

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, September 22, 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; Dan Baasen, Wayzata; Doug Babcock, Tonka Bay; David Gross, Deephaven; Peter Hartwich, Excelsior; Chris Jewett, Minnetonka; 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: Tom Scanlon, Spring Park.

3. APPROVAL OF AGENDA

Whalen stated that discussion of 2011 LMCD bookkeeping functions was planned at the September 23rd LMCD Personnel Committee Meeting. Therefore, she recommended that this agenda item (11C) be removed from the agenda.

MOTION: McDermott moved, Page seconded to approve the agenda as amended, removing agenda item 11C.

VOTE: Motion carried unanimously.

Klohs arrived at 7:01 p.m.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made the following two Chair announcements. First, she stated the MN DNR has asked her to serve on a State Aquatic Invasive Species (AIS) Task Force, with the first meeting scheduled in Brainerd on September 30th. The purpose of this Task Force is to discuss recommendations on the prevention of new AIS and the consideration of legislative matters. She stated that she will be representing the LMCD and will keep the Board apprised of the discussions. Second, she stated there was a need to schedule a Board Workshop/Planning Session to update the Strategic Plan. She asked Nybeck to expound on possible dates.

Nybeck recommended holding the Workshop/Planning Session on October 27th in lieu of a Regular Board Meeting.

Babcock questioned if it would be more advantageous to discuss updates to the adopted LMCD Strategic Plan during the budget planning process. The consensus of the Board was to conduct two

Workshop/Planning Sessions (one on October 27th at 6:00 p.m. in the LMCD office to briefly review the status of the Plan, with a second one during the 2012 LMCD Budget process).

MOTION: Olson moved, Woodruff seconded to cancel the October 27th LMCD Regular Board Meeting for the purpose of scheduling a Board Planning/Workshop Session to review the LMCD Strategic Plan.

VOTE: Motion carried unanimously.

5. APPROVAL OF MINUTES – 9/8/10 LMCD Regular Board Meeting

MOTION: Babcock moved, Johnson seconded to approve the minutes from the 9/8/10 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (9), Abstained (4; Gross, Jewett, McDermott, and Whalen); motion carried.

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Woodruff seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (9/16/10 – 9/30/10); and **6B**, August 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:

- Personnel Committee
- Aquatic Invasive Species (AIS) Task Force
- Save the Lake Committee
- Environmental Committee
- Ordinance Review Committee
- Public Safety Committee

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

Personnel Committee

Whalen reiterated that a meeting was scheduled in the LMCD office on September 23rd at 8:00 a.m.

AIS Task Force

Woodruff stated that the Task Force will be meeting on October 8th at 8:30 a.m. in the LMCD office.

Save the Lake Committee

Olson stated the 2010 contributions to date have exceeded 2009's contributions, in which he acknowledged the LMCD's appreciation for the public's support.

Environmental Committee

There was no Committee update.

Ordinance Review Committee

Babcock stated that a meeting was scheduled in the LMCD office on September 29th at 8:00 a.m.

Public Safety Committee

There was no Committee update.

10. PUBLIC HEARINGS

There were no public hearings scheduled.

11. OTHER BUSINESS

A. Public Safety Committee Ordinance Amendments:

- **First reading of ordinance relating to towing of sleds or other devices; amending LMCD Code Section 3.11, Subdivision 2.**

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

Nybeck stated that this was discussed at the September 8th Board meeting, in which Deputy Sedesky from the Sheriff's Water Patrol was in attendance to respond to some of the Board's questions. However, the Board tabled consideration of the draft ordinance to this meeting to allow for Lt. Steve Hartig and Sgt. Chris Mathisen, from the Sheriff's Water Patrol, the opportunity to provide further input on the Board's questions.

Johnson expressed concern that the draft ordinance amendment does not address the towing of disabled snowmobiles without the use of a straight arm.

Babcock stated that LMCD Code defines a snowmobile as a motorized vehicle, whereas the State of Minnesota does not. Additionally, he believed that there should be a tradeoff between speed and straight bar/rope length, as he believed some towing without a straight arm at low speeds was warranted. He believed that the use of the straight arm may cause additional hazards and that addressing speed limits could address Johnson's concern noted above.

Whalen believed that vehicles with tires should not be allowed to tow persons without a straight arm. However, snowmobiles at restricted speeds should not be as large of a concern because the person being towed would not have the risk of being towed under a motorized vehicle. Whalen asked that representatives from the Sheriff's Water Patrol address the Board.

Lt. Hartig stated that the Sheriff's Water Patrol's primary concern for vehicles towing a human passenger without the use of a straight arm was public safety. Further research into this matter found that a number of the cities in Minnesota (including seven of the Lake Minnetonka communities) have ordinances in place to address the requirement for snowmobiles as well. The ordinances addressed towing in traffic and highways, with some communities including the inability to tow on the lakes (i.e., Victoria and Excelsior). He stated that the Sheriff's Water Patrol is asking the LMCD to adopt the draft ordinance to include all vehicles for the purpose of providing public safety and consistency with other community laws. He entertained further questions and comments from the Board.

Page asked how many incidents were documented in 2008 and 2009, in which Hartig stated that there were no serious injuries documented. He believed that the adoption of the draft ordinance would provide for a more comprehensive law than what was currently provided under Minnesota law.

Sgt. Mathisen stated that typically tickets are not written at the time stops are made. However, the deputies do take the time to effectively educate all involved in the dangers that exist, in which the operators usually stop the act on their own. He described an incident that took place about three years ago, in which a rope tangled up in the tracks of a snowmobile (unknowing to the operator); causing the person being towed to slam into the back of the snowmobile.

Whalen asked Hartig to list the seven communities around Lake Minnetonka that adopted the requirement of a ridged hitch while towing with a snowmobile.

Hartig stated that Deephaven, Minnetrista, and Orono require a ridged hitch on the public streets and highways only, while Excelsior, Minnetonka, Shorewood, and Victoria include the lake area. Additionally, the Three Rivers Park District, Ramsey County, and the cities of Woodbury and Watertown maintain ordinances that cover the lakes. He stated that the MN DNR snowmobile pamphlet advises the use of a ridged hitch when towing; however, it is not the law. He acknowledged that the above list is a sampling of communities and agencies that maintain an ordinance.

Hartwich asked Hartig to explain the mechanics of a straight arm and vehicle stopping performance, including the possibility of the passenger being towed to become speared by the straight arm.

Hartig stated that the straight arm comes in various sizes. However, it is attached directly to the sled (or towing device) so that it turns appropriately with the vehicle and does not sway back and forth; providing for the inability of the towing equipment getting caught up in the snowmobiles tracks. He was not aware of any incidents whereby the passenger being towed was injured by the straight arm itself.

A brief discussion was held by the Board as to the logistics of the straight arm's use, in which Whalen provided examples of the hitching setup, while Babcock explained that the bar helps provide for a more gradual slowdown process. Additionally, Hartig confirmed that the use of words "Or Other Devices" within the title of the ordinance is all inclusive (toboggans, skis, etc.); with confirmation from Nybeck that parasailing on Lake Minnetonka requires a special event permit. The Board continued their discussion of the draft ordinance by making the following comments:

- Interest was expressed in finding a balance between a blanket probable cause and

reasonable additions to the draft ordinance to provide for specific safety issues, in which Mathisen reiterated the need for consistency as various requirements will make enforcement difficult.

- The Board's concern in balancing the need for public safety, while not interfering with personal freedom.
- Discussions held at the Public Safety Committee meeting, in which a member (and former Board member) received a ticket for towing behind a snowmobile on Lake Minnetonka. That member supported the ordinance to provide for consistency and less confusion.
- Confirmation was requested as to how the various ordinances were enforced.

LeFevere provided the following information:

- The words "Or Other Devices" in the draft ordinance amendment includes anything one can imagine; confirming the use of the language is also used by the MN DNR (with the exception of snowmobiles).
- He questioned if a snowmobile's stopping motion would provide for ejection of not only the individual being towed but also the vehicle operator and suggested Hartig address that matter.
- Jurisdiction matters can be a real problem in that the Sheriff utilizes Minnesota law, which provides for the authority to issue tickets for the towing of a sled, or other device, with a vehicle any where the public has the right to drive.
- He acknowledged that it would be nice to provide for more clarity; however, the current law is sufficient for the Sheriff's Water Patrol's use. If the Water Patrol is going to continue issuing tickets under Minnesota or municipal laws, prosecution would not be provided under the violation of LMCD Code or by the LMCD's prosecutor.
- If the LMCD sets a standard via the drafting of an ordinance that is not consistent with Minnesota State law and operators meet the LMCD standards, they can still be ticketed for violating Minnesota standards; providing for the ability to mislead the public. Therefore, he stated that if the Board does not want to regulate the matter under LMCD Code, it would be better to do nothing.

Woodruff stated that he was reluctant to pursue the draft ordinance amendment because there is a Minnesota law that is currently being enforced. Therefore, he questioned why the LMCD would need to create further regulations.

Page opposed approval of the draft ordinance amendment because he was not confident the Water Patrol is properly charging under the Minnesota law that is provided, he expressed concern about the gray area of the law that is being utilized for the purpose of pulling individuals over, and the lack of incidents documented in 2008 and 2009.

Jewett concurred that more regulations are not necessarily better. However, he encouraged the Board to recognize that the Water Patrol is the front line of enforcement for the LMCD and they are requesting assistance from the Board to make their job easier.

Whalen called the question on the draft ordinance amendment, in which no motion was provided.

- **First reading of an ordinance relating to operation of vehicles on Lake Minnetonka; amending LMCD Code Section 3.11, Subdivisions 3, 4, and 5; and adding new Subdivision 5a).**

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

Nybeck stated that the Public Safety Committee has previously recommended the Board's consideration of three other ordinance changes for winter speed limits, in which the Board directed LeFevere to draft ordinance amendments. These three ordinance changes included: 1) to change the maximum speed limit outside of the shorezone, and other defined areas, during nighttime hours to 50 miles per hour (m.p.h.), which would be consistent with State law, 2) to increase the maximum speed limit within the shorezone and when vehicles are within 150' from persons fishing, a fish house, pedestrian, skier, skater, skating rink, or property from 15 m.p.h. to 25 m.p.h., and 3) to establish an ordinance that restricts maximum speeds for all of Black, Emerald, and Seton Lakes from 15 m.p.h. to 25 m.p.h. (with appropriate signage at all three entry points). He entertained questions and comments from the Board.

Gross stated that he opposed changing the maximum speed limit outside of the shorezone (as noted by Nybeck under #1 above) to 50 m.p.h. during the night time. He documented his opposition as an irresponsible act due to the regular pedestrian use on Carsons Bay and the existence of docks and public accesses throughout the lake.

Woodruff concurred with Gross. Additionally, he opposed the remainder of the draft ordinance amendment, with the exception of adding new subdivision 5a) (25 m.p.h. throughout Black, Emerald and Seton Lakes).

Babcock requested clarification on the LMCD's intent to post signage with the adoption of subdivision 5a). Nybeck confirmed the LMCD's intent is to add signage at the bridges leading into Black, Emerald, and Seton Lakes.

Jewett stated that the purpose of the proposed changes were to simplify LMCD winter speed limit ordinances and make them more consistent with Minnesota law. Thus, he expressed concern about the Board's inconsistency in addressing public safety concerns through additional LMCD regulations.

MOTION: Jewett moved, Babcock seconded to approve the first reading of the ordinance relating to operation of vehicles on Lake Minnetonka; amending LMCD Code Section 3.11, Subdivisions 3, 4, and 5; and adding new Subdivisions 5a).

Whalen acknowledged inconsistencies existed; however, she concurred with Gross and Woodruff's comments regarding raising the night time speed limit to 50 m.p.h. based on alcoholic consumption and open channels. She supported adding new subdivision 5a).

Hartwich stated that he did not have a concern with providing for inconsistent discussion on public safety issues as each matter should be delineated separately (acknowledging the struggle to provide for a balance between public enjoyment and safety). It is important to consider how one can best serve the users of Lake Minnetonka. He believed that the safety concerns being considered under this draft

ordinance are far clearer than the consideration of the straight arm requirement for snowmobiles. He concurred with Gross and believed the current speed limits need to be maintained as is.

The Board briefly discussed their experiences in operating vehicles on the lake, pros and cons to the amendments for consideration, a review of lake-wide channel markings and rules, and examples of various compromises for consideration.

Nybeck reiterated the committee's objective to simplify the rules.

Gross made a friendly amendment to not amend LMCD Code Section 3.11, subd. 3; retaining 15 m.p.h. within 150' of any fisherman, fish house, pedestrian, skating rink, sliding area, or in any other area on the Lake where the operation would conflict with or endanger other persons or property. Jewett and Babcock did not accept the friendly amendment.

VOTE: Ayes (10), Nays (2, Gross and Woodruff), Abstained (1, Hartwich); motion carried.

Nybeck stated that the draft ordinance amendment will be on the agenda for the October 13th Board meeting. If the Board has a desire to adopt the ordinance amendment, he recommended that it be adopted at this meeting due to timing requirements for the printing of winter pamphlets and signage. He reminded the Board that adoption of the ordinance amendment would require a majority of the entire Board, or eight votes in the affirmative.

The meeting was recessed at 9:05 p.m. and reconvened at 9:10 p.m.

B. WYC/WCSC (Site 2) and WYC (Site 3), discussion of:

- Amended new multiple dock and special density license applications
- Consideration of mandatory Environmental Assessment Worksheet (EAW) document
- Update from WYC & WCSC on the licensing and permitting requirements, and progress of, with the City of Wayzata

Whalen stated that staff will provide a brief overview, Board members will have an opportunity to comment, and then the applicant will be asked to address the Board. She asked Nybeck to provide his overview.

Nybeck directed the Board to his staff memo, dated 9/17/10, in which he provided a thorough overview of the following:

- Applications were submitted in March for the 2010 boating season. A public hearing was scheduled, although it was tabled to allow a charette to take place on June 18th and 19th.
- A staff update took place at the August 11th Board Meeting. This update included: 1) a request to combine WYC (Site 2) and WCSC (Site 4), 2) a request for possible changes at WYC (Site 3), and 3) to hold application fees for future applications, which some Board members expressed concern about. The consensus of the Board was that the applicants should consider amending the applications submitted rather than withdrawing the applications. The consensus of the Board was to schedule an agenda item in September to: 1) assess current application fees and 2) consider a draft mandatory EAW document.

- For WYC (Site 2) and WCSC (Site 4), he reviewed the March applications received and respective fees paid to date. Additionally, he reviewed the respective September applications received, and associated pending fees, for Board consideration of amending the applications and applying former fees paid as noted above and creating a new WYC/WCSC (Site 2). The applications were outlined as follows:
 - March: WYC (Site 2) – new multiple dock and special density licenses (\$927.50 and \$330, respectively, totaling \$1,302.50).
 - March: WCSC (Site 4)- new multiple dock and special density licenses (\$770 and \$320, respectively, totaling \$1,090).
 - September: WYC/WCSC (Site 2- combining Sites 2 & 4)- new multiple dock and special density licenses (\$1,265 and \$400, respectively, totaling \$1,665).

He stated that the 68 boat storage units (BSU) for the combined WYC/WCSC application submitted in September remains the same as proposed in March. Therefore, he believed that the Board could make a strong case that additional fees are not needed through the amended application.

- For WYC (Site 3), he reviewed the March applications received and respective fees paid to date. Additionally, he reviewed the respective September applications received and associated pending fees, for Board consideration of amending the applications and applying former fees paid as requested. The applications were outlined as follows:
 - March: WYC (Site 3) – new multiple dock license, special density license, and dock width variance (\$931.25, N/A, and \$500, respectively; totaling \$1,431.25). He stated that a special density license application was not required as they proposed to maintain BSUs at 27.
 - September: WYC (Site 3) – new multiple dock license, special density license, and dock width variance (\$1,032.50, \$360, and \$500, respectively; totally \$1,892.50). He stated the BSUs have been proposed to increase to 33; providing for a need to submit a new special density license application.

He stated that although it is a Board decision, he believed the Board could make a strong case that the September application is more than an amended application and suggested the applicant pay a new fee for a new multiple dock license (in the amount of \$1,032.50). He stated that with the additional special density license application fee, it would allow staff the ability to perform the additional needed hours to process the application (an estimated 15 or 20 more hours).

- He entertained questions and comments for the Board.

Babcock expressed concern in having applications span two billing cycles prior to approval; causing the LMCD to miss a fee charge.

Nybeck stated before the Board are the 2010 applications. Once approved, staff will send the applicants 2011 renewal (without change) applications.

Whalen stated that she believed the Board should consider establishing deadlines for change applications. She used the current applications as an example, citing the lack of time to process them within the same boating season. She asked Baasen if he would like to consider the disbursement of application fees prior to moving forward with other discussion matters.

Baasen stated he would like to consider the disbursement of fees at this time. The discussions held at the August 11th meeting provided for the Board's interest to support the applicant in such a way that application fees would not be overpaid should the newly submitted applications be considered an amendment. He believed that the WYC (Site 2) and WCSC's (Site 4) newly submitted combined application Site 2 (as noted by Nybeck in his review under the third bullet point) could be considered an amended application. Additionally, he believed that the newly submitted application for Site 3 (as noted by Nybeck in his review under the fourth bullet point) is a new application due to the additional BSUs.

Whalen concurred with Baasen's assessment. Additionally, she stated that the Board needs to be careful in setting precedence when refunding application fees.

Babcock stated that the Board has historically allowed other variance applications to expand multiple years with only one fee paid. Additionally, he stated the application process requires the applicant to agree to pay additional time over and above the application fee if warranted. In this case, he was inclined to have the applicant pay for additional time needed rather than paying a new application fee for the same calendar year.

Whalen stated that the applicant could very well pay more for overages than the amount of a new application fee, in which the Board (with staff assistance) briefly compared the applicable fees that would apply in considering the applications as amended vs. newly submitted.

Babcock stated that if the Board were to consider the applications as reviewed by Nybeck (amended applications for Site 2 and a new application for Site 3), he believed that it would not be consistent with past Board policy. He realized that the new application for Site 3 has an increase in BSUs, which triggered the need for a special density license application. He concurred with having the applicant pay for the special density license (\$360) and the difference in the new multiple dock license application fee of \$100.75 (\$931.25 vs. \$1,032.50). However, he stated that the applicant has not withdrawn the application to date; technically providing for the Board's consideration of an amended application unless the Board was to consider rejecting the former application (WYC Site 3).

Whalen asked Babcock how the LMCD would be reimbursed for the overage in staff time, in which Babcock reiterated that the new multiple dock license application provides for the applicant to agree to pay for other expenses incurred by the LMCD in excess of the amount of the application fee.

Nybeck stated that technically, the application fees paid to date are non-refundable and the applicant would then be charged for all additional fees. However, in fairness of compromise, the applications currently being considered and the respective fees are at the Board's discretion.

Babcock stated that at the August 11th meeting, the Board had a request from the applicants to withdraw new multiple dock and special density license applications at all three sites, which would have forfeited any fees associated with the old applications. However, the Board suggested the applicants not abandon their applications and lose the associated fees but to submit amended applications; allowing some of the fees to be carried forward if the Board felt the applications were not truly new vs. amended. In summary, he stated the Board's decision at this meeting should not be on what fees have been, or not been, paid to

date, but rather considering if the applications are so different that they are indeed considered new vs. amended.

Whalen reviewed Nybeck's recommendations; providing for the Board's consideration of whether Site 3 should be a new application and the applicant make payment of \$1,032.50, as the applicant has already paid the \$360 for the new special density license application and the Board would carry forward the \$500 variance application fee previously paid.

Nybeck stated that his thought process for recommending new fees for Site 3 was a significant increase in proposed BSUs from 27 to 33.

Babcock stated that in light of precedence, he believed that the Board should consider the merits of the application and not on the amount of staff time spent.

MOTION: Gross moved, Baasen seconded to consider WYC/WCSC Site 2 (formerly known as WYC Site 2 and WCSC Site 4) multiple dock and special density license applications as amended, with the WYC Site 3 multiple dock license application as new; requiring WYC to pay a new fee of \$1,032.50 and applying the previously paid variance application fee of \$500.

Babcock asked, for the record, if the variance application was amended, in which Nybeck confirmed there were no amendments to the original application received.

VOTE: Ayes (12), Nays (1, Babcock); motion carried.

Whalen asked Baasen if he would like to make any further comments on this agenda item.

Baasen commended the applicants for the attempts they have been making in 2010 to gain a further understanding of the community and the City of Wayzata's (city) concerns as to how the applicants' activities and policies are affecting them. He believed the charette was well attended and orchestrated; providing for the acknowledgement that there are actions in place to resolve issues between the respective parties. One of the actions included the establishment of an advisory committee (represented by himself, community members, and city representatives) to review proposed changes before consideration by the city and other respective agencies. He stated that staff has asked the applicants to resolve their issues with the city prior to amending their applications. In talking with the city, the following issues are currently present: 1) having sufficient parking, under city code, for the number of BSUs in existence, 2) providing for storm water management in the existing parking lots, 3) providing buffers for wetlands (with MCWD input), and 4) creating on-land BSUs with proper landscaping. Additionally, he stated the applicants are in the process of creating a comprehensive plan amendment to be submitted to the city, which would address zoning, district map, and text amendments to the existing plan (providing for shoreline conditional use permits and a site plan review). He expressed concern in the consideration of the EAW at this time as the timing process would be shorter than what it will take for the applicant to resolve the city issues via their processes; acknowledging risks involved for the applicants in submitting their applications at this time. He confirmed that if applications are received, the LMCD is obligated to consider them. He asked representatives of the applicant if they had considered the respective risk factor.

Mr. Richard Krier, Midwest Planning and Design, stated that he was in attendance as a representative for the applicants. He stated that Baasen made a very good point; however, he believed that issues with the city will be resolved before the finalization of the EAW and Board consideration. Additionally, he stated that the city cannot take action on WYC and WCSC applications during the process of an EAW. Therefore, they are trying to get both matters resolved at the same time; providing for the Board's consideration of their applications next January or February. He expressed concern about the amount of time delayed should the EAW not be submitted until the city issues are resolved. He respectfully requested the Board table action on the mandatory EAW document until October to provide the applicant an opportunity to review the document with staff, by which time the advisory committee will have met and the amended comprehensive plan will have been submitted to the city for consideration.

Whalen asked LeFevere if the city is allowed to move forward with applications submitted to them for consideration.

LeFevere confirmed that the city cannot take any action until the completion of the EAW, which is an informational document that is intended to be available for the benefit of the permitting agencies. He acknowledged that both the EAW and the comprehensive plan are lengthy processes.

Baasen requested clarification as to what triggers the EAW.

Nybeck, returning back to his PowerPoint presentation, reviewing the following information pertaining to the EAW process: 1) the EAW is required for facilities that exceed 20,000 square feet of dock structure and maneuvering space, 2) that both facilities exceed this trigger point; 34,375.73 square feet at Site 2 and 27,465.83 square feet at Site 3, 3) that the LMCD would be the Responsible Governmental Unit (RGU), with one document prepared for both facilities, 4) if the Board approved the draft document, it will be published in the October 4th Environmental Quality Board (EQB) Monitor; providing for a 30 day comment period, 5) a recommendation on whether there is a need for an Environmental Impact Statement (EIS) will be made to the Board in November or December, and 6) he recommended Board approval of the document, as submitted or amended. Procedurally, by EQB rules, the LMCD has 30 days to deem that an application is complete with the necessary data points to prepare a mandatory EAW document. The LMCD is provided an additional 30 days to prepare the mandatory EAW document and begin the public review process. Thus, tabling consideration of the draft EAW document to the October 13th Board Meeting, per request by the WYC and WCSC, is not problematic.

Whalen confirmed that the applicants are asking the Board to table consideration of the EAW until October. She asked Baasen what he believed the city would prefer.

Baasen stated that he believed that the city would like to see progress going forward.

Babcock acknowledged that the LMCD has all the respective data points for the current EAW. However, he was unsure what future city application data points existed. He asked LeFevere to comment on that matter.

LeFevere stated that the LMCD has to do a mandatory EAW regardless and that the city may decide to do a discretionary EAW if warranted. However, he could not foresee trigger points existing for land-based planning.

Krier acknowledged that Babcock brought forward a good point; however, he did not foresee an EAW being triggered through a community petition or city process.

Whalen asked if the tabling of the mandatory EAW document could maintain conditions based upon specific non-delaying actions by the applicants, in which LeFevere confirmed that the October 13th approval already provides for delays.

Babcock acknowledged that the LMCD is required to move forward with the mandatory EAW document. However, he expounded on his concern that the city parking issue was not addressed in detail in the LMCD's EAW. Therefore, there will not be governmental comments in that regard due to its lack of existence. He wanted to set the expectation with the Board that the EAW will not be comprehensive to all the issues documented by the city.

Nybeck stated that the LMCD's EAW is more of a water based document vs. land planning document as a number of the questions are not applicable to the LMCD, in which staff documents "not applicable." However, the EAW is submitted to the various permitting agencies, in which it was his hope that the agencies would then provide their comments (30-day comment period) to the respective questions asked; providing for the LMCD to review and respond to the comments. He expounded on the EAW parking question and his comment that jurisdiction is provided by the city.

Baasen stated that he believed there were two issues for the Board's consideration. These included legal issues and whether the applications being considered are putting the cart before the horse. He reiterated his interest for the applicant to resolve the city issues prior to submitting the LMCD applications; providing for the LMCD to make a more responsible decision in considering the applications before them. He asked Krier to confirm if the applicants were considering withdrawal of the applications.

Krier confirmed that the applicants would not be considering withdrawal of the applications. He reiterated their request to table consideration of the EAW until October to provide for the opportunity to review the document with staff.

Whalen reiterated her concern that approving the EAW might cause the city the inability to act on any applications that would be brought before them for consideration.

LeFevere stated the EAW will be completed prior to the city's consideration of applications. However, he stated that once the EAW is complete, the LMCD will be under a timeline to consider the applications before the Board, unless the applicant waives the 60-day rule.

Page requested confirmation that the 60-day rule does not start until after the EAW is completed, that the applicant is requesting the Board table consideration of the EAW until the October 13th meeting, and that the legal time frame allows for such. LeFevere confirmed yes to all questions.

MOTION: Page moved, Babcock seconded to table consideration of the WYC and WCSC mandatory EAW document until the October 13th Regular LMCD Board meeting.

Babcock stated that ideally, the EAW should be co-sponsored between the LMCD and the City of Wayzata. However, without an application before them, he was unsure if that could be done. He requested that staff contact the city to verify if they would like to make recommended changes to the draft mandatory EAW document.

LeFevere confirmed that no one has the ability to dictate to the LMCD how the EAW is drafted. However, the LMCD does have the ability to take the time to solicit input prior to its submittal.

Whalen wanted to make it perfectly clear that she would like to see an application before the city sooner rather than later; providing for the Board's confirmation of the applicants' intentions.

Gross acknowledged the issues before the city are major and he questioned if we were not putting the cart before the horse.

Krier stated that the dock plan and other major issues are integrated within the amended comprehensive plan, which the advisory committee will be reviewing. He did not believe applications to the city would change the respective dock plan.

VOTE: Motion carried unanimously.

D. Staff update on 2010 multiple dock license inspections

Nybeck recommended that this agenda item be tabled to the October 13th Board meeting.

MOTION: Babcock moved, Jewett seconded to table this agenda item to the October 13th Regular LMCD Board meeting.

VOTE: Motion carried unanimously.

12. EXECUTIVE DIRECTOR REPORT

Nybeck stated that a recent emphasis on projects within the office have been on the infestation of zebra mussels. He complimented staff on the completion of two projects that have taken a significant amount of their time. First, he stated Harper has been working with the MN DNR to install 35 signs at the local marinas and public accesses, which required significant communication with the various stakeholders. Second, the most recent lake service provider training session was well attended due to efforts made to get the word out, which Herman assisted on. Because of this, attendance improved from 25 to 80.

Whalen stated that the LMCD will be represented at the Sheriff's Department Volunteer Appreciation Banquet scheduled for Saturday, September 25th.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:12 p.m.

Lisa Whalen, Chair

Andrew McDermott, Secretary