

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, June 25, 2008
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:01 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Kelsey Page, Greenwood; Richard Siakel, Shorewood; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician.

Members absent: Chris Jewett, Minnetonka; Andrew McDermott, Orono; Jeff Morris, Excelsior; Bill Olson, Victoria.

3. APPROVAL OF AGENDA

MOTION: Siakel moved, Tanner seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen stated she and Tanner had attended the grand re-opening of the Big Island Park. She believed that it was a wonderful event and she thanked the City of Orono and Gabriel Jabbour.

5. APPROVAL OF MINUTES- 5/28/08 LMCD Regular Board Meeting
6/11/08 LMCD Regular Board Meeting

MOTION: Tanner moved, Siakel seconded to approve the minutes from the 5/28/08 LMCD Regular Board Meeting as submitted.

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

Tanner stated that the minutes in the fifth paragraph on page four should reflect that he was discussing the City of Wayzata's conditional use permit requirements when the power outage occurred.

MOTION: Babcock moved, Page seconded to approve the minutes from the 6/11/08 LMCD Regular Board Meeting as amended, adding language to the fifth paragraph on page four as recommended by Tanner.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Babcock moved, Siakel seconded to approve the consent agenda as amended, adding language to agenda item 6C that requires all previous license conditions. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (6/16/08 – 6/30/08); **6B**, May financial summary and balance sheet, and **6C**, **Presbyterian Homes on Lake Minnetonka**, approval of 2008 new multiple dock (minor change) license application as outlined in 6/18/08 staff memo.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items removed from the consent agenda.

8. 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.

9. PUBLIC HEARINGS

- A. **Wayzata Yacht Club (Site 2)**, new multiple dock license, special density license, and variance applications for the installation of 42 BSUs and the construction of a bridge.
- B. **Wayzata Yacht Club (Site 3)**, new multiple dock license and special density license applications for the installation of 27 BSUs.
- C. **Wayzata Community Sailing Center**, new multiple dock license, special density license, and variance applications for the installation of 16 Boat Storage Units (BSUs) and the construction of a bridge.
- D. **Wayzata Community Sailing Center & Wayzata Yacht Club (Site 2)**, bridge application between these two sites.

Whalen stated that all public hearings would be conducted at the same time as the applications are for the Wayzata Yacht Club and Wayzata Community Sailing Center. She asked Nybeck for background on these agenda items.

Nybeck reviewed his staff memo, dated 6/20/08, which summarized the nine applications submitted by the applicant for the Wayzata Yacht Club (WYC) and the Wayzata Community Sailing Center (WCSC). He made the following comments:

- A public hearing for these applications was scheduled for the June 11th Board Meeting, with an extensive overview provided by Harper. However, the public hearing was not conducted due to an unanticipated power outage.
- He focused his presentation on the three recommendations made at the June 11th Board Meeting. These included: 1) Harper believed that the Board could direct LeFevere to prepare draft Findings of Fact and Order for approval of the special density license applications, subject to finalizing public amenities, 2) Harper believed that the Board could direct LeFevere to prepare draft Findings of Fact and Order for approval of the variance applications, subject to establishing hardships and reducing useable shoreline at both sites, and 3) no action was necessary on the bridge application because this would be dictated on the outcome of the variance applications.

- He reviewed public amenity requirements for WYC (Sites 2 and 3) and WCSC (Site 4). Revised public amenities have been submitted by the applicants and he believed that they could be approved because they complied with special density license criteria, subject to further review and clarification by the Board.
- He reviewed LMCD Code and variance standards used by the Board in past applications. The proposed hardships include: 1) public safety concerns for the children between the two sites, and 2) drop-off and parking requirements per City of Wayzata conditional use permit. He believed that the request was unique; however the Board should define what the hardships are. He reviewed a similar approved bridge situation at Shorewood Yacht Club (Sites 1 and 2).
- He made four recommendations to the Board. First, no action could take place on the three multiple dock license applications until a decision is made on the three special density license applications. Second, he recommended that the Board direct LeFevere to prepare draft Findings of Fact and Order approving the three special density license applications, subject to: 1) 1:15' density standard for storage of unrestricted watercraft on land and 2) reducing useable shoreline at Site 4 to 240' to determine the number of restricted watercraft. Third, no action on the bridge application was necessary because action on the variance applications needed to be resolved first. Fourth, he recommended that the Board direct LeFevere to prepare draft Findings of Fact and Order approving the two variance applications, subject to: 1) defining the hardship or difficulty, 2) restricting useable shoreline at Site 4 to 240' for restricted watercraft calculations, and 3) eliminating the bridge if the two sites were not used in conjunction with each other.
- He entertained questions and comments from the Board.

Babcock asked if the proposed public amenities had been reviewed by LMCD staff utilizing the subjective criteria.

Nybeck stated that he had not and he did not believe that Harper had.

Whalen asked for further background and comments from the applicants.

Mr. Bert Foster stated that he was representing both the WYC and the WCSC. There are two issues to be considered at this time. These included a disabled sailing program at the WYC and a sailing school for children at the WCSC, to which he provided further details on disabled sailing through a short video. WYC is excited about having a disabled sailing program, although there is a need to upgrade existing facilities. He commented on public amenities for the WCSC and the WYC. The WCSC is an amenity in itself and is open to the public. The WYC is open to the public through the racing of sailboats, the ability to rent a slip, and to enjoy the sport of sailing. He reviewed a spreadsheet that summarized approved and proposed BSUs for all three sites. These BSUs included slips in the water, transient tie-ons, slides, and buoys. Overall, he believed that the increase in BSUs was not as significant as it appeared on face value and he explained why; in particular the slides and transient BSUs for the sailing school. He discussed shoreline at the inlet area north of the bridge at Sites 2 and 4. Although staff has recommended that useable shoreline be reduced at both sites north of the proposed bridge, he believed that it was useable and he recommended that the Board count this shoreline for density calculation purposes. He entertained questions and comments from the Board.

Tanner asked how many handicapped sailors would be using the WYC.

Foster stated that the exact numbers was hard to predict. He reviewed handicapped programs in Miami, Chicago, and Providence. In order for a program to start on Lake Minnetonka, he believed that the facility needed to be constructed first. Although he did not believe that the number of sailors would be huge, he believed that it was the right thing to do.

Mr. Mark Janda, WCSC Vice President, further commented on how many handicapped sailors would be using the WYC. Requests have been made by representatives of the Veteran's Hospital to provide sailing opportunities to wounded veterans. In the Iraq war, statistics show that there are 10 veterans that suffer a traumatic injury when compared to one veteran that is killed. A number of these veterans that have suffered a traumatic injury have expressed an interest in sailing opportunities. These veterans are currently being turned away because the facilities are not up to standard.

Babcock stated that one of the goals of special density licenses is to allow public greater access to these facilities by providing amenities in exchange for the increased boat density. He asked the applicants to clarify how they would transition from a "members only" facility to a facility that allows for greater public use, citing public parking as an example.

Foster stated that he believed the public was able to get access to Lake Minnetonka by joining the sailing school. He questioned, for example, whether daily rental of sailboats made sense because of the necessary training prior to allowing the use of these boats by the public. The WCSC is a 501(c)(3) organization and it provides amenities to the public at a modest cost. The WYC is also open to the public, similar to other commercial marinas, and is not for "members only". There are no restrictions, although handicapped individuals might be given some priority. He believed that parking at the WYC exceeds City of Wayzata parking requirements. When the sailing school boats are moved from the west parking lot to Site 4, this will create an additional 28 parking spaces.

Babcock stated that he was hoping that the applicants would transition from parking being signed as "private property" to being signed as allowing for some "public parking" for the amenities to be provided. This is a Code requirement for facilities with approved special density licenses.

Foster stated that the primary use of the west lot were for drop-off purposes of the sailing school and occasional public overlook of the Wayzata Bay. The primary purpose for the sign at the entrance of the west lot is to prohibit car/trailer parking by the public. He recognized that the signage might need to be changed.

Tanner questioned how parking for the general public in the west lot might be impacted when parking spaces need to be provided for the handicapped sailors.

Foster stated that he believed the 28 additional parking spaces being created in the west lot should address this.

Babcock questioned whether the west lot also supported parking for Sites 2 and 3.

Foster stated that the west lot supports Site 4, with its primary high use periods for the sailing school countering the high use periods at the WYC.

Babcock re-stated that he believed there was a need to provide public parking associated with the proposed public amenities.

Tanner asked if a citizen that was not a member, using Anoka as an example, could launch a sailboat on a Thursday night at Site 2 utilizing the jib crane without an appointment.

Foster stated that he was unaware of any facility around the country where an individual could expect to launch a sailboat with a crane without an appointment. The crane is available to the public on an appointment, fee basis to the owner of the sailboat.

Gross asked Foster to comment on three questions. First, can the public park at the WYC without a sticker. Second, can any member of the general public rent a slip at WYC without needing to be a member. Third, he questioned which slips would be for handicapped purposes.

Foster stated that parking in the east lot had been allowed for years without a sticker. A member fee is encompassed as part of the slip rental, which he believed was similar to the Shorewood Yacht Club. The handicapped slips at these facilities are BSUs 14 through 24 at Site 3.

Whalen opened the public hearing at 7:49 p.m.

Mr. Ernest Brody commented on the number of handicapped sailors that might use WYC. In a program recently coordinated with the Courage Center, between eight and 10 handicapped sailors participated in the 2.4 meter program. The Courage Center has expressed a continued interest in this program. Additionally, representatives have expressed an interest in utilizing the three-handed Sonar boats, which will expand handicapped sailor participation.

Mr. Pat Maloney, WCSC President, stated that they had recently purchased Site 4 and were in the process of bringing it up to Code. He requested eight slips for the storage of restricted and unrestricted watercraft for the 400 to 500 kids that participate in the sailing school each year. He did not believe that parking was an issue because parking for the sailing school does not compete with the race schedules on Thursday evenings and on weekends. In the rare occasions of regattas, this is worked out in advance with the WYC. The primary purpose of this application is to move the WCSC from part of the west parking lot to Site 4. He encouraged the Board to look favorably at this request.

There being no further comments, Whalen closed the public hearing at 7:52 p.m. She asked the Board to comment on these applications.

A summary of the Board discussion is detailed below:

- General support was voiced for handicapped sailing and the sailing school.
- Shoreline calculations and how much shoreline is useable.
- Review of a 6/25/08 memo from Wayzata's Acting City Planner Bryan Gadow, which included four recommended conditions of any approval by the LMCD.
- The need to possibly license these three sites together rather than separately. It was clarified that a mandatory Environmental Assessment Worksheet requirement was one contributing factor.
- Whether there was a need to take into consideration parking at this facility because of the proposed expansion and existing parking issues on certain nights. The Board was sensitive to the City of Wayzata's parking concerns, although enforcement of these ordinances needs to be done

by Wayzata. The need for dedicated parking spaces for Site 3 was also discussed.

- Public amenities and whether each site can support them on their own, in particular Site 3. There was discussion of making them available to the public, without membership requirements, with dedicated parking spaces. Some concern was raised about the proposed riprap amenity and whether it was the best means of environmental protection.
- Concern was raised about parking and the lack of details provided by the applicants at this meeting. There was discussion of the best means to address this, City of Wayzata and/or LMCD, and whether amendment to the applicant's conditional use permit should be resolved prior to a decision being made by the LMCD.
- Operations of the WCSC and whether this could be done without a multiple dock license and the bridge permit. It was clarified that Site 4, without a multiple dock license, could store up to four restricted watercraft and an unlimited number of unrestricted watercraft, subject to these watercraft being contained within the authorized dock use area.

Janda stated that he believed the WYC and the WCSC could bring back a more detailed parking plan for review by the Board. This would include: 1) current parking in the west and east lots, 2) where incremental parking would be increased in the west lot with the relocation of the WCSC, and 3) where additional parking might be created by working with the City of Wayzata that would not be in the neighborhoods and would not impact the community.

Maloney re-emphasized the need to store eight restricted watercraft at Site 4. Currently, the WCSC has a signed document from the City of Wayzata that allows for the use of the west lot for the sailing school kids.

MOTION: Page moved, Gross seconded to direct LeFevere to prepare draft Findings of Fact and Order for approval of the side setback variance applications at Sites 2 and 4, with public safety as a particular hardship.

Babcock proposed a friendly amendment to require minimum park spaces at the west lot for Site 4. Page did not accept this.

Babcock proposed a friendly amendment to reduce useable shoreline for density calculations at Sites 2 and 4 up to the bridge. Page and Gross agreed to this.

VOTE: Motion carried unanimously.

Gross questioned whether the bridge could be constructed prior to approval of the Findings at the July 9th LMCD Board Meeting.

LeFevere stated that approval of draft Findings is a part of the LMCD process. If the applicants decide to construct the bridge prior to approval of the draft Findings, they would be doing it at their own risk. However, he did not believe that the LMCD would initiate criminal prosecution while there are pending applications for approval.

Whalen stated that further discussion was planned for the July 9th LMCD Board Meeting, primarily for parking and public amenities.

10. OTHER BUSINESS

- A. **Shorewood Yacht Club (Site 2)**, consideration of 2008 new multiple dock license (minor change) application.

Whalen asked Harper for background on this agenda item

Harper reviewed his staff memo, dated 6/20/08, which summarized the minor change application submitted by Shorewood Yacht Club (SYC). This site is considered a legal, conforming facility for density purposes because it was granted a special density license on 1/24/01, which was later amended on 1/12/05. The application has been submitted for the installation of five canopies and associated poles. He reviewed LMCD Code Section 2.03, subd. 7 and the criteria that needs to be met to qualify for a minor change application. He believed that they were met, with the following two possible exceptions: 1) the dock, mooring area, or launching ramp is in compliance with the provisions of this Code, and 2) there is no substantial change in slip size, length, width, height, or location of the dock or launching ramp, the amount of Lake obstructed or occupied by the dock or launching ramp, or the type of watercraft stored at the dock or launching ramp. He provided further details of the SYC (Site 2) request analyzing it with these two criteria. If the Board believes that the application meets the minor change application criteria, he believed that the Board may approve the application for the 2008 season, subject to restricting the sizes of the boats in Boat Storage Units (BSUs) 425-433 to 26 ' or 27' length overall. If the Board believes that the changes are significant and do not meet the minor change application criteria, LMCD staff can work with the applicant to submit the required applications and schedule a public hearing for July 9th. He entertained questions and comments from the Board.

Nybeck stated that the original approval by the Board was done in 2001, without pilings, by the previous owners of this site. Subsequent Board approvals and LMCD staff inspections have taken place, to which he could not respond to why these pilings had not been raised to Shorewood Yacht Club's attention. He was sensitive to possibly allowing for approval of the proposed changes through a minor change, provided it does not set an undesirable precedent for the future. He believed that additional changes should take place during the winter months for 2009.

Whalen questioned why the Board could not partially approve what the applicants want at this time, provided they resolve the remainder of the issues during the 2009 application process.

Babcock stated that it was the applicant's responsibility to construct the dock consistent with the original site plan, although he recognized that there had been a change in ownership. Because this dock is installed beyond 100' from the 929.4' shoreline, it has an approved dock length variance that needs to be amended. This application would require a public hearing.

Mr. Gabriel Jabbour, representing SYC, stated that none of these pilings have been installed since he has owned SYC. This dock cannot function without these pilings. When the dock was constructed originally, it was built to slip lengths of 24' rather than the approved length of 26'. Jabbour stated that he would have installed additional pilings if he were involved in the original construction to prevent boats from bumping into each other. He believed that there had been some miscommunication between SYC and LMCD staff on permitting requirements for the installation of canopies for antique boats. There also appears to be some oversight on both parties for these pilings.

Mr. Mike Maloney, also representing SYC, stated that the size of the boats in the slips and docks would

remain the same. The canopies would stick out slightly longer to provide for some shading for the boats to be stored within these slips. Until recently, the City of Shorewood did not allow for motorboats at SYC. However, this restriction has partially been lifted and some powerboats are allowed, with a 30' length restriction.

A summary of the Board discussion is detailed below:

- Should canopies be allowed at commercial marinas without requiring a public hearing.
- Whether this site complies with LMCD Code because it requires a dock length variance.
- The proximity of the neighborhood in relationship to the docks at Site 2.
- Whether the LMCD had some responsibility because the pilings had not been previously recognized.
- The unique dock construction and how it was originally constructed.

Page moved to approve the SYC (Site 2) minor change application for the installation of five canopies, subject to restricting boat lengths in these five slips to 26'. The motion failed due to the lack of a second.

MOTION: Gross moved, Tanner seconded to approve the 2008 SYC (Site 2) new multiple dock license (minor change) application as amended, subject to: 1) approval of five canopies at BSUs 425-433, 2) approval of all pilings at the remaining 30 BSUs, and 3) the submittal of a revised to-scale survey documenting these changes.

VOTE: Ayes (8), Nays (2; Babcock and Page); motion carried.

B. Marine Max, consideration of special event application.

Whalen asked Nybeck for background on this agenda item

Nybeck stated that a request from Mike Anderson has been received for a proposed "Boat in Theater" on Friday, July 18th at 9 p.m. He reviewed LMCD Code Section 3.09 for special events on Lake Minnetonka, noting that the Executive Director issues permits for most events. Because of the uniqueness of this application, he believed that the Board should process this application. He reviewed six subjective questions for the Board to consider when reviewing this application. These subjective questions have been forwarded to Marine Max and he anticipated that Anderson would address them at this meeting. He stated that a letter had been received from the City of Orono expressing concerns about the event.

Mr. Mike Anderson spoke on behalf of Marine Max. A permit has recently been issued by the Sheriff's Water Patrol for this event. He recognized that there was a stigma of Cruiser's Cove, although activity on Friday evenings is rather light. The event is planned to be a family-type event with the movie "Ghostbusters" planned. Some supervision will be provided by the Sheriff's Water Patrol and the purpose for this event is to provide customers something new to do, similar to firework displays. He commented on the subjective questions raised by Nybeck and entertained questions and comments from the Board.

A summary of the Board discussion is detailed below:

- Whether a trial run had been done before somewhere else.

- What impacts this might have on a neighborhood and should a public hearing be required.
- The best location for the event (Cruiser's Cove versus Veteran's Bay).
- The proposed location of the barge/screen within the public safety lanes.
- Possible liability associated with this special event.
- Whether this should be a one-time or an on-going event.
- Possible precedent this might set and the impact it could have on staffing for the Sheriff's Water Patrol.

MOTION: Babcock moved, Scanlon seconded to approve the Marine Max special event permit application.

Nybeck stated that he would work with Lt. Kip Carver on necessary permit conditions.

VOTE: Ayes (7), Nays (3; Klohs, Tanner, and Whalen); motion carried.

C. Final review of draft 2009 LMCD Budget.

Whalen stated that the LMCD approved the draft 2009 LMCD Budget at the June 11th Board meeting, subject to a final review at this meeting. Feedback from a number of the member cities has been to reduce the proposed levy increase from 5.8% to 3.9%, which would be consistent with levy restrictions established by the State of Minnesota. She asked Nybeck to comment on further changes that could be made to reduce the proposed levy increase to 3.9%.

Nybeck stated that reducing the levy increase to 3.9% would require a reduction of \$5,968 in expenditures. He recommended: 1) reducing the contingency from \$10,000 to \$5,000, and 2) reducing the seasonal Code enforcement position from \$3,432 to \$2,464.

MOTION: Gross moved, Page seconded to adopt and certify the 2009 LMCD Budget as amended, reducing the contingency line-item from \$10,000 to \$7,500.

VOTE: Ayes (4; Gross, Page, Scanlon, and Siakel), Nays (6); motion failed.

MOTION: Siakel moved, Johnson seconded to adopt and certify the 2009 LMCD Budget as amended, subject to: 1) reducing the contingency line item from \$10,000 to \$5,000, and 2) reducing the seasonal Code enforcement position from \$3,432 to \$2,464.

VOTE: Motion carried unanimously.

D. Discussion of July and August Regular LMCD Board Meetings schedule.

Whalen asked Nybeck for background on this agenda item.

Nybeck recommended maintaining the July 9th Board meeting, with the possibility of cancelling the July 23rd Board meeting. He recommended cancelling the August 13th and 27th Board meetings due to the pending move of the LMCD office. However, he recommended conducting Board Planning/Workshop Session meetings in the field on August 13th and 27th.

Whalen stated that Nybeck had also recommended cancelling the Board Inspection Tour on a charter boat in 2008 and 2009 due to budget constraints.

The Board discussed Nybeck's recommendations and concurred with them.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:10 p.m.

Lisa Whalen, Chair

Tom Scanlon, Treasurer