

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, March 9, 2011
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:04 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; Chris Jewett, Minnetonka; Peter Hartwich, Excelsior; Anne Hunt, Minnetrista; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Debbie Siakel, Shorewood; and Herb Suerth, Woodland . 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

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

There were no Chair announcements.

5. APPROVAL OF MINUTES – 2/23/11 LMCD Regular Board Meeting

MOTION: McDermott moved, Johnson seconded to approved the minutes from the 2/23/11 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Jewett moved, Kask seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (03/01/11 – 03/15/11).

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. Abdo, Eick, & Meyers, review of draft 2010 LMCD Audit

Babcock stated that Steve McDonald was in attendance to provide an overview on this agenda item. He welcomed him on behalf of the Board.

McDonald made the following comments:

- The implementation of in-house bookkeeping was a significant change in 2011, which seems to be going very well.
- Financial operations were all in compliance with State of Minnesota standards.
- One internal control deficiency was noted (preparation of financial statements). He further explained that the account receivable portion of finances is well segregated. However, at the end of the year, it is the Executive Director (one employee) who has ultimate responsibility of the financial statements, which is common in a small office setting. He believed the statements were well managed and that staff should continue to do what they have done every year (maintaining a close review of the statements via meetings with the Treasurer).
- Performing the audit provided for no disagreements or difficulties. All material requested was received and in compliance.
- The General Reserve Fund balance was up \$71,000 from 2009. He stated that the budget provided for a \$5,000 increase; therefore, a \$66,000 positive budget variance existed. This increase was generated from fines and forfeits, which are out of the LMCD's control. He reviewed the fund balance over the past five years, as it relates to the LMCD's reserve fund policy of maintaining 30% to 50% of annual expenditures. 2010 provided for a 52% fund balance reserve; noting a steady increase in fund balances over the past three years.
- The Aquatic Invasive Species (AIS) Budget year-end balance was negative \$35,000, which ended close to the budgeted amount of negative \$37,000. The fund balance remained at \$46,000; noting a decreased trend over the last three years (intentionally from 2009 to 2010). The fund balance remained within adequate range of the 30% to 50% reserve fund policy for AIS.
- The Save the Lake Fund balance was approximately \$201,000. Expenditures were documented at \$16,000, based off of a zero increase budget. Most of those Board approved expenditures funded the 2010 Watercraft Inspection Program and Save the Lake re-branding efforts.
- The Equipment Replacement Fund balance was approximately \$80,000. In 2008 through 2010, this Fund account has only increased from interest deposits. Nybeck estimated the cost of a new mechanical harvester at \$170,000. He believed that this fund account needed to be addressed in the near future.
- He entertained questions and comments from the Board.

Nybeck directed the Board to a draft Resolution within their handout folders. This resolution proposes to transfer \$20,000 from the General Reserve Fund to the Equipment Replacement Fund. He stated that he, former and current Treasurers (Tom Scanlon and Kelsey Page, respectively), met with McDonald, in which all acknowledged that McDonald had been advising the LMCD on the need to increase that Equipment Replacement Fund balance for a number of years. Although the transferring of the funds from the General Fund would reduce its balance, it would be within the 30% to 50% reserve fund policy.

The Board briefly discussed the draft resolution, in which the following comments were made: 1) expressed interest in having the Finance Committee review the recommendation prior to Board consideration, 2) a question as to the use of harvesters vs. herbicide treatments, in which Babcock provided a historical review of the Board's position and the availability of budgeted funds on the two programs, and 3) confirmation that a solid mechanic has been in place for the maintenance of the harvesters. To this end, the consensus of the Board was to have the Finance Committee review this matter prior to Board consideration.

10. PUBLIC HEARINGS

A. Shorewood Yacht Club (Site 1), 2011 reconfiguration of non-conforming, multiple dock license and variance applications to amend a license condition.

Babcock asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 3/3/11, which summarized a request to amend a license condition on an approved Variance Order from 1979 that allows for the storage of sailboats only at Site 1. The applicant has requested removal of that condition. He highlighted actions taken to date between the City of Shorewood and the applicant, which allows for the storage of power boats at Shorewood Yacht Club (Site 2). He believed that the removal of the condition was reasonable; however, he believed that the Board should decide if it is reasonable to remove the condition for all of Site 1 or mirror the City of Shorewood's approval (Resolution #11-004) and allow for power boats only at pier #3 at Site 1. If the Board concurred with amending the condition, LeFevere should be directed to prepare Findings of Fact and Order for approval of the reconfiguration of non-conforming, multiple dock license and variance applications. He entertained questions and comments from the Board.

Babcock provided a brief historical review of previous Board actions, which resulted in some tradeoffs for the approval of the 2001 variance at Site 2. In particular, a side setback variance was approved that allowed the dock at Site 2 to be connected to Site 1 to accommodate parking and access needs. In exchange, Site 2 was to be left in a natural state.

The Board asked a few questions, in which Harper responded as follows: 1) a review of the three docks approved near shore at Site 2 (which provides for the storage of a fire boat), 2) a review of the shoreline at Site 2, 3) confirmation that the vast majority of other marinas on the lake do not have restrictions as to the type of watercraft that can be docked or moored (except for some mooring buoys with the City of Deephaven), and 4) confirmation by Siakel that the City of Shorewood recently approved the storage of 57 power boats at piers 3 and 4 (noting that pier 3 is located at Site 1 that is restricted by the current LMCD variance). She believed that the City of Shorewood is supportive of the applicant's request before the Board to remove the license condition.

Babcock asked the applicant to address the Board.

Gabriel Jabbour and Michael Maloney were in attendance to speak on behalf of Shorewood Yacht Club (SYC). Jabbour stated that he owns multiple marinas in which, over the past 20 years, he has positively resolved all matters that have arisen with the local municipality or the LMCD. Furthermore, he stated that there are matters that are of different concern for the City of Shorewood and the LMCD (i.e., the City mandated that Sites 1 and 2 be joined as part of their resolution, whereby the LMCD has required the

sites to be licensed separately). The City of Shorewood's mandate of joining the sites was able to be accomplished via the public waters; however, not via land as the Railroad Authority restricts such action. He stated that he was in attendance in 1979 when the current variance was being considered. He acknowledged the discussions, at that time, were contentious and that they are the only marina with such a restriction (no power boats allowed). He questioned whether the LMCD Code provides for the restriction of power boats and subsequently, other marinas have since been approved without that restriction (including Site 2). He documented that sailboat usage has significantly reduced over the past years (1,648 in 1975 compared to 655 in 2004). He acknowledged that the SYC's priority is for sailboats. However, over the past five years, they have not been able to fill the BSUs to its licensed capacity. He documented the important sailboat maintenance service provided by the SYC utilizing the technical equipment that was invested in to handle such maintenance. With that said, he requested the Board treat the SYC in the same manner as other marinas have been treated by removing the sailboats only condition. He entertained questions and comments from the Board.

Hartwich questioned what size of power boats they anticipated storing, in which Jabbour confirmed no larger than 32' (per a City restriction).

Maloney stated that the BSUs are constructed to accommodate a sailboat, which makes it difficult to dock a power boat. Most of the BSUs will provide for a 25' power boat on average.

Babcock opened the public hearing at 7:39 p.m. There being no comments, he closed the public hearing at 7:40 p.m.

Jewett asked Siakel if the City of Shorewood was okay with the LMCD lifting the restriction, in which Siakel stated that the SYC has been working with the City and their residents for five years and concurs with the applicant's request.

Olson stated that he would support the request and acknowledged the applicant's efforts to resolve the issues with the City prior to submitting applications to the LMCD.

LeFevere stated that the applicant has requested that the Board amend the condition via its deletion on the existing Variance Order. The Board has that ability; however, he acknowledged that the historical approval of the 1979 variance was fairly contentious (providing for documented concerns by the residents in the area at that time). The Findings (not the condition) provided for documentation that sailboats take up less of the lake's surface than powerboats, which generated the sailboats only condition. Without amending the Findings, it leaves the documentation open ended and the preparing of amended Findings would provide for closure as to why the condition was removed.

The Board briefly discussed this matter, in which the following comments were made: 1) expressed concern that economics are going to continue to dictate available space for sailboats (acknowledging that this applicant has stressed their intention to provide a priority to sailboat usage, and 2) confirmation that future amendments to the Findings are not needed when adding additional sailboats over time.

MOTION: Jewett moved, Baasen seconded to direct LeFevere to prepare amended Findings of Fact and Order for approval of the 2011 Shorewood Yacht Club (Site 1) applications

to remove the sailboats only storage condition.

Baasen complimented the applicant for working so well with the City of Shorewood.

Kask stated that the City of Deephaven has had similar concerns as they have not been able to fill the 54 buoys that are licensed for sailboat usage only.

VOTE: Motion carried unanimously.

- B.** Palmer Heights, LLC, 2011 new multiple dock license application for six Boat Storage Units (BSUs) on 306' of continuous shoreline on South Upper Lake.

Babcock asked for background on this agenda item.

Harper reviewed his staff memo, dated 3/1/11, which summarized the request for a new multiple dock license. The applicant has proposed to install a dock, which extends approximately 93' from the 929.4' shoreline, with six 12' x 32' slips for the purpose of providing members lake access at this outlot. He highlighted four LMCD Code sections to evaluate the application. These included: 1) Code Section 2.03, subd. 1- outlines the multiple dock license process, 2) Code Section 1.02, subd. 28 - defines the multiple dock or mooring area, 3) Code Section 2.01, subd. 1- outlines authorized dock use area requirements, and 4) Code Section 2.03, subd. 3 a) - outlines subjective review criteria for granting or denying the multiple dock license. He recommended the Board approve the new multiple dock license application for the 2011 season, subject to five conditions outlined within his staff memo. He entertained questions and comments from the Board.

Babcock invited the applicant to address the Board.

Mr. Jay Scott, representing the applicant, stated that the recent change to the proposed dock configuration was to provide for a safer environment around the swimming beach area. He entertained questions and comments from the Board, in which he confirmed that the usage of the six BSUs had not been assigned and that a future day dock is not apart of the proposed application.

LeFevere stated that if it is the desire of the Board to impose a condition that the six BSUs be assigned or associated to one residential lot or unit, he would recommend that the Board direct him to prepare draft Findings of Fact and Order. Otherwise, the Board could ask the applicant if that condition would be acceptable, in which case Findings would not be necessary.

Scott stated that condition would be acceptable, especially if the matter would expedite approval of the multiple dock license application.

Babcock opened the public hearing at 8:01 p.m.

Mr. Nevin Harwood, 4793 Crane Island, was in attendance representing fellow neighbors of Crane Island. He supported the applicant's request; however, had the following two questions and comments. First, how does one know if the watercraft docked at the BSUs are tied to a particular lot (should that condition

be required). Second, he believed that the proposed dock configuration encourages unauthorized watercraft tie-on at the edges of the dock and questioned whether that would be monitored. He expounded on the fact that area attracts up to 50 moored boats at a time, which Crane Island utilizes for ingress and egress to the island. He expressed safety concerns for traffic patterns as their association always traverses slowly in and out of the area. He compared the bay's use to traffic at Big Island and asked the Board to consider the possibility of implementing safety lanes to control the flow of traffic.

Babcock stated that the LMCD inspects the multiple dock sites on an annual basis and can run boat registration numbers to confirm ownership of the watercraft. He believed that the City of Minnetrista will require the BSUs to be tied to a lot, as well. The LMCD can be contacted at any time should the neighboring property owners have concerns or questions about the watercraft storage. He thanked Harwood for the efforts of the Crane Island residents in maintaining the island's resources.

There being no further comments, Babcock closed the public hearing at 8:08 p.m. He entertained further Board discussion or a motion.

MOTION: Johnson moved, Olson seconded to approve the 2011 Palmer Heights new multiple dock license application, subject to the five conditions outlined in the 3/1/11 staff memo.

VOTE: Motion carried unanimously.

Babcock noted that there are currently minimum wake buoys at the area between Palmer Point and Eagle Island. Additionally, the LMCD Code provides for a minimum wake restriction 150' from the end of any dock structure or watercraft and that violations of this restriction should be reported.

11. OTHER BUSINESS

- A. **Woodland Cove, LLC**, draft Findings of Fact and Order for approval of 2011 new multiple dock license and variance applications.

Babcock directed the Board to a memo from Nybeck, dated 3/9/11, which incorporated proposed revised language to paragraph 14 on pages six and seven of the redlined version of the draft Findings of Fact and Order. The draft Findings included in the packet were not consistent with the motion approved by the Board at their February 23rd meeting (specifically that no more than 20 BSUs may be assigned usage each year in subsequent license years). He recommended that the Board could incorporate the revised language in their consideration of the draft Findings of Fact and Order; however, he was open to discussion should the Board not have had enough time to consider the revised language.

LeFevere stated that the discussion at hand is to what extent the designation of the BSUs' storage use can be changed from one house to another. During the development stage, both versions allow for the change of all BSUs' use (except in the peninsula) from one slip to another on an annual basis. The difference in the two languages is that the redlined version provides for that use for an indefinite period of time, whereby the revised language (noted in the 3/9/11 staff memo) provides for only 20 BSUs having flexible use for an indefinite period of time with all others (67) remaining locked in after construction is complete.

Mr. Peter Pflaum, representing Woodland Cove, LLC, stated that the redlined version obviously provided for more flexibility. However, they could live with the language noted in the staff memo.

The Board briefly discussed the matter, in which the following comments were made:

- LeFevere's understanding that prior Board discussion leaned towards all BSUs (except the peninsula area) having the ability to assign the BSUs on an annual basis.
- Confirmation that more boat usage and greater demands on LMCD staff's code enforcement efforts will be provided when considering the redlined version. Page concurred noting the LMCD does not have enough staff to enforce flexible use of all BSUs, which would also be a disservice to the residents of Halsted Bay.
- A review of comments made from prior Board discussion and purposes for such.
- Expressed concern by Hunt (representing the City of Minnetrista) that 117 BSUs is too many and does not preserve the lake's shoreline.
- In cooperation with the City of Minnetrista, confirmation was provided that whatever language the LMCD approves, the governing agency with the most restrictive rule would apply.

MOTION: Baasen moved, Johnson seconded to approve the draft Findings of Fact and Order as amended, incorporating the substitute paragraph 14 as detailed in the 3/9/11 staff memo.

VOTE: Ayes (8), Nays, (5; Hartwich, Hunt, Kask, Page, and Siakel); motion carried

Babcock thanked the applicant for their time and efforts in bringing the application to a conclusion.

B. Timetable for 2012 LMCD Budget Process

Babcock asked Nybeck for an update to this agenda item.

Nybeck reviewed the proposed timetable for the 2012 LMCD budget process. He recommended that a Work Session be held to review and modify the draft budget prior to the initial consideration at the April 27th Board meeting. An email will be sent out soliciting the Board's availability for a Workshop/Planning Session in the office for the week of April 11th. He pointed out that the Annual 2010 LMCD Report will be completed in the near future coinciding with the distribution of the draft 2011 LMCD Budget to the member cities. A meeting will be held in the LMCD office on June 2nd, with further review planned by the Board on June 8th and 22nd. By statute, the adopted budget needs to be received by the 14 member cities no later than July 1st.

Babcock recommended that a conditional approval be considered at the June 8th Board meeting, with a final review at the June 22nd Board meeting.

12. Update from standing LMCD Committees:

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

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

AIS Task Force

Suerth stated that a meeting was held this date, in which those in attendance reviewed the Proposals received by the Lake Minnetonka Association (LMA) for the 2011 Coordinated Herbicide Treatment project. Dick Osgood, representing the LMA, requested further review of the Proposal prior to a final decision.

Nybeck stated the primary focus of the meeting was to review the Proposals for compliance with the Request for Proposal and the Lake Vegetation Management Plan, in which they all complied. To this end, Osgood will make recommendations to his Board, with an update planned for the April 8th AIS Task Force meeting on the LMA's decision. At that point, a Save the Lake grant agreement with the LMA will need to be prepared and approved by the Board.

Save the Lake Committee

Olson stated that a committee meeting was schedule for March 22nd, 8:30 a.m., in the LMCD office.

Ordinance Review Committee

Babcock stated that a committee meeting will be scheduled for later this month. Consideration of the special density code revisions will move forward. Additionally, the committee will created a task list for future agenda items.

Public Safety Committee

Johnson stated that a committee meeting was scheduled for March 14th, at 3:00 p.m., at the Sheriff's Water Patrol Headquarters.

12. EXECUTIVE DIRECTOR REPORT

Nybeck directed the Board to a packet of information recently mailed to past special event licensees. This packet announced the delegation of the LMCD's special event permitting to the Sheriff's Water Patrol; however, outline AIS expectations and recommendations for the upcoming boating season.

Olson stated that bubbling has recently taken place at the Grays Bay dam to assist in the process of discharging water from Lake Minnetonka as soon as conditions allow.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:37 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary