

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, March 12, 2008  
Wayzata City Hall

**1. CALL TO ORDER**

Whalen called the meeting to order at 7:08 p.m.

**2. ROLL CALL**

**Members present:** Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Kelsey Page, Greenwood; Richard Siakel, Shorewood; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** David Gross, Deephaven; Chris Jewett, Minnetonka.

**3. APPROVAL OF AGENDA**

Whalen stated that agenda item 10D needed to be removed from the agenda because it had not been finalized. She believed that the draft 2008 Internet Landing Installed Device Sensors (I-LIDS) Project Agreement would be finalized for the March 26<sup>th</sup> LMCD Board Meeting.

**MOTION:** McDermott moved, Tanner seconded to approve the agenda as amended, removing agenda item 10D.

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Whalen**

Whalen stated that Jerry Rockvam from Rockvam Boat Yards had requested a Board Workshop/Planning Session to discuss issues being faced by Lake Minnetonka commercial marinas. He has requested that this take place prior to the March 26<sup>th</sup> LMCD Board Meeting at 5:00 p.m.

The Board discussed this and the consensus was to schedule a Board Planning/Workshop Session at 5:30 p.m. on March 26<sup>th</sup>. The Board directed Nybeck to contact Rockvam to better understand what issues the commercial marinas would like to discuss.

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

There were no comments from the public on subjects not on the agenda.

**6. APPROVAL OF MINUTES-** 02/27/08 LMCD Regular Board Meeting

**MOTION:** Tanner moved, Morris seconded to approve the minutes from the 02/27/08 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (10), Abstained (2; McDermott and Suerth); motion carried.

## 7. APPROVAL OF CONSENT AGENDA

Babcock moved, McDermott seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included **7A, Baycliffe Property Owners Association**, staff recommends Board approval of 2008 renewal (without change) multiple dock license application that has been paid in full; **7B**, Staff recommends Board approval to refund variance application deposits for previously approved variance applications as outlined in 3/6/08 staff memo; **7C**, Audit of vouchers (3/1/08 – 3/15/08); **7D**, January financial summary and balance sheet, and **7E**, State of Minnesota Income Contract for the use of MN DNR Watercraft Inspection Program inspectors for 2008.

## 8. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed from the consent agenda.

## 9. PUBLIC HEARINGS

There were no public hearings scheduled.

## 10. OTHER BUSINESS

- A. City of Mound**, new multiple dock license and variance applications to amend a previously approved dock length variance from LMCD Code at the Seton Bluff Development (Public Hearing conducted at 2/13/08 LMCD Board Meeting).

Whalen asked for an update on this agenda item from Nybeck.

Nybeck reviewed the three changes proposed by the City of Mound at the February 13<sup>th</sup> LMCD Board Meeting. These included: 1) to add a 5' x 7' platform on the west end of the dock, 2) to increase the width of the six slips from 10' to 12.5', and 3) to increase the length of five of the six slips from 24' to 32' by moving the dock closer into the wetland area. The Board directed Mound to revise its site plan consistent with the Board discussion at the February 13<sup>th</sup> LMCD Board Meeting. A revised site plan has been submitted by Mound, with two changes made from the previously proposed site plan. These included: 1) the removal of the 5' x 7' platform, and 2) to increase the length of five of the six slips from 24' to 32' by moving the dock further into the lake. He recommended that the Board should review the Mound variance application by applying decision standards outlined in the staff memo, dated 3/4/08. He believed that the proposal to increase the width of the slips from 10' to 12.5' was reasonable. However, the Board needs to determine whether to increase the length of five of the six slips from 24' to 32' was reasonable. He entertained questions and comments from the Board.

Babcock stated that he was hesitant to approve this level of expansion being proposed compared to the hardship offered. He proposed an alternative that would allow for some overhang of the watercraft by granting a four foot expansion to the current dock use area. He expressed concern about non-compliance with the approved 1999 LMCD Variance Order because he believed the Board granted a reasonable use. He viewed the six properties as not having riparian rights and he believed that the City of Mound could accommodate the storage of watercraft without a variance from LMCD Code.

Whalen acknowledged Babcock's comments, although she believed that it would be cleaner for all slips to be expanded to 32' in length.

Siakel stated that he had recently visited the site and was not opposed to granting the additional slip lengths as proposed because it would take the dock away from the wetland area, but not cause obstruction to navigation. He believed that times and circumstances change and that accommodating Mound's request would not open the flood gate for more requests because the request was unique.

LeFevere stated that the 1999 Variance Order required that no watercraft to be stored at this facility to have a length overall that is greater than the length of the slip. He reviewed the difference between this and the proposal to allow for a one foot overhang at the front of slip A.

Page stated that the City of Greenwood continued to be opposed to the variance request for a number of reasons. He further stated that approving the variance would encourage others to ignore the law, break it, and then come back and ask for the law to be re-written. He supported 24' long slips, with overhang allowed, as long as the watercraft is removed upon selling or relocating the existing boat and complying with the 1999 Variance Order.

Whalen asked Fackler to provide the Board with background on the watercraft use.

Mr. Jim Fackler, Mound Park Superintendent, stated that upon being aware of non-compliance with the 1999 Variance Order, Mound approached the Association to discuss their dock use needs. Those needs were then presented to the Mound Dock Committee and the Mound City Council, in which both considered the use reasonable and acceptable. Boat lengths were documented as one at 33', two at 28', and three at 24'.

**MOTION:** Babcock moved, Scanlon seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the Mound variance application, subject to amending the 1999 Variance Order by allowing: 1) an increase in the width of the slips from 10' to 12.5' and 2) a four foot lakeward extension for all slips by watercraft overhang.

Olson stated that this site only had one slip approved for 32' in length, although there were two slips currently installed at this length. He asked Babcock to clarify if his motion applied only to the one slip that was 32' in length.

Babcock stated that his motion would only apply to the one slip that was approved for 32' in length, slip B.

McDermott stated he preferred to extend the length of the slip so that a visual precedent was not set.

The Board asked Fackler to comment on what steps Mound was taking to prevent this from happening in the future.

Fackler stated that new applications were currently being processed by Mound for places such as the Seton Bluff Development. As part of this process, Mound is adding the boat sizes and their variance on the application, which should provide consistent information to the inspectors. The turnover in Mound inspectors has caused some problems; however, Mound will now review each applicant annually.

Johnson recommended that the Board be consistent on overhang restrictions for multiple dock facilities in the City of Mound, citing the inconsistency between the Mound Lost Lake Channel and this site, if the motion was to be approved.

LeFevere stated that the motion, if approved, would be to direct him to prepare draft Findings in part, and denying in part, the Mound variance application. Mound would also need to submit a new revised site plan.

**VOTE:** Ayes (4; Babcock, Page, Scanlon, and Suerth), Nays (8); motion failed.

**MOTION:** Siakel moved, Klohs, seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the Mound new multiple dock license and dock length variance application as submitted, subject to all watercraft being fully contained within these slips.

**VOTE:** Ayes (8), Nays (4; Babcock, Page, Scanlon, and Suerth); motion carried.

**B. 2008 LVMP Project**, approval of draft Agreement between LMCD and the Lake Minnetonka Association (LMA).

Whalen asked for an update on this agenda item from Nybeck.

Nybeck stated that LeFevere worked with LMA Executive Director Dick Osgood on the preparation of the draft Agreement. He and LeFevere were comfortable with it and he believed that the Board could approve it at this meeting. He entertained questions and comments from the Board.

McDermott stated that the draft Agreement documents that if homeowners do not sign off for consent to treatment, their property will be subtracted from the equation of the treatment area. He asked LeFevere how many homeowners can be subtracted before the project was not a feasible project.

LeFevere stated he discussed that question with Osgood and their proposal is that they would not specify that equation. The MN DNR does not have a cut off point on the number of homeowners that need to consent to this project. If nobody signs up and a donor comes in for the payment of the entire project, the LMA would still have to get the consent to treat the area within 150' from shore (a legal requirement separate from the funding contact). The worst case scenario would be that the LMCD pays the \$10,000 per bay, but all of the shoreline within 150' is subtracted due to lack of consent. If not enough landowners sign up so it is not financially feasible, then that bay would not get treated and the LMCD does not have to pay the \$10,000. All treatments would fall under MN DNR permit requirements, regardless of this draft Agreement.

Babcock expressed concern about the draft Agreement not defining the "terms of completion". He believed that there was a need for staff to go back to the LMA and to better define the minimum criteria for treatment. He recommended that each bay, at a minimum, should have at least 50% of the targeted area to be treated in order for the project to be deemed complete.

The Board discussed the concerns raised by McDermott and Babcock at length. The consensus of the Board was to define a percentage of the acres to be treated rather than the number of homeowners that participate in this project.

Tanner asked if there was a representative from the LMA in attendance that could offer some insight on the current participation rate.

Ms. Katrina Francis, a LMA Board member, provided the Board an update on the progress being made on these three bays for homeowner participating and private funding.

Whalen suggested that this agenda item should be continued to the March 26<sup>th</sup> LMCD Board Meeting. This would allow staff time to resolve what would be the minimum amount of acreage to be treated in order to be effective, and to provide the results the Board is comfortable with. If the Board did not object, she stated that she believed staff had their marching orders and knew how to proceed. There were no objections.

**C. Lake Minnetonka Charter Boat Association (LMCBA)**, consideration of proposed Quiet Water Area request at the Cedar Point East channel on Wayzata Bay.

Whalen asked for background on this agenda item from Nybeck.

Nybeck stated that Jay Soule and Terry Juengers from the LMCBA were in attendance to further comment on their request. He provided the Board background via a powerpoint presentation. This included: 1) an overview of the location of the request on Wayzata Bay, 2) an overview of LMCD Code Section 3.02, which outlines Quiet Water Area restrictions on Lake Minnetonka, and 3) an overview of the 1986 Quiet Water Policy Statement. He reviewed the request with the 10 need criteria outlined in the 1986 Policy Statement, interjecting comments applicable to the criteria from Tony Brough and Sgt. Steve Hartig. He recommended that the Board direct staff to: 1) coordinate times with the Sheriff's Water Patrol to observe activities in this channel area during peak boat use periods, and 2) to schedule a public hearing during the latter part of the 2008 boating season, most likely in July or August of 2008. He entertained questions and comments from the Board.

Babcock suggested that the Water Patrol should provide feedback on whether they can support another area of enforcement on the lake. He reviewed the logistics of the buoy placement and recommended researching the possibility of placing the buoys wider apart, if the water depths in this area allow for this to occur.

Mr. Jay Soule, representing the LMCBA, provided the Board with a thorough background on the history of the LMCBA, in which the Association promotes safety, respect, and conservation on Lake Minnetonka. He reviewed three observations of the channel's use, which brought this subject to the Board's attention. These included: 1) the speed of watercraft, 2) the overtaking of watercraft to the point of weaving, and 3) the prior two observations with inner tubes and wakeboards in use in this channel area. He entertained questions and comments from the Board.

The consensus of the Board was to: 1) direct staff to coordinate times with the Sheriff Water Patrol to observe activities in this channel area during peak use periods, 2) to direct staff to work with Hennepin County Environmental Services on water depth soundings for the possibility of widening the Channel, and 3) to schedule a public hearing in July or August to obtain public input on the LMCBA's request. The Board thanked the LMCBA for their observations in this area.

**E. Ordinance Amendment**, first reading of an ordinance relating to watercraft storage density, amending LMCD Code Section 2.02.

Whalen asked for background on this agenda item from LeFevere.

LeFevere provided background on a recent LMCD Code enforcement at a residential property on Lake Minnetonka. In this case, the District Court ruled in favor of the LMCD, with the MN Court of Appeals reversing this decision. He believed that this ordinance amendment would address concerns raised by the MN Court of Appeals.

The Board discussed this and the following three proposed changes: 1) in Subd. 8a) on page 4, insert the words "is considered to be" between the words "is" and "used", 2) to delete the word "separate" at the end of Subd. 8 a & b), and 3) to be consistent with the terms "mooring" and "docking" throughout the ordinance amendment.

**MOTION:** Babcock moved, Olson seconded to approve first reading of the draft ordinance amendment as amended, making the three changes referenced in the previous paragraph.

**VOTE:** Motion carried unanimously.

F. Review of timetable for 2009 LMCD Budget process.

Whalen directed the Board to a staff memo, dated 3/5/08, in which Nybeck outlined the proposed timetable for the 2009 LMCD budget process. She asked Nybeck to expound on this.

Nybeck stated that the memo was included in the packet for informational purposes only. The 2009 LMCD Budget process will commence in the near future, with the need for a Board Planning/Workshop Session in the LMCD office at the end of April. This date will be coordinated with interested Board members via e-mail.

## 11. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First, he directed the Board to an email from MN DNR Aquatic Invasive Species (AIS) Program Coordinator Jay Rendall, documenting the approval of grant funds in the amount of \$9,500 of \$10,000 requested for the 2008 Lake Minnetonka AIS Prevention Program. Second, he recommended that monument markers should be installed at the Miles and Pamela Canning site to ensure that the dock placement in 2008 is consistent with the approved Settlement Agreement. He stated that these monument markers would cost between \$300 and \$500. If the Board did not object to this, he stated that he would proceed accordingly. There were no Board objections.

Suerth complimented Nybeck on the securing of grant funding from the MN DNR for the 2008 Lake Minnetonka AIS Prevention Program.

## 12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:11 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary