

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, April 11, 2012
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; James Doak, Woodland; David Gross; Deephaven; Gary Hughes, Spring Park; Steve Johnson, City of Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Sue Shuff, Minnetonka; and Mark Sylvester, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Anne Hunt, Minnetrista

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 made two Chair announcements: First, he stated that the City of Deephaven appointed David Gross to the LMCD Board of Directors. He welcomed Gross on behalf of the Board and asked LeFevere to administer the oath of office, in which he did. Gross was seated as a representative for the City of Deephaven. Second, he stated there was a need to schedule a Workshop/Planning Session to review the first draft of the 2013 LMCD Budget.

Nybeck proposed a Board Workshop/Planning Session for April 18th at 6:00 p.m. in the LMCD office. The consensus of the Board was to schedule a Workshop/Planning Session for April 18th as proposed by Nybeck. Nybeck stated that he would have the first draft of the budget sent out by the end of the week.

5. APPROVAL OF MINUTES – 3/28/12 LMCD Regular Board Meeting

MOTION: McDermott moved, Shuff seconded to approve the minutes from the 3/28/12 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (10), Abstained (3; Baasen, Gross, and Johnson); motion carried.

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Shuff seconded to approve the consent agenda as submitted. Items so approved included: **6A**, Audit of vouchers (4/1/12 – 4/15/12); **6B, MCWD**, draft Agreement for partial funding of

\$7,500 for 2012 Watercraft Inspection Program; and **6C, LMCIT Liability Coverage Waiver Form**, staff recommends that the Board approve a motion that the LMCD does not waive monetary limits on municipality tort liability established by Minnesota Statutes 466.04.

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

Mr. Robert Schleider, 11761 Weltersway in Eden Prairie, stated that he has a business proposition (food service at Cruiser Cove and Big Island) that provides an opportunity to raise a substantial amount of money, possibly for Save the Lake, for the purpose of improving the environmental quality on Lake Minnetonka. He believed this business proposition was not in violation of Code Section 3.01, subd. 18, "Commercial Sales on the Lake" and respectfully requested an agenda item be scheduled for the next regular Board meeting so that he could provide further background.

Babcock stated that commercial sales on the Lake are prohibited. However, he recommended that Schleider present his business idea to staff and LeFevre for possible discussion at the April 25th Board meeting.

8. PUBLIC HEARING

- **Linda Lee Charters**, 2012 new on-sale intoxicating liquor license applications for the charter boat, Linda Lee

Babcock asked Harper to provide background on this agenda item.

Harper summarized a request for a 2011 new intoxicating liquor license, with Sunday option, for the charter boat Linda Lee. The applicants, Martin and Anne Davis, have purchased Linda Lee from Excelsior Bay Charters, Inc., who last held this license in 2009. The applicants have identified Excelsior Municipal and Wayzata Depot docks as their ports of call, in which both municipalities have approved. He recommended that the Board approve the following: 1) a new 2012 intoxicating liquor license application, with Sunday option, for the charter boat, Linda Lee, 2) Excelsior Municipal and Wayzata Depot docks as the authorized ports of call, and 3) a full refund of \$3,000 for the preliminary investigation deposit. He entertained questions and comments from the Board.

Page questioned if staff expended any funds or time in processing this application to warrant keeping a portion of the deposit refund noted above.

Harper stated that staff did not expend any funds, or significant time, in the processing of the application. He commented that the completion of the background check was completed by the Hennepin County Sheriff's Office.

Babcock stated that the LMCD utilizes the Sheriff's background investigation as they do not charge the LMCD for this process. He confirmed that the applicants do pay an application fee that would cover staff's time noted above. He invited the applicants to address the Board. Seeing they were not present, he opened the public hearing at 7:09 p.m. There being no comments, he closed the public hearing at 7:10 p.m.

MOTION: McDermott moved, Olson seconded to approve: 1) Linda Lee's new 2012 intoxicating liquor license application, with Sunday option, for the charter boat Linda Lee, 2) Excelsior Municipal and Wayzata Depot docks as the authorized ports of call, and 3) a full fund of \$3,000 for the preliminary investigation deposit.

Morris inquired as to whether the approval of this application had any bearing on the watercraft passing their hull inspection.

Harper stated that the watercraft for hire license is approved based on the passing of the hull inspection, in which all applicants schedule that process with the State of Minnesota and Sheriff's Water Patrol. The LMCD is notified of the inspection status; preventing the business from operating if failed.

VOTE: Motion carried unanimously.

9. OTHER BUSINESS

A. Staff update on current Lake Minnetonka water levels

Babcock asked Nybeck for an update on this agenda item.

Nybeck reviewed the Board discussion at their March 28th meeting (current water levels, projected precipitation maps and documented statistics, review of LMCD Code sections pertaining to the declaration of low water, an outline of the Board's options, and packet attachments). He provided updated 2012 Lake level readings (3/30 – 4/11) and an overview of the trigger point required to declare "Low Water". He stated staff did not have a recommendation as it was the Board's decision to declare "Low Water". However, he believed the same three options (presented on March 28th) existed for the Board's consideration; wait and see, no action, or declare a "Low Water". He entertained questions and comments from the Board.

The Board had a few questions, in which Nybeck confirmed that only one other time had "Low Water" been declared (late 1980's to early 1990's). He documented that the trigger point at that time was 929.4'; confirming the Code now documents that to be 928.0'. He stated that the water levels at that time were quite a bit lower than currently (around 926.0'). There are a significant number of docks that could be impacted by the low water levels. Those docks impacted are affected by the area of the Lake they are placed in. He directed the Board to an attachment within his staff memo, entitled, "LMCD Code Excerpts; Low-Water Situations;" providing for an overview of the criteria required for residential dock extensions (LMCD Code Section 2.01, subd. 2d.). He defined the "Need" for the temporary dock extension (subd. 2d)1) as being shallow water. He further defined "shallow water" as the standard utilized for normal dock length variances (4' of water at the outer edge of the dock; adjusted back to the 929.4' ordinary high water mark). He distributed and provided an overview of three draft documents (worked out in consultation with Babcock and LeFevere) outlining the proposed process to allow for dock extensions should the Board declare "Low Water". The documents referenced were: 1) LMCD Low Water Permitting Process Guidelines, 2) General Permit Registration Form, and 3) Dock Extension Permit Application.

Babcock reviewed the process in place after the Board declared "Low Water" back in the 1980's. He

confirmed that the Board processed applications for each dock extension. However, he proposed that the Board should consider a general variance concept if "Low Water" was declared. This could involve a General Permit Registration Form (allowing for a 20' dock extension based on specific Lake level readings). This provision would not allow for additional watercraft density than what is provided by Code, as well as the inability to adjust the side setbacks or block navigation. Additionally, he proposed to add (on both the General Permit and Application forms) the inability to remove any additional structure from the property until the end of 2012 (for the purpose of preventing the spread of aquatic invasive species; in particular Zebra mussels).

Nybeck directed the Board to page two of the draft General Permit Registration Form (acknowledging that it is not an application). He outlined the proposed conditions. He stated that if a resident can meet those conditions, the completion, signing, and filing of the form to the LMCD office is all that would be needed. If a resident cannot meet those conditions, they would need to complete the Dock Extension Permit Application.

The Board discussed the proposed process at length, in which the following questions and comments were offered:

- It is the Board's decision as to whether fees would be associated with the permitting process, in which Babcock confirmed they were not in the late 1980's.
- If there is a problematic residential site (i.e., converging lot lines) a Dock Extension Permit Application would be required. If a residential site fits within this category, the Executive Director has the ability to approve those. If it is more problematic (i.e., the whole neighborhood), a formal variance process may be required.
- Confirmation that there were about 100 applications filed in the late 1980's. However, staff believes the Board may have streamlined that process by early 1990's as a paper trail from that point forward does not exist.
- Dock extensions approved through the General Permit Registration Form or Dock Extension Permit Application would be good for the entire 2012 boating season. Babcock believed that if the Lake level comes back up to 928.0', new applications would not be accepted.
- Commercial and multiple dock license holders that file the Dock Extension Permit Application would not be required to have a public hearing or pay an additional fee. However, they will need to wait until the next Board meeting for consideration and approval.
- A permanent dock can only be extended with seasonal dock structure (non-pile driven).
- Staff provided an overview of the Dock Extension Permit Application (in particular how the measurements of the extension would be established).
- Baasen asked the dock installers in attendance to provide background on the docks they are currently installing. Additionally, Klohs stated that he was unsure what percentage of the docks were 8' vs. 10' and asked if the process could incorporate a multiple of the most common dock sections used.

Mr. Bret Niccum, Niccum Docks, stated that the size of the dock structure depends on the manufacturer (typically 8' or 10'). He stated that 80% of the dock structures on Lake Minnetonka are 8'.

Babcock stated that in drafting the proposed process noted above, consideration of two 10' dock sections

were considered (providing for the 20' maximum extension allowed under the General Permit Registration Form).

Niccum stated that docks for Minnetonka Beach, Browns Bay, and Ferndale Road generally provide for 3' of water depth at 260' out. He reiterated his idea (presented at the March 28th meeting) to have the dock installers streamline the general permit and application process via one document for multiple sites.

Babcock stated that the proposed process provides for those sites to go out 260'. Although some of the comments previously made by Mr. Niccum were taken into consideration in the proposed process, he recommended that the Board not entirely streamline the process of going through the dock installers.

Mr. Tim Latterner, Dock and Lift, Inc., estimated that one-half of the docks he installed are already done. He asked the Board for feedback on how fast consideration and approval of those needing to file the Dock Extension Permit Application could be processed. He expressed concern that many of the docks currently installed for 40' to 50' of lakeshore already go out beyond 60' in length during normal water conditions.

Babcock stated that he believed the Board could consider Dock Extension Permit Applications on March 18th. The next approval date for these applications would be at the March 25th Regular Board Meeting. Docks that are illegally installed will be granted dock extensions based on the length provided by Code. Additionally, those that need that extra length during normal water levels should consider making an application for variance from the Code, which would be considered by the Board.

Nybeck re-stated that residential sites that need to submit a Dock Extension Application could be approved by the Executive Director.

Page stated illegal docks should not be installed, in which Babcock stated the Board has chosen to have dock installers police themselves. If that does not work, the Board could consider licensing them.

MOTION: Page moved, Olson seconded to adopt the draft Resolution declaring "Low Water" to authorize temporary dock extensions; filling in the elevation of 928.0' within the first sentence.

Shuff asked if there were any other reasons, other than administrative costs and interfering with navigation, why the Board should not declare "Low Water" and provide for dock extensions.

Babcock stated that complaints may be generated for those that extend beyond the legal limit allowed or approved by Board (providing for the recommendation to utilize the proposed multiple tier approval process). Additionally, some staff effort may be extended next year to insure compliance in removing approved dock extensions.

Gross questioned if a public hearing will be required for multiple dock license holders that submit the Temporary Dock Extension Applications, in which Babcock confirmed a public hearing would not be required due to the extension being a temporary situation.

Baasen asked if the LMCD had a list of those sites that have both illegal and legal extended docks, in which Babcock confirmed staff has a list of approved variances (legal) for dock length extensions, but not those that are illegal.

VOTE: Motion carried unanimously.

MOTION: Page moved, Gross seconded to add consideration of 2012 Dock Extension Permit Applications to the March 18th Workshop/Planning Session (providing for the meeting to be a Special Board Meeting).

VOTE: Motion carried unanimously.

Nybeck asked if the Board would like to move the venue of that meeting, in which the Board chose to remain at the LMCD office. Nybeck stated that staff will do what they can to expedite the distribution, processing, and finalization of the General Permit Registration Form and Dock Extension Application by this Friday. He recommended that all questions on this issue be directed to Harper to provide consistency in this process.

B. Staff update on 2012 LMCD Code Enforcement and Shoreline Boat Storage Count Programs

Babcock asked Herman to provide background on this agenda item.

Herman provided a brief overview of both the Proactive Code Enforcement and Shoreline Boat Storage Count programs that will be completed during the 2012 boating season. This overview provided for the programs' background, objective, goals, and methodology. She entertained questions and comments from the Board.

McDermott asked if the complaints filed with the prosecuting attorney were flagrant. Additionally, he stated that he had received positive feedback as to the narrative of the communication letters.

Herman stated that the complaints pertained to sites that were out of compliance and exhausted all communication efforts. She thanked McDermott for the feedback on the letters; acknowledging that the letters were originally drafted with both staff and Board input.

10. Update from standing LMCD Committees:

Babcock asked for an update from the Chair, or designated representative, of each committee (Save the Lake, AIS Task Force, Finance, Personnel, Public Safety, and Ordinance Review).

Page stated that the next AIS Task Force meeting is scheduled for April 13th at 8:30 a.m. in the LMCD office.

Olson stated that staff is working on the printing of a Save the Lake solicitation envelope that will be utilized by the marinas. The marinas have expressed an interest in initiating their own fundraising drive to raise more

funds for the Remotely Operated Vehicle (ROV) and solar lights.

Johnson stated the Public Safety Committee will meet within the month to go over activity prior to the boating season.

Babcock stated there were no reports for the Finance, Personnel, and Ordinance Review Committees.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated that he had not prepared a written Report; however, he would answer any questions the Board might have.

McDermott asked if herbicide treatment dates were established and whether Grays Bay would need a full treatment this year.

Nybeck stated the AIS Task Force will be reviewing the 2012 herbicide treatment protocol on April 13th, which will include Grays Bay. This is a requirement of the 2012 Save the Lake grant approved for this project, with an Agreement to be brought back to the Board on April 25th for consideration and approval.

Harper stated that the EWM Harvesting Program Working Group will be meeting in the LMCD office on April 16th at 8:30 a.m. He invited those interested to attend.

Page asked if the "Low Water" dock extension forms would be downloaded on the website.

Nybeck stated that the forms would be downloaded on the LMCD website, as well as emailed out to a large database of respective stakeholders (dock installers and multiple dock license holders). Additionally, a press release announcing "Low Water" will be submitted.

Mr. Herb Suerth, 2850 West Road in Woodland, expressed an interest in the Board approving a set dock extension length and not require the registration/application process. He believed that this process would be similar to the early 1990's.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:05 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary