

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, August 12, 2009
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; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; Peter Hartwich, Excelsior; Chris Jewett, Minnetonka Beach; Steve Johnson, Mound; Bill Olson, Victoria; Kelsey Page, Greenwood; Dick Woodruff, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician.

Members absent: Dennis Klohs, Minnetonka Beach; Herb Suerth, Woodland; Emily Herman, Administrative Assistant.

3. APPROVAL OF AGENDA

Whalen stated that there was a need to add an agenda item relating to a de-icing ordinance amendment as it pertains to insurance requirements. She recommended that the draft ordinance amendment be added as item 12D. Furthermore, she recommended that the information on Other State's Aquatic Invasive Species (AIS) Management Plans and Herbicide Safety provided in the packet by the Lake Minnetonka Association (LMA) as part of their Report be referred back to the EWM/Exotics Task Force for their review and comments. After which, she recommended a work session be scheduled by the Board for a more thorough review of both documents. She suggested that the LMA provide a Report on their other activities as scheduled.

MOTION: Woodruff moved, McDermott seconded to approve the agenda as amended, approving the changes recommended above by Whalen.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen stated that there were no confirmed zebra mussels in Lake Minnetonka. Furthermore, she stated the MN DNR is educating the public about flowering rush and its existence in Lake Minnetonka. She used educational bill boards as far as up north as examples of the MN DNR's educational efforts, as well as continuing other education practices for the prevention of all AIS.

5. APPROVAL OF MINUTES- 7/22/09 LMCD Regular Board Meeting

Olson requested confirmation on what veligers were as utilized in Suerth's comments in the second paragraph on page eight.

Harper confirmed that veligers refer to zebra mussels.

MOTION: McDermott moved, Page seconded to approve the minutes from the 7/22/09 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Woodruff moved, McDermott seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (8/1/09 – 8/15/09); and **6B**, Approval of temporary assistance for LMCD office, as outlined in 8/5/09 staff memo.

Babcock arrived at 7:05 p.m.

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 public comments.

9. Update from standing LMCD Committees:

- EWM/Exotics Task Force
- Save the Lake Committee
- Technical Advisory Committee (TAC)

Whalen asked for a brief update from the Chair of each committee, with Nybeck providing the update on the EWM/Exotics Task Force in Suerth's absence.

EWM/Exotics Task Force

Nybeck stated that the next Task Force meeting was scheduled for Friday, August 14th. Agenda items planned for discussion at this meeting included minimal discussion of the 2009 herbicide treatment projects; an assessment by the MN DNR of flowering rush on Lake Minnetonka, which was treated with herbicides today; and further discussion on the second draft of the 2010 Lake Minnetonka AIS Prevention Plan, which is anticipated for discussion by the Board sometime this fall. He updated the Board on other related AIS topics. August 14th was the last day of the 2009 EWM Harvesting Program on Lake Minnetonka. The presence of public access inspectors (contracted by the LMCD with the MN DNR for 2009) are on-going through Labor Day, with a follow-up Report sometime this fall. He updated the Board of a concentrated enforcement day held on July 25th by MN DNR Conservation Officers. Eight officers worked that day, with each officer working three hours. As a result of this effort by the MN DNR, seven civil

citations and 10 written warnings were issued for transporting aquatic macrophytes. Capt. John Hunt from the MN DNR stated that this effort was well received by the public.

Save the Lake Committee

Olson provided the Board with a summary of the Save the Lake program (created in the early 1970's), its purpose, and the various projects that have historically been funded. He believed that there were three challenges that required immediate attention of the committee. First, the prevention of new AIS (specifically zebra mussels) and the need to increase the hours contracted with the MN DNR for watercraft inspections. Second, the management of Eurasian Watermilfoil and the various programs being considered (i.e., the Herbicide Treatment Program and the costs associated with such). Third, continued efforts to improve public safety on the Lake (such as limited safety equipment funding for the Hennepin County Sheriff's Water Patrol and the purchase of more solar lights). In regards to the solar light program, he acknowledged the receipt of funds from the Tom Breslin Memorial Fund, which was specifically directed to that project. In follow-up to those challenges, a number of efforts have recently been implemented and/or considered by the Save the Lake Committee. First, a solicitation letter will be mailed in the near future to all lake residents currently not on the solicitation database. That letter asks for their consideration of a donation to Save the Lake should they believe in the list of projects outlined to them within the letter. Second, an invitation has been proposed by the Wayzata Chamber of Commerce for an LMCD representative to address the participants of the summer concert series by educating them on Lake Minnetonka and the programs addressed by the Save the Lake fund. The Chamber had previously donated funds from promotional, recycled water bottles (.50 cents per bottle) handed back at the end of the performances and have proposed to do the same next summer. He provided a thank you to the various family foundations that have stepped up to the plate in providing donations; acknowledging that Save the Lake expenses do outweigh income and their efforts were greatly appreciated. The next Save the Lake Committee meeting was scheduled for Tuesday, September 22nd.

TAC

Gross stated that the TAC was in receipt of scientific data in which further professional review is required. He acknowledged that this professional review of the data was not budgeted; however, efforts are underway to establish that expert and the costs associated to such. He stated that one of the potential experts being considered was a representative of the U of M.

Whalen thanked all for their efforts and their informational updates. She stated that the Save the Lake donations are tax-deductible and confirmed that Tanner would provide an update on the LMCD Code Review Committee at the September 9th Board meeting.

10. LMA REPORT

Whalen stated that Richard Glidewell was in attendance to provide the LMA Report and welcomed him on behalf of the Board.

Glidewell, representing the LMA, provided an overview of the LMA's current activities by highlighting the following:

- He introduced summer intern Andrew Bredeson to the Board acknowledging his work on the Report entitled "Other State's AIS Prevention Efforts" that was within the Board packet. This will be

forwarded to the EWM/Exotics Task Force for review and comments. Bredeson introduced himself to the Board, confirmed his attendance to the next Task Force meeting, and the process in which the Report was researched.

- He directed the Board to a second Report on herbicide safety that was also within the Board packet and being forwarded to the Task Force for review and comments.
- He acknowledged the receipt of many positive comments on the herbicide treatments from residents of Grays and Phelps Bay. Discussion was held by the Board on the water quality of Grays Bay, in which that matter will also be discussed at the Task Force level.
- He stated the LMA's annual golf event was very successful and always welcomed the Board's participation.
- He entertained questions and comments from the Board.

There being no questions or comments, Whalen thanked Glidewell for his Report.

11. PUBLIC HEARINGS

There were no public hearings.

12. OTHER BUSINESS

A. Hennepin County Sheriff's Water Patrol, Report from Lt. Kip Carver on 2009 Lake Minnetonka Boating activities.

Whalen asked for background on this agenda item from Lt. Carver, welcoming him on behalf of the Board.

Carver made the following comments based on activities of the Water Patrol from January 1st through mid July:

- He reviewed enforcement statistics from the 2009 boating season. He stated that 74% of the Water Patrol hours have been spent on Lake Minnetonka. Boating While Intoxicated (BWI) arrests to date were 54, compared to 41 last year at this time. Written and verbal warnings were up 42% and 35% respectively compared to 2008, with citations up 12%. Education of those warnings continues to be a high priority of the Water Patrol. However, there is little room to educate on personal floatation devices (PFDs) and alcohol related offenses.
- The majority of personal injury/property damage watercraft accidents that the Water Patrol investigated have occurred on Lake Minnetonka. There have been no drownings or fatal accidents on Lake Minnetonka to date, which compared to two drownings and one fatal accident in 2008. He believed that the cooler weather has been a factor as it pertains to swimming activity; however, boating has been active.
- There are 28 special deputies, with an additional six currently in field training. Those deputies have provided 5,381 hours of volunteer time throughout Hennepin County in 2009. He recognized the importance of the deputies to the Water Patrol as they are a strong force in communicating safety, laws, and ordinances.
- The 4th of July weekend provided for the following statistics: 1) 13 people were arrested for BWI (two of which were cited for more serious accounts of child endangerment factors, with

one of the watercraft seized due to prior criminal history), 2) the Water Patrol responded to three medical calls and issued eight citations for underage consumption at Cruiser's Cove, 3) two individuals were booked into jail for disorderly conduct and assault, 4) several property damage accident reports were taken, and 5) 36 deputies worked; 26 of which were special deputies that provided 364 hours of volunteer patrolling.

- He stated that on the morning of Sunday, September 13th, the Water Patrol will be simulating a mass causality incident on Lake Minnetonka in Excelsior Bay utilizing a charter boat and civilian watercraft. The simulation will be a joint effort with the Excelsior Fire District, Hennepin County Emergency Preparedness Division, and many other related agencies (with an estimated 225 participants).
- He entertained questions and comments from the Board.

The Board asked questions or made comments, in which Carver addressed. These included:

- Confirmation that the simulated incident will be advertised in the paper and that regular traffic (on land and water) will be able to traverse with some restrictions.
- Confirmation that the Water Patrol strictly utilizes blood and urine tests for BWI arrests and no longer utilizes the breath test.
- An offer for any LMCD Board member to contact Carver directly on any matter needing to be addressed (including the offer to ride along with a Water Patrol deputy).
- Confirmation that the special deputies come from areas within and outside of Hennepin County, with varied professional backgrounds. The Sheriff's Department has the ability to maintain 45 special deputies; 28 of which are currently filled with six in training. To date, there has been 5,381 hours provided by these special deputies, with an estimated 3,000 on Lake Minnetonka. He provided background on training and monthly requirements for these special deputies. Further discussion took place with regards to the special deputies' authority to make legal stops and arrests.
- Confirmation of a new state law that requires watercraft to move over 150' or, if unable, to go at a minimum wake speed for the passing of an emergency watercraft.

Whalen thanked Carver for his update on behalf of the Board.

B. Staff update on 2009 Lake levels.

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

Nybeck briefly reviewed his staff memo, dated 8/5/09, in follow-up to discussions held at the June 24th and July 22nd Board meetings on their ability to declare a low-water emergency based on LMCD Code. Due to the current water levels being above the emergency trigger point, he believed that there was not a need to discuss the declaration of an emergency at this meeting. However, he entertained questions from the Board, with the recommendation for staff to continue the monitoring of water levels through the balance of the 2009 boating season. If a low-water emergency were to take place, he believed that this might be justified in the spring before the 2010 boating season.

The Board concurred with Nybeck's recommendation.

C. Chair update of 8/25/09 LMCD and LMA Public Officials Lake Inspection Tour

Whalen directed the Board to a copy of the invitation that was in their handout folders, which had recently been sent out. She reminded the Board of the event date of August 25th and the logistics currently planned (specifically the presentations by both organizations and their topics of discussion). She solicited the Board's input on the number of representatives that planned on attending, including whether the LMCD should pay for their attendance in the amount of \$35 each.

MOTION: Tanner moved, Woodruff seconded to approve the expenditure of LMCD funds of \$35 each for the LMCD Board members and staff's attendance to the August 25th LMCD and LMA Public Officials Lake Inspection Tour.

VOTE: Ayes (11), Nays (1, Page); motion carried.

D. **Ordinance Amendment**, first reading of an ordinance amendment relating to insurance for de-icing operations; amending LMCD Code, Section 2.09, Subd. 4e.

Whalen asked LeFevere for background on this agenda item.

LeFevere stated Chapter 466.04 of the Minnesota Statutes places a cap on municipal liability and does not specify the level of insurance that a public body has to carry. That cap was raised to \$1,200,000 prior to July 1st and \$1,500,000 from July 1st forward, which is the most that one could file suit for in multiple claims arising out of a single occurrence against a public body. The LMCD is not obligated to impose any insurance on permitting applicants. However, he recommended the continued practice for the following reasons: 1) when the applicant is required to name the LMCD as an additional insured, the applicant's insurance stands in front of the LMCD's potential liability; providing for the primary claim to be paid out by the applicant's insurance company, and 2) it protects the public by providing some level of funding to claims that are paid out. In terms of licensing a permit in general, he stated that it is very unlikely that the LMCD could be found liable for a claim. However, that does not preclude the LMCD from being sued and the legal course of action required in follow-up to a suit. In regards to de-icing applicants, current LMCD Code requires all applicants to provide proof of insurance in the amount of \$1,000,000 for persons and \$50,000 for property, with commercial applicants being required to name the LMCD as additional insured. In considering the ordinance amendment to increase the insurance limit to \$1,500,000 for persons, all applicants will pay a higher insurance premium to meet that need. He believed that imposing the requirement of insurance is a judgment call of the Board and entertained questions and comments.

Tanner asked if there was a reason why the draft ordinance amendment did not recommend an increase in the required \$50,000 for property damage.

LeFevere stated that there was not a reason why the Board could not consider increasing the proof of insurance for property damage, currently set at \$50,000.

Whalen asked if the Board needs to consider adding a clause requiring the indemnification of the LMCD as an insurance requirement in the permitting of their de-icing license.

LeFevere stated that if one has contractual liability to indemnify someone and commercial liability insurance exists, then the commercial liability covers contract liability and in essence provides indemnification. The other option, in which the LMCD has adopted, is to request being named as additional insured. To further clarify questions of the Board, he reiterated that the LMCD is not required to impose proof of insurance at any level. However, to cover the maximum liability of \$1,500,000 imposed by law to the LMCD, the Board has the ability to require permitting applicants show proof of insurance at that level.

MOTION: Gross moved, Babcock seconded to approve the first reading as submitted, to waive the second and third readings, and to adopt the ordinance amendment.

Tanner proposed a friendly amendment to raise the proof of liability for property damage from \$50,000 to \$100,000. Gross and Babcock asked for clarification as to why that increase was proposed and solicited LeFevere's comments. LeFevere stated that he was unsure as to why some liabilities require the proof of property damage. However, he believed that although many have insurance coverage well above the \$1,500,000 level, he did not think it was common to have property damage above the \$50,000 level. After a brief discussion regarding possible risks involved for property damage vs. personal claims covered by the proposed \$1,500,000, Tanner withdrew his friendly amendment.

VOTE: Motion carried unanimously.

13. EXECUTIVE DIRECTOR REPORT

Nybeck stated that he had provided a written update of pending and upcoming activities of the LMCD office. He entertained questions and comments from the Board, in which there was one question that was addressed.

Whalen updated the Board on the Strategic Planning Work Session that was held on August 5th for the purpose of initiating a Work Plan, which staff will present to the Board at a future meeting.

14. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:11 p.m.

Lisa Whalen, Chair

Andrew McDermott III, Secretary