

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, October 13, 2010
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:06 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Kelsey Page, Greenwood; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Dan Baasen, Wayzata; David Gross, Deephaven; Peter Hartwich, Excelsior; Chris Jewett, Minnetonka; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; 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: Doug Babcock, Tonka Bay; Herb Suerth, Woodland.

3. APPROVAL OF AGENDA

MOTION: McDermott moved, Jewett seconded to approve the agenda as presented.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made five Chair announcements. First, she reminded the Board that a Workshop/Planning Session, to review the LMCD Strategic Plan, is scheduled for October 27th, at 6:00 p.m., in the LMCD office. Second, she continued to serve on the State of Minnesota Aquatic Invasive Species (AIS) Task Force, in which the Task Force has been charged with brainstorming ideas to prevent the spread of AIS. She has attended a few meetings and anticipated attending several more. She will provide updates to the Board as more concrete information becomes available. Third, she announced that Olson was recently appointed as a Board of Manager to the Minnehaha Creek Watershed District (MCWD). She congratulated Olson on his dedication to serving both agencies. Fourth, she announced that the City of Deephaven has re-appointed Keith Kask to serve as their representative as of November 1st (during Gross' winter departure). She thanked Gross for his on-going participation and appreciated Kask's involvement as well. Fifth, she stated that representatives of Woodland Cove, LLC, have requested a meeting with her for the purpose of updating the LMCD on their proposed plans. However, she stated she was reluctant to meet with them on an individual basis and recommended they submit a new multiple dock license application, at which time a Planning/Workshop Session could be scheduled for the Board's informal review and comments. To this end, she stated that the application had been received. Therefore, she solicited the Board's availability to attend a Planning/Workshop Session on Wednesday, November 17th. A number of Board members had confirmed their availability. The Session was scheduled for 6:00 p.m., with the location to be determined.

Page asked if the application would be provided to the Board prior to the Session, in which Nybeck confirmed that it would.

Whalen stated that upon receipt and review of the application, she requested the Board take time to formulate and forward their questions and comments to Nybeck.

5. APPROVAL OF MINUTES – 9/22/10 LMCD Regular Board Meeting

MOTION: McDermott moved, Woodruff seconded to approve the minutes from the 9/22/10 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (11), Nays (1, Baasen); motion carried.

6. APPROVAL OF CONSENT AGENDA

Scanlon and Woodruff requested that agenda items 6A and 6C be removed from the consent agenda.

McDermott moved, Woodruff seconded to approve the consent agenda as amended, removing agenda items 6A and 6C. Motion carried unanimously. Item so approved included: **6B**, 6/11/10 and 8/27/10 AIS Task Force Minutes.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

- **6A**, Audit of Vouchers (10/1/10 – 10/15/10)

Scanlon stated that an additional payment of \$28.92 to US Bank for the submittal of employment taxes was added to the original vouchers received.

Nybeck stated that the cleaning of the harvesters was recently performed by two of the seasonal employees, which took place after payroll was originally provided to the bookkeeper. In order to pay the employees in a timely manner, checks were produced after the fact; providing for the need to amend the Audit of Vouchers (adding the additional tax payment to U.S. Bank).

MOTION: Scanlon moved, Gross seconded to approve agenda item 6A as amended.

VOTE: Motion carried unanimously.

- **6C, Save the Lake**, announcement of Funds available for 2011.

Woodruff requested clarification, on behalf of the City of Shorewood, as to how the LMCD established the availability of \$55,048 in Save the Lake Funds, in which Nybeck confirmed the current policy that allows for up to 25% of the previous year-end audited balance.

MOTION: Woodruff moved, Baasen seconded to approve item 6C.

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
- Personnel Committee

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

AIS Task Force

Woodruff stated that a well-attended Task Force meeting was held on October 8th, in which the action items established from the infestation of zebra mussels were discussed. A substantial number of those actions items were closed. Additionally, the Task Force briefly discussed the 2011 Herbicide Treatment Program, in which a Special Meeting was scheduled for November 19th. The purpose of the meeting will be to review the anticipated receipt of the 2010 Army Corps Report. Additionally, he stated that there are potential new permitting requirements, which the Task Force will need to consider in planning for the 2011 project. Lastly, he stated an AIS Task Force meeting will be held in December to consider more normal business items.

Whalen asked Woodruff to provide a brief overview of discussions held on the management of the Herbicide Treatment Program and when that matter is anticipated to be brought before the Board for consideration.

Woodruff stated the Board previously considered taking over the management of this project in 2010, in which a decision was previously made to allow for the Lake Minnetonka Association (LMA) to serve as project manager. He suggested discussion to that affect could be held by the Board in November; prefacing that management requires a substantial amount of time and that funds have not been budgeted for such in 2011.

Whalen recommended that this be discussed at the October 27th Workshop/Planning Session.

Baasen stated that he and Jewett recently attended a meeting with bay captains, and other representatives from the MN DNR, for the purpose of discussing the current three-bay treatments, potential program expansion, and other miscellaneous issues. In summary, he stated that the attendees were going to appear before the Task Force at the November and/or December AIS Task Force meeting(s); pending receipt of the 2010 Army Corps Report.

The Board briefly discussed matters noted above. Comments provided included the following:

- Confirmation that expansion of whole bay treatments is permitted by the MN DNR; with little involvement by the LMCD.
- Reiteration that the October receipt of the Army Corps Report is an estimated time frame.

- Confirmation that there is an interest in expediting 2011 permitting requirements as the Environmental Protection Agency (EPA) may be mandating additional permitting requirements for the use of pesticides (possibly as early as December).
- Confirmation that the MN DNR will not consider expansion of other whole bay treatments until after the Army Corps Report is reviewed.

Save the Lake Committee

Olson stated that he and staff will be meeting with a printing company in the near future to discuss incorporating the new logo within various stationery designs. Additionally, discussions are on-going for the re-design of the website. He reiterated that up to \$55,048 in Save the Lake grant funds are available for 2011 and that the solicitation process will be initiated in the near future. Lastly, he stated that the fall solicitation letter will be mailed out in November; noting that the income from spring solicitation was higher than normal, which was greatly appreciated.

Environmental Committee

There was no committee update.

Ordinance Review Committee

There was no committee update.

Public Safety Committee

Johnson stated that he anticipated the committee to reconvene in the winter.

Personnel Committee

Whalen stated that a meeting is scheduled for October 22nd; after which various recommendations will be presented to the Board for consideration (i.e., amendments to the Personnel Policy, insurance, and finalization of the Executive Director position description).

10. PUBLIC HEARINGS

There were no public hearings scheduled.

11. OTHER BUSINESS

- A. Ordinance Amendment**, second 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 Board had considered and approved first reading of this draft ordinance amendment at the September 22nd meeting. He reviewed the following ordinance changes for consideration of its second reading: 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 stated that if the Board was leaning towards approval of the second reading, he recommended consideration of waiving the third reading and adopting the ordinance to accommodate for time to process signage and the printing of the winter pamphlets.

MOTION: Johnson moved, Olson seconded to approve the second reading, to waive the third reading, and to adopt the ordinance as submitted.

Woodruff stated that he was not in support of the ordinance amendment because he was opposed to increasing the nighttime speed limit to 50 m.p.h.

Whalen stated she also had concerns about increasing the nighttime speed limit to 50 m.p.h. However, she supported the motion on the basis that she would assess this winter's activity and that the nighttime speed limit could be changed back to 30 m.p.h.

VOTE: Ayes (7), Nays (5; Baasen, Gross, Hartwich, McDermott, Woodruff); motion failed.

LeFevere stated that the Board could consider adoption of the ordinance without increasing the nighttime speed limit to 50 m.p.h.

The Board discussed this matter with a summary of the comments as follows:

- Expressed concern that partial approval of the proposed changes does not provide for simplicity.
- Reiteration that some of the Board members expressed concern with increasing the nighttime speed limit only, and that all other ordinance changes were acceptable.
- Confirmation that: 1) all other lakes within Minnesota maintain a 50 m.p.h. speed limit without safety concerns, 2) that the speed limit is self-governing in that most snowmobilers drive on designated roads rather than the main parts of the lake itself, and 3) it is more dangerous going 15 m.p.h. to 25 m.p.h. within 150' of a shorezone (or other activity) than it is to increase the nighttime speed limit.
- Confirmation that the ordinance changes pertain to all motor vehicles and not just snowmobiles.
- Expressed interest in resolving at least a few of the changes noted within the draft ordinance.

MOTION: Page moved, Woodruff seconded to approve second reading, to waive the third reading, and adopt the ordinance amendment, excluding Subdivision 5.

VOTE: Ayes (9), Nays (3, Jewett, Johnson, and Olson); motion carried.

B. WYC/WCSC (Site 2) and WYC (Site 3), update of draft mandatory EAW document.

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

Nybeck stated that at the September 22nd Board meeting, the following two items were considered: 1) a fee study analysis of the applications submitted and 2) the processing of the mandatory Environmental Assessment Worksheet (EAW). In follow-up to Board direction, the applicants were directed to pay

specific application fees, in which restitution has been made. Additionally, the Board tabled the submittal of the EAW (per the applicants' request) to allow for them to work with staff on possible changes to the document. A representative for the Wayzata Yacht Club (WYC) and Wayzata Community Sailing Center (WCSC) have communicated to the office that the draft EAW needed to be more comprehensive (taking into consideration the proposed land changes), in which the Environmental Quality Board (EQB) concurred. Therefore, the tabled EAW could not be presented for Board consideration at this meeting. For this reason, he recommended the Board consider approval of the EAW at their October 27th Workshop/Planning Session (with feedback being solicited by the Minnehaha Creek Watershed District and the City of Wayzata in the interim).

The Board concurred with Nybeck and directed him to add approval of the EAW to the October 27th Workshop/Planning Session agenda.

C. Staff update of 2010 multiple dock license inspections.

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

Harper provided an overview of 2010 multiple dock license inspections, with a summary of his comments as follows:

- Multiple dock license inspections are conducted to verify compliance with LMCD Code Section 2.03. Inspections for compliance provide for installation and storage consistent with the approved site plan, license conditions, and variance/special density orders (if applicable). Inspections for 2010 were performed from June through August.
- There were 120 multiple dock licensed sites inspected, four of which were District Mooring Area (DMA) licenses. Of those, 99 passed inspection and 21 failed due to minor boat storage/dock installation and major dock installation violations.
- Inspection reports were provided to all licensees noting pass or failure, as well as a request to provide proof of all special density amenities (if applicable). If the site failed inspection, corrective steps were offered. Those steps included relocation or removal of boats, dock construction modifications, and suggested application processes (if applicable).
- He entertained questions and comments by the Board.

Whalen asked how many major violations existed, in which Harper confirmed five. He stated that he was currently working with the applicants to resolve the issues.

Baasen requested confirmation whether licensees have the ability to make application to resolve their documented violations. If so, he questioned if a regulatory body should allow for such a process and not hold licensees that are consistent violators accountable for their actions.

Nybeck used the pending 2010 WYC and WCSC applications as an example. A public hearing for these applications was scheduled in March, although the hearing was tabled to allow for the charette, coordinated by the applicants, to take place prior to holding the public hearing. The charette eventually took place in mid June and the applications have not been processed because the WYC and WCSC have amended their applications. However, he stated that in the spring staff clearly communicated to the representative for the applicants (Mr. Bert Foster) that the docks installed in 2010 as well as the boat

storage, would need to comply with what was approved by the LMCD in 2009, not what they have made application for.

LeFevere stated that the LMCD would be within their rights to start a prosecution action or a license revocation process for a violation. He concurred the idea is notable; however, the process is expensive. He anticipated that the courts would be less than interested when there is a pending application being processed to rectify the violation. He believed it is a policy matter and a judgment call by the Board as to how much the LMCD would like to work with licensees prior to initiating an enforcement action. The LMCD does not directly notify the licensee that the violation is acceptable. However, he could not recall a time where the Board has commenced a prosecution action when there is a pending application to rectify the violation.

Baasen questioned if the LMCD has ever required the applicant to rectify the violation prior to consideration of a new application, in which LeFevere could not confirm. Baasen reiterated his question as to whether the LMCD should provide for a stronger enforcement policy for consistent violators.

Whalen recommended the Board consider establishing a policy that outlines a specific timeframe the licensee needs to adhere to in requesting a change to their license.

D. 2010 EWM Harvesting Program Final Report

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

Harper provided an overview of the following information: 1) a summary of the harvesting season data (the number of working days, lake levels, harvester loads, and truck load), 2) operating highlights, 3) personnel, 4) equipment (including the operation and maintenance of), 5) the 2010 budget, and 6) how challenges and issues from 2009 were addressed in 2010. He entertained questions and comments from the Board.

Whalen stated that she and former Vice Chair Tom Tanner performed a site visit during the 2009 harvesting season. She recognized Tanner for his contributions to many of the corrected actions noted above (i.e. preventative maintenance, staffing/work hour adjustments, and fragment preventative cutting procedures). She acknowledged staff's efforts in making better use of the funds provided.

The Board asked a few questions, in which Harper responded to. Those questions and responses are as follows: 1) that communication is performed via the use of citizen band (CB) radios, 2) confirmation that tandem cutting is subject to certain areas of the lake, and 3) that the LMCD-owned pontoon is operated by the supervisor for shuttling and scouting purposes.

Nybeck stated that after it was announced that zebra mussels were discovered on the Lower Lake, and not the Upper Lake, a decision was made to store the harvesting equipment on the Lower Lake (south side of Big Island) until further monitoring was done on the Upper Lake by the MN DNR and the various public agencies. This was of particular concern because the harvesting equipment is removed through the Spring Park public access on the Upper Lake. Recently, the MCWD coordinated a diving effort to examine the extent of the zebra mussel infestation on the Lower Lake. During this effort, divers viewed

the harvesting equipment and determined that zebra mussels were not attached to it. After consulting with the MN DNR on this feedback, a decision was made to remove the harvesting equipment through the Spring Park public access.

E. 2010 Shoreline Inventory Report

Whalen asked Herman to provide an overview on this agenda item.

Herman highlighted the Report by making the following comments:

- The boat storage count has been performed by LMCD staff since 1971 at riparian, multiple dock, and district mooring areas (performing the inventory on even years only since 2000). The current inventory marks the 29th season.
- The three primary objectives of the project include: 1) establish the total number of watercraft stored, 2) outline historical data collected, and 3) identify observable trends.
- She reviewed the methodology utilized for this and past projects.
- She provided a summary of the findings, which were highlighted as follows: 1) there were 9,230 watercraft stored on Lake Minnetonka in 2010. Of those, 5,719 were riparian storage and 3,511 were multiple dock/district mooring area storage. Sites storing three and four plus restricted watercraft were 360 (compared to 332 in 2008) and 207 (compared to 188 in 2008), respectively. Additionally, there were 773 sites with defined empty slips (compared to 1,102 in 2008). Historical shoreline counts included an all time average of 8,361 (1971-2010). Additionally, four of the 29 seasons provided for counts exceeding 10,000 (1996: 10,475; 2002: 10,509; 2006: 10,278; 2008: 10,233).
- Conclusion and Trends were highlighted as follows: 1) 2010 total storage count of 9,230 is slightly higher than all time average of 8,361 and directly in line with the current decade average of 9,917, 2) the 2010 runabout count of 3,186 is directly in line with the current decade average of 3,157, 3) the 2010 cruiser count of 2,183 has consistently decreased since 2002 (3,135), 4) the 2010 Personal Watercraft (PWC) count of 1,064 has leveled out to the current decade average of 1,053, and 5) 2010 empty slips count of 773 has regularly fluctuated and is slightly above the current decade average of 616. A comment was made that one could tie the empty slip count to consistent home ownership and that the increase number of vacant homes might play a part in the increase of empty slips.
- She recommended continuation of the Shoreline Boat Storage Count in 2012 and entertained questions and comments from the Board.

The Board briefly asked questions or made comments, in which Herman responded to. Those questions and comments include the following: 1) confirmation that the count obtained is consistent with the day staff is on site (noting other factors that could effect results, i.e., weather), 2) confirmation that airplanes are stored on Lake Minnetonka, in which a question on the transportation of zebra mussels was raised, and 3) confirmation that the multiple dock counts (including dry stack storage) are included within the inventory by adding the multiple dock inspection results.

12. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:35 p.m.

Lisa Whalen, Chair

Andrew McDermott, Secretary