

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, July 23, 2008
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:00 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Drew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; 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 LeFevre, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Chris Jewett, Minnetonka; Tom Tanner, Wayzata

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Madam Chair Whalen

Whalen reminded the Board that Workshop/Planning Sessions on Lake Minnetonka were scheduled for August 13th and 27th. She anticipated earlier start times and details will be forwarded to the Board.

5. APPROVAL OF MINUTES- 06/25/08 LMCD Regular Board Meeting

MOTION: Siakel moved, Page seconded to approve the minutes from the 06/25/08 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (9), Abstained (3; McDermott, Morris, and Olson); motion carried.

6. APPROVAL OF CONSENT AGENDA

Whalen stated that she would like to remove agenda item 6C from the consent agenda.

McDermott moved, Page seconded to approve the consent agenda as amended, removing agenda item 6C. Motion carried unanimously. Items so approved included **6A**, Audit of vouchers (7/16/08 – 7/31/08); **6B**, June financial summary and balance sheet, and **6D**, Lake Minnetonka Significant Activity Report.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

6C. WYC (Sites 2-3) & WCSC (Site 4), approval of draft Findings of Fact and Order approving new multiple dock license and special density license applications.

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that draft Findings of Fact and Order were prepared consistent to Board direction. The third condition in the draft Findings allows for one unrestricted watercraft for each 15' of 929.4' lakeshore frontage at Sites 2, 3, and 4. He directed the Board to a handout submitted by the applicants' representative, Bert Foster, which reviews shoreline for all three sites allowing a cumulative 67 unrestricted watercraft (30 for Site 2, 21 for Site 3, and 16 for Site 4). The Order provides for the unrestricted watercraft to be parked on each site; however, Foster has requested the ability to not delineate the storage of the watercraft at the respective sites, stating that the cumulative unrestricted watercraft at the three sites would not exceed 67.

LeFevere stated that there had not been previous Board discussion on the storage location of the unrestricted watercraft during the public hearing and Board consideration process. If the Board were to grant the request made by Foster, one potential issue to consider is the inability to communicate any Code violations for the storage of the 67 unrestricted watercraft because each site maintains a separate license. Also, he questioned whether the Board might have any concerns because the topic was not previously discussed; citing aesthetic, safety, and/or parking concerns. LeFevere stated that he was prepared to offer proposed language should the Board wish to amend the draft Findings.

Gross stated that Site 4 was under separate ownership from Sites 2 and 3. Therefore, he questioned if it would be advisable for the two organizations to have a written agreement as to the storage of the unrestricted watercraft so not to have an adverse effect on Site 4's tax status.

Babcock arrived at 7:09 p.m.

LeFevere stated the organizations do have other interrelated amenities that are shared, for example parking. As it pertains to the LMCD, the draft Findings recognizes that there is separate ownership of the three sites in the second paragraph on page one and in the fourth condition on page four. This provides the LMCD to have the ability to reconsider the licenses granted by this draft Order. The protection of the tax status at Site 4 would be the responsibility of the applicant.

Babcock stated that he did not recall other special density licenses allowing for watercraft density to float between other sites. He believed that this might be better addressed if handled on a site by site basis.

LeFevere stated that he believed there are other special density licenses where public amenities were shared between sites. However, he did not believe that this had been done for storage density. He recognized what was currently being considered does offer an educational public value, providing for the approval being the discretion of the Board.

Babcock questioned if the sharing of unrestricted watercraft density amongst the three sites would

require a variance to LMCD Code.

Nybeck stated he believed that Code Section 2.05, subd. 11 b)2) might allow the Board to grant the request made by Foster.

Mr. Bert Foster, representing the WYC and the WCSC, stated that a specific agreement amongst the applicants had been agreed to relating to the storage of unrestricted watercraft. He provided examples of how the sharing of the unrestricted watercraft was beneficial and he assured the Board that enforcement would not be a concern as the number of watercraft would be policed by the applicants.

Page recommended leaving condition three in the draft Order as prepared.

Whalen stated that there was a typo on page 2 that needed to be corrected. In the second to last sentence in paragraph A2), the word "hoisted" should be changed to "hosted."

MOTION: Gross moved, Siakel seconded to approve the WYC (Sites 2-3) & WCSC (Site 4) Findings of Fact and Order, approving new multiple dock license and special density license applications for the 2008 season as amended, changing the word "hoisted" to "hosted".

VOTE: Motion carried unanimously.

Foster publicly thanked the LMCD staff for their time and thorough work in this application process.

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

There were no public hearings scheduled.

10. OTHER BUSINESS

A. City of Deephaven, discussion of representation on LMCD Board of Directors.

Whalen stated that the City of Deephaven has previously requested the Board's time to discuss and consider allowing the member cities the possibility of appointing an alternate representative to the LMCD Board. In response to Deephaven's response, LeFevere has prepared a letter that frames the issues for the Board to discuss. She asked Deephaven Mayor Paul Skrede to further comment on their request.

Mayor Skrede stated that the Deephaven City Council had recently considered the proposed option. It felt that it was worthy of consideration and discussion for all LMCD member cities so that representation could continually participate and keep the city councils apprised of matters discussed. He had hoped the Board did not consider this a City of Deephaven concern and that the matter was not proposed for voting purposes.

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

LeFevere reviewed his staff memo, dated 7/17/08, which summarized the LMCD's enabling legislation. Minnesota Statute 103B.611, Subd. 1 provides that: "The District is governed by a Board composed of members appointed by the governing bodies of the municipalities included in the District. Each municipality may appoint one member." In extreme cases, he stated the member cities could recall a member and appoint a new member to cover the absence of its appointed representative during a critical time. He reviewed the disadvantages in doing so and recommended an alternative option in that the member city submit a request to the Board to hold over any agenda items of importance because the Board has always been respectful of such requests.

Whalen stated that she believed that alternate representatives are typically seen in management committees that are smaller in scale, five or six representatives, where quorums are a concern.

A summary of the Board discussion is detailed below:

- Review of the current LMCD enabling legislation, in particular Subdivisions 1 and 2, and a brief history of past changes to this legislation.
- Whether alternatives to the LMCD Board made sense, including how frequently they might be used by the member cities.
- Necessary training of LMCD Board members, including a benefit of continuity of one Board member.
- The possible benefits of having an alternative LMCD Board member.
- Whether LeFevere's assessment of the LMCD enabling legislation was legally correct, in particular the third paragraph on page one.
- The idea of updating the LMCD's enabling legislation was discussed, including other potential undesired outcomes if this were pursued.
- How Board members are appointed to the LMCD by the member cities, including whether there is the ability of these Board members to vote independently on LMCD related issues.
- Whether there is a need to discuss alternative Board representation at an upcoming Lake Minnetonka Mayor's Meeting.
- Joint power organizations and how a number of them maintain staff members who have the most expertise and direct contact with legal counsel, although they are prohibited by law to be appointed to the Board.

Skrede stated that he appreciated the Board discussion. He communicated that the Mayors typically do not meet more than once a year and that when he is in attendance, he is representing himself and not the City of Deephaven. For this reason, he would recommend any interest in discussion be handled at the city council level during their meetings. He requested LeFevere clarify the procedure for recalling and appointing.

LeFevere reviewed that procedure.

Whalen thanked Skrede for raising this topic for Board discussion and she welcomed all member

cities to come forward at any time to discuss specific agenda items.

B. Eric Lindberg, mid-season report on 2008 Internet Landing Installed Device Sensors (I-LIDS) project.

Whalen asked Lindberg to provide his mid-season update.

Lindberg stated that he was in attendance to provide the Board a mid-season update as required by the 2008 contract. He directed the Board to a handout in their packet, dated 7/23/08, in which he summarized the following information:

- A summary of 2008 contract requirements at the Grays Bay and Maxwell Bay public accesses.
- Performance to date.
- The high visibility present at these public accesses.
- Video capture statistics at these public accesses through mid July, with an estimated violation rate of 0.28% for attached aquatic vegetation.
- A summary of recent changes to Minnesota State law relating to the launching of aquatic macrophytes.
- An offer to implement audio messaging and indirect lighting where needed, free of charge, upon Board approval.
- Launch statistics and peak hours of use, in particular between 5 and 6 a.m.
- The Board's ability to view the video sequences via a website provided by Environmental Sentry Protection.
- He entertained questions and comments from the Board.

The Board briefly discussed the use of audio messaging and what would need to be accomplished should they accept Lindberg's offer (i.e., the use as an educational tool, the need of bilingual language, contractual amendments, noise violations, etc.).

Whalen thanked Lindberg for his Report on behalf of the Board.

C. 2008 EWM Harvesting Program, mid-season report.

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

Nybeck stated the report in the Board packet, dated 7/11/08, was for informational purposes. A more detailed report will be provided at the end of the season. He entertained questions and comments from the Board.

Olson asked when the Army Corps of Engineers would be providing a Report on the 2008 coordinated herbicide treatment project.

Nybeck stated he had been provided a draft Report that summarized field observations conducted by Chip Welling from the MN DNR and John Skogerboe from the Army Corps of Engineers on July 22nd. This draft Report will be forwarded to the LMCD Board and will be

discussed by the EWM/Exotics Task Force in August. He anticipated a more detailed final Report sometime this fall.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated the he and Board member Jewett observed the Marine Max "Boat In Theater" special event that took place at Big Island on July 18th. As a requirement of the special event permit, the applicant will be meeting with the City of Orono, the Sheriff's Water Patrol, and the LMCD to assess the special event.

A number of other LMCD Board members stated that they attended the event. Comments made were all positive, including providing for a family, friendly event; good volume control; and participants being respectful.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:29 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary