

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, September 14, 2011
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:02 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; Anne Hunt, Minnetrista; Chris Jewett, Minnetonka; Steve Johnson, Mound; Jeff Morris, Excelsior; Debbie Siakel, Shorewood; Roger Swanson, Spring Park; 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: David Gross, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria.

3. APPROVAL OF AGENDA

Babcock recommended removing discussion of the 8/25/11 MCWD Board of Managers meeting from "Chair Announcements" and discussing it after "Update from LMCD Standing Committees".

MOTION: Jewett moved, McDermott seconded to approve the agenda as amended; making the change recommended by Babcock above.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

There were no Chair announcements.

5. APPROVAL OF MINUTES – 8/10/11 LMCD Regular Board Meeting

MOTION: McDermott moved, Jewett seconded to approve the minutes from the 8/10/11 LMCD Regular Board Meeting as submitted.

VOTE: Ayes, 9; Abstained (2, Babcock and Swanson); motion carried.

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Johnson seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (8/16/11 – 8/31/11) and (9/1/11 – 9/15/11); **6B**, July financial summary and balance sheet; and **6C**, Partial reimbursement of deposits for recently approved variance applications as outlined in 9/8/11 staff memo.

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

There were no public comments.

8. PUBLIC HEARING

- **Russ & Gina Nettle and Ed Alexander**, dock length, side setback, and adjusted dock use area (DUA) variance application to amend a previously approved variance for a combined dock at 4658 and 4662 Kildare Road.

Babcock asked Nybeck to provide background on this agenda item.

Nybeck reviewed his staff memo, dated 9/7/11, which summarized a request for a joint variance application for dock length, side setbacks, and dock use area (DUA). The application has been submitted to amend a previously approved variance granted in 1999 for 4658 and 4662 Kildare Road because of non-compliance with the approved Order. He provided a review of the approved variance, as well as the variance approved immediately to the east for the same housing development, in which the City of Mound was the applicant. In 1999, the Board determined hardships of emergent vegetation, shallow water, and a converging lot line for the applicants' sites, which he still believed existed. He highlighted two relevant LMCD Code Sections in evaluating the variance application. These included: 1) Code Section 2.01, subd. 1- authorized dock use area requirements, and 2) Code Section 1.07- outlines the variance from LMCD Code process. To further evaluate the applicants' request, he provided a thorough review of seven staff comments that were outlined within his staff memo. Staff believed that adequate hardships exist to amend the approved variance to allow for: 1) the general placement of the proposed dock to continue 2) the overall length of the proposed dock, and 3) to allow for 32' long slips. However, staff had concerns about the overall width of the proposed dock structure within a 76' wide DUA. Mr. Alexander had provided an amended proposed site plan, in which Nybeck reviewed with the Board. In summary, staff believed that the width of the proposed dock structure should not exceed 36' with canopies and 46' without canopies. Once this issue is resolved, staff recommends that the Board direct LeFevere to prepare draft Findings of Fact and Order approving the variance application subject to a number of conditions outlined within his memo, which were summarized for the Board. He entertained questions and comments from the Board.

Babcock asked Nybeck if additional hardships were provided outside of those documented in the originally approved variance in 1999. Additionally, he asked if staff found a reason why the variance was not originally complied with.

Nybeck stated that the hardships approved in 1999 remain today. With regards to non-compliance with the approved variance, he believed that this predates the applicants' owning the properties in question. He believed that the remaining question for the Board is whether a 32' long boat is reasonable for this combined dock. He believed it was due to the abutting variance (noted above) that was amended in 2008 to allow for 32' long slips. Additionally, he believed that this application was an attempt to provide for consistency and continuity at this dock.

Babcock asked Mr. Alexander to address the Board.

Mr. Ed Alexander, 4662 Kildare Road, stated that he was in attendance representing the interest of both applicants, per the Nettle's request, due to medical concerns that arose. After reading the staff memo, he believed that he had a better idea of how a DUA is defined, which includes limitations on the width of a dock and maintaining side setbacks. This process has been going on since 2008, with both parties having different priorities (he had interest in a canopy while the Nettle's did not). Based on those priorities and a better understanding of the DUA, he had submitted an amended proposed site plan, which he provided the following details of:

- Reduce the overall width of the proposed dock structure to 41'. He believed this would work; taking into consideration the 76' of shoreline and side setback requirements outlined within the staff memo.
- Due to the Nettle's interest in minimizing costs, he proposed keeping their 16.5' wide slip in tack.
- A reduction of the width of the walkway between the two slips from 7' to 3.5'.
- The sliding of the Alexander slip towards the center of the dock (where the width of the proposed dock would be reduced). He proposed maintaining the width of this slip at 14'.

He entertained questions and comments from the Board.

Nybeck stated that he assumed the two platforms at the current dock would also be removed.

Alexander concurred that both platforms would need to be removed based on staff's analysis, although this has not been specifically discussed with the Nettle's. He stated that he was a little bit uncomfortable representing the Nettle's on their removal of the platform.

Babcock stated that the LMCD would consider the platforms in question illegal based on the approved variance. He asked Alexander to comment on whether the proposed dock structure could be straightened within the established DUA and comply with side setback requirements.

Alexander stated that it could be done, although there would be added costs and expenses to move the dock. He believed that the survey documenting the current dock installation illustrated how poorly the original dock was installed.

Babcock stated that he supported the revised proposed site plan; however, he questioned whether there is a need for a side setback variance if the dock were to be straightened out.

Alexander re-stated his concerns about added expenses if the dock were to be straightened out.

Nybeck stated that he concurred with Babcock that the dock structure on the revised proposed site plan could be straightened and most likely not require a side setback variance. He also concurred with Alexander that the dock installation is significantly off from the approved 1999 variance site plan. Thus, staff analyzed the proposed site plan based off of what would be allowed at a site with 76' of deeper shoreline. He expressed concern about disturbance to the vegetation in this area. If this is the direction the Board would like to proceed, he believed that LeFevere could prepare Findings of Fact that would not create an undesirable precedent.

Babcock stated that he was striving to approve the minimum number of variances to allow the co-applicants reasonable use of this combined site. He believed that a 32' long slip was reasonable and he was asking for assistance from the applicants' to fit the proposed dock within the DUA. In particular, this dock was approved in 1999 and installed illegally.

Alexander stated that the abutting dock with six slips approved for the City of Mound appears to be installed in a comparable angle.

Babcock agreed that the abutting dock was installed in a comparable angle; however, a side setback variance was not required due to the amount of shoreline at this site (estimated at 500').

Alexander stated that he talked to the surveyor and questioned how the dock installers were so far off from the approved site plan. Even though this application process was to amend the approved variance, he would not guarantee that the dock installation would be 100% correct with whatever site plan is approved.

Babcock stated that he hoped that the revised dock installation would come into compliance as much as possible with whatever site plan might be approved.

Jewett asked for clarification of how the amended proposed site plan would be contained within the DUA established by the 1999 variance. Babcock and LeFevere clarified this. Jewett stated that if amendments are required to the proposed dock, he recommended that they take place beyond the emergent vegetation so that it remains undisturbed.

Nybeck stated that the approved variance from 1999 had two, 10' x 24' slips that were maintaining 20' setbacks from the extended side site line. The proposal before the Board is for two 32' long slips that are wider than 10'. This is compounded by the dock installed that is significantly off from what was approved in 1999.

Babcock questioned whether there were any additional hardships (since the approved 1999 variance) that would allow for the Board to consider the amended variance.

LeFevere stated that question is raised from time to time. If the variance granted in 1999 was the maximum reasonable request, there should be a change in circumstances to consider it. However, if the conclusion is that the variance granted in 1999 was not the maximum reasonable request; the applicant should not be punished for requesting a lesser variance.

Babcock thought the Board discussed slip length in great detail in 1999 and decided that a 10' x 24' slip was reasonable at that time. He expressed concern about the Board granting a side setback variance, although he supported the slip length and overall dock length. He hoped that the applicant could assist with this.

Alexander stated that he purchased the property in 2008, with the Nettle's approximately six month later;

both unaware of this situation. As both parties did not install the dock, he questioned why it falls on them to correct the situation.

Babcock stated that it is the applicant's responsibility to ensure compliance with the ordinances and approved variance(s) when they purchase a property. The variance has been on record and this discussion should take place with the realtors.

LeFevere stated that if costs associated with re-locating this dock are a concern, the applicants could consider changing the installation of the dock near the end rather than re-installed the entire dock.

Johnson asked Alexander if he would be okay with placing a bend at the end of the dock and re-installing it within the DUA established by the approved variance.

Alexander stated that he would consider that if it is needed to keep the dock. However, he could not speak for the Nettle's and they have previously expressed concern about incurring expenses to resolve this issue. He believed that the revised proposed site plan was a win-win situation for all parties.

McDermott asked Babcock to clarify his concerns.

Babcock stated that he would like the proposed dock to meet the required side setbacks for a 76' wide site.

LeFevere stated that there is 76' of shoreline at this combined site; however, the DUA established by the 1999 variance is not 76' wide because the shoreline is oblique rather than perpendicular. The Board could consider this as an additional hardship because the Code requires the combined dock to be installed within the DUA rather than perpendicular to the shoreline. The Board could consider the oblique shoreline as a hardship and treat this site as though it has 76' of shoreline.

Nybeck stated that the most recent variance approved at Minnetonka Beach (Dock Site 10) took into consideration the oblique shoreline measurement.

Page asked what the water depths were at 131'.

Nybeck estimated that water depths would be between 3.5' and 4'. If a 4' water depth is used for the dock length variance request, a 32' long slip would not fit within this area.

Page stated that he could not support the variance request for a number of reasons. These included:

- A variance was already considered by the Board (including hardships).
- The approval was on record in the LMCD office when these properties were purchased.
- He questioned the need to increase boat sizes in the Seton Channel area (believing a 24' long boat was reasonable).
- The costs involved to bring an illegal dock in conformance with an approved variance is not a hardship based on state law.

Babcock asked how the emergent vegetation today overlaid on the emergent vegetation documented in 1999.

Nybeck stated that he did not have the information available to answer that question. With regards to the 24' long slips approved for this dock, as well as the City of Mound dock immediately to the east, the request was made by the applicants' (not restricted by the Board). The variance for the Mound docks was amended in 2008 to allow for 32' long slips.

Babcock solicited feedback from the Board on the revised proposed site plan. A summary of the Board feedback was as follows:

- Morris stated that he supported pivoting the proposed dock structure within the established DUA. He believed that there were hardships to expend the variance for slip length and that he was not prepared to determine a reasonable boat size for Lake Minnetonka.
- Jewett concurred with the comments made by Babcock and Morris on relocating the proposed dock within the DUA, commenting that it should be minimal expenses for the Nettle's that have a concern about costs (estimated at \$200). He supported a 32' long slip at this site, similar to the City of Mound amended variance from 2008. He recommended that a dock installer should be consulted on this.
- Hunt stated that this site is more constrained than the City of Mound's site. She questioned why the Board would approve wider slips through this request. She supported 12.5' x 32' slips.
- Swanson concurred with the previous Board comments, noting it should be easier for the Board to discuss the pivoting of the proposed dock once it is laid out on paper.
- Johnson stated that this will be a new situation if the dock is entirely removed; acknowledging that the Nettle's might not need a 16' wide slip.

Swanson asked Nybeck when his communications with the applicants began.

Nybeck stated his initial discussion with Alexander was in 2008 and with the Nettle's this past fall. He asked for a summary of the Board's direction for proper communication in working with the applicants.

Babcock provided a summary of what he believed the Board direction was. This included: 1) to install the dock within the DUA established in 1999, 2) to extend the dock and allow for 32' long slips, although there is not 100% consensus on this, and 3) to have these docks meet the same standards that would be allowed for a similar site width.

McDermott stated that he would prefer to minimize the disturbance of the emergent vegetation if the walkway and dock need to be relocated.

Babcock stated that unless there was Board objection, he would table consideration of this application to the September 28th LMCD Board Meeting. There were no objections.

9. OTHER BUSINESS

- Staff update on 2011 EWM Harvesting Program

Babcock asked Nybeck for an update on this agenda item.

Nybeck reviewed his staff memo, dated 9/7/11. A summary of his comments were as follows:

- Background (The program concluded on August 18th. He reviewed discussion held at the August 10th LMCD Board Meeting.)
- There was a significant decrease in harvesting statistics (contributing factors, how this was addressed, and the review of the Final Report is planned in October).
- An update on the capsized harvester, including the following summary of discussions with the League of Minnesota Cities Insurance Trust (LMCIT):
 - Retrieval costs;
 - Costs for the employee that was operating the harvester (covered and not covered);
 - A summary of replacements costs, which included:
 - The policy would provide for 200% of the fair market value, which has been deemed \$32,500, if the harvester is replaced.
 - The policy would provide for 100% of the fair market value if the harvester is not replaced.
 - There was limited discussion at the August 10th Board meeting on whether the harvester should be replaced, with no consensus.
 - A timeline review for the sealed bid and ordering process should the Board decide to replace the harvester for 2012; with the expectation of a June 1st delivery date.
- He entertained questions and comments from the Board.

MOTION: McDermott moved, Johnson seconded to reimburse the seasonal employee \$143.08, for the cell phone lost as part of this capsized harvester incident that was not covered by the LMCIT.

VOTE: Ayes (9), Nays (1, Baasen), Abstained (1, Suerth); motion carried.

Jewett asked if there was deadline on when the Board would need to decide on whether to replace the harvester.

Nybeck stated that he would need to check with the LMCIT on this.

Babcock stated that he understood there were differing opinions on the direction of the mechanical harvesting program. He questioned what would prevent the Board from initiating the sealed bid process, recognizing that all of the facts are not on the table and the Board does not have to accept a bid.

Siakel asked for background on the number and age of the LMCD harvesters.

Nybeck stated that the LMCD operated three harvesters for most of 2011. The harvester that capsized was the oldest; purchased in 2000. The remaining two harvesters were purchased in 2003 and 2005. He stated the life expectancy of these harvesters range from 10 to 15 years.

Siakel questioned whether there would be adequate funds to replace the harvester, noting the \$65,500

offer from the LMCIT and the \$80,000 in a fund balance for depreciated harvesting equipment. Based on Nybeck's presentation, she understood a replacement cost to be approximately \$170,000.

Nybeck stated that \$25,000 was included in the adopted 2012 LMCD Budget to be transferred to this fund account.

Siakel stated that she would like to have some questions addressed prior to the Board making a decision on whether to replace the harvester. Some of these questions were as follows:

- A need to re-evaluate the current metric with regards to the mechanical harvesting program.
- The need for a comprehensive AIS management plan (including how mechanical harvesting and herbicide treatments would factor into this). In particular since five bays in 2011 did not have a need for harvesting (because of the pilot projects).
- Rather than replacing the harvester, would it be more cost effective for the LMCD to consider contracting for these services.

Babcock stated that one of the metrics used by the LMCD is acres harvested. He understood that Siakel and others might have questions with regards to mechanical harvesting, herbicide treatments, and contracting for mechanical harvesting. However, he believed that mechanical harvesting is currently the best means to economically manage milfoil on a lakewide basis.

The Board discussed this and the consensus was for Nybeck to:

- Check with the LMCIT on whether there are time constraints on when a decision needs to be made by the Board to replace the harvester. This will be updated at the September 28th Board meeting.
- To solicit review and comments on the most current harvester specifications from potential vendors.
- To schedule an agenda item to discuss whether it makes sense to replace the harvester at the October 21st AIS Task Force Meeting. This discussion will be provided at the October 26th Board Meeting
- To prepare draft specifications for possible consideration by the Board on October 26th if that is the direction the Board decides to proceed with.

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 the next meeting is scheduled for October 21st. In addition to discussion on the LMCD's

Eurasian Watermilfoil Harvesting Program (including whether the capsized harvester should be replaced), the committee will discuss the coordinated herbicide treatment project on Carmans, Grays, and Phelps Bays based on the goals and objectives spelled out in the Lake Vegetation Management Plan.

Finance Committee

There was no Finance Committee Update.

Ordinance Review Committee

Babcock stated that the scheduling of an Ordinance Review Committee meeting was pending.

Personnel Committee

Nybeck stated that there will be a need to schedule a meeting sometime in the near future.

Public Safety Committee

Johnson stated that he anticipated scheduling a meeting sometime in the near future.

Save the Lake

Baasen stated that the committee has been very busy with three meetings since the end of July. He updated the Board on the following:

- The aerial photos are up at Al and Alma's, Maynards, and the Wayzata Muni. These were delayed due to the timing of the updated LMCD website. The program seems to be going quite well.
- 2011 cash and photo solicitations are at approximately \$14,500. The spring solicitation was sent out a couple of months late, which he believed will delay the mailing of the fall letter.
- He briefly commented on fundraising initiatives that were planned for 2011. These included: 1) Lake Minnetonka aerial photos, 2) the gas discount project at the commercial marinas, 3) the "Boat in Theater" event, and 4) a fall fundraiser.
- The committee has recently discussed the viability of coordinating a larger fundraising event yet in 2011. The consensus of the committee was that there were time constraints and this should be pushed back to early 2012. He believed that this will involve soliciting professional fundraisers and including other stakeholders.
- He commented on other fundraising initiatives being considered by the committee for 2012. These included: 1) the gas discount project, 2) a unique boat parade, and 3) a larger fundraiser event.
- For the fall solicitation letters, he asked the Board to submit potential stakeholders from the community that they represent to the office. A letter will then be prepared for each Board member summarizing the needs of Save the Lake, what is planned for 2012, and a request to contribute.

Chair Update of 8/25/11 MCWD Board of Managers Meeting

Babcock stated that he and number of other Board members were in attendance at this meeting. A draft AIS Management Plan, as well as a number of other AIS topics, was on the agenda. The draft Plan was published and the link to this will be sent out to the Board. The MCWD has communicated to him that this Plan is in draft form, although this is all that has been published to date and he recommended that the Board become familiar with it. At this meeting, he provided the MCWD Board some feedback and encouragement on technology they are considering. However, he did not provide them feedback on the Plan and how it might impact the LMCD. It is quite comprehensive and it would include boat, dock, and equipment stickers, as well as gates at approximately

70 public accesses (with access codes). It is quite a departure from other proposals that have been published in the past in an attempt to protect other lakes within the watershed that currently do not have AIS. In addition, the MCWD Board directed its staff to solicit the level of support from the 29 cities within the MCWD. The City of Shorewood has adopted an AIS resolution (within the Board's handout folders), which has been distributed to the Lake Minnetonka communities. He asked Siakel, who serves on the Shorewood City Council, for further background on this.

Siakel commented on the resolution, as well as the City of Shorewood's philosophy relating to AIS. A summary of her comments were as follows:

- Residents from Christmas Lake have approached the City of Shorewood in an attempt to further protect the lake from AIS. Shorewood is currently working with the homeowners association, the MN DNR, and the MCWD on a project that would involve a gate and would allow for access between 6 a.m. and midnight. An access code will be provided for this gate once it has been determined that a watercraft is deemed free to AIS. The logistics of this pilot project are currently being worked out and has the support of the city council.
- The City supports the LMCD and its general management efforts. However, the City is concerned about the LMCD's ability to come up with the funds needed to manage and prevent AIS because of its funding limitations based on state statute. The MCWD does not have the funding limitations that the LMCD has and the city council believes that AIS efforts should be done on a regional basis, with the MCWD coordinating this effort.
- This does not mean that the LMCD would not have a role in the management and prevention of AIS on Lake Minnetonka, citing the LMCD's harvesting program as one example.
- She entertained questions and comments from the Board.

Babcock stated that he believed the resolution was one-sided because it does not reference the LMCD. There is currently no defined Plan and the current draft Plan references gates and access codes for Lake Minnetonka, which is invasive to users. He believed that this would result in a closed lake situation; acknowledging this is a draft concept. He expressed concern that the resolution does not reference what has been done the past 22 years (including concepts that have been proposed and turned down). Feedback he has received includes that the LMCD (and others) have dropped the ball on this issue and he wanted to resolve this because he wants to work with the MCWD. He believed that there is a need to balance the needs of the MCWD with the LMCD, MN DNR, and 14 LMCD member cities on this issue. He supported the efforts of preventing the introduction of AIS into Christmas and Lotus Lakes; however, he did not want to see the costs associated with this passed to the users of Lake Minnetonka.

Siakel stated she does not believe this effort is an assault on the LMCD. The City believes that having the MCWD make the decisions for Lake Minnetonka makes more sense because there are too many agencies that have jurisdiction.

Babcock stated that the only agency making these decisions for Lake Minnetonka is the MN DNR. His frustration was that the statewide policy slowed the spread of zebra mussels to Lake Minnetonka, not prevent their spread. Based on statewide policy, the LMCD efforts were planned taking this and budget limitations into consideration. He expressed concern about protecting other bodies of water within the watershed by closing or restricting Lake Minnetonka.

Siakel suggested that the Board might want to consider discussion, in the near future, whether limiting or restricting access on Lake Minnetonka makes sense. She believed that there will be an outcry on zebra mussels once watercraft and equipment is removed from the lake.

The Board discussed this matter in greater detail. A summary of the discussion included:

- How the fees to manage this program for other lakes could be passed back to Lake Minnetonka residents.
- Why a draft Plan was prepared without consulting with the LMCD and other stakeholders that have worked on this topic for numerous years.
- What the intent of the City of Shorewood might be with regards to the resolution and draft Plan.
- The need for all stakeholders to participate in this process, not just the City of Shorewood and the MCWD.
- Whether it's presumptive for cities within the watershed to adopt the Shorewood resolution prior to MCWD, LMCD, and other stakeholders pulling together and creating a unified Plan.
- Staff was directed to schedule an update from the MCWD on this topic at the September 28th LMCD Board Meeting. Babcock asked the Board to review the draft Plan prior to this meeting.

11. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two topics. First, a "Question and Answer" brochure and MN DNR General Permit for commercial activities to transport invasive species and infested waters was recently e-mailed to Lake Service Providers. This was coordinated with Jay Rendall from the MN DNR. Second, BayView Event Center, at the 8/10/11 LMCD Board meeting, requested an exemption to anchor within 300' for charter boats on Lake Minnetonka, in particular Big Island. Because BayView's interest was for 2011 and would require an ordinance amendment, BayView does not want to further pursue their request for 2011 or beyond. Thus, staff has not done further research on this.

12. ADJOURNMENT

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

Douglas E. Babcock, Chair

Andrew McDermott, Secretary