

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, January 14, 2009
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:03 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Kelsey Page, Greenwood. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Doug Babcock, Tonka Bay; Chris Jewett, Minnetonka; Richard Siakel, Shorewood; Herb Suerth, Woodland. The City of Excelsior has no appointed member.

3. APPROVAL OF AGENDA

MOTION: Tanner moved, McDermott seconded to approve the agenda as presented.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made two Chair announcements. First, she reminded the Board that the 42nd Annual "Save the Lake" Recognition Banquet Dinner will be held on February 5th at the Bayview Event Center. She welcomed all to attend. Second, she solicited dates for the scheduling of the 2009 LMCD Board Strategic Planning Meeting. After a brief discussion, the Board scheduled the meeting for Wednesday, February 18th, at 6:00 p.m., in LMCD office.

5. APPROVAL OF MINUTES- 11/12/08 LMCD Regular Board Meeting

MOTION: McDermott moved, Olson seconded to approve the minutes from the 11/12/08 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Tanner and Page requested that agenda items 6A and 6E be removed from the consent agenda, respectively.

Page moved, McDermott seconded to approve the consent agenda as amended, removing agenda items 6A and 6E. Motion carried unanimously. Items so approved included: **6B**, November financial summary and balance sheet; **6C**, **2009 Multiple Dock Licenses and District Mooring Areas (DMA)**, staff recommends

Board approval of renewal (without change) multiple dock license and DMA applications, that have been paid in full, as outlined in the 1/9/09 staff memo; **6D**, Staff recommends Board approval of partial refunds of \$250 deposits for approved variances from LMCD Code, as outlined in 1/8/09 staff memo; and **6F, LMCD Personnel Committee**, compensation adjustments for three full-time staff members, as outlined in 1/9/09 memo.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

6A. Audit of vouchers (12/16/08 – 12/31/08) and (1/1/09 – 1/15/09).

Whalen asked Tanner to clarify why he had item 6A removed from the consent agenda.

Tanner requested clarification on check number 17514 in the amount of \$7,290 and check number 17518 in the amount of \$19,479; both to the MN DNR.

Nybeck stated the two payments were for the 2008 Public Access Inspection Program contracted with the MN DNR.

MOVED: McDermott moved, Tanner seconded to approve the audit of vouchers (12/16/08–12/31/08) and (1/1/09–1/15/09) as submitted.

VOTE: Motion carried unanimously.

6E. Save the Lake (STL) Committee, Board approval of 2009 Save the Lake Funding Proposals, as outlined in 1/7/09 memo from Chair Bill Olson

Whalen asked Page to clarify why he had item 6E removed from the consent agenda.

Page stated that the City of Greenwood questioned why their \$6,000 request for an aquatic plant inventory, with possible inclusion on expanding into the herbicide treatment project, for St. Alban's Bay was not funded. He conveyed the City's continued interest in the LMCD's consideration; even at a partial level with matching funds.

Whalen asked Save the Lake Chair Olson to respond to Page's question.

Olson stated that the Committee reviewed the City of Greenwood's proposal at length and concluded the proposal to be experimental. Therefore, the committee did not recommend funding it. This committee decision was based on: 1) that the herbicide treatment program, currently being performed on Grays, Carmans, and Phelps Bays, continue to remain in an experimental state, 2) there was an interest in keeping the program contained, and 3) that starting a new experimental program would require more staff and funding that could not be expensed at this time because there was already a significant amount of Save the Lake funding dedicated to the first three bays. The City of Greenwood has the ability to proceed independently with their program, in which results would be considered for future proposals.

Page questioned why the committee did not recommend appropriating all of the Save the Lake funds available for 2009.

Whalen stated that the LMCD had revised the Save the Lake Fund Balance Policy this past summer, which allows the committee to recommend appropriating funds up to a percent of the fund balance from the previous calendar year. Due to significant funds being spent and the decrease in contributions to Save the Lake, the committee expressed an interest in maintaining a conservative approach. She foresaw expansion of the current program should positive results prevail.

Page asked if contributors could earmark their donations to a specific program or purpose through Save the Lake.

Nybeck stated that there had been a few occasions in recent years where funds had been donated and earmarked for specific projects, citing a donation by the commercial marinas for added law enforcement presence by the Sheriff's Water Patrol as an example.

McDermott complimented the Save the Lake Committee for their excellent work.

MOTION: Tanner moved, McDermott seconded to approve the 2009 Save the Lake Funding Proposals, as outlined in the 1/7/09 memo from Chair Bill Olson.

VOTE: Ayes (8), Nays (1; Page); motion carried.

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. Brad Stannard, side setback variance application to install a permanent dock at 1700 Jones Lane in a lagoon off of Harrisons Bay.

Whalen asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 1/8/09, which summarized the applications submitted to install a permanent dock that requires a variance from LMCD Code. Tom Niccum of Minnetonka Portable Dredging was in attendance representing the applicant. The applicant has proposed: 1) a 40' long permanent dock, with two permanent pilings on the west side to support a boat lift, and 2) the mooring of one boat on a lift on the west side of the dock and two personal watercraft on the east side of the dock near shore. He highlighted three LMCD Code Sections to evaluate the variance application. These included: 1) Code Section 2.06- outlines permanent dock requirements, 2) Code Section 2.01, subd. 1- outlines authorized dock use area requirements, and 3) Code Section 1.07- outlines the variance process from LMCD Code. He advised the Board that staff cannot take action on the Permanent (non-multiple) Dock License until the Board makes a decision on the proposed variance application. He believed that the applicant had documented an adequate hardship (conversion of lot lines) for the Board to direct LeFevere to prepare draft Findings of Fact and Order for approval, subject to the following conditions: 1) that all restricted watercraft moored or docked comply with LMCD Code Section 2.02; specifically that all three restricted watercraft be owned and registered to residents of the

site, 2) that the construction of dock structures, including posts and slip structures, and the location of moored or docked watercraft be in strict conformance with the approved dock plan, 3) that, pursuant to Code, no de-icing be allowed at the subject property, and 4) that the applicant record a copy of the variance order against the title to the property and provide evidence of recording to the District. He entertained questions and comments from the Board.

Tanner questioned whether there should be a restriction on canopies at this site.

Harper stated that placing a canopy restriction at this site, as part of the variance process, was at the Board's discretion.

Whalen asked the applicant to provide further comments on the applications.

Mr. Tom Niccum, representing the applicant, stated that Mr. Stannard was not going to install a canopy as defined by LMCD Code, to the best of his knowledge. He will be utilizing a shore-covered lift station. He further clarified that the applicant owns all three proposed restricted watercraft and that the proposed dock would be less of a structure than what is currently in place.

Whalen opened the public hearing at 7:29 p.m.

Mr. Robert Skorczewski, owner of the abutting lot to the south, stated that he did not have an objection to the proposal.

There being no further comments, Whalen closed the public hearing at 7:30 p.m.

LeFevere requested confirmation from the Board as to whether the proposed three restricted watercraft should be restricted by location, type, and/or size of the watercraft.

A brief discussion was held by the Board as to type, size, and storage of the proposed watercraft, along with the dimensions of the proposed permanent dock.

Nybeck recommended that the Board consider approval of the variance as noted on the proposed site plan. Should future amendments be warranted, the applicant could make application to amend the variance at that time.

MOTION: Page moved, Johnson seconded to direct LeFevere to prepare Findings of Fact and Order approving the Brad Stannard side setback variance application to install a permanent dock at 1700 Jones Lane in a lagoon off of Harrisons Bay, subject to the following recommendations: 1) staff recommendations, 2) that the personal watercraft be moored or docked on the east side only, and 3) a prohibition on no canopies as defined by LMCD Code.

VOTE: Motion carries unanimously.

B. Tonka Bay Sales (Site 2), new multiple dock and special density license applications to

reconfigure existing docks at Tonka Bay Sales (Sites 2 and 3).

Whalen asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 1/9/09, which summarized the applications submitted by the applicant, Gabriel Jabbour, to reconfigure the existing docks. The proposed changes include: 1) moving the City of Excelsior's 12' wide firelane to the east side of Site 3, which would make the shoreline at the two sites continuous, 2) maintain boat storage at this site at 90 Boat Storage Units (BSU's); however, replace the majority of the walkway with a new permanent dock at current Site 2, and 3) the reconfiguration of the existing dock structure and slip size to improve safety and make them more useable. Once the firelane is vacated, there will be 956' of continuous shoreline at this site. He highlighted four LMCD Code Sections to evaluate the applications. These included: 1) Code Section 2.03, subd. 7- outlines the multiple dock license process, 2) Code Section 2.01, subd. 1- outlines authorized dock use area requirements, 3) Code Section 2.02, subd. 1- outlines density requirements, and 4) Code Section 2.05, subd. 2- outlines special density license requirements, including public amenities. If the Board was comfortable with the proposed public amenities, he recommended that the Board direct LeFevere to prepare Findings of Fact and Order for approval of the new multiple dock and special density license applications for the 2009 season, subject to the following conditions: 1) approval is contingent on the relocation or re-platting of the 12' city firelane to the east side of the facility in accordance with the 12/4/08 proposed site plan, 2) the annual documentation of the proposed public amenities, 3) all watercraft moored or docked must be fully contained within the 100' contour from the 929.4' shoreline, and 4) construction of dock structures and location of moored or docked watercraft must be in strict conformance with the approved dock plan. He entertained questions and comments from the Board.

Page expressed concern about how the added dock structure closer to the channel between Excelsior and St. Albans Bays could create added traffic congestion to an already crowded area at times. He asked if an analysis had been considered relating to this by staff.

Harper estimated that the distance between the nearest dock structure and the channel on the proposed site plan was approximately 56'. On the Excelsior Bay side of Minnetonka Blvd., the docks at Tonka Bay Sales (Site 1) and Excelsior Bay Harbor are closer than 56' to the same channel. He did not believe that watercraft leaving their BSUs, as well as the private access at the applicant's site, would create further congestion issues in the channel area.

Whalen asked the applicant to provide further comments on this application.

Mr. Gabriel Jabbour, the owner of Tonka Bay Sales, addressed the concern raised by Page. He reiterated Harper's comments that similar sites on Excelsior Bay maintain less setback footage from the channel area than this proposal. Additionally, LMCD Code does not have specific setback requirements from channel areas. His goal in the proposed dock layout was to reduce density at the residentially zoned area (currently Site 3) by relocating six BSUs to the commercially zoned site (currently Site 2). In this proposal, the width of the fingers will increase from one foot to two feet, which will make access to the BSUs safer. Because of the relocation of six BSUs and the increase in finger widths, this has required moving the docks closer to the channel area. He expressed an interest in the

relocation of the six BSUs because the current location would require a dredge, causing environmental concerns. Recently, he agreed to a settlement with the City of Excelsior that he would own the entire shoreline and that the firelane will be relocated. This settlement agreement is pending the MN DNR's final approval for the firelane to be vacated. He requested that the Board approve his applications, subject to the processing of the settlement agreement. He entertained questions and comments from the Board.

Whalen asked Jabbour to confirm his ownership of the lots and the firelane. She believed that it was more common for firelanes to be maintained under an easement via the ownership of a city or represented entity.

Jabbour confirmed that he owns both sites (previously known as Sites 1 & 2). He agreed with Whalen that most firelanes are maintained via an easement. However, that was not the case in this situation and the City of Excelsior owns the firelane. In the settlement agreement, Jabbour stated that he agreed to deed the land to the City of Excelsior for the relocation of the firelane. He provided the MN DNR the right to construct the shore fishing area and spoke in depth on the ownership and easements that are proposed within the agreed settlement, including a non-exclusive right for Excelsior to establish 16 parking spaces for use of the trail and shore fishing area. Furthermore, he provided approval for the Three Rivers Park District to install a pedestrian bridge and the relocation of the trail on his land. He reviewed the original, man-made shoreline in which the LMCD had asked the City of Excelsior in the early 1980's to provide documentation as to who owned the shoreline. That question has not been answered until this date, in which he has now confirmed ownership of the site.

LeFevere asked Jabbour to confirm that he was requesting approval of the applications, subject to the MN DNR providing approval to vacate the current placement of the firelane.

Jabbour stated the MN DNR's approval for the vacation of the firelane could take a substantial amount of time. He respectfully requested the Board approve the applications, subject to the MN DNR's approval or the filing of a variance application if not approved, so that he may proceed with the immediate installation of the dock structures. He provided LeFevere a copy of the settlement and an Excelsior Resolution endorsing such.

A brief discussion was held amongst the Board and Jabbour as to the public amenities provided, including the distribution of literature, and how the Code evaluates those amenities. Whalen acknowledged the need for the LMCD to review that portion of the Code for possible revisions.

Page restated his concern, based on telephone calls he had received from Greenwood residents, relating to watercraft congestion within the channel area.

Whalen opened the public hearing at 8:22 p.m.

Mr. Tom Jacob, Excel Boat Club, stated that he had been a tenant at this commercial facility for a number of years and he clarified the various literature that is distributed at this facility. Because he spends a significant amount of time at this facility, he addressed Page's concern about congestion in the channel area. The Boat Club's service includes the picking up of their customers at the end of the

dock for transportation to and from their BSU. He personally has witnessed the traffic flow at the end of the boating day and did not feel there was a congestion concern at the bridge site due to the large area that is designated as a "Quiet Water" area. He personally has not witnessed the wall-to-wall congestion that is currently being discussed on either sides of the bridge.

Scanlon asked Jacob to clarify where Excel Boat Club picks up its customers.

Jacob stated that the Boat Club picks up its customers at the end of the dock and drives the boat to its slip to minimize concerns about shoreline rocks and the navigation of other watercraft.

There being no further comments, Whalen closed the public hearing at 8:29 p.m.

Whalen believed that the LMCD needed to review the Code pertaining to public amenities. She believed that public parking, shore fishing areas, and walkways are excellent amenities that should be noted. She deferred to LeFevere regarding the possibility of adding a stipulation to the Order that would provide for the notation of the firelane should the applicant sell his property or that approval be granted subject to the firelane being relocated.

LeFevere stated that the provision of parking is already mentioned in various areas of the Code for special density licenses. It currently is not listed as a specific amenity; however, the Board could consider parking under "additional amenities unique to the application". He currently did not know how the firelane was legally being addressed (i.e., platted, dedicated, etc.). However, he acknowledged that the applicant was not the current owner of the firelane. For this reason, the two sites are considered non-contiguous. With that said, if the firelane is not vacated, then the applicant will need to continue to treat the sites as two separate sites, as currently recognized, which would provide for Site 2 to have more density than what would be allowed as proposed.

Jabbour stated that should the fire lane not be vacated, he will come into compliance with LMCD Code by reducing the necessary density and applying for a variance from Code, with converging lot lines as the hardship.

Nybeck asked LeFevere if the non-continuous shoreline concerns could be addressed if Jabbour received control of the firelane through a lease with the City of Excelsior.

LeFevere stated that historically, the LMCD has recognized a lease from the City of Excelsior that covers dockage rights so that shoreline is not double counted. He believed that a variance would be warranted for review should an application come forward. However, he was more concerned about the construction of a permanent dock, which might need a variance from LMCD Code, prior to securing it. A question of historical presence cannot be addressed as grandfathering on the lake does not exist as a matter of constitutional entitlement. To the extent of grandfathered rights, docks are grandfathered under the terms of the ordinance itself (length and setbacks). No grandfathering has been provided for docks extending over the extended lot line.

Jabbour summarized his legal agreement in place with the City of Excelsior and the MN DNR's requirements that are in place to vacate the firelane. He reiterated the need to build the docking structure this month. He made a request to confer with his legal counsel.

The meeting was recessed at 9:00 p.m. and reconvened it at 9:08 p.m.

Whalen summarized the two applications before the Board; noting the proposed public amenities are consistent with Code to proceed in the approval of the special density license. She agreed that staff should proceed with documenting how far the nearest dock would be setback from the channel area, as well as providing an explanation of how the BSUs that parallel the dock use area for the firelane were historically approved. At the same time, she believe that LeFevere could prepare draft Findings of Fact and Order for consideration at the next meeting, with language that would provide for the "control" of the firelane to allow the applicant to move forward with the construction of the docks while pending the vacation of the firelane by the MN DNR.

MOTION: McDermott moved, Tanner seconded to direct LeFevere to prepare draft Findings of Fact and Order to approve the 2009 special density and new multiple dock license applications, subject to: 1) recommendations outlined in the staff memo, dated 1/9/09, 2) the re-platting, relocation, or control of the firelane, and 3) no dock or mooring on the north end of BSU 84.

Page stated that the City of Greenwood continues to be opposed to extending the dock structure closer to the channel area. St. Albans Bay is heavily used for personal watercraft, water skies, and tubers, which all contribute to the congestion of watercraft traffic in the area. With uncertainties of ownership of the shoreline along Minnetonka Blvd. and the vacation of the firelane, he questioned the need to process these applications until these issues are resolved.

VOTE: Ayes (8), Nays (1, Page); motion carried.

10. OTHER BUSINESS

- A. Treasurer update of RFP's received to perform 2008 LMCD Audit.

Whalen asked Scanlon for an update on this agenda item.

Scanlon directed the Board to the memo in their packet, dated 1/8/08. Four proposals were received in which the following comments were provided: All proposals received were from Certified Public Accounts (CPA) that were: 1) highly qualified, 2) had experience with agencies in the Lake Minnetonka area, and 3) fell within the scope of services established via the RFP process. He provided an overview of the proposals received from: 1) Larson Allen, 2) Kern, De-Wenter, Viere (KDV), 3) Abdo, Eick, & Meyers (Abdo), and 4) Stuart J. Bonniwell. Bonniwell submitted the lowest proposal, roughly \$1,500 less than Abdo, Eick, & Meyers. An interview has been conducted with Bonniwell and positive references have been received. He recommended that the Board appoint Stuart J. Bonniwell to conduct the 2008 LMCD Audit, with the LMCD's option to have Bonniwell conduct the 2009 and 2010 LMCD Audits. He entertained questions and comments from the Board.

Tanner asked if the cost savings of \$1,500 was comparable in service and worth changing accounting firms to conduct the LMCD Audit.

Scanlon stated that he was comfortable making the change for the 2008 LMCD Audit based on Bonniwell's background and qualifications, the interview, and references received.

MOTION: Tanner moved, Johnson seconded to appoint Stuart J. Bonniwell to conduct the LMCD's 2008 audit, not to exceed \$5,200.

VOTE: Motion carried unanimously.

B. Discussion of winter events and the use of a catering license on Lake Minnetonka

Whalen asked Nybeck for an update on this agenda item.

Nybeck stated the LMCD has been actively involved in the planning process for a pond hockey special event planned for the weekend of January 17th on Excelsior Bay. During these meetings, there was discussion of the feasibility of selling liquor on the ice, as well as other special events in conjunction with the Bayview Event Center. Currently, LMCD Code prohibits this type of activity because it can only be done on licensed charter boats. Bayview Event Center has petitioned the Board to allow such activity and he provided a brief overview of their proposed ordinance amendment. He asked the Board if the Bayview Event Center petition for an ordinance amendment was something that the Board might have interest in. If so, it will be scheduled for a future Board meeting and staff will make the necessary preparations.

The consensus of the Board was to schedule an agenda item at an upcoming meeting.

11. EXECUTIVE DIRECTOR REPORT

There was no Executive Director report.

Whalen requested that staff provide a 2009 LMCD Meeting schedule for the Board's approval at the January 28th meeting, which would provide for the cancellation of the meetings in November and December due to the holidays.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:38 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary