

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, June 8, 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; David Gross, Deephaven; Anne Hunt, Minnetrista; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; 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

Babcock stated the following changes to the agenda were recommended:

- Nybeck has requested that: 1) agenda item 6A, Audit of Vouchers (6/1/11 - 6/15/11), to be considered under "Other Business", and 2) the removal of agenda item 6B, April financial summary and balance sheet, for consideration at a future meeting.
- Baasen has requested that: 1) agenda item 6C, Updated LMCD Investment Policy, to be considered under "Other Business" and 2) an update on the Wayzata Yacht Club/Wayzata Community Sailing Center (WYC/WCSC) multiple dock license inspection status be added to the agenda.

Club/Wayzata Community Sailing

Center (WYC/WCSC) multiple dock license inspection status be added to

the agenda.

He recommended the agenda be amended as follows: 1) item 9E, Updated LMCD investment Policy, 2) item 9F, WYC/WCSC Update, and 3) 9G, Audit of Vouchers (6/1/11 - 6/15/11).

MOTION: Olson moved, McDermott seconded to approve the agenda as amended, making the

changes recommended by Babcock.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock stated that Nybeck had one announcement.

Nybeck recommended that a Board Workshop/Planning Session be held on June 22nd in lieu of the scheduled

Board meeting. Agenda items could include: 1) a new LMCD Board orientation and 2) further background

and discussion of the Ordinance Review Committee recommendations for updated public amenities.

The Board concurred with Nybeck's recommendation and scheduled a Workshop/Planning for 6:00 p.m., on June 22nd, in the LMCD office.

5. APPROVAL OF MINUTES – 5/25/11 LMCD Regular Board Meeting

Siakel requested that the following two sentences replace the fourth sentence in the seventh paragraph on page 6: "She questioned the effectiveness of the Harvesting Program. She referred to an aerial photo located on a Carmans Bay website." She clarified that she did not receive the photo from a Carmans Bay resident.

MOTION: Baasen moved, Gross seconded to approve the minutes from the 5/25/11 LMCD Regular Board Meeting as amended, making the changes noted above by Siakel.

VOTE: Ayes (10), Abstained (3, Hunt, Johnson, and Swanson); motion carried.

6. APPROVAL OF CONSENT AGENDA

MOTION: McDermott moved, Hunt seconded to approve agenda item 6D, Minnetonka Boat

Rentals, approval of 2011 renewal on-sale, non-intoxicating malt liquor license application for the charter boat Looneytoon.

VOTE: Motion carried unanimously.

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

There were no public comments.

8. PUBLIC HEARING

- **Tom Niccum**, side setback variance application at 5351 Three Points Blvd. to amend a previously approved variance for a permanent dock.

Harper reviewed his staff memo, dated 6/1/11, which summarized a request to amend a previously approved variance. The applicant has proposed to reconfigure the dock use area (DUA) by: 1) removing a 4' by 44' portion of the approved dock use area and adding a 1' x 15' area on the west side of the dock, and 2) a 6' x 15' area east of the permanent dock (resulting in a decrease of the approved DUA by approximately 71 square feet). This request has been made to accommodate a 5' wide floating personal watercraft (PWC) lift as the applicant had expressed difficulty in using the area between the dock and shore for watercraft storage. He highlighted three relevant LMCD Code Sections in evaluating the variance application. These included:

1) Code Section 2.06- outlines the permanent dock license process, 2) Code Section 2.01, subd. 1- authorized dock use area requirements, and 3) Code Section 1.07- outlines the variance from LMCD Code process. Harper recommended the Board direct LeFevere to prepare Findings of Fact and Order for approval of the side setback variance application, subject to five conditions outlined within his staff memo. He entertained questions and comments from the Board.

Babcock requested confirmation that there were no other conditions from the original variance to be carried over, in which Harper confirmed there were not.

Babcock questioned if the Order needed to document that the PWCs would be

lake exiting as opposed to side exiting.

Harper stated that could be done. The applicant has indicated that any lake exiting watercraft on the east end would not extend into the newly proposed DUA because they would be placed at the end at the dock.

Page questioned why the application does not document hardships for the variance request.

Harper stated the application is amending a previously approved variance, in which that application documented the hardship(s).

Babcock confirmed that the previously approved variance is registered against the title of this property. However, he recommended that staff update the current application to document the prior hardship(s). He asked the applicant to address the Board.

Mr. Tom Niccum, 2680 North Saunders Lake Drive, referred to the east side of the DUA and expressed an interest in not being specifically restricted to the use of PWCs. He acknowledged that a small aluminum boat may be of interest should the PWCs be removed.

Babcock confirmed that the variance would not specifically restrict his use to PWC. He asked the applicant if he was okay with the east side of the DUA being lake exiting, in which Niccum did not have a concern.

LeFevere stated that the PWC lift on the east side may be lake opening. However, the setback for the side opening slip along the shore would be less than what was required for navigational purposes.

Niccum stated that he believed the PWC storage numbers will be decreasing in the near future, at which time he would prefer storing the watercraft inside the BSU (acknowledging that water levels may dictate the placement of the storage). He did not believe the east side storage would affect the watercraft docked on the outside.

Baasen asked how many BSUs he was approved for, in which Niccum confirmed four.

Babcock opened the public hearing at 7:20 p.m.

Mr. William Mernik, 5341 Three Points Blvd, stated that he was an abutting neighbor and was not concerned about the applicant's request. The other abutting neighbor could not attend this public hearing due to being out of town.

There being no further comments, Babcock closed the public hearing at 7:21 p.m.

LeFevere reiterated that boat storage on the east end of the proposed DUA would provide for less navigational ability for the watercraft inside the BSU. However, if watercraft stored on the east end are within the BSU, there would not be a concern.

Niccum stated that if the watercraft are docked on the east end, there would not be a watercraft inside the BSU (confirming an either/or storage situation).

MOTION: Gross moved, McDermott seconded to direct LeFevere to prepare Findings of Fact and
Order amending the previously approved side setback variance, subject to staff's recommendations.

VOTE: Motion carried unanimously.

9. OTHER BUSINESS

A. Public Safety Committee update on 2011 "High Water Declaration"

Babcock stated that Renae Clark from the Minnehaha Creek Watershed District (MCWD) and Lt. Steve Hartig from the Hennepin County Sheriff's Water Patrol were in attendance to participate in the discussion of this agenda item. He asked Clark to provide background in the management of the Grays Bay Dam.

Clark stated that she was Project and Operations Manager for the MCWD. Her purpose for attending this meeting was to provide background on the history and operation of the Grays Bay Dam, as well as how the MCWD managed the water levels prior to and during the "High Water Declaration". Via a PowerPoint presentation, the following comments were made:

- She provided a thorough history of the original and current dam's

construction, the establishment

of the MCWD in 1967 to control flooding on the Minnehaha Creek, the establishment of the

Ordinary High Water elevation of 929.4' by the Minnesota Department of Natural Resources, and

the natural run out of 928.6' established in 1974.

- A review of the MCWD's 1980 Operation and Maintenance Plan.
- A graph review of the water level behavior from 1910 to 1990, in which she documented the similarities of the water levels before and after the newest control structures were put in place.
- A review of the current zoned based operating plan, in which it is based on the lake level, the time of year, and creek capacity.
- Discussion of three cement bays located under the dam, in which water discharges through each of their aluminum gates. She documented that the gates are removed during the winter time and stop logs are put in place to act as a dam during the winter months (one of the flood control measures within the operating plan). Operation of the gates are provided by a detachable wheel located on the deck of the dam.
- She reviewed the management plan's discharge calculation formula which takes into account the level of the lake, level of the wetland downstream, the energy loss of water coming through the dam, and the number and width of each of the gate openings (noted above).
- She reviewed the two procedures utilized to read and report the lake levels; a manual gauge reading (updated once a day; less when not in critical times) and the use of automated equipment (updated every two hours on the MCWD's website). Both methods are based on a permanent benchmark survey. The differences in the two methods provide for a bit of error in the benchmark survey (two to three hundredths of a foot), as well as

factoring in wind.

- A review of the preparedness steps taken in preparation of the high water levels this spring.

Those steps included: 1) closing of the dam later than usual in 2011, 2) the use of newly

developed hydraulic models to predict the springs water levels based on the snow fall and its

precipitation, as well as what flows to expect in the Creek, 3) presentations to the Lake

Minnetonka and Minnehaha Creek area cities in an effort to prepare all for the potential upcoming

high water levels, and 4) opening the dam prior to ice out, March 9th, and discharging water by

March 23rd.

- A review of the 2011 lake levels to date. She acknowledged a considerable trend downward the last two weeks. However, little evaporation was provided prior to this date due to the nine creeks that flow into Lake Minnetonka and the considerable rainfall.
- She entertained questions and comments from the Board.

The Board asked a number of questions, in which Clark's responses are documented as follows:

- The discharge rate is calculated from the dam only and not the unrestricted water flowing over the weir.
- The electronic water level monitoring device is calibrated every 18 months to two years (acknowledging the last calibration was in January of 2011).
- In response to McDermott expressing concern that his constituents have expressed an interest in holding off the discharge until later in the fall, Clark stated that the discharge rate is provided via a matrix within their operation policy (based on the current water level and the 929.4' Ordinary High Water elevation). She stated that the goal is to try and create how the lake would react in a natural setting by extending flow into the Creek. Additionally, she reviewed the operational plan lake level record and

behavior graph, which provided for a balance of keeping the lake level steady and flow in the Creek as long as possible.

- The lower limit of the dam is 926.0', which is the elevation of the sill that the gates sit on.
- Reiteration that when the water level is at 928.6', the operating plan requires the gates to be closed (documenting that in the late 1800s, the legislature established that to be the run out elevation). McDermott suggested that when the lake level reaches 928.6', possibly hold it a little longer to accommodate for evaporation.
- A comment by Baasen to consider talking to service providers on the current use of lifts and more boats getting stuck than in previous years (1940s and 1950s).
- Confirmation on the placement of the electronic reading devices and that wind factor is taken into consideration when discharging water from the dam.

Babcock thanked Clark for her presentation and asked Nybeck to address the Board.

Nybeck stated that the Board received an update on the "High Water Declaration" on May 25th. This update provided for documenting of lake level readings and testimony from a resident requesting that the entire lake be restricted to "minimum-wake" speeds during a "High Water Declaration". At this meeting, the Board directed staff to coordinate a Public Safety Committee Meeting to discuss the matter and to provide further update at the June 8th Board meeting. The committee met on June 6th, in which the following update was provided:

- An overview of those in attendance (committee members, Board members, and non-committee members).
- An overview of the topics discussed, which included: 1) compliance with the ordinance, 2) enforcement efforts (statistics reviewed), 3) erosion concerns, and 4) possible ordinance amendments to be considered.
- A review of a 2004 MN DNR Report, which documented erosion effects by watercraft on the Upper Mississippi River. Babcock commented that the Board last

provided revisions to the

ordinance in 2002. Some of the goals were to provide for a 600' buffer vs. the 500'

documented in the MN DNR's report to provide room for error and to keep the larger boat wakes

down to eight inches at this measurement (acknowledging that the measurement is not easily

enforceable). Babcock documented other studies that were considered in 2002.

- Nybeck stated that committee recommendations include no changes to the ordinance. However, there is a need for increased public education efforts (signage, television, VHF radio messages, and use of social media).
- He provided: 1) a visual picture of the LMCD's "High Water Declaration" signage (in which Babcock recommended the 600' wording be added to the sign) and 2) the one-page instructional handout distributed widely (including distribution by local marinas to their customers).
- A review of the recent Lake Minnetonka water level readings (acknowledging three consecutive readings below the 930.0' water level have been documented electronically). However, June 8th is the first date where a manual reading has been taken below 930.0'. LMCD Code allows for the Executive Director to terminate the "High Water Declaration" after three consecutive days below 930.0'. Nybeck solicited the Board's direction as to: 1) whether to terminate the Declaration immediately (noting a press release has been prepared) or 2) take a more conservative approach and utilize June 8th as the first reading of 930.0, to document the next two days, and to assess the anticipated rainfall over the upcoming weekend (considering termination as early as June 13th).
- He entertained questions and comments from the Board.

The Board briefly discussed Nybeck's presentation (including public compliance) by making the following comments: 1) comments received by the public are subjective (somewhat equal on both sides), 2) an interest to increase education, 3) an interest in possibly considering minor changes to the ordinance, 4) a belief

that obtaining compliance to the ordinance does not fall to amendments, but to enforcement of the current ordinance in place, 5) documentation from some of the Board members observing both compliance and non-compliance, and 6) acknowledgement that shutting down and increasing the throttle at the minimum wake buoy positions provide for greater erosion than gradual throttle use approaching and passing the buoys. Babcock asked Lt. Hartig to address enforcement efforts.

Hartig stated that most of the Water Patrol stops have resulted in verbal warnings (acknowledging the effort to educate the watercraft operators). He stated it is hard to determine whether the operator was familiar with the regulations; however, he concurred there were operators that purposely violated the ordinance. Violation of the ordinance was provided by all operators and not just those operating fast boats (reviewing some citizen comments received). He believed that the signs are present but not being acknowledged. He reviewed Water Patrol staffing levels and the coverage of 104 lakes and three rivers within Hennepin County. He acknowledged the violations are not a public safety concern, that the deputies conduct as much education as possible, and that some citations have been written. He entertained questions and comments from the Board.

The Board asked a few questions and made comments, which were as follows:

- It is difficult enforcing minimum-wake speeds 600' from the shore.
- A citation is a misdemeanor, in which LeFevere could not confirm if the offense was within the fine schedule.
- Acknowledgement that watercraft operators are responsible for their wake via State regulations.
- Acknowledgement that many watercraft operators are making an effort to comply, in which they should be complimented. Those that do not comply are aware of the ordinance but have simply chosen not to comply until they are caught.
- Acknowledgement that wind is a major factor to shoreline erosion, in which Babcock provided a homemade video of the impact of wind on the shoreline during a windy day.
- A recommendation to enforce with education because once enforcement

is initiated, the word
spreads quickly.

Nybeck reiterated his interest in receiving the Board's input on when to terminate the "High Water Declaration". The Board directed Nybeck to assess termination of the "High Water Declaration" on June 13th due to non-substantiating changes to the lake's water levels.

Mr. Mark Washa requested that the Board provide him a minute to make a public comment, in which

Babcock granted. Washa expressed concern about a herbicide treatment of Grays Bay taking place

while the dam is open (providing for residents not being notified of the presence of herbicides at the

Minnehaha Falls).

B. MCWD, presentation of 2010 Water Quality Sampling Project

Babcock welcomed Kelly Dooley and Yvette Christianson from the MCWD.

Kelly Dooley and Yvette Christianson introduced themselves as the Water Quality Technicians for the MCWD. They were in attendance to present the 2010 Streams and Lake Water Quality Monitoring Report, which covered the following areas: 1) 2010 Water Quality Monitoring, 2) Gleason Lake Water Quality Improvement Project (Vegetation Management Study), 3) Bathymetric Mapping, 4) Lake Nokomis Biomanipulation Project, and 5) Aquatic Invasive Species (AIS) Zebra Mussel Rapid Assessment and Monitoring. Via a PowerPoint presentation, the following comments were provided:

- Precipitation was measured and monitored at seven locations, as well as additional locations via the Citizen Precipitation Monitoring program (reported monthly). Data from both resources were utilized in the Report. She reported that the 2010 annual precipitation was 32.89", which is 12% higher than the long term average of 29.4".
- Telemetry was used for the monitoring of stormwater and water levels, in which an overview of those monitoring locations was provided.
- Stream flow monitoring and water quality sampling was completed on a weekly basis at 10 locations on the Minnehaha Creek and 31 locations in the Upper Watershed. Manual stream monitoring was obtained by use of

a SonTek Flow Tracker, as well as the use of a YSI multi probe meter to measure water temperature, dissolved oxygen (DO), Phosphorous (pH), and conductivity. Additionally, water quality samples were obtained for total phosphorous (TP), soluble reactive phosphorous (SRP), total suspended solids (TSS), and total nitrogen (TN). Chloride monitoring is collected monthly in the open water season and when salt/sand is present on the roads during the winter season.

- E. Coli was tested weekly (April through October) at all ten locations on the Minnehaha Creek, as well as one location on Six-Mile Creek and four sites on Painters Creek.
- Lake water quality was measured at 26 bays on Lake Minnetonka and 11 upper watershed lakes that feed into Lake Minnetonka. Additionally, she stated that 15 limited access lakes are monitored every two years for baseline data.
- A Citizen Lake Monitoring Initiative was established in 2010. Samples were collected once a month (May through September) at seven sites within the 15 limited access lakes for TP, Chlorophyll-a, and water quality.
- Lower Watershed Lake Monitoring was completed in coordination with the Minneapolis Park and Recreation Board. Additionally, the Three Rivers Park District (four lakes) and the Metropolitan Council (three lakes) assists in the monitoring, as well. All data collected is provided to the MCWD.
- Lake water quality monitoring included the following: 1) the use of YSI probe measurements to obtain water temperature, DO, pH, and conductivity (unlike stream monitoring, these measurements are provided from the surface to the bottom of each of the lakes sampling site), 2) nutrients, which are heavily focused on TP, SRP, and TN, 3) Chlorophyll-a for algal abundance, 4) Secchi disk depth for water transparency, and 5) beginning in 2010, ions for chloride. Additional monitoring includes the testing of phytoplankton and zooplankton samples on St. Albans and Halsted bays, as well as Gleason Lake, for the purpose of monitoring the food web.
- The process in reporting water quality data was reviewed, in which the formula is provided by the Metropolitan Council. A chart documenting the water quality grade for all 26 bays was provided (as well as those in the upper watershed and limited access lakes). In general, water quality on Lake Minnetonka has had minimal changes since 2009.

- A summary of many other projects were reviewed. A few of which included Gleason Lake Water Quality Vegetation Management Study, Bathymetric Mapping, and Lake Nokomis Biomanipulation Project.
- A review of the Zebra Mussel Monitoring Program (pre and post infestation) was provided. This review provided for other parameter testing that was completed to determine environment susceptibility, as well as an overview of the infested areas.
- Dooley and Christianson entertained questions and comments from the Board.

The Board asked a few questions, in which the following responses were provided:

- Confirmation that density monitoring of zebra mussels will be initiated in 2011.
- Confirmation that a trend is currently not documented between zebra mussels and water quality. However, they confirmed that zebra mussels are filtering the water (removing phytoplankton and zooplankton; food sources for fish).
- Confirmation that growth of the zebra mussels will be determined in 2011 (acknowledging no adults were found in 2010).
- Confirmation that the MCWD approved \$40,000 for a carp management program. A thorough review of that program and answering of questions was provided to the Board. Olson directed the Board to a fax printout in their packet, dated June 6th, regarding the harvesting of carp.

Nybeck stated that the LMCD is currently accumulating regulation information from the 14 member cities on bow fishing on Lake Minnetonka, in which the results will be discussed at a Public Safety Committee meeting. He personally thanked Dooley and Christianson for putting this presentation together at his request (acknowledging that Dr. Singh, who previously provided this update, had recently resigned from the MCWD).

C. Review of draft 2012 LMCD Budget

Babcock asked Nybeck for an update on this agenda item.

Nybeck stated that a budget review session for the 14 member cities was held on June 2nd in the LMCD office. No comments were received and one member city representative was in attendance.

MOTION: Gross moved, McDermott seconded to approve and certify the draft 2012 LMCD Budget as submitted.

VOTE: Motion carried unanimously

D. Staff update on 2011 EWM Harvesting Program schedule

Babcock asked Harper for an update on this agenda item.

Harper stated that he performed an aerial survey on June 6th, as well as a surface water survey on June 7th, in which he documented sparse growth of Eurasian watermilfoil (EWM). For this reason, staff has postponed initiating the project until June 20th, at which time re-evaluation will be completed just prior.

E. Updated LMCD Investment Policy

Babcock stated that Baasen requested an opportunity to comment on this agenda item.

Baasen stated that minor amendments to the Investment Policy are provided for the Board's consideration and approval. However, he wanted to comment that the LMCD solely purchases Certificates of Deposit with the 4M Fund (PMA), in which the LMCD is a member of. However, he expressed an interest in researching fees associated with investing in 4M vs. other investment avenues as safety in investing is a number one priority. Therefore, he asked what fees the LMCD is paying for investing with the PMA.

Herman stated that an email was provided to the Finance Committee outlining the PMA's investment program. The committee has asked staff to compare investment rates with other companies, in which she confirmed that task will be completed and reported to the committee prior to their consideration of further investments.

MOTION: Baasen moved, Page seconded to approve the amended LMCD Investment Policy.

VOTE: Motion carried unanimously

F. Wayzata Yacht Club/Wayzata Community Sailing Center (WYC/WCSC) Update

Babcock asked Baasen to comment on this agenda item.

Baasen stated that staff has recently completed multiple dock license inspections for the WYC/WCSC. He asked Harper to provide the Board with an update on the outcome of those inspections and the actions that the LMCD will require for compliance at these facilities.

Harper stated that multiple dock license inspections were completed for the WYC/WCSC, in which two discrepancies were documented. First, the WCSC (Site 4) is limited as to how many and where unrestricted watercraft may be stored on land, in which the number of unrestricted watercraft stored was in compliance. However, these watercraft were not located in the assigned area. Second, the WYC (Site 2) had two dock structures that were not in compliance with the approved site plan (one placed incorrectly and the other exceeded length limitations). Staff communicated and re-inspected the sites, in which all matters, except the one dock that was too long, was resolved. The WYC Commander has communicated that they are working on the latter.

Nybeck communicated to staff that a follow-up inspection is to be completed with an update to the Board in the near future. Should non-compliance remain, the Board will need to consider the next course of action as this matter will not be allowed to continue through the 2011 boating season.

Harper documented that the WYC is constructing placement of an approved 50' floating dock section that is not currently finalized. Matters that were in non-compliance prior to the 2011 boating season have all been resolved.

G. Audit of Vouchers (6/1/11 – 6/15/11)

Babcock asked Nybeck for background on this agenda item.

Nybeck stated that the original audit of vouchers has been amended to add an additional check (#19113), in the amount of \$240.36, for the purpose of replenishing petty cash.

MOTION: Baasen moved, McDermott seconded to approve the amended Audit of vouchers (6/1/11 - 6/15/11).

VOTE: Motion carried unanimously.

10. Update from standing LMCD Committees:

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

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

AIS Task Force

Page stated that there was a meeting scheduled for June 10th at 8:30 a.m. in the LMCD office.

Finance Committee

There was no Finance Committee update.

Ordinance Review Committee

Babcock stated that the Board will be discussing committee recommendations on Jun 22nd at the Board Workshop/Planning Session.

Public Safety Committee

There was no Public Safety Committee update.

Save the Lake

Olson stated that work is proceeding with the Save the Lake fundraising

initiatives, in which the Lake Minnetonka aerial photos are framed, planning continues for a brief Save the Lake presentation by Marine Max at the Boat in Theater event, as well as the creation and distribution of the spring Save the Lake solicitation letter.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director report.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:35 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary