ticket, 2) confirmation that the urine tests also document other drug use; explaining the challenges in the validity of the readings once the urine is fermented, 3) he attributed the increases in BUI arrests as weather related, and 4) confirmation that many of the arrests are located around Big Island and Lord Fletchers.

Whalen thanked Tallen for his update.

13. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on three topics. First, a second 2010 MN DNR grant application has been prepared for public access signage. This application will not require matching funds of the LMCD; however,

staff resources will be required to install these signs. If the Board did not object, he intended on submitting this application. There were no objections. Second, he reminded the Board of the 2010 Pond Hockey North America Championship event, which is scheduled for January 22nd through 24th on Excelsior Bay. Third, he stated he will be attending a MN DNR AIS Prevention Open House on January 14th on behalf of the LMCD.

14. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:41 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary