

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, November 10, 2010
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; 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; and Dick Woodruff, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: None

3. APPROVAL OF AGENDA

The agenda was approved as submitted.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen stated that November 11th was Veteran's Day. She thanked the Veterans for their service and dedication to the country. Additionally, she made the following three Chair announcements. First, she stated that the City of Deephaven has re-appointed former Board member Keith Kask to the LMCD Board. She welcomed Kask and asked LeFevere to administer the oath of office. LeFevere administered the oath of office and Kask was seated as a representative for the City of Deephaven. Second, she reminded the Board that a Workshop/Planning Session to discuss the 2011 Woodland Cove, LLC multiple dock license application is scheduled for November 17th, at 6:00 p.m., at Wayzata City Hall. Third, she stated that staff is currently coordinating the scheduling of the LMCD and Hennepin County Sheriff's Water Patrol annual meeting, in which meeting dates will be proposed in the near future.

**5. APPROVAL OF MINUTES – 10/13/10 LMCD Regular Board Meeting
10/27/10 LMCD Workshop/Planning Session**

MOTION: Jewett moved, McDermott seconded to approve the minutes from the 10/13/10 LMCD Regular Board Meeting and the 10/27/10 LMCD Workshop/Planning Session as submitted.

VOTE: Ayes (12), Abstained (2, Babcock and Kask); motion carried.

6. APPROVAL OF CONSENT AGENDA

Nybeck directed the Board to an amended Board attendance record within their handout folder. He stated the record will replace the original one attached to agenda item 6C.

Olson moved, Woodruff seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (11/1/10 – 11/15/10); **6B**, September financial summary and balance sheet; and **6C**, Draft letter to be forwarded to LMCD Member cities regarding Board appointments for 2011.

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:

- Aquatic Invasive Species (AIS) Task Force
- Save the Lake Committee
- Environmental Committee
- Ordinance Review Committee
- Public Safety Committee
- Personnel Committee

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

AIS Task Force

Woodruff deferred to agenda item 11C for discussion.

Save the Lake Committee

Olson deferred to agenda item 11D for discussion.

Environmental Committee

There was no Committee update.

Ordinance Review Committee

Babcock stated a meeting is currently being coordinated.

Public Safety Committee

There was no Committee update.

Personnel Committee

There was no Committee update.

10. PUBLIC HEARING

There were no public hearings scheduled.

11. OTHER BUSINESS

A. Discussion of recently adopted LMCD Ordinance 208

Whalen stated that Board member Jewett had requested further discussion of this ordinance relating to winter speed limits on the lake, which was discussed at length and adopted at the October 13th Board meeting. Jewett has additional information he wanted to bring forward; noting the importance of accommodating Board member's requests when deemed appropriate. She asked Nybeck to provide an overview of discussions held to date.

Nybeck stated that the following ordinance changes have been adopted for this winter:

- The enactment of a 25 mile per hour (m.p.h.) speed limit for all of Black, Emerald, and Seton Lakes (with appropriate signage at all three entry points). The purpose of this approval was to simplify traversing in and out of the 150' shorezone buffer, which was hard to determine due to existing wetlands.
- The increasing of the maximum speed limit within the shorezone and when vehicles are within 150' from persons fishing, a fish house, pedestrian, skier, skater, skating rink, or property from 15 m.p.h. to 25 m.p.h. The requirement for vehicles to traverse through the shorezone at the shortest distance possible remains unchanged.
- The Board considered a recommendation from the Public Safety Committee to increase the nighttime speed limit from 30 m.p.h. to 50 m.p.h. for vehicles outside of the shorezone and 150' from various activities noted above. However, this proposed amendment did not pass.
- In considering the proposed amendment, former Board member David Gross expressed concern about the impact increasing the speed limit would have on the Deephaven activities held on the ice. Nybeck reviewed a contour map of various bays delineating the shorezone and activity areas that required vehicles to traverse at 25 m.p.h. vs. areas where vehicles had the ability to traverse at 50 m.p.h. during the nighttime.
- He entertained questions and comments from the Board.

The Board asked the following questions, in which Nybeck responded to.

- Confirmation that the LMCD clearly outlines the definition of the shorezone and the area within 150' of the various activities, noted above, within the Code, on public access signage, and within the winter rules pamphlet.
- A press release on the newly adopted rules will be submitted in the near future, as well as noted within the fall/winter newsletter.
- Confirmation that channel areas are defined within the shorezone and subject to the newly adopted speed limit of 25 m.p.h.

Seeing no further questions, Whalen asked Jewett to address the Board.

Jewett stated that the committee originally proposed adopting new and amending various current winter regulations at the September 22nd Board meeting. At that time, representatives from the Sheriff's Water Patrol were in attendance to provide a hands-on perspective of the proposed amendments. However, between that meeting and the October 13th meeting, two of the proposed amendments were not adopted (the use of a straight arm when hitching and towing a human and the increase in the nighttime speed limit outside of the shorezone, or greater than 150' from various activities, to 50 m.p.h.). He has researched adopted speed limits throughout the State of Minnesota, in which Lake Minnetonka was the only location that reduced the speed limit at night and within the shorezone area (noting that all other areas were 50 m.p.h. 24 hours per day). Furthermore, he stated that 25 states around the country maintained snowmobile regulations (nine of which did not have speed limits, two documented traversing within a reasonable and prudent manner, none had nighttime speed limits, and only one that had an established speed limit for a particular lake). He pointed out that the increased speed limit from 15 m.p.h. to 25 m.p.h. within the shorezone and 150' of various activities was increased by 67%. However, the Board was not willing to increase the nighttime speed limit from 30 m.p.h. to 50 m.p.h. outside of the 150' shorezone or greater than 150' from various activities that would have also been a 67% increase. He stated he was not prepared to discuss statistical findings when the motion originally failed; however, as an individual that snowmobiles, he welcomed further discussion by the Board to re-consider increasing the nighttime speed limit from 30 m.p.h. to 50 m.p.h. He entertained questions and comments from the Board.

Whalen acknowledged that the proposed change to increase the nighttime speed limit did not pass by a narrow margin; providing for one of the reasons the matter was brought back before the Board.

The Board discussed this matter at length, in which the following questions and comments were offered:

- LeFevere outlined the procedure in re-considering amending the nighttime speed limit. He confirmed that Ordinance 208 was previously adopted and placed within the Code. Therefore, amending the nighttime speed limit would require consideration of an ordinance amendment for Section 3.11, subd. 5. He stated that the Board had the discretion of adopting a draft amendment at this meeting or requesting the drafting of the ordinance amendment for consideration at the December 8th Board meeting.
- Consideration as to whether the Board would like to define specific vehicles having the ability to traverse at 50 m.p.h. (i.e., snowmobiles only; acknowledging the creation of enforcement difficulties).
- Acknowledgement that the City of Greenwood was opposed to increasing the nighttime speed limit.
- Consideration as to whether Gross' former comments, noted above, were directed to only the Deephaven area, the entire lake, or just within the 150' shorezone.
- Advantages and specific reasons listed for the re-consideration of increasing the nighttime speed limit, which included the following: 1) consistency with the State of Minnesota law, 2) the knowledge that increased safety standards for snowmobiles made increasing the nighttime speed limit more reasonable, 3) that the existence of LMCD's definition for shorezone had assisted in establishing safety standards, and 4) the existence of increased public safety due to the presence of more lighting on the lake.
- Acknowledgement that former consideration of the increased nighttime speed limit was not just about snowmobiles but all motorized vehicles (trucks, cars, ATV's, etc.).

- Continued consideration by the Board to increase the nighttime speed limit for snowmobiles only, which provided for a discussion in comparing manufactured standards between a snowmobile vs. other motorized vehicles (i.e., car or truck).
- Confirmation from LeFevere that a public hearing to amend the nighttime speed limit would not be required. He stated that in light of the Board's expressed interest to move forward sooner than later (due to acknowledged publication needs), he offered to draft a handwritten, amended ordinance for the Board's consideration at this meeting. Additionally, he stated that the Board had the option to direct him to draft an ordinance amendment for consideration at the December 8th meeting.
- Acknowledgment that day and nighttime watercraft speed is significantly different than motorized vehicle speed during the winter. In discussing why the Board would consider increasing the percentage difference for the nighttime speed limit in the winter vs. the summer, as well as why the LMCD would promote snowmobile use on the lake (while discouraging other uses of the lake), the following was offered: 1) disbelief that the LMCD is not discouraging the use of the lake in any way and 2) the that the lake is busier in the summer months.

Whalen recommended the Board entertain a motion to amend the nighttime speed limit, in which LeFevere could provide a handwritten draft of the amended ordinance for Board consideration at the end of this meeting.

MOTION: Jewett moved, Johnson seconded to direct LeFevere to prepare a handwritten, draft ordinance at the end of this meeting for Board consideration to amend LMCD Code Section 3.11, subd. 5 (relating to increasing the nighttime speed limit to 50 m.p.h. for snowmobiles only).

Hartwich stated that discussions held at this meeting all have merit in the consideration of increasing the nighttime speed limit. However, he disagreed with the notion to compare rules and regulations of other bodies of water with Lake Minnetonka.

VOTE: Ayes (9), Nays (5; Baasen, Hartwich, Klohs, Page, and Woodruff); motion carried.

B. Update on Personnel Committee recommendations relating to 2011 LMCD Bookkeeping Functions

Whalen asked Nybeck to provide an update on this agenda item.

Nybeck directed the Board to a memorandum within their packet, dated 11/3/10, which outlined discussions held to date in the consideration of 2011 bookkeeping functions. He highlighted the memo by making the following comments. Since the early 1990's, the LMCD has annually appointed an outside bookkeeper to perform various functions, outlined within the memo. In consideration of the upcoming annual appointments in December, the LMCD's contracted auditor (Steve McDonald of AEM Financial Solutions, LLC- formerly known as Abdo, Eick & Meyers, LLP), recommended the LMCD consider incorporating the bookkeeping functions in-house; acknowledging many of the duties already taking place from within. He stated the Personnel Committee had an opportunity to consider this change, in which it was determined that they concurred with the recommendation, with an exception to continue outsourcing the payroll and income tax reporting functions. With that said, he reviewed estimated costs,

incorporating the outsourced items, ranging from \$7,900 to \$12,500. He stated that a portion of those funds are transitional costs associated with hiring AEM Financials Solutions, LLC, as well as funding four additional weekly staff hours for part-time Administrative Clerk, Diane Agnew. Additionally, the 2011 adopted budget provided for \$12,500 for the bookkeeping line item. At the October 22nd Personnel Committee meeting, the following two options were considered: 1) transition to in-house bookkeeping services (payroll and income tax reports being outsourced), or 2) continue bookkeeping services on a contracted basis (acknowledging the need to initiate a Request for Proposal process). He reiterated that the consensus of the Personnel Committee was to initiate the first option, with the increase of four additional weekly hours for Agnew from 20 to 24 hours (effective January 1st), in which Agnew has agreed to. Additionally, he stated a meeting was held with himself, Treasurer Scanlon, and the current bookkeeper, Lavena Wilhelm of SB Management, Inc., to provide an overview of the committee's reason for the transition, as well as initiating the process involved to make the transition. He stated that if the Board concurred with the committee's recommendation, it is recommended that the Agreement with AEM Financial Solutions, LLC be approved. He entertained questions and comments from the Board.

Whalen further outlined expenses believed to be of a one-time transitional cost (est. up to \$4,500). She acknowledged that direct deposit of employee paychecks will be initiated within this transition and she concurred with the thought process that many of the services provided are currently being completed in-house.

Scanlon believed that this transition is a win, win situation. He stated that not only maintaining the bookkeeping functions in-house provided for a financial benefit, but also an efficiency benefit as financial reports could easily be produced in different formats, as well as in a more timely manner. He confirmed a target start date of January 1st. Additionally, he stated staff has been streamlining the payment of invoices on line and is appreciative of their openness to change.

The Board briefly discussed this matter, in which the following comments were made:

1) acknowledgement that the software purchase will be more of a transition expense (minus updates), 2) further discussion on the estimated cost savings and date for noted results, 3) confirmation that Herman will be the primary project user, with cross-training provided to Agnew, and 4) support for the general concept of the transition. However, concern was expressed in that the narrative of the written agreement lacked a reference to the Letter of Intent. Whalen stated the Board could adopt the process in general (allowing staff the ability to move forward with the transition process), with an amended Agreement for consideration at the December 8th Board meeting.

MOTION: Woodruff moved, McDermott seconded to: 1) approve the process to transition and maintain bookkeeping services in-house for 2011, and 2) to direct staff to revise the transitional Agreement with AEM Financial Solutions, LLC, incorporating comments noted above, for consideration at the December 8th Regular Board Meeting.

VOTE: Motion carried unanimously.

C. Aquatic Invasive Species (AIS) Task Force Update:

- 10/28/10 Lake Area Police Chiefs Meeting
- 11/9/10 Invasive Aquatic Plant Management Forum

- State AIS Task Force Meetings
- Sample AIS Resolutions- changes in distribution of fine revenue for AIS citations

10/28/10 Lake Area Police Chiefs Meeting

Woodruff stated the Lake Area Police Chiefs Meetings was held October 28th, in which many of the local agencies attended. The notion to increase local Aquatic Invasive Species (AIS) enforcement was presented and well received. Additionally, representatives from the Minnesota Department of Natural Resources (MN DNR) were in attendance to explain what is currently taking place and various laws provided for such activity. To this end, the agencies expressed an interest in receiving training by the MN DNR to initiate local enforcement of AIS laws; however, tailored to fit their timing constraints. Additionally, Nybeck had offered to facilitate the coordination of the training. He entertained questions and comments from the Board.

The Board discussed this matter at length, in which the following questions and comments were considered:

1. Confirmation that the local agencies were not being asked to adopt ordinances for new laws, but to just enforce the current state and local laws that are provided.
2. Confirmation that local officers enforcing State of Minnesota laws will be enforced by the city prosecutor, unless referred and accepted by the LMCD prosecuting attorney. Additionally, discussion took place with regards to local agencies having the ability to write citations based on LMCD ordinances if it is a public offense. LeFevere expressed an interest in further discussing and confirming jurisdictional enforcement rights and receipt of revenue with LMCD prosecuting attorney Steve Tallen.
3. Babcock acknowledged and concurred with the enforcement goals that are in motion to prevent the spread of AIS. He stated that the jurisdiction of the LMCD stops at the public access and any enforcement on the public roads would be under local and State of Minnesota laws. However, the City of Tonka Bay expressed concern in adopting the resolution supporting such action due to ambiguity in the distribution of fine revenue and the need to incorporate the judicial system within this process.
4. Woodruff stated that the representatives in attendance at the meeting expressed an interest in the consideration of AIS enforcement, separate from how the fine revenues were disbursed.
5. On behalf of the Minnehaha Creek Watershed District (MCWD), Olson stated that the MCWD is currently considering a resolution that would amend the Minnesota Statutes, Chapter 84D.13 to allow local government to capture revenues from civil penalties relating to AIS (reading the resolution in its entirety).

11/9/10 Invasive Aquatic Plant Management Forum

Woodruff stated that an Invasive Management Forum (for terrestrial and aquatic) was recently held, in which representatives from the MN DNR and other local agencies were present. He represented the LMCD in a special session for local lake associations around the State of Minnesota. He stated that it was a very good session, in which experts in the field answered a number of technical questions provided to them in advance. Those experts acknowledged they were continuing to learn about the control of AIS and confirmed there were no hard, fast answers to many of the questions asked. Additionally, he stated that from a technical standpoint, the LMCD is currently "up to speed" on the current AIS matters.

State AIS Task Force Meetings

Whalen stated she had attended three Task Force meetings to date, in which an estimated 20 representatives discussed a number of different ways to slow down the spread of AIS; acknowledging the task is enormous. The Task Force acknowledged prevention of AIS is not possible; however, was hopeful that slowing down the process would provide time for technology to catch up to control the prevention of AIS. Discussion held to date included the following: 1) how to improve inspection programs, 2) the use of prevention via color coding, and 3) the closing of public accesses (in which the MN DNR cannot do at this time due to, in part, federal monies currently being received and the lakes being defined as public bodies of water). The Task Force will hold a few more meetings, at which time they will formulate ideas for the legislature's consideration at their next session.

Babcock stated he had the opportunity to spend time on Lake Powell, in which there is a mandatory inspection program for zebra and quadra mussels. This program requires all vehicles with trailers to be stopped at the four major accesses entering the recreational area (with the exception of one beach launch area). The operators are to drive their vehicles and trailers onto a large platform that is isolated from any runoff potential into the basin itself, in which a thorough inspection is provided from early morning to late evening. The inspection included going under the watercraft with mirrors, requiring the operator to raise and lower the out drive to confirm all residual water was drained. Additionally, each access had a full decontamination unit. The inspectors acknowledged that they had difficulty controlling early morning launches as they cannot close the launch site, as well as having a small beach access area that did not provide for inspections.

Whalen expounded on the challenges that exist for Minnesota as there are currently 100 access points coming in from other states. She acknowledged that the Task Force also discussed how the State can improve the inspection process, such as the use of wash stations.

Sample AIS Resolutions- changes in distribution of fine revenue for AIS citations

Whalen stated that she hoped all LMCD representatives will take the draft AIS resolution to their member cities for consideration, in which all adopted resolutions (including local agencies such as the MCWD) will be presented to the legislature for their consideration next session.

The Board briefly discussed the adoption of the AIS Resolution, in which the general consensus of the Board was for staff to draft a letter which would resolve many of the questions noted above so that the cities could make a more informed decision. Examples of some of those questions included the following: 1) what are the laws, 2) what prosecuting agency will be handling the various local enforcements, 3) who are the local enforcement agencies, 4) what are the financial effects in the adoption of the resolution (negative or positive) and what financial benefits will be provided to the local enforcement agencies, and 5) confirmation as to whether the enforcement will be a segway into other enforcement abilities (i.e., lack of seatbelt use or driving under the influence).

Nybeck confirmed staff can draft the subject letter in consultation with both LeFevere and Tallen. He

believed that the Board might want to approve this letter prior to distribution to the member cities. Tallen could possibly attend the December 8th Board Meeting and the Board will need to decide, at some point, whether local enforcement of AIS laws can be prosecuted by Tallen.

Whalen expressed concern in timing constraints and did not believe there was enough time for the Board to approve the draft letter. Therefore, she recommended that staff draft the letter and email it to the Board for their review and comments, with the letter to be sent to the member cities directly after.

D. Staff update on LMCD Website Project

Whalen asked Olson to provide an update on this agenda item.

Olson stated that the Board previously approved Phase 1 of the LMCD re-branding efforts, which provided for the establishment of a new logo and identity, the State of Minnesota registration of the logo, and the incorporation of such into the re-design of the LMCD website. The new logo and identity has been established, the registration of the logo is pending release of various educational/promotional materials (newsletter, winter rules pamphlet, etc.), and staff is currently working to move forward with the re-design of the website. He reviewed Phase 1's approved budget of \$12,985 to actual expenditures to date of \$12,325, which included the expenditure of \$5,775 for the re-design of the website with a specific vendor (Flicker Creative, Inc.). To this end, staff has worked with the vendor to narrow down the scope of services required for this process; directing the Board to an outline of those services, dated November 3rd, and a draft Professional Services Agreement in the amount of \$6,000 within their packet. He acknowledged a \$225 increase for this service from the approved budget; however, noted the \$660 savings in the overall budget and the added benefit of a more functional, interactive, and up-to-date website. He recommended the Board approve the draft professional Services Agreement with Flicker Creative, Inc., in the amount of \$6,000.

MOTION: Woodruff moved, Page seconded to approved the Professional Services Agreement with Flicker Creative, Inc., in the amount of \$6,000 for the re-design of the LMCD website.

Babcock asked if the LMCD was going to utilize Flicker Creative, Inc., for the hosting of the website as outlined under "Additional Services Available" within Attachment One of the Agreement, in which Harper confirmed no as the current web hosting company is more economically efficient and compatible with the new website.

VOTE: Motion carried unanimously.

E. Appointment of nominating committee for 2011 LMCD Board Officers

Whalen solicited Board members to serve on the 2011 Nominating Committee for 2011 LMCD Board Officers. Babcock, Baasen, and Kask offered to serve; with Baasen as the chair.

A. Discussion of recently adopted LMCD Ordinance 208 (Con'd)

Whalen asked LeFevere if he was ready to present a handwritten, draft ordinance amendment taking

into considerations comments noted under item 11A above.

LeFevere provided a handwritten, draft ordinance on the overhead that would amend LMCD Code Section 3.11, subd. 5. Specifically, the following was offered:

Subd. 5. Speed and Operation Outside the Shorezone, ~~Outside the shorezone a motorized vehicle may not be operated on the Lake at a speed in excess of 50 miles per hour during the daytime and 30 miles per hour during the nighttime.~~ Outside the shorezone, motorized vehicles may not be operated in excess of the following speeds:

- a. During the daytime, 50 miles per hour; and
- b. During the nighttime, 50 miles per hour for snowmobiles, as defined in Minnesota Statutes, Section 84.81, Subdivision 3, and 30 miles per hour for all other motor vehicles.

Additionally, Lefevere stated the LMCD Code currently maintains a definition for snowmobiles (LMCD Code Section 1.01, subd. 53). Therefore, he recommended the draft ordinance amendment provide for snowmobiles as defined by Minnesota Statute. He recommended that staff review how often the use of the word snowmobile is utilized within the Code for consideration of a future amendment to that section.

MOTION: Babcock moved, Johnson seconded to approve the first reading, waive the second and third reading, and adopt the draft ordinance relating to operation of vehicles on Lake Minnetonka; amending LMCD Code Section 3.11, subd. 5, as noted by LeFevere above.

VOTE: Ayes (9), Nays (5; Baasen, Hartwich, Klohs, Page, and Woodruff); motion carried.

12. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:41 p.m.

Lisa Whalen, Chair

Andrew McDermott, Secretary