

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, March 23, 2011
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:15 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; Peter Hartwich, Excelsior; Anne Hunt, Minnetrista; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Debbie Siakel, Shorewood; Herb Suerth, Woodland; and Roger Swanson, Spring Park. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Chris Jewett, Minnetonka

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock stated that the City of Spring Park has appointed Roger Swanson to the LMCD Board. He welcomed Swanson and asked LeFevere to administer the oath of office.

LeFevere administered the oath of office and Swanson was seated as a representative for the City of Spring Park.

5. APPROVAL OF MINUTES – 3/09/11 LMCD Regular Board Meeting

Babcock stated that Hartwich had approached him after the March 9th Board Meeting, in which he recognized that he misunderstood the motion for agenda item 11A (Woodland Cove, LLC). He has requested to amend the draft minutes by changing his vote from an “Aye” to a “Naye”. He believed Hartwich had the ability to make a statement to that affect and if the Board did not object, the amendment can be made (per his review of Roberts Rule of Order).

Hartwich stated that he misunderstood the motion as it pertained to the 20 flexible Boat Storage Units. For this reason, he would like the record to reflect his intention by changing his vote, recognizing that this would not change the outcome of the Board’s decision.

Baasen asked LeFevere to clarify the existence of a protocol to accommodate Hartwich’s request.

LeFevere stated that he would need to rely on the Chair’s review and comments. However, if there is not an

objection to the request, the Board does have the ability to amend the minutes as requested, as well as not allowing for such.

Baasen expressed concern that approving the request would set a precedent in allowing other Board members to change their vote after-the-fact; acknowledging his concern did not relate to Woodland Cove.

Hartwich concurred with Baasen that his request was not clean; however, he expressed an interest in recording his intent. Therefore, if it is not the will of the Board to amend his vote, his actions would at least be recorded.

Baasen respected Hartwich's intent and stated that he would not oppose the change.

Babcock believed that Hartwich's request was a matter of general guidance; acknowledging that it was based on a misunderstanding of the motion. He supported Hartwich's request because he acted in a timely manner.

MOTION: McDermott moved, Johnson seconded to approve the minutes from the 3/9/11 LMCD Regular Board Meeting as amended, making the change requested by Hartwich.

VOTE: Ayes (12), Abstained (1, Baasen); motion carried.

6. APPROVAL OF CONSENT AGENDA

Baasen moved, McDermott seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (03/16/11 – 03/31/11); **6B**, February financial summary and balance sheet; **6C, Shorewood Yacht Club (Site 1)**, Findings of Fact and Order approving 2011 new multiple dock license and variance applications to amend a license condition; and **6D, 2011 Liquor Licenses**, staff recommends approval of renewal (without change) Intoxicating Liquor License applications as outlined in 3/14/11 memo.

7. PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda (limited to 5 minutes)

Mr. Ed Pekarik, Jr., 2990 Casco Point Road in Orono, stated that he was in attendance to follow-up on a letter that he received as a result of the LMCD Proactive Code Enforcement Program. He expressed an interest in amending the rules and regulations as it pertains to watercraft storage density at residential sites due to the fact that his watercraft storage interests are not supported by ordinance.

Babcock stated that an amendment to the watercraft density ordinance would need to be considered for the betterment of the lake as a whole. He provided Pekarik the option to schedule a future agenda item to provide for a more in-depth discussion on his concerns or to document his concerns in a letter to the LMCD, at which time staff will review and act upon as warranted.

Pekarik believed that writing a letter was a little more in-depth process than what he had hoped to be involved with, but believed that would be his first step of action.

8. State AIS Task Force, update on stakeholder recommendations (including pending legislation)

Babcock welcomed Whalen on behalf of the Board and thanked her for her time in serving on the Task Force.

Whalen stated that she was in attendance to provide an overview of a State Aquatic Invasive Species (AIS) Task Force. A series of meetings were held across the State of Minnesota from October through January. Members of the Task Force included representatives from the Minnesota Department of Natural Resources (MN DNR), county commissioners, Minnesota Sea Grant, Freshwater Society, Minnesota Waters, LMCD (in which she represented), various lake associations, a member of the tribal community, and many statewide stakeholders (marina operators, fishing guide operators, etc.). The Task Force's objective was to propose legislation that would prevent or slow down the spread of AIS to provide an opportunity for science to create technology that would assist in ecologically sustaining bodies of water throughout the State of Minnesota. A list of ideas was devised that members felt would be beneficial in preventing the spread of AIS. That list was narrowed down to 25 topics, which was further refined to eight recommendations for legislative consideration. She highlighted the following recommendations and provided further background on them:

1. Increase enforcement of AIS laws at the state and local levels;
2. Increase penalties for violation of state invasive species laws;
3. Improve the MN DNR's watercraft inspection process for AIS;
4. Increase public awareness of AIS;
5. Require lake service provider licensing and training;
6. Focus on high-use infested waters and prioritize other efforts at infested waters;
7. Increase funding for AIS efforts (watercraft surcharge is in Governor's Budget); and
8. Aid AIS actions at water accesses (MN DNR is developing best management practices for water accesses).

She entertained questions and comments from the Board.

The Board discussed these recommendations, as well as the proposed legislation, in great detail. A summary of this discussion was as follows:

- The proposed increase to the AIS surcharge for the registration of watercraft (\$5 for a 16' or greater boat, escalating down in size and charge), which would generate about \$4,000,000 per year (specifically for AIS prevention). A question was asked about why the surcharge would vary based on the size of the boat.
- What the next steps of the Task Force were, including whether there was legislative interest. It was noted that legislation had been prepared to address the Task Force recommendations and that there was a hearing scheduled for the House Environmental Committee on March 24th. Nybeck planned on attending the committee meeting and Board members who have interest were encouraged to attend or possibly testify/document their interests.
- A question was raised of the technology status to prevent or eradicate AIS. It was noted that technology that currently exists might slow down the prevention and spread, although it cannot eradicate AIS.
- The effectiveness of the MN DNR's current public awareness programs, including how the messages could be made more effective. Whalen stated that there was discussion by the Task Force of how to certify that out-of-state watercrafts are AIS free when coming to Minnesota.
- A question was raised as to how the MN DNR would spend the proposed additional \$4,000,000 in

annual funds. Whalen stated that the MN DNR has those details, although it was not available at this meeting.

- A question was raised as to the Task Force recommendations for bodies of water that are already AIS infested, in particular zebra mussels. Board discussion took place with regards to the management of AIS vs. preventing the introduction of AIS (including how these efforts are funded). Whalen stated that the objectives of this State Task Force have been completed, although the MN DNR has created another State Task Force for management purposes.
- Suerth asked what the LMCD can do to show support of the proposed legislation now that we have the legislator's attention. Whalen stated the next step would be to get the public and local agencies active in the support of the proposed bill. She reiterated that an Environmental Committee hearing was scheduled for March 24th and she recommended the submittal of a letter or resolution of support. Suerth believed that a letter of support was warranted.
- There was discussion that the management and prevention of AIS needs to be more comprehensive and collaborative, with Lake Minnetonka needing a more robust voice at the State level.
- A discussion took place with regards to what Board members supported and did not support, including additional points of emphasis for future legislation. Points of concern included whether the surcharge would be a financial burden to the lake community and whether lake service providers that work exclusively on Lake Minnetonka should be required to participate in mandatory training.
- Babcock recommended that the AIS Task Force, coordinated by the LMCD, and an internal committee comprised of LMCD Board members should consider: 1) the drafting of a letter of support for the currently proposed legislation that could be submitted in a timely manner, and 2) draft a resolution for future legislative support in creating a comprehensive program providing for both preventative and management of AIS.

Nybeck stated that he would be attending the March 24th committee hearing. He believed that it would be appropriate for the Board to provide him feedback should he have the opportunity, or feel it is warranted, to testify at the hearing. He confirmed the matter is time sensitive and, after speaking with the MN DNR, they would prefer a letter/resolution of support sooner than later. He documented current support of the proposed legislation by the Minnehaha Creek Watershed District, Three Rivers Park District, and Lake Minnetonka Association.

The general consensus of the Board was that LMCD supports the proposed legislation and will continue to be involved in the legislative process.

Babcock offered those in the audience a chance to speak on the matter.

Pekarik, who spoke under "Public Comments", believed that the prevention of new AIS into Lake Minnetonka was not a viable option. He recommended that water operators be required to register their watercraft for use on specific bodies of water (via a color coding system for AIS). He believed that process would be self-enforced as other operators would see watercraft in a lake that their boat is currently not registered to be in.

Babcock had stated that the Board considered a similar program back in 1992. However, a concern remains for watercraft launched in non-registered bodies of water and timing of when the public recognizes its existence, which in most cases could be too late.

9. PUBLIC HEARINGS

A. **Wayzata Bay Charters**, 2011 new on-sale intoxicating liquor license application for the charter boat, Voyager.

Babcock asked Harper for background on this agenda item.

Harper summarized a request for a 2011 new intoxicating liquor license, with Sunday option, for the charter boat Voyager. The applicant has previously been issued an on-sale, intoxicating liquor license for a charter boat named Voyager of the Lake, in which Voyager is replacing. The applicant has identified Bayview Event Center as its only port of call. He recommended that the Board approve the following: 1) a new 2011 intoxicating liquor license application, with Sunday option, for the charter boat, Voyager, 2) Bayview Event Center as the authorized port of call, and 3) a full refund of \$3,000 for the preliminary investigation deposit.

Olson asked Harper to define "Sunday option", in which Harper stated the license authorizes the sale of intoxicating liquor on Sundays.

Babcock opened the public hearing at 8:37 p.m. There being no comments, he closed the public hearing at 8:38 p.m.

MOTION: McDermott moved, Olson seconded to approve: 1) Wayzata Bay Charters new 2011 intoxicating liquor license application, with Sunday option, for the charter boat Voyager, 2) Bayview Event Center as the authorized port of call, and 3) a full fund of \$3,000 for the preliminary investigation deposit.

Page asked why the LMCD does not retain a portion of the preliminary investigation deposit.

Harper stated that Hennepin County performs the preliminary (full or partial) investigation on applicants that apply for liquor, wine, or beer licenses. Hennepin County typically provides the LMCD minimal, or no invoicing, for such services. Therefore, the Board has historically refunded the entire deposit unless extenuating situations (legal fees, etc.) warrant use of the funds, at which time they are deducted from the deposit.

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

B. **Bayview Charter Cruises**, 2011 new non-intoxicating malt liquor and wine license applications for the charter boat, Escape

Babcock asked Harper for background on this agenda item.

Harper summarized a request for 2011 new non-intoxicating malt liquor and wine licenses, for a new charter boat named Escape. He stated that the applicant had previously been issued on-sale, non-intoxicating malt liquor and wine licenses for a boat named Endeavor, in which Escape is replacing. The

applicant has identified Bayview Event Center, Wayzata City Docks, and Lord Fletchers of the Lake as its ports of call. He recommended that the Board approve the following: 1) a new 2011 non-intoxicating, malt liquor and wine licenses for the charter boat, Escape, 2) Bayview Event Center, Wayzata City Docks, and Lord Fletchers of the Lake as authorized ports of call (contingent upon receipt of ports of call approval certificates from the respective municipalities), and 3) a full refund of \$500 for the preliminary investigation deposit.

McDermott questioned if there were any prior operating concerns with the use of Endeavor, in which Harper confirmed that there were not.

Babcock opened the public hearing at 8:41 p.m. There being no comments, he closed the public hearing at 8:42 p.m.

MOTION: McDermott moved, Hunt seconded to approve: 1) Bayview Charter Cruises new 2011 non-intoxicating, malt liquor and wine license applications for the charter boat Escape, 2) Bayview Event Center, Wayzata City Docks, and Lord Fletchers of the Lake as authorized ports of call (contingent upon respective municipality approvals), and 3) a full fund of \$500 for the preliminary investigation deposit.

VOTE: Motion carried unanimously.

C. Eagle Bluff HOA, 2011 new multiple dock license application to reconfigure the conforming multiple dock facility on Halstead Bay.

Babcock asked for background on this agenda item.

Harper reviewed his staff memo, dated 3/16/11, which summarized the request from Eagle Bluff Homeowners Association (HOA) for a new multiple dock license. The applicant has proposed to reconfigure the existing six slip dock (located on Outlot C) by expanding the size of three of the slips and replacing one slip with a smaller lift located along the main walkway. He highlighted four LMCD Code sections to evaluate the application. These included: 1) Code Section 2.03, subd. 1 – outlines multiple dock license requirements, 2) Code Section 1.02, subd. 28 – defines multiple dock or mooring areas for five or more restricted watercraft, 3) Code Section 2.01, subd. 1 – outlines authorized dock use area requirements, and 4) Code Section 2.02, subd. 5 – outlines special rules for non-continuous shoreline. He recommended the Board approve Eagle Bluff HOAs new 2011 multiple dock license, subject to conditions outlined in the staff memo. He entertained questions and comments from the Board.

The Board asked a few questions, in which Harper responded to. They were as follows: 1) confirmation that there were not any prior license conditions that needed to be carried forward, 2) confirmation that a small dock documented on the proposed site plan, and not on the previously approved site plan, was on land, and 3) that the proposed site plan provides for a new lift to store a small boat (taking the place of the sixth BSU previously approved).

Babcock invited the applicant to address the Board.

Mr. Tony Hessburg, representing Eagle Bluff HOA, confirmed that the small dock on land was not on the currently approved site plan. This dock is used to stock wood planks on during the winter due to the steep terrain. He believed that the HOA has met all the licensing requirements, that staff was helpful through the application process, and that all members of the HOA are in agreement with the application being considered.

Babcock opened the public hearing at 8:45 p.m. There being no comments, he closed the public hearing at 8:46 p.m.

MOTION: Kask moved, Hunt seconded to approve Eagle Bluff HOA new multiple dock license application for the 2011 boating season, subject to staff's recommendations.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

- A. Mark Olshansky**, side setback and adjusted DUA variance application for a permanent dock at 16901 Grays Bay Blvd. (public hearing conducted at 2/23/11 Regular LMCD Board Meeting).

Babcock asked Harper for background on this agenda item.

Harper directed the Board to his staff memo, dated 3/16/11, in which he provided an overview of discussions held to date in the consideration of the permanent (non-multiple) dock license and variance applications submitted by the applicant. The Board scheduled a public hearing for the January 26th meeting, at which time it was continued to the February 23rd meeting. At that meeting, the public hearing was conducted and staff was directed to work with the applicant to come up with a configuration that would address the concerns raised by the Board, in which he highlighted. He directed the Board to a revised proposed site plan. He highlighted three LMCD Code sections to evaluate the applications. These included: 1) Code Section 2.01, subd. 1 – outlines authorized dock use area requirements; 2) Code Section 1.07 – outlines criteria for issuing of a variance, and 3) Code Section 2.02 – outlines restricted watercraft density allowances. Staff cannot take action on the permanent (non-multiple) dock license (approved at staff level) until the Board makes a decision on the proposed variance application. The Board must determine if the applicant has proposed adequate hardships in order to grant the side setback variance for the sheet piling cap structure on the east side of the site. If the Board believes there are sufficient hardships to grant the variance, he recommended the Board direct LeFevere to prepare Findings of Fact and Order for approval of the side setback variance application, subject to six conditions outlined in the staff memo with one minor change. He stated that the applicant, due to unforeseen circumstances, has requested that the date May 15th date outlined within the first staff condition be amended to June 1st. He entertained questions and comments from the Board.

Babcock questioned whether the variance request was for the placement of the dock structure or to use the 10' setback from the easterly side site line for boat storage.

Harper confirmed that the variance was for only the placement of the dock structure over the sheet piling.

Babcock asked the applicant if he would like to address the Board.

Mr. Mark Olshansky stated that he was partial owner of the property. He explained their request to revise the May 15th date to June 1st, which was due to a fire that took place on site and their inability to enter the property until investigations are completed. He requested the ability to maintain the sheet piling cap structure on the basis that, if removed, may pose a safety/liability risk.

Babcock believed that the consideration of the hardship is more of a technical question as the structure is over both land and water. He believed that the request was minimal as long as watercraft are not stored in the 10' setback area. Additionally, he questioned if all of the staff conditions should be placed on the variance, as most of them pertained to the permanent dock permit. The consensus of the Board was to streamline matters and have all conditions noted on the Order.

MOTION: Johnson moved, Babcock seconded to direct LeFevere to prepare Findings of Fact and Order approving Mark Olshansky's side setback and adjusted DUA variance application, subject to: 1) staff's recommendations, and 2) to require the applicant to reconstruct the dock according to the revised proposed site plan by June 30, 2011 (rather than May 15, 2011) prior to any boats moored at the dock.

Babcock proposed a friendly amendment restricting the storage of watercraft within the 10' side setback from the easterly side site line. Johnson agreed to this.

VOTE: Motion carried unanimously.

B. Update on 3/14/11 Public Safety Committee Meeting.

Babcock asked Johnson for background on this agenda item.

Johnson stated that the committee met on March 14th and discussed a number of topics. This included: 1) inspection of watercraft by Minnetonka Power Squadron, 2) 2010-2011 winter speed limit changes, 3) 2011 LMCD Solar Light Program, and 4) LMCD "High-Water Emergency" regulations. He asked Nybeck to provide further details on these topics.

Nybeck provided an overview his staff memo, dated 3/15/11, which provided greater details of these topics. He requested that the Board approve an additional \$1,000 of "Save the Lake" (\$3,000 rather than \$2,000) for the 2011 LMCD Solar-Light Program just in case the additional funds are needed. He stated that there is \$3,067 of contingency funds available in the adopted 2011 "Save the Lake" Budget.

Suerth asked if the LMCD maintained spare lights for emergency replacement, in which Nybeck confirmed the LMCD did have a small supply of extra lights for such use.

Babcock asked Johnson what a typical inspection would consist of.

Johnson confirmed the Minnetonka Power Squadron's inspection is similar to what the U.S. Coast Guard requires, which takes about an hour for each watercraft. He reiterated that the Minnetonka Power Squadron continues to provide free inspections for those that request such.

Kask directed the Board to the 2010 Shoreline Inventory Report within their packet (2010 Annual Report), which documented 9,230 watercraft on Lake Minnetonka. With that said, the Power Squadron has 13 qualified inspectors that performed an estimated 200 safety checks last year. He applauded Mr. Rockvam's idea; however, he stated that realistically the Power Squadron could not take on that large of task. He stated that the Power Squadron will continue to train members to perform safety checks and offer those and other services on a requested basis.

MOTION: McDermott moved, Johnson seconded to amend the adopted 2011 "Save the Lake" Budget to provide for an additional \$1,000 for the Solar Light Program from the \$3,067 contingency line item.

VOTE: Motion carried unanimously.

C. Ordinance Review Committee Update:

- **Ordinance Amendment**, an ordinance relating to special density licenses; amending LMCD Code Section 2.05, subd. 4
- Draft resolution specifying public amenities pursuant to LMCD Code Section 2.05

Babcock stated that the proposed ordinance amendment pertains to special density licenses, which he explained that such a license is typically issued to individuals requesting a multiple dock license for watercraft storage density greater than the 1:50' General Rule (by providing public amenities outlined for special density licenses). A special density license is not renewed annually (unlike a multiple dock license). He reviewed the purpose behind public amenity points and the following committee recommended changes: 1) to issue the point criteria and values via resolution vs. within the license (streamlining the Code provision), 2) authorizing the Executive Director to work with the applicant in amending their approved resolution of point criteria and values (based on specified conditions outlined within the proposed ordinance), and 3) that the Executive Director does not have the authority to amend the number of points originally approved by the Board (providing for Board action to do so). He believed the wording of the draft ordinance was sufficient, although he proposed one minor change in the last sentence on page four. He recommended that the words "or reduction" be inserted between the words "substitution" and "of". He stated that two motions could be considered at this meeting (one to approve the draft ordinance amendment and one to approve the draft resolution). He entertained questions and comments from the Board.

Page entertained tabling action on this agenda item to provide the Board the ability to digest what is being proposed.

McDermott questioned the reasoning for removing the public amenity points and criteria from the Code and placing them in a resolution format. Additionally, he asked if the committee proposed revisions to the public amenity list.

Babcock explained that the Code amendment would provide for a more streamlined/flexible process for the use of public amenities because a public hearing would not be required in most cases. He confirmed that the public amenity list was removed from the Code, updated to a more relevant format (including some of the old amenities and incorporating the committee's work for some new, as well), and placed in the draft resolution currently being considered.

MOTION: Page moved, McDermott seconded to table this agenda item to the April 13th Board Meeting.

VOTE: Motion carried unanimously.

D. Review of draft 2010 LMCD Annual Report.

Babcock asked Nybeck for background on this agenda item.

Nybeck recognized that the Board may need some more time to read the draft Report and he recommended that this agenda item be tabled to the April 13th Board Meeting. At this meeting, a PowerPoint will be prepared to provide further background on this draft Report. He recommended that any questions or comments from the Board be emailed to him in the interim.

The Board concurred with Nybeck's recommendation and the agenda item was tabled to the April 13th meeting.

11. Update from standing LMCD Committees:

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

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

AIS Task Force

Suerth stated that a committee meeting is scheduled for April 8th, at which time the Lake Minnetonka Association (LMA) will provide an update on their decision for the Proposals for the 2011 Coordinated Herbicide Treatment Project. He expressed concern that a point intercept review is not scheduled prior to the start of treatments and recommended future consideration of.

Nybeck stated that a number of Task Force members believed that a pre-season point intercept review was a good idea. The LMA was going to take it into consideration; however, a question remained as to who would perform the work and how was it going to be funded. He recommended to the Task Force that any unused "Save the Lake" funding granted to the LMA could possibly be considered by the Board for this purpose, although the Board would need to approve this. The April 8th meeting will accommodate discussion of the

proposed legislation for statewide AIS prevention.

Save the Lake Committee

Olson stated that the committee met on March 22nd to brainstorm fundraising ideas, which will be presented to the Board on April 13th.

12. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

Babcock stated Kask was finishing his winter term on the Board, in which David Gross will be re-appointed at the next Board meeting. He thanked Kask for his service and looked forward to seeing him next fall.

Kask stated that he was happy to serve on the Board. He thanked Nybeck for his efforts in creating the helpful, comprehensive 2010 Annual Report. With that said, Olson requested the continuation of a PowerPoint presentation on the Report that was utilized in 2009 because he believed it was helpful to the Board in presenting to their respective municipality.

Baasen asked Nybeck if the LMCD would be hosting a municipality budget review session again this year, in which Nybeck stated that planning for such could take place at the next Executive Committee (acknowledging that the session is of benefit). Baasen asked if there was an update to the lake water levels.

Olson stated that the water level reached 930.0' this date (providing for overflow of the spillway and dam).

Discussion was held on the possibility of a "High Water" Declaration, in which Nybeck proposed the possibility of amending the Code to provide for minimum-wake speeds for the entire lake vs. specific whole bays and areas 600' from the shore, whichever is designated. He believed that this change would simplify matters for the lake users, as well as enforcement by the Hennepin County Water Patrol.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:28 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary