

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, April 14, 2010
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; Kelsey Page, Greenwood; Andrew McDermott, Orono; Doug Babcock, Tonka Bay; David Gross, Deephaven; Peter Hartwich, Excelsior; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; 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: Dan Baasen, Wayzata; Chris Jewett, Minnetonka; Tom Scanlon, Spring Park.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made two Chair announcements. First, 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. Second, there was a need to schedule a Board Planning/Workshop Session for the draft 2011 LMCD Budget, in which the Board scheduled Thursday, April 22nd at 8:30 a.m., in the LMCD office.

5. APPROVAL OF MINUTES – 03/24/10 LMCD Regular Board Meeting

MOTION: Woodruff moved, McDermott seconded to approve the minutes from the 03/24/10 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (11), Abstained (1, Gross); motion carried.

6. APPROVAL OF CONSENT AGENDA

Woodruff asked for clarification on agenda items 6D and 6F, in which Nybeck confirmed that MN DNR representative Chip Wellings' comments were added to the draft AIS Task Force minutes of February 17th and that there was not supporting documentation in the packet for 2010 Bayview Charter Cruises liquor license applications.

Gross and Babcock requested that agenda items 6E and 6C be removed from the consent agenda, respectively.

McDermott moved, Olson seconded to approve the consent agenda as amended, removing agenda items 6C and 6E. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (04/01/10 – 04/15/10); **6B**, **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; **6D**, Minutes from the 02/17/10 AIS Task Force Meeting; and **6F**, **Bayview Charter Cruises**, approval of 2010 intoxicating liquor license application for the charter boat, Escalade, and a 2010 non-intoxicating malt liquor license application for the charter boat, Endeavor.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

- **6E, 2010 EWM Harvesting Program**, staff recommends Board approval of the Maintenance Proposal from Curfman Trucking and Repair, Inc.

Gross questioned if the 2010 Proposal was increased from 2009, in which Harper confirmed the amount remained the same.

MOTION: Gross moved, Woodruff seconded to approve the 2010 EWM Harvesting Program Maintenance Proposal with Curfman Trucking and Repair, Inc.

VOTE: Motion carried unanimously.

- **6C, Lake Minnetonka Association**, 2010 Save the Lake Grant Agreement for Eurasian Watermilfoil (EWM) and Curlyleaf Pondweed (CLP) Treatment Project on Carmans, Grays, and Phelps Bays.

Babcock questioned if a performance guarantee with PLM had been considered by the AIS Task Force in the drafting of the Agreement as concerns arose in 2009 that caused an initial herbicide application to be higher than what was desired.

Woodruff stated that discussion on the application concentration levels were held at the Task Force level, in which they requested John Skogerboe from the U.S. Army Corps of Engineers to specify what the treatment levels should be. He confirmed that Skogerboe provided that follow-up and that if there is re-growth, follow-up treatments could be made.

MOTION: Babcock moved, Suerth seconded to approve Lake Minnetonka Association 2010 Save the Lake Grant Agreement for Eurasian Watermilfoil (EWM) and Curlyleaf Pondweed (CLP) Treatment Project on Carmans, Grays, and Phelps Bays.

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:

- Aquatic Invasive Species (AIS) Task Force
- Save the Lake
- Technical Advisory Committee (TAC)
- Ordinance Review Committee

Whalen asked for an update from the Chair, or designated representative, of each committee.

AIS Task Force

Woodruff stated that an AIS Task Force meeting was conducted on Friday, April 9th. Discussions took place on what the 2010 action plans would be as a result of the AIS Prevention Plan. Additionally, he reported on an AIS training session that was held on Friday, April 2nd, which is also in follow-up to the AIS Prevention Plan. He stated the Task Force will be going back to the even months' schedule, in which the next meeting will be held on June 11th.

Save the Lake

Olson stated that the Save the Lake Logo Identity Proposal has been finalized with Pat Weas from The Thorburn Group. Additionally, representatives from Flickercreative for the website redesign and update will be meeting with staff shortly to finalize a proposal for the Board's consideration. He stated that there is currently not a Save the Lake Committee meeting scheduled.

TAC

Gross commented on the public's input that was provided at the TAC Public Forum, held February 17th, or documented in a respective survey. Comments provided from the public included the following: 1) show a clear and imminent danger to the lake before consideration of amending any dock ordinances, 2) prioritize a higher level of effort on preserving the lake, and 3) that the public was okay with the consideration of more quiet water areas (QWAs); particularly in shallow and channel areas.

Whalen stated that it was unfortunate that more testimony was not received at the Public Forum on the shallow water issue. She asked Gross if the survey results were available.

Gross stated that the survey results were available and that he would report the findings at the next meeting. Additionally, although testimony was not received at the Public Forum on the shallow water issue, the public did address the issue in the survey; providing for the consideration of more QWAs.

Ordinance Review Committee

Babcock stated the next Ordinance Review Committee is scheduled for Thursday, April 15th, in which discussion will include proposed ordinance amendments for combined docks at residential sites and special density license public amenities.

10. PUBLIC HEARING

- **Brad Hoyt**, side setback, adjusted dock use area, and length variance application at 2900 Gale Road.

Whalen asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 4/8/10, with a summary of his comments as follows:

- He stated that just prior to this meeting, the applicant has requested to withdraw his request for a side setback variance for both canopy and dock placement. Letters from the abutting neighbors agreeing to adjust side setback requirements through mutual consent were included in the handout folders. The remaining variances requested by the applicant include an adjusted dock use area (DUA) and dock length.
- Proposed hardships include unique considerations such as lot size and configuration (adjusted DUA) and rock bottom and shallow waters (dock length).
- The applicant has proposed the following: 1) a 71' long dock with a 16' x 48', three sided slip for the storage of one 13' x 34' boat, 2) a 3.5' wide dock on the north side of the slip and a 5' wide dock on the south, 3) to adjust the south extended side site line so it is parallel with the north extended side site line, 4) to maintain a dock setback of 3' from the north extended side site line and a 3' from the adjusted south extended side site line, 5) install a canopy over the slip setback 6.5' from the north extended side site line and 8' from the adjusted south extended side site line.
- He reviewed the following relevant LMCD Code Section in evaluating the variance application: 1) Code Section 2.01, subd.1- defining an authorized DUA, 2) Code Section 1.07- outlines the variance process from LMCD Code, 3) Code Section 2.01, subd. 3- outlines the ability to adjust side setback requirements under mutual agreement of adjoining sites, and 4) Code Section 2.02- outlines watercraft density restrictions.
- He reviewed two fundamental issues for the Board to address in considering the application. First, he recommended Board approval to the adjustment of the DUA (south extended site line to be parallel with the north extended side site line). Second, the Board must determine what dock length and boat and slip size are appropriate for the variance at this site.
- He believed the Board could table or continue this agenda item to a subsequent meeting and direct staff to work with the applicant to amend their application and site plan to meet the direction of the Board based on the discussion at this meeting. Additionally, the Board could direct LeFevere to prepare draft Findings of Fact and Order to approve the variance request, with conditions deemed appropriate by the Board.
- He entertained questions and comments from the Board.

The Board asked questions or requested clarification of Harper, in which he responded to. Those questions or comments are outlined as follows:

- Clarification as to how the removal of the request for a variance for side setbacks affect what is depicted on the proposed site plan. Harper confirmed that the proposed site plan depicts as shown the requested adjusted side site lines for the Board's consideration. He reiterated what has changed is the request for the 3' side setback and the request for the canopy as both, upon approval by the Board, would be allowed with neighbor consent.
- Clarification by LeFevere that Code Section 2.01, subd. 3 allows abutting neighbors the ability to waive side setbacks (including additional setbacks for canopies) under the following three provisions: 1) the adjustment of side setbacks only, 2) the use of one or more sites for a single, common dock, and 3) adjusting side setbacks or adjusted DUA's between two sites. He further explained that all provisions do not allow for adjustment of length. He confirmed that the dock length and adjustment of side site lines are the two variance requests the Board should be considering. Additionally, he stated that if the abutting neighbors consent is removed, the

applicant would need to adjust the placement of his dock to a 5' setback and remove his canopy to whatever is approved by variance for his length and DUA.

- Clarification from LeFevre that the Board has the ability to place a stipulation in the variance to allow, or disallow, consent by a neighbor to waive side setbacks in conjunction with a variance. The Board has historically provided for both actions on a case by case basis. In cases where the Board has not allowed a variance plus consent by abutting neighbor to waive side setback, the Board has found that the length and side setback of the site is not appropriate for both options.
- Harper stated that he could not verify the length of the abutting neighbors' docks; however, noted that the property to the south was estimated at 50'. Additionally, he could not verify at what water depth rocks were not present on the lake bottom. However, he pointed out specific water depth measurements on the proposed site plan. He recommended those questions be asked of the applicant and the abutting neighbor to the north, Ms. Williams.
- Harper could not clarify why the applicant has not proposed equally adjusting the north and south side site lines extension, including why he has proposed a 71' dock length. He recommended the applicant address those questions. Suerth believed that if 71' dock length was granted, a restriction on the size of the boat was warranted.

Whalen asked the applicant to address the Board.

Mr. Brad Hoyt, 2900 Gale Road, thanked the Board and Harper for their time in considering this application. He directed the Board to a letter in their packet from his dock installer, Tim Niccum. He stated he has lived on the lake for 30 years; however, this is the first of seven locations (due to living on the point) in which he has dealt with a high level of wave and wind action; noting his neighbors do not have the same problems. He stated that he installed the dock in 2007 and provided both verbal and physical examples of the wind and wave damage he has been dealing with. Those examples are outlined as follows: 1) physical evidence of broken tie lines, 2) spoke about dock sections that blew off the pipe standards that were replaced, 3) he stated that within his DUA there are rocks that are 3' and 4' in diameter and that the boat needs to be moored stern in so that the wind does not slam the rutter down onto the rocks (which commonly happens at the 4' depth contour when the water is low and the winds are high), 4) when commercial or other watercraft come within 20' at the end of the dock at a high rate of speed, 5) that his personal watercraft was lifted off its lift which was placed two feet above water level, and 6) the need for the canopy as last year his boat sustained \$30,000 worth of damage prior to the placement of the canopy (noting the bow line snapped in half). He confirmed ownership of one boat that draws an estimated 3.5' of water. He respectfully requested the Board's consideration of his variance request as he believed it to be reasonable. He entertained questions and comments from the Board.

The Board asked questions of Hoyt, in which he responded to. Those responses are outlined as follows: 1) the 71' dock length is requested to avoid the wave action from coming into the boat and the rutters from hitting the rocks, 2) confirmation that the only lift available for a boat his size is hydraulic, which was documented as not being stable enough for the height that he needs. Additionally, a lift would require the need to raise the canopy height as well, and 3) confirmation as to the logistical placement of the canopy.

Whalen opened the public hearing at 7:55 p.m.

Mr. Tom Cross stated that he represented Ms. Patricia Williams, the abutting property owner directly to the north at 2856 Gale Road. Ms. Williams has consented to the use of the dock as it has been planned by the applicant, subject to the mutual consent not being binding to any future owner of her property.

Page asked if Ms. Williams has previously had a boat on a lift and whether it was ever lifted off due to wave action.

Ms. Williams, 2856 Gale Road, stated that she has previously had a boat on a lift and that the boat was never lifted off due to wave action.

There being no further comments, Whalen closed the public hearing at 7:58 p.m.

LeFevere stated that any approval by the Board for an adjusted DUA cannot be withdrawn. However, any consent by an abutting property owner to waive side setbacks can be withdrawn at any time, whether it is from the current or new property owner. Should the abutting property owner to the north withdrawal their consent to waive side setbacks, the applicant would have to adhere to a 5' setback and remove his canopy as he could not meet side setback requirements.

The Board discussed consideration of the variance application, in which the following comments were made: 1) confirmation that the Board could authorize an adjusted DUA with the 5' setback and not require an approved site plan be attached to the variance, 2) confirmation by Page that a hardship exists for the adjusted DUA request, 3) acknowledgement that the applicant is dealing with high wave and wind conditions and that there is a need to moor the boat bow out, and 4) expressed concern for the need of such a large boat and dock length; acknowledging some length is warranted. Discussions were held between the applicant and the Board for consideration of a 64' to 71' dock length, with acknowledgement that a lift could possibly work for the applicant's boat.

MOTION: Page moved, Babcock seconded to direct LeFevere to prepare Findings of Fact and Order for the approval of Brad Hoyt adjusted DUA and dock length variance, subject to a 64' dock length and the adjustment of the southerly side site line as depicted on the proposed site plan.

LeFevere requested clarification on two matters. First, he stated that the proposed site plan before the Board is currently not the proposed dock plan as side setbacks are documented that no longer exists. He questioned if the Board would like to request a dock plan to be attached to the variance. He believed that the variance could be approved without a dock plan; citing the dock length and deflection of side site lines. Second, he questioned if the Board would like to allow the variance to be approved in conjunction with allowing neighboring consent to waive the side setbacks and, in turn, whether the applicant would be allowed to adjust his dock length within the adjusted DUA or be required to maintain the length at 64'.

Page clarified his motion by stating that the abutting neighbors have the ability to provide consent to waive side setbacks and allow for the canopy as it pertains to moving his dock from 5' to 3' from the side site lines; noting that consent can be removed at any time. However, the adjustment of the DUA by deflecting his side site lines and the length of his dock at 64' are to be bound by the variance and cannot be changed upon consent by the neighbor.

Gross requested clarification that both abutting neighbors have documentation with their signature to provide consent to waive the side setbacks, in which that documentation was confirmed in existence. Additionally, he stated that if a 64' dock length is enough to not damage the watercraft, he concurs with that length. However, he believed that adjusting the dock length to avoid damage to the watercraft is prudent; acknowledging he has personally dealt with high waves and wind action.

VOTE: Ayes (10), Nays (1, Woodruff); motion carried.

11. OTHER BUSINESS

A. Staff update on 2010 LMCD Code Enforcement and Shoreline Boat Storage Count

Whalen asked Herman for an update on this agenda item.

Herman directed the Board to her staff memo, dated 4/8/10, in which she provided an update of both the LMCD Code Enforcement and Shoreline Boat Storage Count Programs that are planned for completion during the 2010 boating season. With respect to the Code Enforcement Program, she reviewed the 2009 priorities and their respective findings, an update on prosecution efforts, current discussions to amend the residential combined dock ordinance and recommended goals for 2010. Additionally, she provided background information on the Shoreline Boat Storage Count Program; providing for a review of the three primary objectives, the established methodology, and 2010 recommended goals. She stated that both programs are scheduled to commence the first week of June with fieldwork typically completed by mid to late July. She stated staffing will be provided by EWM Harvesting Program personnel when the program is not running, with other staffing sources to be determined. She entertained questions and comments from the Board.

The Board asked a few questions, or made comments, in which Herman responded to. Those discussions and/or responses are highlighted as follows: 1) confirmation that prosecution costs are negotiated by the prosecuting attorney (with Herman to further clarify what the LMCD's reimbursement rate is), 2) discussion and further clarification from Page on sites that have signed an Agreement to Suspend Prosecution and what that typically entails, 3) clarification on what staff considered flagrant violations, 4) confirmation that violations on watercraft density ordinances do not prevent a site from installing their dock and dock or mooring watercraft that are in compliance with LMCD ordinances, and 5) confirmation that some of the residents do respond to letters that are sent and that staff welcomes the opportunity to speak with them by phone to further educate and clarify the sites storage density.

B. Staff update on 2010 Lake Minnetonka Public Access Inspection Program.

Whalen directed the Board to a memo in their handout folder and asked Nybeck for an update on this agenda item.

Nybeck reviewed his state memo, dated 4/14/10, in which he provided an update on the funding sources for the 2010 Public Access Inspection Program, which were previously discussed by Whalen at the March 24th meeting. He highlighted the funding sources, totaling \$62,184, as follows: 1) LMCD Aquatic Invasive Species (AIS) Budget- \$30,000; 2) LMCD Save the Lake Fund- \$11,238; 3) MN DNR AIS Prevention Grant- \$6,720; 4) MCWD- \$7,500; 5) Reduction in EWM Harvesting Program Expenses-

\$1,726; and 6) LMA- \$5,000. The funding from the LMA is subject to conditions in which he could not expound on at that time. However, the LMA will be addressing those conditions at the April 28th meeting. Respective contracts from the MN DNR, MCWD, and the LMA will be provided for the Board's consideration at that meeting as well. The total hours of inspections, which was previously conveyed by Whalen, remained at 4,096; utilizing both the MN DNR and staffing from Volt Workforce Solutions (Volt). He provided a breakdown of those hours and pay rate as outlined in his memo. Additionally, he stated that the use of Volt is a pilot project. He entertained questions and comments from the Board.

Whalen stated that the review noted above does not take into account possible volunteer inspection hours currently being considered by the Minnetonka Power Squadron. Additionally, she confirmed all non-MN DNR inspectors will be trained consisted with the MN DNR inspection program.

McDermott asked Nybeck to compare the total number of 2009 inspections made to what is currently being proposed to date, in which he stated the MN DNR completed 86% of the planned inspection hours (an estimated 3,200). Additionally, he stated the logistics are currently being worked out between the MN DNR's inspection schedule and the implementation of Volt's employees where coverage is not provided.

Whalen stated that in talking with representatives from the MN DNR, confirmation was received that there are enough employees for coverage until the employees go back to college. She confirmed that the LMCD would be coordinating coverage with Volt and that Nybeck recommended coverage be at the secondary accesses, in which she concurred. She recognized that the cost of watercraft inspections are becoming prohibited, in which the LMCD must continue to look at all options available.

Woodruff asked Nybeck to clarify how many employees are being recommended for use by Volt, in which Nybeck anticipated six or seven employees. Additionally, he stated that Volt utilizes college students as well, in which there may be the same coverage concerns that the MN DNR deals with. However, the Volt employees are not subject to the education criteria for employment that are required by the MN DNR.

Whalen stated that employment with the MN DNR is an internship, in which staff actually pays for the college credit hours.

12. EXECUTIVE DIRECTOR REPORT

Nybeck reported on three items. First, that the official ice out date was April 2nd. Second, the current lake level is 929.18; noting a small discharge. Third, he attended a Woodland Cove neighborhood meeting on Monday, April 12th, at the Gillespie Center. He directed the Board to various news articles and his letter to the City of Minnetrista, within their handout folders, that further outlines the development and his comments to the City. He stated that docking and boat storage at this development is quit complex and he recommended the developers get feedback on docking and boat storage from the LMCD ASAP through a Board Workshop/Planning Session. He stated that he would keep the Board apprised on this matter.

McDermott questioned why the MCWD was discharging water, in which the Board has requested staff obtain the established policy from the MCWD for the Board's information.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:49 p.m.

Lisa Whalen, Chair

Andrew McDermott, Secretary