

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, October 28, 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; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; Peter Hartwich, Excelsior; Chris Jewett, Minnetonka; Steve Johnson, Mound; Bill Olson, Victoria; Kelsey Page, Greenwood; Herb Suerth, Woodland; Dick Woodruff, Shorewood. Also present: Greg Nybeck, Executive Director; Charlie LeFevere, LMCD Counsel; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

**Members absent:** Dennis Klohs, Minnetonka Beach; Andrew McDermott, Orono.

**3. APPROVAL OF AGENDA**

**MOTION:** Olson moved, Page seconded to approve the agenda as submitted.

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Whalen**

Whalen made the following three Chair announcements: First, she reviewed a number of upcoming LMCD related meetings. These included: 1) the November 4<sup>th</sup> LMCD Strategic Planning Session (5:30 p.m. in the LMCD office), 2) the November 18<sup>th</sup> LMCD Regular Board Meeting, which needs to be re-scheduled from November 11<sup>th</sup> in observance of the Veterans holiday, and 3) the December 2<sup>nd</sup> LMCD and Hennepin County Sheriff's Water Patrol annual meeting (7:30 a.m. at the Water Patrol Headquarters in Spring Park). Second, she stated that she and Nybeck recently attended the MCWD Watershed Heroes Award Banquet held on Friday, October 23<sup>rd</sup>. Third, she recognized the following two individuals that were in attendance: 1) Gabriel Jabbour, who was a MCWD Watershed Heroes Award recipient, and 2) Gedney Tuttle, who is the new Lake Minnetonka Association (LMA) president.

**5. APPROVAL OF MINUTES- 9/9/09 LMCD Regular Board Meeting**

**MOTION:** Page moved, Scanlon seconded to approve the minutes from the 9/9/09 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (9), Abstained (3; Babcock, Jewett, and Woodruff); motion carried.

**6. APPROVAL OF CONSENT AGENDA**

Babcock requested that item 6G be removed from the consent agenda.

Gross moved, Woodruff seconded to approve the consent agenda as amended, removing item 6G. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (10/1/09 – 10/15/09) and (10/16/09 – 10/31/09); **6B**, August and September financial summary and balance sheets; **6C**, 7/10/09 and 8/14/09 EWM/Exotics Task Force Minutes; **6D**, 10/14/09 LMCD Strategic Planning Session Minutes; **6E**, **Save the Lake**, announcement of Funds available for 2010; and **6F**, Draft letter to be forwarded to LMCD member cities regarding Board appointments for 2010.

**7. ITEMS REMOVED FROM THE CONSENT AGENDA**

Whalen asked Babcock to clarify why item 6F was removed from the consent agenda.

Babcock requested clarification on the 2009 and 2010 hourly rates for SB Management, Inc, the LMCD's bookkeeper. He also asked for clarification on the appointment of the 2010 LMCD prosecuting attorney.

Nybeck stated that SB Management, Inc. is proposing a \$1 per hour increase from 2009 to 2010. At this time, a proposal has not been received from Tallen and Baertschi to continue as the LMCD's prosecuting attorney. A 2010 proposal by Tallen and Baertschi is expected shortly, which will be brought back to the LMCD Board for consideration.

**MOTION:** Babcock moved, Page seconded to approve the following appointments: 1) Abdo, Eick, and Meyers to conduct the 2009 LMCD Audit, 2) Kennedy and Graven as the LMCD legal counsel for 2010, 3) SB Management, Inc. to handle the LMCD Bookkeeping needs for 2010, 4) Lakeshore Weekly News as the official newspaper for 2010, and 5) U.S. Bank, through the 4M Fund, as the banking depository for the LMCD in the fiscal year 2010.

**VOTE:** Motion carried unanimously.

**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 (STL)
- Technical Advisory Committee (TAC)
- Ordinance Review Committee

Whalen asked for an update from the Chair of each committee, with Harper providing the update for the Ordinance Review Committee.

EWM/Exotics Task Force

Suerth stated that he believed the public's perception of the three bay pilot herbicide treatment project, in particular on Grays Bay, was acceptable and that expansion should be considered. At a recent Task Force

meeting, expansion of the project was discussed and the consensus was to not expand the five-year project until the final results have been documented by the Army Corps of Engineers (Army Corps).

Woodruff, who also serves on the Task Force, concurred with the comment made by Suerth. However, the Task Force also concluded that outside groups could apply for separate MN DNR permits for their own treatment program. Both the MN DNR and the Army Corps have communicated that they do not have the means to expand their support provided in the current pilot project.

A summary of the Board discussion on this matter was as follows:

- A question was raised whether this would be an expansion if Carmans Bay continued not to treat in 2010 and another bay substituted for it.
- That the Lake Minnetonka Association (LMA) and a St. Albans Bay citizen group have: 1) expressed a strong interest in participating in the pilot program (particularly if Carmans Bay residents do not continue their participation in the program), 2) that funds have been raised and an initial plant survey has been completed, and 3) that the group intends to apply for 2010 Save the Lake Funds.
- Confirmation that the program consists of not only herbicide treatments, but also follow-up testing and plant surveying.
- There is a need for Carmans Bay residents to provide a definitive decision on their continuation of the pilot program.
- Confirmation that its the LMA's position that the treatment of Grays Bay was a success and, as a result, gathered community support to expand the program.
- Expansion of the project would most likely require amending the current Lake Vegetation Management Plan (LVMP), the completion of pre and post survey studies, the establishment of a funding pool to equally treat each bay, and foremost, to act with the Lake's interest at heart.

Whalen stated that the expansion of the herbicide treatment project should be discussed under its own agenda item and recommended adding this to the November 18<sup>th</sup> Board meeting agenda.

Nybeck stated that John Skogerboe from the Army Corps was tentatively scheduled to present his Report on the 2009 project at the November 18<sup>th</sup> LMCD Board meeting. This Report will analyze the outcome of the 2009 project with the goals and objectives spelled out in the LVMP. He believed that additional agency representatives serving on the technical committee for this project would also be in attendance.

Suerth recognized the level of expertise from the various agencies that is being provided on the project at no cost.

#### STL Committee

Olson stated the last STL meeting was held on October 20<sup>th</sup> with a follow-up meeting scheduled for November 10<sup>th</sup> (8:30 a.m. in the LMCD office). He stated that the committee has reviewed the historical and current functions of STL, which he believed was originally created to address poor water quality. The committee believes that STL should consider the possibility of re-branding its existence to accommodate revolving functions. As a result, the committee met with marketing firms to receive their opinion on how to work with the general public now and into the future. To initiate the process, a questionnaire is being sent to all LMCD Board members for their input. He stated the STL 2010 Availability of Funds notification was

approved earlier this evening under the consent agenda and will be released October 29<sup>th</sup>; which will include a press release and posting on the LMCD web site.

### TAC

Gross directed the Board to the October 2009 Findings of the TAC, which was provided in their packet. He provided a thorough review of the Findings via a PowerPoint presentation. A summary of his comments were as follows:

- He reviewed the background on the TAC, which included the following: 1) that the committee was formed in the spring of 2008, 2) that it is an advisory committee to the LMCD Environmental Committee, 3) , its purpose is to determine the ecological effects of surface structures and motor boat traffic on the Lake, and 4) a review of the current TAC members.
- The Findings were adopted after review of 14 technical papers and informational pamphlets from various credible agencies that were listed.
- The first conclusion was that docks in the littoral zone prevent light from reaching the surface water and inhibit growth of both aquatic fauna and flora. Effects of such docks could be mitigated by providing for space, height, clustering, specific manufacturing material, and by minimizing the use of the surface area.
- The second conclusion was that motor boats operated at speed in the littoral zone scour and mechanically disturb the lake bottom, increase turbidity, and inhibit growth of both aquatic fauna and flora. Effects of such motor boat use could be mitigated by establishing no wake zones and minimize boat movement. He further concluded that motor boat traffic in 10' of water or more has little effect on the ecology.
- Recommendations provided by the TAC include: 1) review LMCD ordinances to facilitate minimization of surface area of docks and other surface structures, 2) increase the use of no wake zones in sensitive littoral zones, 3) avoid high density traffic in shallow areas, 4) attempt to protect sensitive areas while allowing unlimited use in others, and 5) educate the public to understand the damage caused by shading and motor boat traffic to the littoral zone.
- He reviewed three discussion points for the Board's consideration. These included the following:
  - Boaters and swimmers- The obvious solution to have macrophyte populations on lakes is to entirely remove them. However, algal blooms will replace the macrophytes and invariably cause as much of a nuisance as the macrophyte populations.
  - Minimize inhibitors vs. herbicide treatment- TAC recommends protecting the macrophyte population by minimizing shading and motor traffic in the littoral zone. However, other groups recommend the control (or elimination) of macrophytes by lakewide use of herbicides.
  - Environmental Economic Analyses- The optimal strategy to balance recreation and conservation on a particular lake would be to aim for an intermediate biomass level. However, it is difficult on Lake Minnetonka to develop a stable biological system due to the large amount of aquatic biomass, primarily EWM. More importantly, the most useful model presented with the papers researched would suggest that the best management strategy would be to keep some part of lake free of aquatic macrophytes (whether native or non-native) and to allow other portions of the lake to be densely vegetated.
- He specifically directed the Board to scientific studies 11.0 and 13.0 of the Findings, documenting the scientific importance of waiting to expand the five-year pilot herbicide treatment program until the final results are provided.

- He entertained questions and comments from the Board.

Whalen asked Gross what the next step of the TAC, or Environmental Committee, should be.

Gross believed that the TAC's next step is to receive public input as to their needs in the use of the Lake; after which, the TAC can weigh the scientific information with the public's needs for a final recommendation. The consensus of the TAC was to stay together, possibly continuing to review the current Findings or even expand their scope to other studies.

Babcock stated that there is recent history on the potential effects of over treating bodies of water with herbicides, citing Lake Zumbro as an example. He believed that herbicide treatments on Lake Minnetonka will turn into a management issue vs. a technical issue in the near future; reiterating the need to establish a management policy.

Gross stated that based on the discussion earlier at this meeting, he questioned whether the MN DNR would issue additional permits for whole bay treatments until a final summary of the five-year pilot project was completed.

Hartwich asked Gross if there was a macrophyte that was shade tolerant and if the possibility of rejuvenation existed.

Gross stated that he was not aware of a native macrophyte that is shade tolerant. However, there are recommendations to diminish the effects as noted above (i.e., spacing of the dock structures, etc.). He further stated that rejuvenation is possible in areas where the macrophytes are not damaged. In areas that they are damaged, he stated rejuvenation comes in the form of algae.

#### Ordinance Review Committee

Harper stated that the committee recently met on September 25<sup>th</sup> to consider recommended changes to LMCD Code Chapter 2 . More specifically, changes have been proposed that allow for the creation of a process to allow some applications to be processed by staff. These applications would include: 1) minor change applications for conforming multiple dock sites, 2) minor change applications for legal, non-conforming multiple dock sites, and 3) annual renewal (without change) multiple dock license applications. He provided a thorough review of each recommended amendment and its respective criteria offered. He stated that if the Board was comfortable with the recommendations, the committee recommended that it direct LeFevere to prepare the appropriate ordinance amendments for the Board's consideration at the November 18<sup>th</sup> meeting.

Some Board members expressed concern about the proposed criteria to provide notification to affected parties with 10 days to respond or request an extension for additional time to review. Concerns mentioned included the following: 1) a neighboring property owner having the ability to potentially place an application on hold for processing, 2) the consideration of different response times for public and private entities, 3) the consideration of increasing the extended time frame, and 4) the need to clarify the type of response days (working days vs. calendar days).

Nybeck stated that the purpose of this agenda item was to get feedback from the Board on whether it supports this concept. If so, he recommended that the Board direct staff to work with LeFevere in the preparation of the ordinance amendments, taking into consideration the Board's comments. Furthermore, he welcomed continued comments from the Board via email during this process.

LeFevere stated that an ordinance amendment could simply state that the application could be approved at staff level, with specific criteria or guidance provided in the form of a policy.

Babcock stated that in regards to the renewal (without change) multiple dock license applications, the committee's recommendation was that the application would be approved for the particular site plan, not what may be installed inconsistent with the approved site plan.

The consensus of the Board was for LeFevere to prepare a draft ordinance amendment(s), working with staff and consistent with the Board discussion at this meeting.

## 10. LMA REPORT

There was no LMA Report.

## 11. PUBLIC HEARING

- **Rockvam Boat Yards (Site 1)**, reconfiguration of non-conforming, multiple dock license and variance applications.

Whalen asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 10/22/09, which summarized a request from Rockvam Boat Yards, Inc., to reconfigure his legal, non-conforming multiple dock license and to amend a previously approved variance for side setback and length requirements. The following is a summary of his comments:

- The applicant has proposed to install twelve poles on the end of dock fingers located on the west side of the main dock, resulting in the extension of twelve side opening BSUs and to resolve some inconsistencies in dock installation that were further documented on the proposed site plan.
- He documented an approved special density license Order, dated 3/28/84, that was also discovered during this application process and how that license could affect the non-conforming status of this site.
- He highlighted three LMCD Code Sections to evaluate the applications. These included: 1) Code Section 2.015– reconfiguration of non-conforming multiple dock facilities, 2) Code Section 2.01, subd. 1– outlines authorized dock use area (DUA) requirements, and 3) Code Section 1.07– outlines the variance process from LMCD Code.
- He recommended that the Board direct LeFevere to prepare Findings of Fact and Order for approval of these applications, with the conditions listed in the staff memo. However, the Board should provide direction on one of the following three options in order to assist LeFevere in the preparation of these draft Findings. First, the Board could decide to continue this site as a hybrid site (a combination of conforming and legal non-conforming), carrying over all previous conditions and public amenities in the 1984 Order. Second, the Board could decide to continue this site as a

hybrid site and to allow the applicant to work with staff on updating the public amenities to be provided. Third, the Board could decide to rescind the approved special density license and approve what exists today, without the requirements of public amenities.

- He entertained questions and comments from the Board.

Nybeck stated that he believed the applicant would have problems complying with Option #1 due to the change in the public amenities being provided since 1984. If the Board would like to continue with an approved special density license for this site, he recommended that the Board allow Mr. Rockvam to work with staff in the updating of the public amenities that need to annually be provided.

The Board discussed the three options and asked questions, which Harper responded to. Some of the discussion included: 1) clarification that the applicant is not applying for a new special density license, 2) the Board could proceed in considering the proposed applications without considering the special density license, 3) clarification on the grandfathering of the license and how it would affect future license needs, and 4) public amenities, and their respective points, currently being provided.

Whalen asked Rockvam if he had any comments.

Mr. Jerry Rockvam, owner of Rockvam Boat Yards, Inc., stated that Harper provided a thorough review. He provided a historical review of both dock structure placement and amenities for Sites 1 and 2, which originally took place due to the purchase agreement with Lakeview Restaurant. He responded to a few brief questions from the Board which pertained to the placement of the dock structure and poles, documenting the need to replace the current 4" poles with 9" poles to provide strength and protection from the westerly winds and ice shifting damage.

The Board continued their discussion of the proposed applications and recommended options for approval, with staff clarification when needed. Some of the discussion included further clarification on the public amenities, what is being considered for the proposed hardship on the variance application, and a review of the proposed lot line as it relates to the placement of the dock structure within the DUA.

Whalen opened the public hearing at 8:45 p.m. There being no comments, she closed the public hearing at 8:46 p.m.

**MOTION:** Babcock moved, Gross seconded to direct LeFevere to prepare Findings of Fact and Order to: 1) approve the reconfiguration of non-conforming, multiple dock license application (with the recommendations in the 10/22/09 staff memo and carrying over all existing license conditions), 2) direct staff to work with the applicant to update the public amenities to be provided annually, and 3) to amend the approved side setback and dock length variance, with the prior hardships previously documented and those hardships documented by the applicant this evening.

**VOTE:** Motion carried unanimously.

The meeting was recessed at 8:53 p.m. and reconvened at 8:56 p.m.

**12. OTHER BUSINESS**

**A. LMCD Code Section 3.09**, discussion of current special event permitting process.

Whalen asked Nybeck to provide background on this agenda item.

Nybeck reviewed the staff memo, dated 10/21/09, which provided an overview of the LMCD Special Event permitting process, its primary objective, and some recommended changes for the Board's consideration. The following is a summary of his review:

- The LMCD and a number of other governmental agencies permit summer and winter special events on Lake Minnetonka. Code Section 3.09, subd. 11, allows the LMCD, by resolution, to authorize the Water Patrol to issue such special events. Resolution 111 was adopted on 10/27/04, which provides for the Water Patrol's issuance of certain winter special event permits for the LMCD.
- The LMCD's primary objective in the issuance of summer special event permits has been the prevention of new aquatic invasive species (AIS), with an emphasis on zebra mussels. The Board has previously concluded that the Water Patrol is the public safety expert on Lake Minnetonka with regards to the issuance of special events.
- He provided an overview of the different types of special events that are regularly held on the Lake. Those events included fishing tournaments, yacht club races, firework displays, swimming, and other miscellaneous events; documenting 29 total for the summer of 2009.
- He provided a thorough review of the LMCD's special event application process as it pertains to the prevention of AIS. This included the copying of a list of AIS infested bodies of water, by the event coordinator, to all event participants, the need for all participating watercraft owners to complete a special event certification form, and the need for the special event licensee to contact the LMCD office prior to the event to discuss arrangements and scheduling for inspection and washing of participating watercraft that have been in infested waters (as per ordinance) on an as-needed basis.
- In preparation for the 2010 boating season, he provided preliminary recommendations and comments. Based on some preliminary conversations he and EWM/Exotics Task Force Chair Herb Suerth had with a fishing tournament coordinator and a yacht club licensee, he recommended abandoning the certification form requirement for 2010. He believed that a greater emphasis needs to be placed on educating participants through their registration process, with their applications going out sometime around January. He recommended that the Board consider the recommendations for 2010 based on the pending AIS Prevention Plan for Lake Minnetonka. Once these recommendations have been received, he recommended engaging these recommendations with the stakeholders ASAP.
- He entertained questions or comments from the Board.

Whalen stated that Denny Nelson, a long-time fishing tournament coordinator on Lake Minnetonka, was in attendance and observing this agenda item. She offered Nelson the opportunity to comment on this agenda item.

Mr. Denny Nelson stated that he was a regular fishing tournament licensee on Lake Minnetonka and has been involved in meetings pertaining to the processing of special event applications over the years. He concurred with Nybeck's assessment that the current certification form is not effective. He

stated that most fishing event coordinators refer the educational information to the sponsor's individual website.

The Board concluded that staff should proceed with the development of educational material to be coordinated with special event coordinators. However, further discussion of the preliminary recommendations should take place at another meeting.

**B. Appointment of nominating committee for 2010 LMCD Board Officers**

Whalen stated Babcock, Page, and Tanner had volunteered to serve on the nominating committee for 2010 LMCD Board Officers, with a slate of recommendations to be provided for Board consideration in January. She solicited other Board members that may have an interest in serving on the nominating committee, which there were none.

**MOTION:** Jewett moved, Johnson seconded to appoint Babcock as Chair, with Page and Tanner, to serve on the nominating committee for 2010 LMCD Board Officers.

**VOTE:** Motion carried unanimously.

**C. 2009 EWM Harvesting Program Final Season Report**

Whalen stated that she believed the 2009 project provided for some challenges that were addressed amongst herself, Tanner, Harper and Nybeck. As a result, she had requested that those challenges, with corrective action, be listed within the Report. She asked Harper to provide an overview of the Report.

Harper provided an overview of the following information: 1) a summary of harvesting season data (the number of working days, lake levels, harvester loads, and truck loads), 2) operating highlights, 3) personnel, 4) equipment (including the operation and maintenance of), 5) the 2009 budget, and 6) 2009 challenges, with 2010 corrective actions. He entertained questions and comments from the Board.

The Board asked questions or made comments, in which Harper responded to. Some of those questions and/or comments include the following: 1) further clarification on the various causes, level, and prevention of milfoil fragments, 2) further clarification on the harvesting statistics; including the number of days the program was down due to weather and mechanical problems, and 3) a request to place more educational material on the web site (mapping and statistical information).

Whalen stated that Tanner had requested a few minutes to address the Board.

Tanner stated that due to the economic concerns and his ownership in a small business, the demands of his time do not allow him to consider continuing to serve on the LMCD Board at the end of his term (1/31/10). He thanked all for the time he has served, considered it a great learning experience, and wished everyone well.

Whalen, on behalf of the Board, thanked Tanner for his service as well.

**13. EXECUTIVE DIRECTOR REPORT**

Nybeck stated that there was a written Report in the handout folders that he believed was self-explanatory. One item he updated the Board on was 2009 lake levels. With the precipitation this fall, lake levels are approaching the norm for this time of the season based on lake level readings from recent boating seasons.

**14. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:33 p.m.

Lisa Whalen, Chair

Tom Scanlon, Treasurer