

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, May 14, 2008
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

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

Members absent: Tom Tanner, Wayzata; Herb Suerth, Woodland.

3. APPROVAL OF AGENDA

Whalen stated that Nybeck had requested that two additional items be added to the agenda.

Nybeck stated that two minor amendments needed to be added to the agenda for the 2008 Trucking and Internet Landing Device Sensor (I-LIDS) contracts. He recommended that these two items be added as agenda items 10D and 10E respectively.

MOTION: McDermott moved, Siakel seconded to approve the agenda as amended, making the changes as recommended by Nybeck.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

There were no Chair announcements.

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

Deephaven Mayor Paul Skrede stated that he and Mayor Pro-tem Kim Crockett were present to request a review of the LMCD operating rules as it relates to member cities having the ability to appoint an alternate representative to attend an LMCD Board meeting when its regular representative cannot be present. He directed the Board to a letter, dated 4/21/08, which summarized Deephaven's position.

Crockett asked the Board for their point of view in allowing an alternate representative being present at meetings when the full-time representative could not be. She stated that LMCD staff has informed the City of Deephaven that the state enabling legislation does not allow for such alternate representation to

exist. The request is not specific to their representative, David Gross. However, his travel sometimes results in Deephaven not having representation on the Board.

Whalen stated that she understood Deephaven's position and directed staff to place this request on an agenda for an upcoming Board meeting.

6. APPROVAL OF MINUTES- 04/23/08 LMCD Regular Board Meeting

MOTION: McDermott moved, Gross seconded to approve the minutes from the 04/23/08 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (11), Abstained (1, Babcock); motion carried.

7. APPROVAL OF CONSENT AGENDA

Whalen stated that she would like to remove item 7C from the consent agenda. She questioned whether the Board would like to remove any additional agenda items from the consent agenda.

Babcock moved, McDermott seconded to approve the consent agenda as amended, removing agenda item 7C. Items so approved included: **7A**, Audit of vouchers (5/1/08 – 5/15/08); and **7B**, **Bayview Apartments, Bean Greenwood Marina, Dr. Glen Nelson, Sailors World, Upper Lake Minnetonka Yacht Club, and Walden Tract X Property Owners**, staff recommends Board approval of 2008 renewal (without change) multiple dock license applications that have been paid in full.

8. ITEMS REMOVED FROM THE CONSENT AGENDA

7C. Lake Vegetation Management Plan (LVMP), amendment to Agreement between LMCD and Lake Minnetonka Association (LMA) for 2008 herbicide treatment project.

Whalen stated that when considering the amendment to the Agreement, she recommended that additional language should be added documenting accountability of tax dollars that public agencies are donating to this project through the LMCD. Specifically, she requested documentation requiring the LMA to provide the LMCD with a copy of the invoices from the herbicide applicators.

LeFevere stated the LMA has been obtained, via contract, as the project manager for the herbicide treatment project. If the LMA finds a herbicide applicator for less than the funds provided, they have still satisfied their contract requirements to the LMCD.

Mr. Dick Osgood, Executive Director of the LMA, stated that he agreed with LeFevere that further amendment to the Agreement was not warranted.

McDermott asked if the contract was approved prior to additional funds being provided by LMCD member cities for this project.

Whalen stated that the proposed amendment was due to three member cities opting to provide additional funding for the project after the original contract was approved. The original contract was

based off of estimated costs and reiterated her concern that tax payer dollars should be ledgered against actual costs incurred.

Osgood stated that he did not know the costs to date or the final costs to the project. He volunteered to provide accountability of funds outside of the contract because he will be doing so for the LMA members. Any overage of funds would be carried over to the next treatment year.

Babcock concurred with Whalen's concerns about accountability. However, he believed that this requirement should be included in future contracts because he was not comfortable adding restrictions to a contract already approved this late in the project.

MOTION: Babcock moved, Siakle seconded to approve the amendment to the Agreement for the 2008 herbicide treatment project as submitted.

VOTE: Motion carried unanimously.

9. PUBLIC HEARINGS

A. Lakewinds HOA, reconfiguration of a non-conforming multiple dock license application utilizing LMCD Code Section 2.015.

Whalen asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 5/8/08, which summarized a request from Lakewinds HOA to reconfigure the overnight dock by: 1) making all of the 24' long BSUs lake opening, and 2) adding docks between every Boat Storage Unit (BSU). He reviewed the application utilizing LMCD Code Section 2.015. He recommended that the Board approve the application for the 2008 boating season with the following conditions: 1) watercraft stored within all BSUs must comply with the four foot length overall (LOA) overhang restriction and all watercraft must be stored completely within the authorized dock use area of this site, and 2) the transient dock is subject to a signed written agreement with Donnie's on the Lake, Inc. for use of separate dockage with 14 transient slips (no overnight boat parking). He entertained questions and comments from the Board.

Whalen asked for additional comments and background from the applicant.

Mr. Chuck Levake, 4363 Wilshire Blvd. #110, stated he represented Lakewinds HOA. He believed that the application, if approved, would provide for better navigational safety and less prop dredging.

Scanlon asked what size boat was planned for storage and whether there was enough room for safe navigation at BSU #9.

Levake confirmed that he believed that there was enough room for safe navigation.

Nybeck stated that BSU #9 was a transient dock that had not been installed for a number of years. If this transient dock were to be installed in the future, he believed that a similar

application would need to be submitted because the main dock would most likely need to be moved to the north to allow adequate navigational room for the transient dock.

Babcock asked how the Association would be managing compliance with the four foot overhang restriction.

Levake stated that the Association would proactively maintain compliance with the four foot overhang restriction and the 100' restriction for the authorized dock use area.

Whalen opened the public hearing at 7:39 p.m. There being no comments, she closed the public hearing at 7:40 p.m.

MOTION: Babcock moved, McDermott seconded to approve the 2008 Lakewinds HOA reconfiguration of non-conforming multiple dock license application, subject to: 1) watercraft stored within all BSUs must comply with the four foot LOA overhang restriction and all watercraft must be stored completely within the authorized dock use area of this site, and 2) the transient dock is subject to a signed written agreement with Donnie's on the Lake, Inc. for use of separate dockage with 14 transient slips (no overnight boat parking).

VOTE: Motion carried unanimously.

B. Seahorse Condominium Association, reconfiguration of a non-conforming multiple dock license application utilizing LMCD Code Section 2.015.

Whalen asked Harper for background on this agenda item.

Harper stated the applicant has submitted an application to reconfigure the non-conforming multiple dock facility. A public hearing was published for this meeting and the applicants have requested that the public hearing be continued to the May 28th LMCD Board meeting to allow them additional time to submit documentation for consideration by the Board.

Whalen opened the public hearing at 7:40 p.m. and stated that individuals would have the ability to provide testimony at both meetings. There being no comments, she entertained a motion from the Board to continue the public hearing to May 28th.

MOTION: Jewett moved, Siakel seconded to continue the Seahorse Condominium Association public hearing for the reconfiguration of a non-conforming multiple dock license application to the May 28th LMCD Board meeting.

VOTE: Motion carried unanimously.

10. OTHER BUSINESS

A. Review of draft Lakeland Boat Storage letter.

Whalen asked LeFevere for background on this agenda item.

LeFevere stated that a public inquiry requesting the interpretation of the LMCD Code, as it relates to a business being formed that would involve the storage of watercraft off of Lake Minnetonka, was discussed at the April 9th Board meeting. At that time, the Board directed him to prepare a letter for the Board's consideration on the interpretation of LMCD Code. If the Board was comfortable with what has been provided, he recommended that the public inquiry be responded to.

Whalen recommended that the Board review LeFevere's letter and the 1992 Lake Minnetonka Lake Access Task Force Report at their convenience. She recommended that the draft Lakeland Boat Storage letter could be reviewed at an upcoming LMCD Board meeting.

B. Chair update on LMCD Environmental Committee

Whalen asked Gross for an update on this agenda item.

Gross made the following comments:

- An Environmental Committee update was provided at the April 23rd Board Meeting, with three recommendations. These included: 1) consider establishing a Technical Advisory Committee (TAC), 2) consider establishing a Citizens Advisory Committee (CAC), and 3) consider declaring a moratorium on new multiple dock license applications. Those recommendations, with comments, were referred back to the LMCD Environmental Committee for consideration.
- An Environmental Committee was conducted on May 8th to discuss these three recommendations. The committee agreed that there was a need to establish a TAC. Goals and objectives of the TAC include: 1) to review LMCD ordinances to confirm they are still applicable, 2) to consider wetland protection, littoral zone, and water quality, 3) to protect riparian rights, 4) to review the Joint Policy Statement, and 5) to look at the long-term Management Plan. The duration of the TAC would be six months, with one meeting scheduled per month. Proposed membership on the TAC includes the LMCD, the MCWD, the MN DNR, the Three Rivers Park District, Hennepin County Environmental Services, and possibly representatives from the University of Minnesota and a commercial dock installer.
- The consensus was that a CAC and a moratorium were not necessary at this time. The committee believed that this decision would be better made after the TAC completed its work, with recommendations.
- He entertained questions and comments from the Board.

Babcock recommended that the powerpoint provided by Gross should be forwarded to each Board member.

Nybeck stated that the next step would be to write a letter to recommended representatives of the TAC. Upon feedback from these representatives, an update would be provided to the Board with the recommendation that the representatives be appointed.

C. Review of draft 2009 LMCD Budget

Whalen asked Nybeck for background on this agenda item.

Nybeck made the following comments:

- The budget consists of the following three components: 1) one page that outlines the city-by-city levy allocation, 2) two pages of budget details, and 3) Appendix A that provides budget assumptions and details for specific line-items.
- He provided an overview of the budget review process. This included preliminary LMCD Board Review at this meeting, a review with LMCD member cities that is planned for May 29th, a second review by LMCD Board at its June 11th meeting, and a third and final review by LMCD Board at its June 25th meeting. By state statute, the adopted budget needs to be to the 14 LMCD member cities by July 1st.
- He highlighted two primary factors for the proposed 8.7% increase in levy to the member cities (\$346,018 in 2009 compared to \$318,238 in 2008; a \$27,597 increase). These include: 1) a \$7,500 reduction in court fine revenue and a \$2,500 increase in prosecution services, and 2) a \$15,000 increase to address the General Reserve Fund level, per adopted 2007 LMCD Audit. He suggested that the Board might want to consider some other budget cuts to bring this percentage down slightly.
- He highlighted four items that were not included in the draft 2009 LMCD Budget. These include: 1) postponement of the 2009 Management Plan Project and the reallocation of the remainder of these funds (\$7,875) to offset the levy to the member cities, 2) a \$40,000 revenue line-item for the EWM Harvesting Program from the MN DNR, although this might be less based on the 2007 grant received for this program, 3) no funds have been budgeted for depreciated EWM Harvesting Program equipment, and 4) funding for AIS Prevention Programs has been proposed to be maintained at \$25,000, the same level that was approved in 2008.
- He believed that there were three Board action items needed at this meeting. These included: 1) preliminary approval of the draft 2009 LMCD Budget to distribute to the 14 LMCD member cities for review and comments, 2) to direct staff to work with Treasurer Scanlon on a cover letter to be sent out with the draft 2009 LMCD Budget, and 3) to schedule a meeting for Thursday, May 29th, at 11:00 a.m., to review the draft 2009 LMCD Budget with the LMCD member cities.
- He entertained questions and comments from the Board.

The Board discussed a number of budgeting concepts. Three of these included: 1) how net tax capacity and taxable market values might impact future budgets as they adjust to the economy, 2) the current license fee structure and the need to evaluate staff time spent administering these licenses, and 3) how the Board could address future herbicide treatments within the 2009 budget and beyond. There was discussion of whether this should be included in the 2009 AIS Management Budget or whether this should be funded through "Save the Lake".

MOTION: Siakel moved, Johnson seconded to provide preliminary approval of the 2009 LMCD Budget for submittal to the 14 member cities for review and comments, subject to adding a \$30,000 line item in the budget for a herbicide treatment project in 2009.

VOTE: Motion carried unanimously.

10D. Curfman Trucking and Repair, Inc., amendment to the 2008 Trucking Service Contract for the hauling of lake weeds.

Whalen asked LeFevere to provide background on this agenda item.

LeFevere stated that Curfman Trucking and Repair, Inc., was the successful bidder for the 2008 trucking contract for the EWM Harvesting Program. Specifications for that contract require the contractor to provide liability insurance in place for a 365 day period of time, along with an increase in the amount of liability insurance from \$1 million to \$1.2 million per state law. The contractor has notified the LMCD office that he had concerns about these two requirements because his insurance agency does not sell insurance in increments other than \$1 million. Because the contractor owns a fleet of trucks, the increase in liability insurance to \$2 million would cost him more than the 2008 contract is worth with the LMCD, which means he might be forced to forfeit his bid bond. The contractor has recommended the following amendments to the 2008 contract: 1) to provide for the ability to move his trucking company to another corporation (OTR Specialists, Inc.) that maintains just one truck and 2) to allow for the existence of insurance only during the period of time that he is providing a service to the LMCD.

Nybeck stated that if the Board were to agree with these recommended changes to the 2008 contract, they would be resolved by a letter with the contractor rather than a formal amendment.

MOTION: Siakel moved, Johnson seconded to approve an amendment to the 2008 trucking contract for the two changes that were recommended by the contractor.

VOTE: Motion carried unanimously.

- 10E. Environmental Sentry Protection, LLC,** amendment to the 2008 Agreement between the LMCD and Environmental Sentry Protection, LLC for the operation and maintenance of one Internet Landing Installed Device Sensor (I-LIDS) at the Grays and Maxwell Bay public accesses.

Whalen asked Nybeck to provide background on this agenda item.

Nybeck stated that the approved contact with Eric Lindberg of Environmental Sentry Protection, LLC, was to initiate on May 10th. Prior to commencement of the contract, the contractor was to document that the units were up and operating in compliance with the contract specifications. One of the contract specifications stated that the playback video sequences shall be 30 seconds in length. Upon initial review, playback video sequences fell well short of this specification and he recommended that the contract be amended to reduce this to 15 seconds. If the Board agreed to this amendment, he believed that this could also be resolved in writing with the contractor.

MOTION: Gross moved, Morris seconded to approve amendment to the 2008 (I-LIDS) contract be reducing the length of the playback time of the video sequences in specification 5 from 30 seconds to 15 seconds.

VOTE: Motion carried unanimously.

Jewett asked if the LMA had an update on the 2008 herbicide treatment project.

Osgood stated that all three bays had been treated by either Lake Management, Inc. or Professional Lake Management. He provided the Board further detail of these herbicide treatments.

Morris stated a watercraft had recently arrived to Lake Minnetonka with attached zebra mussels. He believed that efforts had been made to inspect this watercraft prior to launching into Lake Minnetonka.

Nybeck stated he was aware of the situation and acknowledged that marina owners were some of the most responsible operators around the lake in the prevention of new aquatic invasive species. Communication has been initiated between the MN DNR and the marina owner for proper care and inspection prior to launching this watercraft.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:56 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary