

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, August 11, 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; Kelsey Page, Greenwood; Andrew McDermott, Orono; Dan Baasen, Wayzata; Doug Babcock, Tonka Bay; David Gross, Deephaven; Peter Hartwich, Excelsior; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Herb Suerth, Woodland; and 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; Tom Scanlon, Spring Park.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made three announcements. First, the LMCD held two informational meetings with the member city officials and legislative representatives on July 21st. Representation was provided from all of the cities, in which good comments were provided. Second, a Board Workshop/Planning Session was held on July 28th with representatives from Woodland Cove Development, LLC. Discussions were held on the proposed development plans, including docking and boat storage. Staff was directed to work with both the developers and City of Minnetrista staff to resolve noted issues prior to the submittal of an application(s) for Board consideration. Third, a Special LMCD Board of Directors Meeting was held on August 4th at the South Lake Minnetonka Public Safety Facility for the purpose of receiving an update from the MN DNR on the infestation of zebra mussels in Lake Minnetonka. Additionally, the MN DNR, in coordination with the LMCD and the Minnehaha Creek Watershed District (MCWD), will be hosting two public open house meetings on this matter. Those meetings will be held on August 31st and September 1st, locations and times to be determined, for the purpose of providing the public the ability to obtain required information and ask questions. She expressed an interest in having attendance from half of the Board at each meeting. Furthermore, the MN DNR will provide a training session for lake service providers on August 12th.

5. APPROVAL OF MINUTES – 06/23/10 LMCD Regular Board Meeting

MOTION: McDermott moved, Woodruff seconded to approve the minutes from the 06/23/10 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Gross moved, Olson seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (7/1/10 – 7/15/10), (7/16/10 – 7/31/10), and (8/1/10 – 8/15/10); and **6B**, June financial summary and balance sheet.

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. UPDATE FROM STANDING LMCD COMMITTEES:

- Aquatic Invasive Species (AIS) Task Force
- Environmental Committee
- Ordinance Review Committee

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

AIS Task Force

Seurth stated that in light of the recent infestation of zebra mussels in Lake Minnetonka, the public must be aware of bodies of water that are currently not infested and do everything possible to forestall infestation to those locations. Additionally, he stated that he did not believe property values would be affected and that the lake community should continue to utilize the lake as before the infestation. He recommended that Board representatives approach their constituents on the basis that the infestation is a nasty inconvenience that will be overcome.

Woodruff stated that in light of the infestation of zebra mussels, a Special AIS Task Force Meeting was held on August 10th at the MCWD office. The purpose of the meeting was to establish a work plan on the handling of the infestation. Committee agencies represented at the meeting included the MN DNR, Hennepin County Environmental Services, Three Rivers Park District, MCWD, LMCD, and the Lake Minnetonka Association (LMA). Discussions held were highlighted as follows:

- Luke Skinner from the MN DNR was designated as the lead technical coordinator and communication clearing house. Information obtained will be posted on the MN DNR website, along with represented agencies maintaining a link to the MN DNR's web site as well.
- A preliminary assessment reported zebra mussel sightings at 12 locations in the Lower Lake area, with one location documented on the Minnehaha Creek, downstream of the Grays Bay dam. The west side of Big Island had most of the sightings. A reproducing population was not found as all were documented as being up to a year old. Assessment will continue within three to four weeks.

- The MN DNR officially designating the lake as infested with zebra mussels on August 16th, which will provide for the enactment of additional inspection and cleaning procedures to comply with the State AIS transportation laws.
- A lengthy discussion was held on eradication of the zebra mussels. The consensus of the Task Force was that there is not a practical or useful eradication method, although efforts should be made to contain them within and outside of Lake Minnetonka.
- The consensus of the Task Force was that control of the zebra mussels may slow down migration; however, it will not stop them from moving around the lake.
- Keeping the zebra mussels from leaving the lake is of high importance, with new rules to adhere to. Key actions were set by the Task Force, which included the following: 1) public education and training (high importance), 2) re-training of public access inspectors, 3) activation of the updated MN DNR website pertaining to the Lake Minnetonka infestation, 4) implementation of new signage, 5) submittal of press releases, 6) lake service provider training, 7) public informational meetings, and 8) enlisting member cities to publicize the information as it becomes available.
- He entertained questions and comments from the Board.

Hartwich asked for clarification on the reproducing population noted above.

Woodruff stated that the zebra mussels need to be at a certain age before they can reproduce. Those that have been found to date are small in nature; therefore, too young to reproduce. Additionally, the areas in which they have been documented are affected by ice, which kills zebra mussels. The MN DNR will continue to look for mature adults that are reproducing in the deeper waters.

Environmental Committee

There was no Committee update.

Ordinance Review Committee

There was no Committee update.

10. PUBLIC HEARING

There were no public hearings scheduled.

11. OTHER BUSINESS

- A. WYC (Sites 2 and 3) and WCSC (Site 4)**, staff update on 2010 new multiple dock license, special density license, and variance applications.

Whalen asked Nybeck to provide an update on this agenda item.

Nybeck stated that this matter was scheduled for informational purposes. He directed the Board to his memo, dated August 5th, in which he highlighted the following:

- He reviewed applications received and fees paid to date. WYC and WCSC have made a request to withdraw applications and to bring these application fees forward for future applications to

- amend what has currently been submitted.
- He provided a detailed review on activities that have taken place to date. A summary of those activities included the following:
 - The scheduling of public hearings for March 24th that were tabled for the scheduled charette.
 - The signing of an indefinite extension to the 60-day rule by the applicant to allow for the continued tabling of the public hearings until the charette took place.
 - The coordination of the charette by the WYC and WCSC on June 18th and 19th, in which Board member Baasen and he attended on behalf of the LMCD.
 - A meeting with the LMCD, City of Wayzata, and the applicant to discuss the charette and public hearings, at which time the applicant communicated the possibility of requesting a delay of the public hearings.
 - Continued follow-up discussions with applicant, at which time an interest was expressed to: 1) consolidate Sites 2 and 4 into one site (which requires the LMCD to conduct a mandatory Environmental Assessment Worksheet (EAW)), and 2) the possible amendment to the Site 3 applications.
 - The completion of a multiple dock license inspection, which revealed: 1) a few minor violations, and 2) one major violation at Site 4 (four boat storage units constructed at 30' in length rather than the approved 20').
 - A review of a letter from the applicant within the packet, dated July 29th, in which the applicant withdrew the applications for WYC (Site 2) and WCSC (Site 4) requesting that the LMCD hold the fees paid and apply them for future applications (combining Sites 2 and 4). Nybeck stated that he informed the applicant that delaying the pending applications for approval of a 2010 license made sense, provided the licensing and permitting issues that need to be resolved with the City of Wayzata were done so before the public hearings were scheduled. Additionally, he stated he will prepare a mandatory EAW document for the Board's consideration at the September 22nd meeting.
 - He entertained questions and comments from the Board.

Whalen requested clarification as to which site was not in compliance with the multiple dock inspection, in which Harper confirmed Site 4 had the major violation, noted above, with minor dock construction discrepancies at Site 3. Otherwise, the boat storage was in compliance with approved site plans.

Baasen stated that the charette was an attempt on the part of the WYC and WCSC to engage the community in the decisions before them, which was well received. He believed that if the stated intent, or direction, of the charette progresses it would be a benefit to the community. Parking amenities were a concern mentioned within the charette, in which the LMCD is not directly involved with but the community was. Additionally, he concurred with Nybeck that it would be beneficial if all matters were resolved before the LMCD holds the public hearings.

Whalen asked Baasen if he could foresee considerable progress by the end of this year, in which Baasen stated he could not speak for the respective parties. However, he confirmed that they are on the track to accomplish their concerns.

Whalen acknowledged the staff's considerable time to date in the processing of the current applications,

which she felt was a concern in the consideration of holding the application fees for future applications. She asked LeFevere to advise on this matter.

LeFevere stated the current request is a little different than one asking for a refund. He confirmed that the application fee is for the application itself, and the processing of, and not for the actual license. If an application is denied, the fee is not refunded to the applicant. It is the Board's discretion as to whether the fees should be refunded; however, the purpose and intent of the fee relates to the amount of staff time involved. He concurred that staff has spent a considerable amount of time, as noted by Nybeck's outline of activities within his staff memo.

Whalen confirmed that the amount of staff time provided to date does not include the time needed to process the EAW.

Babcock stated that application fees have typically not been refunded, even if the application has been withdrawn. At this time, there is not an application before the Board to allow for the preparation of an EAW. He expressed concern that a 2010 license has not yet been issued and the continued use of staff time on this matter when there is a letter from the applicant to withdraw the applications. He recommended a better approach would be for the applicant to request an extension of the applications with the intent to amend, providing for the ability to initiate the EAW process once amended.

Whalen asked the applicant for the WYC and WCSC to address the Board and clarify their intent.

Mr. Bert Foster stated that he is the representative for both the WYC and WCSC. He provided a historical review of the applications made to date, the reason for delaying the public hearings, and their current interest in combining Sites 2 and 4 due to the recent receipt of legal easements for those properties. With that said, he stated it was staff's recommendation that he withdrawal the current applications. Additionally, he stated he would dedicate the coming week to filing new applications with all of the supporting documentation. He acknowledged the staff's time spent on the applications to date. Therefore, he offered to pay for any time incurred from this point forward, up and above the fees previously paid, if the Board would consider applying the prior fees to the future applications.

Whalen stated that if the applications are amended, the WYC and WCSC would be subject to paying additional fees for the processing of the application from date of receipt forward. Additionally, if a new application is submitted, the applicants are required to pay the application fees. She asked LeFevere to advise which route would be preferred.

LeFevere stated there are advantages for the WYC and the WCSC to amend their applications, which happens all the time. Additionally, he explained the two parts associated with the fee structure, in which one part covers the generic staff time involved in processing the application while the other part covers engineering, surveying, legal fees, etc. He did not know enough about the two applications to make a recommendation. However, he believed that if an amended application(s) was received, the Board would have the discretion to accept the application(s) or require new application(s) at that time.

Babcock stated that he believed that amending applications for Site 3 was acceptable. However, he believed that the consolidation of Sites 2 and 4 should require new applications.

Nybeck confirmed that Sites 2 and 4 have both multiple dock and special density licenses. Therefore, two applications are required for the proposal to combine the two sites.

Babcock stated that application fees are applied to all applicants equally and designed to cover the average cost of the application program throughout the year. These fees are not designed to be specific to any one application.

Whalen concurred with Babcock and stated that staff should not take time to research and document time spent on the applications.

The Board briefly discussed the options of amending or submitting a new application for each site. In conclusion, it was agreed that the applicant would work with staff in submitting their amended applications, in which Nybeck will bring back the applications for the Board's determination of fees and draft mandatory EAW document for approval in September.

Babcock recommended that Foster withdrawal his letter of July 29th, which requested that the applications for Sites 2 and 4 be withdrawn. Foster verbally did so.

B. Save the Lake Committee, chair update of:

- Updated Logo Artwork
- Draft Usage Guide

Whalen asked Olson to provide a Save the Lake Committee update.

Olson stated that the committee has been working to rebrand the LMCD and Save the Lake logo for incorporation on all levels of use; one of which is for use on all printed materials, respectively. He provided a detailed overview, via a PowerPoint presentation, of the various revisions (original, revised, revised 2) to the logo design considered to date, the reasoning behind the requested revisions, and the respective effects. He stated the committee does not have a final recommendation for approval and solicited the Board's input or selection in the design of the new logo identity, in which a straw poll took place.

MOTION: Johnson moved, Klohs seconded to approve the LMCD and Save the Lake original logo design, as presented.

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

Olson stated that early on in the logo identity selection process, Board member Woodruff had recommended that the LMCD create a Usage Guide. He believed that some leeway was warranted; however, concurred with the need to provide consistency in its use. He provided a detailed review, including primary use, campaign identity, color system, typography, and graphic pattern use. He stated that the next step would be to incorporate the identity in the LMCD's web site, in which a contractor has been identified and work will be moving forward in the near future. He entertained questions and comments from the Board.

The Board asked a few questions, in which Olson responded to. Those questions and his responses are as follows: 1) the request to research past discussions on the registration of the trademark, in which staff was directed to proceed and report back to the Board and 2) confirmation that the five items listed for the logo's primary identity use is not all inclusive, and that the District has the ability to utilize the logo on t-shirts, water bottles, etc.

MOTION: Woodruff moved, McDermott seconded to accept the LMCD and Save the Lake Identity Usage Guide.

The Board continued to ask a few more questions or made comments, in which Olson responded to. Those questions and comments, and his responses, are as follows: 1) confirmation that the blue and grey colors are standard for price efficiency use, 2) an observation noted that within the logo the words "Conservation District" are in smaller font than the words "Lake Minnetonka," 3) confirmation that large scale printing applications, i.e., banners with narrative, would be approved by the Board prior to printing, and 4) expressed concern that the logo patterns presented in the Usage Guide could be more recognizable.

VOTE: Motion carried unanimously.

C. Public Safety Committee Update

Whalen asked Nybeck to provide an update on this agenda item.

Black Lake Quiet Water Area (QWA)

Nybeck stated that in February, the committee recommended that the Board consider making Black Lake entirely Quiet Water Area (QWA) because the current designation is confusing. In follow-up to the Board's direction, staff prepared a questionnaire that was sent to area community residents and performed site visits of the boating activity. He provided a review of the survey responses and his interpretation of the boating activity that was observed, which was reviewed by the committee as well. The committee concluded that a public hearing to consider Black Lake as entirely QWA was not warranted. However, consideration should be made to improve signage at both entrance points.

Johnson, who chairs the committee, reiterated Nybeck's comments and noted that the signage could be improved. The Board could always revisit the matter as future concerns arise.

The Board concurred with the committee's recommendation.

Cedar Point West QWA

Nybeck stated that at the June 23rd Board meeting, Mr. Michael Kirkwood inquired about the LMCD process to have the channel off of Cedar Point West established as a QWA due to public safety concerns. Mr. Kirkwood followed-up with the submittal of a formal request to the LMCD via a letter, dated 6/30/10. He provided an overview of activities and discussions held after receipt of the formal request, which included the following: 1) staff's one hour observation of boating activities at the subject area (documenting public safety concerns), 2) discussion and consideration of current and alternate

navigational buoy placement locations and the respective effects, 3) documented concerns from neighboring residents sighting a public safety concern, 4) the consideration of consequential effects in changing the wake size should the channel be designated as a QWA. The committee did not feel that a public hearing was warranted; however, recommended LMCD and Water Patrol staff continue to monitor public safety in the channel and whether the current navigational buoy placement has improved matters.

Whalen did not think the Board should determine whether a QWA is not warranted based on one-hour of observation. She was inclined to request further observation of the area or schedule a public hearing.

Babcock suggested the idea of designating the QWA during weekend hours.

Johnson expressed concern in the designation of a QWA during weekend hours due to creating a confusing situation. The committee considered creating a channel on the west side of the reef area because a number of boaters are not aware that they can go around the current channel area. Additionally, he sighted visibility concerns at the channel area.

Whalen asked what the negative effects would be if the channel was designated as a QWA. Additionally, she expressed concern for public safety as the channel is only 60' wide.

Johnson stated the area could be designated as a QWA. However, it would change the effects of the wave action and increase the noise level due to the accelerated throttles, which in turn stir up the lake bottom.

Page expressed concern in establishing the QWA based on the concerns of two neighboring residents and the lack of public outcry. Based on the committee's recommendation to not hold a public hearing, at the very most, continued observation of the area should be completed.

Whalen reiterated her concern that more observation is needed to confirm whether a public safety concern exists, in which Babcock recommended increasing Water Patrol enforcement in the area.

Nybeck stated that although it was the recommendation of the committee that a public hearing was not warranted, it was his recommendation that if the Board felt strongly enough to take the matter one step further, staff could be directed to continue site observations and report findings or schedule a public hearing. He believed that more than two residents would come forward if a hearing was scheduled.

The Board directed staff to observe the area one more time during high traffic use, communicate to the Water Patrol the Board's interest in increasing enforcement in the area, and continue documenting the various navigational buoy placement points and respective results. A recommendation was made by Gross to consider adding a second set of red and green buoy for a longer channel to assist in visibility concerns.

Possible Winter Rule Changes for 2010-2011

Nybeck stated that the committee recommended a number of winter rule changes for the Board's consideration. The recommendations are highlighted below with the respective comments.

- Amend LMCD Code to provide for the requirement of a straight arm for the hitching and towing of a sled, trailer, or other device containing one or more human passengers. Nybeck stated that the Hennepin County Water Patrol recommended this change, in which the committee concurred. Additionally, approval of the proposed amendment would streamline some inconsistencies with State law. This includes the State requiring the use of a straight arm but does not recognize snowmobiles as a motor vehicle, while the LMCD recognizes a snowmobile as a motorized vehicle but does not require a straight arm.

The Board discussed the recommendation to require a straight arm for the hitching and towing of one or more persons at length. They cited various examples of recreational hitching and towing and the pros and cons in the use of a straight arm, as well as whether there was sufficient documentation to currently cite individuals on Lake Minnetonka. Additionally, they requested further clarification as to what State law is currently being used for the issuance of citations, in which LeFevere provided an overview of Minnesota Rules 6102.0040, "Required Equipment."

Herman stated that the LMCD regularly receives calls as to whether one can tow behind a snowmobile vs. an ATV. The proposed amendment would resolve those questions as both motorized vehicles would be recognized with the use of a straight arm. She stated that the Water Patrol cited another state statute that was used as well; however, she did not have it on hand. Additionally, she stated the Water Patrol considers the matter a public safety concern.

Nybeck recommended that Lt. Hartig address the Board on this matter when he provides the Water Patrol's 2010 boating activity update in the near future, at which time the Board can ask for feedback on this proposed ordinance change. The Board concurred with Nybeck's recommendation.

- Amend LMCD Code to increase the maximum speed limit from 15 to 25 miles per hour (m.p.h.) when: 1) within the shorezone (150' from the shore) and 2) within 150' from persons fishing, a fish house, pedestrian, skier, skater, skating rink, property, or people.
- Establish an ordinance that restricts maximum speed limits for all of Black, Emerald, & Seton Lakes to 25 m.p.h. (with appropriate signage). Nybeck stated this recommendation would provide for more consistent enforcement by the Water Patrol.

Johnson concurred with the recommendations and did not believe 25 m.p.h. was unreasonable. Additionally, he stated that whether the ordinance was approved or not, more signage was needed as individuals are regularly cited for not adhering to the shorezone speeds as they enter from under the bridge areas.

- Amend LMCD Code to increase the nighttime maximum speed limit for all areas, other than noted within bullet point two and three above, from 30 m.p.h. to 50 m.p.h. Nybeck stated that this recommendation would provide for consistency with State law.

The Board briefly discussed this recommendation, in which the following comments were made: 1) the increase in residential lighting provides for a safer atmosphere to go 50 m.p.h. at night, 2)

concern was expressed in the increase of the noise level at 50 m.p.h., 3) whether enforcement is available to handle the increase in speed limits, 4) that Lake Minnetonka provides for a high density of residential living compared to some other bodies of water in the state; providing for cause and effect to be considered, 5) the observation that vehicles are better manufactured to provide for safer handling, 6) the comparison that watercraft are better manufactured as well but that their speed limits have not been adjusted to be consistent with state law, and 7) expressed concern for the safety of the pedestrians utilizing the lake after dark.

Whalen recommended that staff bring forward draft ordinance amendments pertaining to the four recommendations by the Public Safety Committee. In doing so, the Board would have time to digest the recommendations for consideration. Additionally, a representative from the Water Patrol would be present to respond to some of the public safety questions as well. The Board concurred with Whalen's recommendation.

The meeting was recessed at 9:00 p.m. and reconvened at 9:05 p.m.

D. Review of draft 2009 LMCD Report

Whalen asked Nybeck to provide an overview of this agenda item.

Nybeck directed the Board to the draft Report provided in their packets. He recommended that the Board: 1) review and approve the draft Report (as submitted or amended), and 2) to direct staff to submit the Report to the member cities. A detailed PowerPoint presentation was nearly complete for Board member presentations to each of their member cities. Additionally, he provided a brief overview of each individual section and the respective appendices.

The Board made comments and asked questions of Nybeck, in which he responded to. Some of those questions and comments are highlighted as follows: 1) the Report and respective PowerPoint will be good information for the member cities, 2) confirmation that each member city received a copy and that the Report will be posted on the LMCD website, 3) submitting the Report at this time, shortly after the recent LMCD public meeting on July 21st, in which the member cities attended, will provide for positive follow-up action, and 4) it is a great reference tool for all.

MOTION: McDermott moved, Woodruff seconded to approve the 2009 LMCD Report as submitted, with its submittal to the member cities.

VOTE: Motion carried unanimously.

Whalen proposed cancelling the scheduled August 25th Lake Tour Work Session due to the two public open house meetings scheduled for August 31st and September 1st.

MOTION: Woodruff moved, McDermott seconded to cancel the August 25th Board Lake Tour Work Session.

VOTE: Motion carried unanimously.

13. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

14. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:10 p.m.

Lisa Whalen, Chair

Andrew McDermott, Secretary