

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, September 8, 2010
Wayzata City Hall

1. CALL TO ORDER

Page called the meeting to order at 7:01 p.m.

2. ROLL CALL

Members present: Kelsey Page, Greenwood; Tom Scanlon, Spring Park; Dan Baasen, Wayzata; Doug Babcock, Tonka Bay; 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: Lisa Whalen, Minnetrista; Andrew McDermott, Orono; David Gross, Deephaven; Chris Jewett, Minnetonka.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Vice Chair Page

There were no Chair announcements.

5. APPROVAL OF MINUTES – 7/28/10 Board Planning/Workshop Meeting
8/4/10 LMCD Special Board Meeting
8/11/10 LMCD Regular Board Meeting

MOTION: Woodruff moved, Suerth seconded to approve the minutes from the 07/28/10 Board Planning/Workshop Meeting as submitted.

VOTE: Motion carried unanimously.

MOTION: Woodruff moved, Johnson seconded to approve the minutes from the 8/4/10 LMCD Special Board Meeting as submitted.

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

MOTION: Scanlon moved, Woodruff seconded to approve the minutes from the 8/11/10 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Scanlon requested that agenda item 6A be removed from the consent agenda. Additionally, Woodruff requested that agenda item 6C be removed from the consent agenda.

Baasen moved, Woodruff seconded to approve the consent agenda as amended, removing agenda items 6A and 6C. Motion carried unanimously. Item so approved included: **6B**, July financial summary and balance sheet.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

- **6A**, Audit of vouchers (8/16/10 – 8/31/10) and (9/1/10 – 9/15/10)

Scanlon stated that check number 18237 in the amount of \$200 to the Hennepin County Treasurer was recently drafted and not originally placed on the audit of vouchers for approval. He asked Nybeck to expound on the purpose of the check.

Nybeck stated the check is to purchase an updated Hennepin County database of current Lake Minnetonka shoreline property owners. The database is used annually for the distribution of the LMCD newsletter and Save the Lake Fund solicitation letters. He recommended approval at this time to expedite the purchase.

MOTION: Babcock moved, Woodruff seconded to approve the audit of vouchers (8/16/10 – 8/31/10) and (9/1/10 - 9/15/10) as amended, adding check number 18237 in the amount of \$200 to the Hennepin County Treasurer to the 9/1/10 – 9/15/10 audit of vouchers.

VOTE: Motion carried unanimously.

- **6C**, 8/10/10 Special AIS Task Force Meeting Minutes

Woodruff directed the Board to a list of Task Force Action Items, with attached attendance sheet, within their handout folder. He recommended that the 8/10/10 minutes be amended to include the list of Action Items.

MOTION: Woodruff moved, Suerth seconded to approve the 8/10/10 Special AIS Task Force Meeting Minutes as amended, adding the list of Action Items noted above.

Page asked who prepared the list of action items, in which Woodruff stated that he prepared the list that was updated by the Task Force in a subsequent meeting.

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 Committee
- Environmental Committee
- Ordinance Review Committee
- Public Safety Committee

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

AIS Task Force

Woodruff stated that the Task Force met on August 13th and 27th; both of which provided for discussion on the zebra mussel infestation. To date, the Task Force has received an update from the MN DNR on the infestation of zebra mussels and has produced and initiated the respective list of Action Items (approved under item 6C). Increased education, containment efforts, and public awareness were of top priority. Two public meetings were held on August 31st and September 1st, in which the public had an opportunity to better understand the AIS transportation laws that are now in effect for watercraft and equipment being transported on the public roads from Lake Minnetonka. He provided a brief overview of those laws and a general permit/authorization form created by the MN DNR that would allow both commercial and residential lake users to transport watercraft and equipment with attached prohibited AIS to a specific destination for proper cleaning and inspection. The MN DNR, in cooperation with the LMCD, is installing respective signage and distributing informational handout cards on the transportation laws. Additionally, the MN DNR has completed the inspector training needed for the infestation of Lake Minnetonka and will be starting a second survey assessment. Informally, he noted that zebra mussels have now been located in Carmans Bay. The next Task Force meeting will be held on October 8th, in which the 2010 herbicide treatment project will be discussed.

Save the Lake Committee

Olson stated that some questions were previously raised by Board members Babcock and Page as to whether the new logo should be used until it is properly registered. In response to this, staff has been working with attorney Eric Haugen on the registration of the new LMCD and Save the Lake identity logos. Haugen was recommended to the LMCD as he specializes in this area of expertise. Funds for both Haugen's services and the State registration application process (both minimal) have been previously approved by the Board. Haugen has directed staff to place the Service Mark, "SM", within the logo, in which it has been added and is print ready for use. Additionally, Haugen recommended the filing of the applications be withheld until the logo is more actively in use and widely distributed amongst the public (i.e., the distribution of educational material such as the LMCD newsletter, Save the Lake solicitation letters, winter rule pamphlets, etc.). Lastly, he stated that staff is proceeding in receiving quotes for the printing of the stationery. He directed the Board to a sample copy of both LMCD and Save the Lake letterhead within their handout folder; noting the printing companies will be asked to provide recommended design samples for consideration.

Nybeck stated that the costs associated with updating the office supplies would be covered under existing budget line items.

Environmental Committee

There was no Committee update.

Ordinance Review Committee

Babcock stated that the committee is currently scheduling a meeting for the last week of September. He asked Harper to provide an update on two topics that were discussed at the last meeting.

Harper stated that the committee last met on July 13th. The discussion of commercial sales on the lake was in follow-up to a representative from "Snack Patrol" who addressed the Board at the May 26th meeting requesting an ordinance amendment to allow for commercial sales on Lake Minnetonka. The business representative attended the committee meeting, as well as a representative from the Sheriff Water Patrol and Hennepin County Environmental Health. The committee concurred with the historical reasoning for the original 1980s ordinance, which provided for safety measures (i.e., the conversion of boats and swimmers, along with food safety requirements). The consensus of the committee was not to recommend an ordinance amendment to allow for the commercial sales on the lake. Another topic discussed was the use of advertisements on the side of boat storage canopies, in which the committee is obtaining further information for discussion.

Babcock stated the committee is wrestling with the various water structures that have manufactured names on the product vs. advertisement that is erected on a canopy after it is installed.

Baasen suggested the committee consider advertisement as a whole (i.e., political banners, etc. vs. zoning in on one type of advertisement service).

Babcock confirmed that the committee would discuss a broad range of potential advertisement or signage.

Public Safety Committee

Johnson asked Nybeck to comment on the various draft ordinances that will be before the Board for consideration; one of which was being considered at this meeting under agenda item 11B.

Nybeck stated that at the August 11th Board meeting, LeFevere was directed to prepare four ordinance amendments that were recommendations of the Public Safety Committee. The draft ordinance being considered at this meeting provides for the use of a straight arm for the towing of one or more humans on sleds or other devices. The remaining three will be presented for Board consideration at the September 22nd meeting. Additionally, the Board directed staff to continue observing and documenting the use of Cedar Point West channel in follow-up to a petition for a Quiet Water Area; citing public safety concerns. He stated observation was planned for Labor Day; however, he was unable to conduct the observation due to the weather. This will need to be planned for in the near future, weather permitting.

10. PUBLIC HEARINGS

There were no public hearings scheduled.

11. OTHER BUSINESS

A. Hennepin County Sheriffs Water Patrol, Report on 2010 Lake Minnetonka Boating Activity

Page asked for background on this agenda item from Deputy Sedesky, welcoming him on behalf of the Board.

Deputy Sedesky thanked the Board for this opportunity and made the following comments based on activities of the Water Patrol from January 1st through August 31st:

- He provided an overview of the Water Patrol staff, their tenure, and the 30 special deputy volunteers (four of which are in training). He noted that the Water Patrol had lost their detective due to caseloads downtown; however, they continue to follow-up on the Water Patrol cases.
- There were 66 special event permits issued on Hennepin County waterways, with a majority of the events on Lake Minnetonka. Fishing and sailing regattas are the most popular and that the Water Patrol continues to evaluate the events for safety factors; working closely with the LMCD and the MN DNR.
- Various factors impacted the Water Patrol and their 2010 enforcement statistics. Factors mentioned included the following: 1) weather (cooler weather and less Boating While Intoxicated (BWI) arrests), 2) a decrease in summer licensed deputy coverage (down to one in 2010; either two or three in previous years), and 3) public safety education.
- He reviewed the following statistics from the 2010 boating season: 1) 48 BWI arrests (104 in 2009 and 76 in 2008), 2) one careless boating citation (23 in 2009 and eight in 2008), 3) no serious boating accidents, 4) 21 minor consumption citations (33 in 2009 and 50 in 2008), which is directly related to specialized enforcement activities, 5) 73 life jacket citations (132 in 2009 and 96 in 2008), 6) 22 theft pieces reported in Hennepin County (43 in 2009 and 36 in 2008), 7) there were no drownings to date on Lake Minnetonka; however, currently one child is in critical condition, 8) 11 drownings have occurred within Hennepin County, and 9) 3,535 hours of patrol were provided on Lake Minnetonka (compared to 4,011 in 2009). The decrease in patrol hours was directly related to the drop in temporary summer deputies, with the next closest patrolled body of water being the Mississippi River with 253 patrol hours.
- The Water Patrol continues to be a model for other law enforcement agencies; providing for search and rescue assistance and management practices to other counties and states. Lake Minnetonka is considered an extremely safe environment, which is a direct result of the LMCD ordinances currently in place.
- As boating season draws to a close, the Water Patrol will evaluate personnel and activity for 2011 patrol procedure adjustments. Additionally, special enforcement details will continue this fall and winter.
- He entertained questions and comments from the Board.

The Board asked questions or made comments, in which Sedesky addressed. These included:

- Expressed interest in discussing increased enforcement for speed and noise violations in 2010 as a result of the last annual meeting between the LMCD and the Hennepin County Sheriff's Department. Sedesky stated that the Water Patrol has four decibel meters; however, he did not have the citation statistics available at this meeting. Additionally, he stated that speeding enforcement is on-going, with radars in each Water Patrol boat.

- Clarification as to whether the speed violations are in excess or just over the speed limit.
- Discussion was held as to the use of starter guns for regatta races, in which Nybeck confirmed that there might be restrictions per LMCD special event permits that are issued. Babcock stated that horns with different sound levels are often utilized on windy days.
- Confirmation that both the Water Patrol and the LMCD permit fire work displays that take place on the surface waters of the lake, with Nybeck commenting that follow-up cleanup efforts will be addressed before the next boating season.
- A discussion of the decrease in summer licensed deputy coverage, adding that the level of coverage in the future is an unknown.
- Confirmation that the Water Patrol dive team practices twice a month and regularly checks its equipment. River rescue training provides for an eight hour session.
- Nybeck confirmed that the annual meeting with the Hennepin County Sheriff's Department is targeted for October or November.

Page thanked Sedesky for his update on behalf of the Board.

B. Ordinance Amendment, first reading of ordinance relating to towing of sleds or other devices; amending LMCD Code Section 3.11, Subd. 2

Page asked LeFevere to provide an overview of the draft ordinance amendment.

LeFevere stated that the Water Patrol has reported that towing of human passengers without the use of a straight arm is deemed unsafe. Therefore, they have been citing vehicle operators towing human passengers without a straight arm under a broad State statute (169.46), which states, "no person shall hitch a toboggan, hand sled, bicycle, or other similar device onto any motor vehicle or streetcar while being used on a highway." Under that statute, vehicle is broadly defined as, "any device in, upon, or by which a person or property is, or may be transported, or drawn upon, a highway." Highway is not separately defined; however, street or highway is defined as, "the entire width between boundary lines of any way or place when any part, thereof, is open to use of the public, as a matter of right, for the purpose of vehicular traffic." He confirmed that all vehicles on frozen lake surfaces are covered under the above definitions. Incidentally, it is illegal to tow any type of sled, whether there is a person on it or not. If the Board were to adopt the proposed ordinance amendment, the act would then become a violation of LMCD Code, could be charged by the Sheriff under LMCD Code, and would be prosecuted by the LMCD prosecutor. Additionally, the amendment would apply only to those towing a sled or other device that would have one or more human persons aboard.

The Board initially asked a number of questions for both LeFevere and Sedesky. Some of their questions included the following: 1) if the words "other device", used within the proposed ordinance amendment, would include towing of individuals with ski ropes, snowboards, parasailing, etc., 2) what safety concerns were present (i.e., history of specific personal injury accidents, speeding violations, etc.), and 3) how would the ordinance amendment affect towing of broken down vehicles (i.e., snowmobiles).

LeFevere stated he would interpret the ordinance to be all inclusive with respect to towing individuals with ski ropes, snowboards, parasailing, etc. He recommended that Sedesky address the Board on what the Water Patrol's specific public safety concerns are.

Sedesky stated that there are a handful of personal injury incidents, in which a handful is not acceptable. Incidents include the towing device rear ending the vehicle upon its stop, providing for foot and leg injuries at the least. The Water Patrol is more interested in having the ability to make a safe stop for the purpose of educating those involved on the safety concerns that exist rather than writing citations (unless repetitive violations occur). He concurred with LeFevere that the State statute provides for a broad interpretation of towing and that the Water Patrol recommends approval of the proposed ordinance amendment so that they have the ability to provide more concrete reasoning as to why they are not allowed to tow without a straight arm. He confirmed that the Water Patrol was not targeting ski ropes, snowboards, or parasailing. Injuries that generally occur with such activities are not caused by the act of towing.

Babcock expressed an interest in balancing the concern of giving the Water Patrol a broad probable cause to fix the activity vs. fixing the safety concerns of serious personal injuries. He expressed concern about speeding; however, forcing individuals to have a fixed object (such as a straight arm) adds to safety concerns of being towed at close range. He concurred with making changes, but not at a broad level so that activities are taken away even at low speeds.

LeFevere stated that the only change the Board is considering is the towing of human persons with a snowmobile because the State statute on straight arms does not apply to snowmobiles. He followed up on various questions on the use of State statutes vs. MN DNR regulations when citing a violation, including the prosecution of. He confirmed that the citations written are charged as a crime; however, he was unsure who prosecutes them. Any citations written under LMCD Code are prosecuted by LMCD prosecuting attorney Steve Tallen, including BWI citations via a delegation of the member cities. However, when citations are written under State statute, the prosecuting attorney could be from the LMCD, county, or local municipality in which the violation occurred.

Babcock asked what percent of accidents are related to automobile/ATV vs. snowmobile, in which Sedesky estimated 50% for wheels vs. tracts.

Nybeck stated that there appeared to be some questions that Lt. Hartig or Sgt. Mathisen might have better background in to address the Board's questions. He stated that if the Board desired, he believed that one of them would be able to attend the September 22nd Board meeting for further clarification and consideration of the draft ordinance amendment.

Babcock stated that he and Board member Johnson believed that the Board should consider sending the draft ordinance amendment back for further refinement by either the Public Safety Committee or the Ordinance Review Committee.

Nybeck question what would be gained by sending the draft ordinance amendment back to committee. The ordinance was prepared because of a recommendation of the Public Safety Committee and he believed that the refining of it could be done by the Board. If the Board did not want to proceed in considering first reading at this meeting, he recommended that the Board wait until Lt. Hartig or Sgt. Mathisen could be in attendance for further clarification of the Board's questions because revisions to winter publications and signage are pending consideration of this matter.

MOTION: Babcock moved, Johnson seconded to table consideration of the draft ordinance amendment to the September 22nd Regular LMCD Board meeting.

VOTE: Motion carried unanimously.

C. Resolution 121, a draft resolution in support of new State legislation providing for changes in distribution of fine revenue for AIS citations

Page asked Woodruff to provide an overview of this agenda item.

Woodruff stated that the proposed resolution is an Action Item at the recommendation of the AIS Task Force. The Task Force discussed ways in which local law enforcement agencies could be encouraged to enforce current AIS laws, in which it was pointed out that almost none of the citation fine revenue is provided back the enforcement agencies or localities. Therefore, the LMCD, Minnehaha Creek Watershed District (MCWD), and the Three Rivers Park District (TRPD) agreed to collaborate on the drafting of the resolutions for consideration by the Boards, providing for the support of the legislators to adopt the draft resolution and direct the specific fine revenue to the respective enforcement agency. He stated that two resolutions were before the Board (LMCD Resolution 121 and a sample resolution for other agencies to consider approval of). If the Board were to approve both resolutions, he recommended the acronym of LMCD within the second paragraph be spelled out.

Olson recommended the acronym of LMCD be spelled out in the title of Resolution 121 as well, in which LeFevere recommended both locations have the formal spelling.

Babcock stated that he would like to see more clarification in the "NOW THEREFORE BE IT RESOLVED..." section of the resolutions. He considered the words "AIS citations" and "local law enforcement agency" to be vague (i.e., who is the law enforcement agency, what generates the fine revenue, and where does it end up).

Page requested clarification of the first paragraph of the resolutions, in which Nybeck stated his thought process, in working with the MCWD and TRPD, was to first indicate why the LMCD's AIS Task force was established. He stated that the statutes that are being discussed will apply to all AIS.

Babcock asked if there could be proposed narrative revisions for consideration to address his concerns yet this evening so that the resolutions could be considered for approval as he did not want to withhold fine revenues received by the LMCD.

Woodruff recommended that the Board consider approval of the resolutions, with the amendment to formally spell out the LMCD's name as noted above. He believed Babcock's concern to clarify the local law enforcement agency was a good point; however, he believed the wording was clear enough and that the narrative would most likely be revised at the legislative level.

A brief discussion was held by the Board as to whether the LMCD currently receives AIS citation fine revenues. Nybeck stated the LMCD does have general AIS ordinances in place; however, he was unaware of any fine revenue received for citations issued for them.

Woodruff reiterated the objective of the resolutions, which was to provide encouragement for law enforcement agencies to enforce AIS laws with the positive effect of receiving the fine revenue. He believed it was important to give the enforcement agencies incentives as there is currently no enforcement provided.

Suerth believed local agencies are providing for some enforcement.

MOTION: Woodruff moved, Hartwich seconded to adopt LMCD Resolution 121 as amended, spelling out the acronym "LMCD" within the title and the second paragraph.

Hartwich stated that he seconded the motion as he believed the adoption of the resolution is sending a message that the LMCD holds true to the adopted mission statement, which provides, in part, "...to promote cooperation and partnerships..." The resolution will provide for a more rigorous policy in protecting Lake Minnetonka and limiting the transferring of AIS to other bodies of water. Consistent enforcement would honor the mission, with hopes that the detailing of fine revenue can be dealt with at a later date.

Babcock stated he was going to oppose the motion because he did not believe redirecting monies from the MN DNR is in the LMCD's best interest at this point. He stated the MN DNR is the Lake's first line of defense for both in and out-bound trafficking. He questioned whether State laws prohibiting the transportation of AIS on public roads has been fully communicated to date, citing the drain plug law as an example.

VOTE: Ayes (6), Nays (3; Baasen, Babcock, and Johnson), Abstained (1, Suerth); motion carried.

12. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:20 p.m.

Kelsey Page, Vice Chair

Tom Scanlon, Treasurer