

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, March 24, 2010
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:05 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Kelsey Page, Greenwood; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Dan Baasen, Wayzata; Doug Babcock, Tonka Bay; Peter Hartwich, Excelsior; Chris Jewett, Minnetonka; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Herb Suerth, Woodland; Dick Woodruff, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: No members were absent.

3. APPROVAL OF AGENDA

Whalen recommended the following three amendments: 1) the addition of a discussion item directly after agenda item 11A on the 2010 Watercraft Inspection Program, 2) the addition of agenda item 11D for the Board's consideration of submitting a Letter of Support to the City of Minnetrista, at their request, on a LCCMR grant application, and 3) the tabling of all public hearings (agenda items 11A, 11B, and 11C) to the May 12th Board meeting per the applicant and city's request. Additionally, she offered individuals currently in attendance that had intended to comment on the proposed applications during the scheduled public hearings the ability to do so at this meeting and/or on May 12th as well.

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen stated that she had recently taped a 2010 LMCD State of the Lake Address with the Lake Minnetonka Cable Commission. Airings will begin on April 1st on Channel 12 (Mondays, Wednesdays, and Fridays at 12:00 p.m. and Tuesdays, Thursdays, Saturdays, and Sundays at 6:00 p.m.).

5. APPROVAL OF MINUTES – 03/10/10 LMCD Regular Board Meeting

Woodruff requested that the date on page one of the minutes be corrected from February 10th to March 10th.

MOTION: Woodruff moved, Baasen seconded to approve the minutes from the 03/10/10 LMCD

Regular Board Meeting as amended, correcting the date to March 10th.

VOTE: Ayes (12), Abstained (2, Johnson and McDermott); motion carried.

6. APPROVAL OF CONSENT AGENDA

Woodruff and Whalen requested that agenda items 6D and 6E be removed from the consent agenda.

Babcock moved, McDermott seconded to approve the consent agenda as amended, removing agenda items 6D and 6E. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (03/16/10 – 03/31/10); **6B**, February financial summary and balance sheet; and **6C, 2010 Liquor Licenses**, staff recommends Board approval of renewal (without change) Intoxicating Liquor License applications as outlined in 3/19/10 staff memo.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

- **6D**, Minutes from the 2/12/10 AIS Task Force Meeting.

Woodruff stated that he was not in attendance at this meeting and the draft minutes should accurately reflect this.

MOTION: Woodruff moved, Suerth seconded to approve the minutes from the 2/12/10 AIS Task Force Meeting as amended, making the changes noted by Woodruff above.

VOTE: Motion carried unanimously.

- **6E, 5th Street Ventures**, draft Findings of Fact and Order approving 2010 new multiple dock license application.

Whalen stated that LeFevere has requested to make some comments prior to Board consideration of this agenda item.

LeFevere stated that the Board should feel comfortable making any adjustments to the draft Findings of Fact and Order, wherever warranted, as they are considered their Findings. He made two comments on the draft Findings. First, he directed the Board to the first paragraph on page three that allows the Board to reconsider the permit granted. This was added based on the applicant's past history of boat size violations and believed to be a true statement that would be utilized for all licensed facilities on a lakewide basis. Second, the Board's motion to prepare the draft Findings did include a condition from the originally approved multiple dock license that he neglected to include in the current draft Findings before the Board. This condition documents that the use of Boat Storage Unit (BSU) 13 be subject to annual review by the Hennepin County Sheriff's Water Patrol. The historical intent of this license condition in 2003 was based on the Sheriff's review of the maneuverability of the watercraft stored in this BSU backing into the adjacent Seton Channel for public safety purposes. He entertained questions and comments from the Board.

Page asked LeFevere to provide recommended language for the annual review of BSU 13.

LeFevere recommended adding the following language for condition 1h on page three: "Approval of BSU 13 is subject to annual review by the Hennepin County Sheriff's Water Patrol".

Babcock proposed adding the words "majority of" between the word "the" and "Board" in the first sentence of paragraph five on page one.

MOTION: Kask moved, Woodruff seconded to approve the 5th Street Ventures, LLC Findings of Fact and Order approving the 2010 new multiple dock license application as amended, subject to the changes as noted above by LeFevere and Babcock.

VOTE: Ayes (13), Nays (1, Babcock); motion carried.

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-

- AIS Task Force
- Save the Lake
- Technical Advisory Committee (TAC)
- Ordinance Review Committee

Whalen asked for an update from the Chair, or designated representative, of each committee.

AIS Task Force

Suerth expressed concern about recent erroneous publicity relating to the LMCD's Eurasian Watermilfoil (EWM) Harvesting Program and the three-bay Herbicide Treatment Program. Specifically, he addressed the following: 1) misunderstandings about EWM floating fragments and other possible causes to that affect and 2) the challenges pursuing at the legislative level on a recent decision made by the MN DNR, which was supported by many other experts serving on the AIS Task Force, not to expand the Herbicide Treatment Program (or issue independent permits) for other baywide treatment projects until the five-year demonstration project was completed and a final Report was received. He documented the misconceptions and recommended that the Board offer to address them when providing updates to their city council.

Whalen stated that she had recently addressed Suerth's concerns by providing factual information on both programs in the recent taping of the 2010 LMCD State of the Lake Address. She commented on the experts currently serving on the AIS Task Force and the partnerships that exist between the LMCD and the many represented agencies. The next AIS Task Force meeting is scheduled for April 9th, at 8:30 a.m. in the LMCD office.

Save the Lake

Whalen stated that the Save the Lake rebranding efforts and funding for the 2010 Watercraft Inspection Program were scheduled for discussion under separate agenda items.

Environmental Committee

No update was provided.

Ordinance Review Committee

Harper stated that meeting was currently being scheduled for mid-April.

10. PUBLIC HEARINGS

- A. **Wayzata Yacht Club (Site 2)**, new multiple dock license and special density license applications for 45 Boat Storage Units (BSUs) on 446' of continuous shoreline.
- B. **Wayzata Yacht Club (Site 3)**, new multiple dock license and variance applications for 27 BSUs on 328' of continuous shoreline.
- C. **Wayzata Community Sailing Center (Site 4)**, new multiple dock license and special density license applications for 24 BSUs on 240' of shoreline.

Whalen stated that these public hearings have been tabled to May 12th Board meeting. However, she offered anyone in attendance wanting to comment on the respective applications to do so at this time. There was no public testimony.

11. OTHER BUSINESS

- A. Continued discussion of 2010 LMCD Save the Lake Re-branding Proposal.

Whalen asked Herman for an update on this agenda item.

Herman directed the Board to a staff memo, dated 3/15/10, in which she provided a brief overview of the Board's March 10th initial consideration of phase 1 re-branding efforts (along with providing additional follow-up information requested at that time). A summary of her comments were as follows:

- An overview of Save the Lake Committee Chair Olson's comments made at the March 10th meeting.
- A review of additional information requested by the Board at the March 10th meeting, which included the following:
 - Further clarification of miscellaneous/hard costs.
 - Trademark and copyright options, with respective fees, that were available for the Board's consideration. She directed the Board to a letter within their packet, dated 3/19/10, from Mr. Eric Haugen of Haugen Law Firm PLLP, which professionally outlined those options.
 - Additional funding sources for the Board's consideration (in which Whalen provided that overview).
- She entertained questions and comments from the Board.

Whalen stated that an Executive Committee meeting was coordinated on March 19th in response to the Board's March 10th request to consider other funding options that would better align with the approved 2010 LMCD Budget constraints. In follow-up to that meeting, the following comments and respective funding options were offered for the Board's consideration:

- She expressed concern in eliminating the production of the second LMCD Newsletter in 2010 to

- help fund Phase 1 of the re-branding efforts, as originally proposed.
- She estimated that \$3,500 has been saved because the part-time Administrative Clerk position, which was included in the adopted 2010 LMCD Budget, was not filled the first quarter of the year. The Executive Committee recommended that these funds should be earmarked for the updating of the LMCD website.
 - \$5,000 was included in the adopted 2010 LMCD Budget to be earmarked to increase the level of the General Reserve Fund. Since the General Reserve Fund was increased by an estimated \$50,000 of additional court fine revenues in 2009, the Executive Committee has recommended that these funds also be earmarked for the updating of the LMCD website. The use of this \$5,000 will not decrease the 36% General Reserve Fund recently reported as part of the 2009 LMCD Audit.
 - The Executive Committee felt strongly that Save the Lake funds should be utilized in the funding of phase 1 of the Logo and Identity Development Plan (The Thorburn Group). She reiterated the original comments made by the Save the Lake Committee that the expenditure of funds would ultimately raise additional Save the Lake contributions in the future. She reviewed Save the Lake funds that may be available without affecting the approved 2010 Save the Lake Budget (unused grant funds for the three-bay Herbicide Treatment Program).
 - She entertained questions and comments from the Board.

Page stated that he believed it was appropriate to utilize Save the Lake funds for the Logo and Identity Development Plan as its purpose is to generate more funds for Save the Lake use. He did not consider the re-branding a special project, but more of an on-going Save the Lake administrative project.

McDermott concurred with comments made by Whalen and Page.

Scanlon concurred as well, noting the importance of maintaining within the approved budgets for 2010.

Whalen solicited the Board's feedback on the expenditure of specific funds for phase 1 of the re-branding efforts, as well as to consider The Thorburn Group proposal. A summary of the Board's feedback is as follows:

- A question as to whether the figures noted above would be the upper limits, in which Whalen clarified \$5,775 would be the upper limit to the web site design. However, in regards to funding the Thorburn Group's proposal, hard costs and the ability to increase design fee expenses by 10% remain unidentified. Additionally, the funding of phase 2 of the re-branding efforts are not being considered at this time. Babcock expressed an interest in placing a cap on the use of the funds.
- Confirmation that the LMCD logo will remain unchanged (only the Save the Lake logo and its identity program will change). Therefore, printing costs associated with the Save the Lake letterhead is currently budgeted to some extent (minus new setup charges).
- Copyright and/or trademark fees are very minimal. Concern was expressed that federal registration may be warranted, in which LeFevere stated he would refer, at that point, further legal counsel to Haugen. However, he did note that design is proposed by The Thorburn Group as "original" work.

MOTION: Babcock moved, Suerth seconded to approve the funding of phase 1 of the Logo and Identity Development Plan for a total of \$12,025 (The Thorburn Group proposal, including miscellaneous fees and 10% of the design fee; the updating of the LMCD website; and State registration of the design itself) from the revenue sources noted above.

VOTE: Motion carried unanimously.

Whalen recommended a short recess prior to the Board's consideration of The Thorburn Group proposal that was in the Board's handout folder. The meeting was recessed at 7:50 p.m. and reconvened at 7:55 p.m.

Page stated that the Proposal provided for not only the ability to charge 10% above miscellaneous and hard costs, which was incremental to the proposal itself, but also 10% of the Proposal (resulting in additional expenditures of \$600 to \$1,000).

Babcock expressed an interest in amending the Proposal to address the allowable 10% variance on the proposal and miscellaneous costs to be approved upon client approval (as referenced for the hard costs within the Proposal). Additionally, he would like to see a detailed listing of all charges that fall within any of the 10% variances attached to the invoice for staff review prior to payment.

Hartwich asked if staff had received professional references on The Thorburn Group.

Nybeck stated that a reference check had not been completed on The Thorburn Group. However, the company's representative, Pat Weas, was introduced to the LMCD through a member of the Save the Lake Committee who is familiar with his work. Additionally, Mr. Weas does maintain significant nationwide clientele.

MOTION: Page moved, Woodruff seconded to approve The Thorburn Group Logo and Identity Development Plan Proposal in the amount not to exceed \$6,630, subject to the following: 1) \$250 of which is not to exceed in miscellaneous charges, 2) \$580 of which is not to exceed in the Design Fee out-of-scope charges, subject to The Thorburn Group providing a written projection of the related charges for LMCD approval prior to initiating any work, 3) that the wording "Out of Pocket" on the front page of the proposal be amended to read "Miscellaneous Charges", and 4) that an additional \$380 be approved for the use of the Save the Lake funds to accommodate the cap of expenditures set in the prior motion to approve the expenditure of funds for phase 1.

VOTE: Motion carried unanimously.

2010 Watercraft Inspection Program

Whalen stated that in follow-up to the MN DNR's feedback on the shortfall of 2010 Prevent Grant Application Funds, as well as the increase in the hourly rate charged to the LMCD, the Executive Committee also discussed on March 19th other funding options for the 2010 Watercraft Inspection

Program. The following comments and respective funding options were offered for the Board's consideration:

- Nybeck and Mr. Gabriel Jabbour recently secured \$7,500 of funding from the Minnehaha Creek Watershed District (MCWD). She publically thanked the MCWD for their contribution and willingness to continue partnering with the LMCD.
- Nybeck and Jabbour also met with members of the Minnetonka Power Squadron asking their membership for their consideration in volunteering inspection hours at public accesses for the 2010 boating season. The Power Squadron is enthusiastically considering this request.
- The Executive Committee, in consultation with Nybeck, acknowledged an estimated shortfall of \$1,726 in Program funds (taking into consideration the contribution from the MCWD and the possibility of volunteerism). She envisioned costs savings from the 2010 EWM Harvesting Program to make up this shortfall (reducing the number of work days from five to four, with longer work days, and possibly not harvesting the week after the July 4th holiday as two possibilities).
- Nybeck is currently checking with other agencies and organizations for the possibility of contracting additional inspection hours. The initial goal of the LMCD was to provide for 4,100 hours of watercraft inspections. She delineated inspection hours by offering the following: 1) MN DNR- 3,000 hours (560 via AIS Prevention Grant at no charge, 560 at \$12 per hour, and 1880 at \$20.75 per hour); volunteer time estimated at 300 hours; and contracting with other agencies and organizations estimated at 800 hours.
- The Program is currently budgeted at \$57,184. She delineated the revenue sources for the budget by offering the following: 1) LMCD AIS Management Fund- \$30,000, 2) Save the Lake Fund- \$11,238, 3) 2010 MN DNR AIS Prevention Grant Funds- \$6,720, 4) MCWD- \$7,500, and 5) 2010 EWM Harvesting Program cost savings- \$1,726. With that said, she acknowledged the MN DNR may not be able to provide the full amount of contract inspection hours currently proposed.
- She entertained questions and comments from the Board.

Suerth asked if a she considered a shortfall in inspector attendance.

Whalen confirmed that she did consider a 15% shortfall in attendance. Therefore, she recommended communication with the MN DNR to narrow down a realistic number in which they can provide inspections. At that point, other inspection sources would need to be considered.

Babcock acknowledged that the LMCD would be funding about 72% of the 2010 Watercraft Inspection Program, which is higher than normal. He expressed concern about sustaining that level of funding for the 2011 season and beyond.

Page acknowledged that the MN DNR is restricted within their hiring process due to state required qualifications that the applicants must possess. He welcomed the MN DNR's consideration in expanding that state hiring guidelines to drive costs down.

Whalen acknowledged the increase in expenses that have been placed on the LMCD to fund. Additionally, she stated the LMCD performs more inspections on Lake Minnetonka than those that are performed on any other lake or body of water in the State of Minnesota.

B. Staff update on vacant Administrative Clerk (part-time) position.

Whalen asked Nybeck for an update on this agenda item.

Nybeck reviewed his staff memo, dated 3/24/10, which summarized the hiring process for the vacant Administrative Clerk (part-time) position. 15 interviews were conducted out of the 83 applications received. He recommended that the Board authorize staff to enter into a permanent, part-time employment agreement with Ms. Diane Agnew, who has accepted an offer of employment. The agreement specifies a start date of April 12th, for up to 24 hours a week, at an hourly rate of \$13.00. No employee benefits are provided per LMCD Personnel Policy. However, as a permanent employee, Ms. Agnew will be required to participate in the Public Employee Retirement Association (PERA) public pension program. He entertained questions and comments from the Board.

The Board asked two questions, in which Nybeck responded to. Those questions entailed:

1) confirmation of a six-month probationary period for Ms. Agnew, and 2) clarification on what the current position is budgeted for.

MOTION: Olson moved, Suerth seconded to enter into permanent, part-time employment agreement with Ms. Diane Agnew as the Administrative Clerk, at an hourly rate of \$13.00 with no employee benefits (other than PERA participation), and a six month probationary period.

VOTE: Motion carried unanimously.

C. Timetable for 2011 LMCD Budget process.

Whalen asked Nybeck for background on this agenda item.

Nybeck reviewed his staff memo, dated 3/15/10, in which he summarized the proposed timetable for the 2011 LMCD budget process. He recommended that a Work Session be held to review and modify the draft budget prior to the initial consideration at the April 28th Board meeting. He acknowledged that the initial review by the Board was moved up one meeting to accommodate member cities that only have one city council meeting per month. He stated that an email will be sent out soliciting the Board's availability for a Workshop/Planning Session in the office for either the week of April 12th or 19th. Additionally, he pointed out that Chair Whalen has recommended the May 27th review of the draft budget with the member cities be rescheduled to June 2nd to accommodate the holiday weekend. He entertained questions and comments from the Board.

Babcock recommended the budget be approved at the June 9th regular meeting to accommodate any lack of quorum at the June 23rd meeting.

C. City of Minnetrista: LCCMR Letter of Support

Whalen directed the Board to a March 19th email in their handout folders from the City of Minnetrista. She stated the city is submitting a Legislative Citizens Commission on Minnesota Resources (LCCMR)

grant application for a flocculation water quality treatment system in Halstead Bay and has asked for a Letter of Support from the LMCD (confirming that no matching funds are being requested). She briefly described the system's function of annually removing an estimated 100 pounds of external loading of phosphorus from the bay, with the goal of increasing the bay's current water quality grade of "D." She entertained questions and comments from the Board.

The Board asked a few questions, in which Whalen responded to. Those questions are highlighted as follows:

- Confirmation that the city engineer is providing expert advice in the use of the flocculation system as a means in the removal of phosphorous (Minnetrista has been charged with removing 151 pounds of external loading of phosphorus each year). Whalen compared the use of the flocculation system to other commonly known treatments utilizing alum.
- She reiterated that the flocculation system will be treating the external loading of phosphorus into the bay, in which Babcock was in support of that process. The removal of internal loading of phosphorus was briefly discussed, with future results yet to be established.
- Whalen was not aware of other cities with tributaries on Lake Minnetonka participating in the use of a flocculation system.

MOTION: Babcock moved, Johnson seconded to direct staff to submit a Letter of Support to the City of Minnetrista to accompany the submittal of their LCCMR Grant Application for a flocculation water quality treatment system.

VOTE: Motion carried unanimously.

12. EXECUTIVE DIRECTOR REPORT

Nybeck stated that both the Aquatic Invasive Species (AIS) Prevention Plan and the Strategic Plan provides for annual AIS prevention training to various commercial stakeholders within the lake community. The first training session has been scheduled for Friday, April 2nd, 9:00 a.m., at Tonka Bay Marina. He stated that he will be sending out an email to that affect.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:47p.m.

Lisa Whalen, Chair

Tom Scanlon, Treasurer