

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, July 13, 2011  
Wayzata City Hall

**1. CALL TO ORDER**

Babcock called the meeting to order at 7:00 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; Chris Jewett, Minnetonka; Jeff Morris, Excelsior; Debbie Siakel, Shorewood; 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:** Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Herb Suerth, Woodland.

**3. APPROVAL OF AGENDA**

**MOTION:** Baasen moved, Hunt seconded to approve the agenda as submitted

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Babcock**

Babcock made two Chair announcements. First, he stated that due to technical difficulties, the video equipment used for the taping and viewing of this meeting will only provide for a one camera viewing option. Second, he recommended a lake tour Workshop/Planning Session in lieu of the July 27<sup>th</sup> Board meeting. The Board concurred with Babcock's recommendation, in which Nybeck confirmed that staff would prepare an itinerary and focus on one-half of the lake for logistical reasons.

**5. APPROVAL OF MINUTES – 6/8/11 LMCD Regular Board Meeting  
6/22/11 LMCD Board Workshop/Planning Session**

**MOTION:** McDermott moved, Siakel seconded to approve the minutes from the 6/8/11 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (9), Abstained (1, Jewett); motion carried.

**MOTION:** Hunt moved, McDermott seconded to approve the minutes from the 6/22/11 LMCD Board Workshop/Planning Session as submitted.

**VOTE:** Ayes (8), Abstained (2; Jewett and Morris); 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 (7/1//11 – 7/15/11); **6B**, April and May financial summary and balance sheets; **6C, MN DNR**, approval of Agreement for partial funding of 2011 EWM Harvesting Program.

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

There were no public comments.

**8. PUBLIC HEARING**

There were no public hearings.

**9. OTHER BUSINESS**

**A. Ordinance Review Committee (ORC) Update:**

- **Ordinance Amendment**, first reading of 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 asked Nybeck to provide an update on this agenda item.

Nybeck made the following comments:

- The ORC was established a few years ago to review LMCD ordinances to ensure that they are current and up to date, in particular Chapter 2 (water structures). The ORC has focused its time this past year on the updating of public amenities, which are required for special density licenses. The ORC believes that the current public amenity list is out of date. Currently, changes to an approved special density license require Board review and a public hearing.
- Four changes have been recommended by the ORC. These include: 1) update the public amenity list and point system in resolution form for ease of Board amendments, 2) allow the applicant changes to amenities approved by the Executive Director in some situations, 3) establish how to transition existing special density licenses to meet the new regulations (the ORC is recommending increasing the number of boat storage units (BSUs) or changing of amenities, and 4) to further define minimum requirements to qualify (such as amenities available to the general public, mandatory parking, handicapped access, as well as reasonable amenity fees).
- The Board conducted a Workshop/Planning Session on June 22<sup>nd</sup> to provide feedback on the ORC recommendations. Feedback on the draft ordinance amendment and resolution included: 1) that the recommendations are on the right track, 2) there was no consensus of when facilities would need to come into compliance with the new regulation, and 3) staff was directed to prepare a spreadsheet to assess current special density licenses against the proposed public amenities list.
- There are currently 22 special density licenses approved by the LMCD. A number of these facilities comply (or nearly comply) with the proposed new public amenities. There are also a number of facilities that would have problems complying with the minimum number of public

amenity points, which he provided greater detail of.

- He believed that there were three options for the Board to consider. First, adopt the ordinance amendment and resolution. This would essentially grandfather the existing special density licenses until there is a proposed increase in BSUs or proposed changes to approved public amenities. Second, approve first reading of the ordinance amendment and require conformance to the new regulation by a set date (such as one to three years). If this is the option that the Board proceeds with, staff recommended getting feedback from the affected facilities. Third, not adopt the ordinance amendment and resolution. With this option, staff believes that the public amenity list is still dated and a number of questionable public amenities have been previously approved.
- He entertained questions and comments from the Board.

Babcock believed that the draft ordinance amendment was adequate as prepared, although McDermott has proposed a few cosmetic changes. After reviewing the public amenity spreadsheet prepared by staff, he believed that there are a number of amenities not on the proposed list that the Board would like to see on the lake. Additionally, there are a number of amenities on the list that should not be approved, citing public telephones as an example. He believed that there is a need for the ORC to review the spreadsheet of currently approved amenities with the proposed amenity list. He believed that an additional option for the Board to consider was to: 1) approve the ordinance amendment and 2) to refer the resolution back to the ORC. He hoped that this would allow for existing special density license holders to be closer to compliance with the new public amenity list.

LeFevere stated that the ordinance amendment requires a list of public amenities in place. Thus, if the Board refers the resolution back to the ORC for refinement of the amenity list, approval of first reading of the draft ordinance amendment makes the most sense. Additionally, adoption of the ordinance amendment and resolution could be done by the Board if it believes it is an improvement from the current ordinance. In the meantime, the ORC and the Board could further study if, or when, existing special density license holders would need to come into compliance with the new public amenity list.

The Board discussed the draft ordinance amendment and resolution in detail. A summary of this discussion was as follows:

- A need to communicate with special density license holders on what would trigger the need to comply with the new public amenity list.
- The difference between a multiple dock license and a special density license. In particular, multiple dock licenses are renewed annually while special density licenses are renewed only when changes are proposed.
- The need for staff to educate special density license holders what the risks are when the applicant is considering changes to an approved special density license.
- How public amenities are being provided for multiple dock facilities that have one or more special density license. In particular, whether a public amenity could be provided from one site to another site.
- Whether grandfathering of approved public amenities should be considered, including how to get public input from affected special density license holders.
- How the Board could handle the special density license issued for Lord Fletchers Apartments,

which would not qualify for a special density license under the current regulation. Most likely, this could be resolved by grandfathering what is currently approved.

**MOTION:** Baasen moved, Gross seconded to: 1) approve first reading of draft ordinance amendment as submitted, 2) refer the resolution back to the ORC for further review and refinement of the proposed public amenity list based on the currently approved public amenities, and 3) gather public input on the proposed changes recommended by the ORC.

Gross stated that he would like to have the words “dedicated parking” in the draft resolution changed to “associated parking”.

**VOTE:** Ayes (9), Nays (1, Page); motion carried.

**B.** Staff update on impact of State shutdown on 2011 EWM Harvesting and Watercraft Inspection Programs.

Babcock asked Nybeck for an update on this agenda item.

Nybeck stated that the 2011 Eurasian Watermilfoil (EWM) Harvesting Program was scheduled to begin mid June and continue through mid August, although the first two weeks were cancelled due to a limited amount of EWM growth. The project commenced the week of June 27<sup>th</sup> and harvesting was done on an as-needed basis on the Upper Lake, although growth continued to be sporadic. The program planned for a week off due to the 4<sup>th</sup> of July holiday; however, a letter had been received from the Minnesota Department of Natural Resources (MN DNR) on June 30<sup>th</sup> suspending the LMCD’s Aquatic Plant Management (APM) Permit due to the State shutdown. Because of this, the LMCD’s EWM Program must be suspended until the State shutdown is resolved; at which time the MN DNR would lift the suspension of the APM Permit. Once lifted, staff will need to: 1) evaluate how much of the scheduled season is left, 2) conduct a budget assessment (in particular the \$32,754 MN DNR grant), 3) assess EWM growth on a lakewide basis, and 4) decide the best plan to manage this growth (most likely to extend the season or to authorize overtime). He entertained questions or comments from the Board.

A summary of the Board’s questions and comments were as follows:

- Where the equipment is being stored during this suspension (along County Road 19 at a private residence on Old Channel Bay).
- Why the APM permit was suspended during the State shutdown (primarily because of the lack of MN DNR oversight and supervision). A few Board members believed that this was a unilateral decision by the MN DNR and did not serve the public.
- Whether the public interest is being served by the suspension and whether this should be changed. A question was raised as to what the procedure would be to challenge this through an injunction, including whether funds should be expended to confirm mechanical harvesting was an essential service.
- The EWM growth is currently causing impediments to public boat navigation.
- A few Board members questioned how the MN DNR would enforce this suspended permit, including whether the LMCD should just continue harvesting.

- The status of the seasonal employees should the shutdown continue for a prolonged period.
- The majority of the Board believed that mechanical harvesting served the general public, although it did not make sense to legally challenge this. The consensus of the Board was to direct Nybeck to: 1) notify the MN DNR in writing that the LMCD does not agree with the suspension of the APM permit because the LMCD's program is unique and 2) ask for a different interpretation of the permit's suspension if the current shutdown continues for an extended period of time or for future shutdowns.

Babcock asked Nybeck to proceed with his update on the 2011 Watercraft Inspection Program.

Nybeck stated that the 2011 Watercraft Inspection Program included inspections by the MN DNR, Volt Workforce Solutions (Volt), and Three Rivers Park District (TRPD). He made the following comments:

- The MN DNR initial program targeted at least 4,000 inspection hours, from April 24<sup>th</sup> through October 15<sup>th</sup>, at no cost to the Lake Minnetonka community. He reviewed the weekly work schedule and the public accesses covered, noting that these inspections ceased with the State shutdown.
- The LMCD has contracted with Volt for 2,292 hours from May 27<sup>th</sup> through September 5<sup>th</sup>. He reviewed the weekly work schedule, the public accesses covered, and funding sources. During the State shutdown, Volt has assisted in filling in for inspections at North Arm and Spring Bay public accesses. Volt has not been able to fill in at the Grays and Maxwell Bay public accesses, per MN DNR State policy for volunteer inspectors (which the LMCD inspectors are classified as).
- TRPD is staffing the Lake Minnetonka Regional Park through its gate attendants. He reviewed the weekly work schedule, noting that there has been no impact because of the State shutdown.
- He reviewed the LMCD's participation with the Minnesota Bass Federation, Tonka Bay Marina, and the City of Tonka Bay on a youth fishing tournament coordinated at Tonka Bay Marina on June 24<sup>th</sup>. This event involved AIS education and pressure spraying of 28 participating watercraft.
- He entertained questions and comments from the Board.

The Board commented that the LMCD has been able to live up to its commitment on coverage of public accesses. In fact, public access coverage has slightly increased during the State shutdown. The Board also expressed concern why Volt inspectors were unable to inspect watercraft at the Grays and Maxwell Bay public accesses during the State shutdown. The consensus of the Board was for Nybeck to prepare a press release to update the LMCD's efforts to protect the lake during the State shutdown through watercraft inspections. This press release should ask for a higher degree of voluntary compliance at the Grays and Maxwell Bay public accesses during the State shutdown.

#### **10. Update from standing LMCD Committees:**

- Aquatic Invasive Species (AIS) Task Force
- Finance Committee
- Ordinance Review Committee
- Personnel 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

There was no update.

Finance Committee

There was no update.

Ordinance Review Committee

Babcock stated that the committee's work was outlined under agenda item 9A above.

Personnel Committee

There was no update.

Public Safety Committee

There was no update.

Save the Lake

Baasen stated that he had recently met with Chair Bill Olson to receive an update on 2011 fundraising initiatives. He provided an update on these initiatives, as well as the need for a committee meeting in the near future.

## **11. EXECUTIVE DIRECTOR REPORT**

Nybeck made the following two comments: First, he attended the June 27<sup>th</sup> Minnetrista Planning Commission Meeting, in which they considered the Woodland Cove preliminary plat application. He stated that concerns were raised at the public hearing (in particular ingress and egress from the neighborhood). He believed that this would be taken up further at the August 1<sup>st</sup> Minnetrista City Council Meeting. Second, he stated that the new LMCD website will be live by early next week. He recommended that the Board respond to Harper on any pending contact information questions.

Baasen stated that he had talked to the City of Wayzata and the video equipment issues will be resolved in the near future

## **12. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:39 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary