

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, December 8, 2010
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; Kelsey Page, Greenwood; Tom Scanlon, Spring Park; Dan Baasen, Wayzata; Doug Babcock, Tonka Bay; Peter Hartwich, Excelsior; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; 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: Chris Jewett, Minnetonka; Steve Johnson, Mound; Andrew McDermott, Orono; and Herb Suerth, Woodland.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

There were no Chair announcements.

5. APPROVAL OF MINUTES – 11/10/10 LMCD Regular Board Meeting
11/17/10 LMCD Workshop/Planning Session

MOTION: Scanlon moved, Baasen seconded to approve the minutes from the 11/10/10 LMCD Regular Board Meeting and the 11/17/10 LMCD Workshop/Planning Session as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Babcock requested that agenda items 6C and 6F be removed from the consent agenda.

Babcock moved, Scanlon seconded to approve the consent agenda as amended, removing agenda items 6C and 6F. Motion carried unanimously. Items so approved included **6A**, Audit of vouchers (11/16/10 – 11/30/10) and (12/1/10 – 12/15/10); **6B**, October financial summary and balance sheet; **6D**, **AEM Financial Solutions**, approval of draft Agreement to assist LMCD on in-house bookkeeping for 2011; and **6E**, **Pond Hockey North America Championship**, approval of 2010 Winter Special Event Permit Application for a 2011 event.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

- **6C**, Appointments for 2011, as recommended in 12/2/10 staff memo, as follows: Auditor Selection, Abdo, Eick, & Meyers; Legal Counsel, Kennedy & Graven; Prosecuting Attorney, Tallen & Baertschi; Official Newspaper, Lakeshore Weekly News; and Banking Depository Resolution for 2011 – 4M Fund

Babcock asked Nybeck to clarify Abdo, Eick, & Meyers' proposed rate of \$6,651 as compared to last year's rate in performing the 2009 audit. Additionally, he asked Nybeck to confirm if the increase was warranted.

Nybeck stated that last year's rate was \$6,440, a \$211 difference. He concurred with the rate increase and confirmed it was a budgeted expense.

MOTION: Babcock moved, Woodruff seconded to approve the Appointments for 2011, as recommended in the 12/2/10 staff memo and noted above.

VOTE: Motion carried unanimously.

- **6F**, Approval of Personnel Committee Recommendations for: 2011 Employee Benefit Package and Updated LMCD Personnel Policy.

Babcock requested that this agenda item be moved to item 11D to accommodate for further discussion.

Whalen solicited the Board's approval to change the Agenda to accomplish that request, in which all concurred. Therefore, item 6F was moved to agenda item 11D for discussion.

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 stated that there was an AIS Task Force meeting scheduled for December 10th at 8:30 a.m., in the LMCD office. The agenda is fairly lengthy, which includes discussion of the 2011 Herbicide Treatment Program. The Task Force is expecting material to be provided by the MN DNR and the US Army Corp of Engineers for that discussion. Additionally, he directed the Board to a document within their packet entitled

“Transportation of Invasive Species.” He stated that both LeFevere and LMCD prosecuting attorney, Steve Tallen, took time to review the current ordinances in the production of the document. He recommended the Board name a committee to further review this document for future consideration by the Board.

The Board discussed Woodruff’s suggestion, in which the following comments were made:

- The question as to whether the AIS Task Force could accomplish this task, in which Woodruff suggested more Board members be involved (such as the Ordinance Review Committee). He offered to serve on whichever committee took on this action. Additionally, he stated that, in the future, the Board will need to consider the LMCD’s level of involvement in the prosecution portion of AIS enforcement (i.e., does the LMCD want to prosecute and absorb the costs).
- In response to the timing requirements of this action, Woodruff stated the matter will not become an issue until spring, in which Whalen suggested a special LMCD work session be scheduled. The Board concurred that a work session would be a good option and requested consideration of that session date be placed on the January 26th regular meeting agenda for scheduling. Woodruff was comfortable with that action; noting that training of law enforcement officers will need to be coordinated and completed by the various agencies during the month of February or early March.
- Babcock directed the Board to the “City Police Tickets” section of the Transportation of Invasive Species document (middle section entitled, State Law Crime), in which he questioned why the costs would go to the LMCD and not the LMCD and City; with the fines going to the City. LeFevere could not speak for Tallen; however, he believed that costs would not be charged to the LMCD if a ticket is written by another agency utilizing state law vs., LMCD Code. The Board asked Nybeck to work with Tallen on the revision of the document to accommodate that concern.

Save the Lake Committee

Olson stated that the fall Save the Lake solicitation letter was finalized. Additionally, staff is currently working on the re-branding of the website and a meeting will be scheduled in the near future to review the 2011 grant proposals.

Environmental Committee

There was no Committee update.

Ordinance Review Committee

Babcock stated a meeting is scheduled for Monday, December 13th, at 6:00 p.m., in the LMCD office.

Public Safety Committee

There was no Committee update.

Personnel Committee

There was no Committee update.

10. PUBLIC HEARING

- A. City of Tonka Bay**, new multiple dock license application to expand the conforming multiple dock site in the lagoon area off of Gideon Bay.

Whalen asked Harper to provide background on this agenda item.

Harper reviewed his staff memo, dated 12/3/10, which summarized the request from the City of Tonka Bay (City) for a new multiple dock license. He stated that two separate licensed sites are currently approved for the City. The main site provides for 47 Boat Storage Units (BSUs), 37 overnight and 10 slides, on 4,801' of non-continuous shoreline in the lagoon harbor on Manitou Road. The second site provides for 10 BSUs on 1,000' of continuous shoreline on Woodpecker Ridge Road. He reviewed the current configuration of the dock structures and stated that the applicant has proposed to consolidate the two sites by expanding the main site by 40 (10' x 25') BSUs; 97 BSUs on 5,798' of non-continuous shoreline. Additionally, a tie pole is proposed that would extend one foot beyond the 24' docks. He highlighted four LMCD Code sections to evaluate the application. These included: 1) Code Section 2.03, subd. 7- outlines the multiple dock license process, 2) Code Section 2.01, subd. 1- outlines authorized dock use area requirements, 3) Code Section 2.02, subd. 7- outlines shoreline calculation rules, and 4) Code Section 2.03, subd. 3- outlines subjective criteria for Board consideration. An email, dated 10/21/10 from Jack Gleason of the MN DNR, was provided within the Board packet. He recommended Board approval of the application for 2011, subject to the amount of useable shoreline dedicated to the license is reduced to 4,826' for determining the number of restricted watercraft that may be stored at this site; providing for a three foot increase to the straight line measurement calculation. He entertained questions and comments from the Board.

Whalen asked the applicant if they had further information or comments that they would like to provide the Board.

Mr. William LaBelle, Mayor for the City of Tonka Bay, introduced himself, along with the City Administrator Joe Kohlmann, City Council Member Anthony Marceau, Public Works Superintendent Greg Kluver, and City Engineer Darren Alexander; all of which were in attendance to answer any questions that the Board may have.

Hartwich asked the City when discussions were initiated on this application process.

Kohlmann stated that City initiated communication on the application process with the LMCD in the spring of 2010. He stated the LMCD staff has been guiding the City through the application process since that time.

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

Mr. Jonathan Grothe, 5040 Manitou Road, stated that he lives directly across from the fishing pier. He asked if the proposed application changes the depth of the boats that are allowed to be moored. Additionally, he asked what the expandable shoreline footage for BSUs being constructed towards the fishing pier was.

Harper stated the length of the dock structures will be 25', although he was unsure of the City's docking policy. LMCD Code does not have a limitation on the length of the boat, provided it is stored within the authorized dock use area for this site.

Whalen asked the City if they had a boat length restriction in place.

Kohlmann stated the City currently has a 21' boat length restriction. However, with the installation of longer dock structures, the City plans to consider increasing the boat length restrictions.

Mr. Jeff Clapp, 20 Birch Bluff Road, stated that he currently shares a dock space and truly enjoys its use. He favored approving the application as it is well needed. He expressed an interest in the City increasing the boat length restriction to 25' and asked if the City provided sufficient parking for the expansion of slips.

Kohlmann stated there are a number of parking spaces in the area, as well as the availability of utilizing the service road for parking.

Whalen asked how many parking spaces are available, in which Kohlmann confirmed 38 marked spaces (not counting the service road use).

Klohs asked what the City's motivation was to expand the availability of the BSUs.

Kohlmann stated there are 50 individuals currently on the waiting list, in which he believed this application would accommodate some of those that are on the list.

Hartwich asked how long the slip was available to the resident once they are awarded the use of a BSU, in which Kohlmann confirmed for a life time as long as they continue to renew their permit.

There being no further comments, Whalen closed the public hearing at 7:35 p.m.

Whalen asked questions, or made comments, that staff and the applicant responded to. Those questions and comments are as follows:

- Clarification on the decrease in BSUs on Woodpecker Ridge. Harper stated that the site in 2010 was approved for 10 BSUs and previously was approved for up to 20 BSUs. The BSUs were dedicated to adjacent property owners, in which the City has slowly been eliminating that use through policies put in place due to the City's shoreline ownership rights. In the current application, the number of BSUs on Woodpecker Ridge would be reduced to eight.
- Confirmation that she liked the extension of the walkway; providing for less boat traffic and greater protection of the shoreline.
- Confirmation that the lagoon area is a no wake zone.

Babcock stated that he and staff had worked together with City staff to address concerns that may have come up in this application process. He was comfortable with approval of the application and had noted that the City received his input on the management of the docking program; relevant to other surrounding municipal docking programs.

Hartwich asked if the area was defined as lagoon or wetland.

Nybeck could not speak for the Minnehaha Creek Watershed District; however, believed it would be categorized as some form of a wetland.

Hartwich stated this was a wetland and expressed concern in almost doubling the size of boat traffic going into this concentrated area. He was not comfortable with the re-distribution of the BSUs but was glad that staff defined what was usable shoreline. This is a fairly large addition into the wetland area; noting the Board's prior discussion and expressed concerns for turbidity and channel widths in considering other applications maintaining BSUs in wetland areas. Additionally, he expressed concern in the width of the lagoon area, in which a brief discussion was held estimating the narrowest width area at 50'; ranging up to 100' in width.

Whalen requested clarification on the water depth levels within the lagoon area, in which staff directed her to the site plan which documented 3.5' to 6' of water depth levels. She stated that the City may want to take that into consideration when discussing larger boat storage.

Kask stated that the Board, in considering another multiple dock license application within a wetland area, placed a restriction to back into the BSUs to mitigate turbidity within the area, which could be a possible restriction by the City, in which Babcock concurred as Lord Fletchers has the same restriction for safety purposes.

MOTION: Babcock moved, Klohs seconded to approve the 2011 City of Tonka Bay new multiple dock license application, subject to Harper's recommendation.

VOTE: Aye (9), Nays (1, Hartwich); motion carried.

- B. City of Excelsior**, new multiple dock license and special density license applications to reconfigure and expand the conforming multiple dock sites on Excelsior and St. Albans Bays.

Whalen asked Harper to provide background on this agenda item.

Harper reviewed his staff memo, dated 12/2/10, which summarized the request from the City of Excelsior (City) for a new multiple dock and special density license. The City is a legal, conforming multiple dock facility with 114 Boat Storage Units (BSUs) at 3,120' of non-continuous shoreline (BSU density of 1:27'). The City has six dock sites, which he reviewed in detail. The applicant has proposed to install an additional 14 overnight BSU's. To accomplish this, the City would install a 16 BSU dock north of the existing Common's area docks, remove a four BSU slide from the Hidden Lane dock and reconfigure it to accommodate two additional BSUs. He highlighted four LMCD Code Sections to evaluate the applications. These included: 1) Code Section 2.03, subd. 7- outlines the multiple dock license process, 2) Code Section 2.02, subd. 1- outlines the 1:50' general rule for watercraft storage allowances, 3) Code Section 2.05, subd. 2 – outlines special density requirements, and 4) Code Section 2.05, subd. 4 – outlines special density license criteria requirements. He reviewed the City's proposed special density public amenities in detail; including their historical approvals. The current special density license requires providing 33 public amenity points annually, which were listed out in his staff memo. One citizen comment was received (Margaret Davis, via email dated 12/6/10), which was provided within the packet and read for the record. If the Board was comfortable with this evaluation of amenities proposed, he recommended approval of the City's 2011 new multiple dock license application and to direct LeFevere to prepare Findings of Fact and Order for approval of the special density license application. He entertained questions and comments from the Board.

Babcock stated that he liked staff's evaluation of the City's amenities. He recommended deleting amenity C5, under Public Service, "Complimentary Use of Municipal Dock for the Minnehaha" and add a "General Amenity" Category "A", entitled, "Port of Call for Commercial and Historical Vessels." Additionally, he recommended that amenity be provided 10 points as he believed providing such is an extremely valuable, lake-wide public service that benefits those that do not have the ability to utilize docking for easy access to the lake.

Whalen questioned if the Board had the ability to revise the amenities.

Babcock confirmed the Board, within LMCD Code, does have the ability to revise amenities, as long as the applicant agreed with the revisions. Additionally, he requested clarification on the dimensions of the Hidden Lane dock structure.

Mayor Nick Ruehl confirmed the Hidden Lane dock structure dimensions as 30' long with 24' slip extensions.

Whalen asked the Board if they had further questions for Ruehl, in which the following questions, with Ruehl's responses, were provided:

- Clarification that the City did not have a concern with the revision in amenities noted by Babcock above.
- Confirmation that canopies will not be utilized on the BSU's and that he was unsure if there was a City Code provision for such.
- Clarification as to whether provision #9 of the new multiple dock license application, "Boat toilet pumping services provided; yes" was one in the same with Amenity B3, "Water and sewer hookups for commercial boats,". The City's Public Works Superintendent, Dave Wisdorf, confirmed that they are one in the same and that water and sewer hookups are only provided for commercial vessels. Woodruff recommended the application be amended to note "commercial use only."
- Confirmation that the current city council does not plan on expanding to a sixth docking structure. However, Ruehl could not speak for future councils. Ruehl expounded in detail on historical discussions and actions taken to date by the City for the consideration of the proposed 5th dock structure.
- Confirmation that there is a waiting list for the residential dock permits and that a portion of the revenue received is applied to the City's operating budget.
- Confirmation that the City's docking program does provide for a non-residential rate. However, residential placement takes priority and, as noted above, currently provides for a waiting list. Additionally, all permit holders provide proof of residential status. Therefore, any relocation of the permit holder would only be retained if relocated within the city, as long as there is a waiting list.

Whalen opened the public hearing at 8:14 p.m.

Ms. Kim Lesinski, 248 Lake Street, stated that she appreciated all the amenities the City provides and that she is actually one of the residents that may benefit from approval of this application as she is on

the waiting list. However, she opposed the application and concurred with Margaret Davis' comments (which were read into the record by Harper) that the shoreline needed to be protected and asked when the construction/expansion was going to stop. She confirmed that she lives directly behind the fourth and fifth dock structure and expressed concern with the added land and water traffic. She concurred with adding additional kayak rentals, but expressed concern with additional motorized boat traffic.

There being no further comments, Whalen closed the public hearing at 8:16 p.m.

Whalen acknowledged that the City has placed riprap along their shoreline and has worked with the Minnehaha Creek Watershed District (MCWD) on other shoreline protection programs. However, she asked if the City had any plans to place some shoreline buffers. Additionally, she asked what mechanisms are in place that would prevent canopies from being erected.

Ruehl stated that the shoreline along the Commons area is either protected by riprap or boat slides. He explained how the beach area had been protected by wind/wave damage through a program implemented with the MCWD. Additionally, he stated that a resident at 859 Hidden Lane has proposed to work with the MCWD on a shoreline stabilization project for a slopped area adjacent to that address. As noted above, he could not confirm if there currently was a mechanism in place to prevent the erection of canopies. However, his initial reaction would be to not do anything as the subject has not been considered by the City and he could not imagine it to be. Should the Board entertain such a restriction, he would prefer to discuss the matter at the City level first.

Woodruff requested confirmation that the MCWD and Minnesota Department of Natural Resources (MN DNR) have not submitted any comments to date, in which Harper confirmed they have not. Additionally, Page confirmed that he discussed this matter with the City of Greenwood as Hidden Lane is adjacent to St. Alban's Bay, in which the City did not have a concern with the request.

Hartwich stated that a sign of a healthy relationship is to be able to accept differences of opinions when a matter is not agreed upon. He believed the City's request is about economics and stated that he would be more favorable to accepting the proposed application if it was the City's only option to produce revenue. He believed that the proposed application is an expansion at the lake's expense.

Whalen confirmed that financial aspects behind the proposed application are not a part of the criteria for the Board to consider approval or denial of. However, she concurred with Hartwich that differences of opinion, and respecting of such, are common within governmental operations.

Hartwich concurred with Babcock that amenities are for the public use. However, the public's use of the docks is a small percentage. He confirmed that 30% of the dock program's revenue does come back to the operating budget. However, he was unsure if the life time waiting list for the use of the public docks was fair and believed that the waiting list is long, due to the lack of limits that it provides. He believed there were other revenue making alternatives available, without the ability to expand; noting the City of Excelsior is the third highest in renting out the slips as compared to what other surrounding municipalities are receiving. He welcomed the opportunity to have more alternative revenue generating discussions at the City level.

Whalen confirmed Hartwich's comments are good, but reiterated the need to take his concerns up at the City level as they do not have any bearing on the Board's consideration of the applications before them.

Hartwich agreed that the application meets the criteria for approval. However, he stated that the application does not meet the subjective criteria in considering differences of opinion. A visible anomaly currently exists in that the City's shoreline is the last pristine, panoramic view that is open to the public for viewing of Lake Minnetonka. He believed that kind of grass roots philosophy, that is the essence of the City, needs to be maintained. He stated the City has been very open and gracious in their discussions; however, the LMCD needs to consider the subjective criteria in accommodating and redistributing the slip usage to make the application valid before all shoreline is taken away.

Whalen stated that she did not necessarily disagree with Hartwich's comments. However, to accommodate his concerns, an ordinance amendment would need to take place. As it stands right now, she believed that the applications meet all criteria (including subjective criteria) and that the Board would be hard pressed to deny the applications.

Babcock stated that the amenities do not determine the watercraft storage allowance, but the shoreline footage the City has available relative to the 1:10' special density allowance. The general purpose of the special density license is to encourage and promote public access to the Lake. In the past, the Board has decided that boat slips that are held for residential use only are an acceptable amenity that provides public access. There is some question as to whether that concept is adequate; however, that needs to be considered on a lake-wide basis as other municipalities operate in this manner as well.

Hartwich believed that most people enjoy the lake from the land, not from the use of the lake.

MOTION: Kask moved, Babcock seconded to: 1) approve the 2011 City of Excelsior new multiple dock license application, subject to the fifth dock in the Excelsior Common's area to be the same dimensions as the existing four docks already present; and 2) direct LeFevere to prepare Findings of Fact and Order for the approval of the special density license application, subject to staff clarifying the public amenity points that exist for recording within the appropriate form.

Babcock requested a friendly amendment to delete amenity C5, under Public Service, "Complimentary Use of Municipal Dock for the Minnehaha" and add a "General Amenity" Category "A", entitled, "Port of Call for Commercial and Historical Vessels" Additionally, he proposed the dock structures on the Hidden Lane's site plan document each slip and dock dimension. Kask agreed to the friendly amendment.

Hartwich, who spoke up to make a motion just seconds after Kask, asked LeFevere what processes were available when motions are made almost simultaneously.

LeFevere stated that the motions made would be the call of the Chair, unless someone challenged the decision.

Hartwich stated that he would like to challenge the motion.

Whalen asked Hartwich what motion he would have made, in which Hartwich stated he would have moved to deny the applications. Whalen then asked the Board if anyone would have seconded the motion, in which no one would have provided a second.

Hartwich acknowledged that his challenge is on the record.

VOTE: Ayes (9), Nays (1, Hartwich); motion carried.

The meeting was recessed at 8:37 p.m. and reconvened at 8:41 p.m.

11. OTHER BUSINESS

A. Staff update on 2010 LMCD Code Enforcement Project

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

Herman directed the Board to her staff memo, dated 12/3/10, in which she highlighted the following information:

- The 2010 Proactive Code Enforcement Program was initiated in 2006 for the purpose of enforcing watercraft storage ordinances at residential sites on Lake Minnetonka.
- The primary enforcement efforts included: 1) identifying and/or re-inspecting sites storing five or more restricted watercraft that do not have a multiple dock license, as well as 2) sites storing three or four larger, restricted watercraft that do not comply with the 1:50' General Rule.
- She reviewed staff time spent and the resources utilized for the program.
- She reviewed the three part communication process established for property owner notification.
- She provided an overview of the 2009 prosecuting matters, in which 24 complaints were filed for non-compliance (nine charged in violation of Code Section 2.03, subd. 1 and 15 charged in violation of Code Section 2.02, subd. 2. Of those, 20 property owners signed a Continuance for Dismissal with conditions and four pleaded guilty with conditions and sentence stayed.
- She provided a detailed overview of the 2010 Code enforcement priorities and respective findings for 167 sites.
- She provided an overview of the 2010-2011 prosecuting matters, in which 12 complaints are due to be filed with the LMCD prosecuting attorney in January, as well as those subject to possible filing upon inspection in the 2011 boating season.
- She recommended staff continue with the priorities set in 2010 for the 2011 boating season.
- She entertained questions and comments from the Board.

Woodruff requested clarification on the purpose of defining watercraft storage and its process, in which Herman provided an overview of.

Scanlon questioned if the enforcement process could be streamlined from three years to two years.

LeFevere stated it is up to the Board's discretion because prosecution could take place on the first inspection day; taking into consideration public relations and staff resources.

Scanlon concurred that public relations is important; however, acknowledged the success rate of the program as 100% of the complaints filed were settled in the LMCD's favor. Additionally, he recognized those out of compliance infringing on others residing on the lake that maintain compliance.

The Board briefly discussed streamlining the communication process, in which a suggestion was made to provide the initial communication letter, with follow-up of the second communication process the same boating season and the defining of storage within the second boating season. In conclusion, the Board directed staff to take into consideration the Board's comments made at this meeting, draft a more streamlined enforcement policy, and present it to the Board for consideration in January.

B. MCWD, review and comments on Minor Plan Amendment relating to Managing and Prevention of AIS.

Whalen stated that she had recently met with MCWD Administrator Eric Evenson in regards to this matter. She prefaced discussion of this agenda item by providing the following background:

- The MCWD (or any watershed district) is required to file a plan with the Board of Water and Soil Resources (BWSR) every 10 years. If a watershed district would like to amend their plan, a process is in place to file a major or minor plan amendment.
- There are two questions that will need to be considered by BWSR. First, whether the amended plan would be a minor or major amendment. Second, whether watershed districts have authority over structures.
- If BWSR determines that watershed districts have authority over structures, a stakeholder task force would be formed, providing the LMCD the ability to serve on.
- She asked Olson (who serves on the MCWD Board of Managers) if he had any comments to add.

Olson stated that the MCWD Board of Managers approved \$180,000 in expenditures for Aquatic Invasive Species (AIS) testing equipment to be utilized by their staff. The MCWD approved this expenditure for the expressed purpose of not wanting to wait two years in dealing with AIS; noting this process will be streamlined in one year.

Whalen concurred with Olson; however, noted that the expenditure of \$180,000 would not only cover testing equipment but also AIS programming, staff, etc. She stated that when meeting with Evenson, she expressed an interest in not waiting a year to implement AIS programming specific to Lake Minnetonka and had noted that staff will be meeting with the MCWD in the near future to initiate plans for such. She entertained questions and comments from the Board.

Woodruff stated that this agenda item is also up for discussion at the next AIS Task Force Meeting. He believed it was important to discuss the roles performed by the various agencies and how those roles could be efficiently managed. He expressed concern that he became aware of this matter via a request for comments letter that was sent to his represented city, in which comments were due by January 7th. For this reason, he encouraged Board members to talk to their respective city.

Babcock stated that he appreciated the funds that are being expensed by the MCWD. However, he was reluctant to support the expenditure of local levied funds for the protection of AIS outside of the levy area;

noting that he understood that AIS is a two-way threat. Additionally, he was not in favor of another agency regulating AIS and was disappointed in the timing of the MCWD's consideration for the expenditure of funds for such purpose. He recommended the Board inform the MCWD that the LMCD is not in favor of overlapping regulations.

Whalen stated that when she met with Evenson, she expressed an interest in not duplicating roles (i.e., the permitting of dock structures). She clarified that the amended plan needs to be watershed district wide and not just specific to Lake Minnetonka.

Babcock reiterated that he applauded the MCWD's efforts. However, he expressed disappointment in the MCWD wanting to take such a broad role in this matter and expend such funds for the following reasons: 1) Lake Minnetonka has been, and is, the gem of the watershed district, 2) the LMCD had requested their support for the past 18 years, and 3) the infestation of AIS has been a significant problem for the past two years. He reiterated the need for the Board to take an official position on this matter by documenting that the LMCD would be willing to cooperate and/or receive funding from the MCWD to further enable the LMCD's licensing program to handle the issues on their behalf. It should be documented that the LMCD believes that the layering of governmental regulations is not a wise appropriation of tax payer money.

Nybeck stated that he attended the MCWD meeting with Whalen and Evenson. At that time, he reviewed the LMCD's current dock licensing program, in which he confirmed that not all docks on the Lake are permitted. Evenson stated that the MCWD's dock permitting program will have a different intent, in that they would permit all dock structures, boat lifts, etc., in and out of the lake, for the purpose of making sure that they are AIS free.

Page concurred with Babcock's comments and confirmed that the City of Greenwood received the MCWD comment letter, which was recently discussed by their City Council. He believed that the MCWD was trying to usurp the LMCD's charges; providing examples of such. Additionally, he stated the City of Greenwood's comments were similar to those expressed by Babcock at this meeting. He believed that it was beyond comprehension that the MCWD would propose such a plan for Lake Minnetonka. The City of Greenwood intended to comment on the minor plan amendment, in which they did not believe it was appropriate for the MCWD to be involved with regulating boats or structures on the lake.

Whalen reiterated that the plan amendment had to be submitted watershed district wide and that Lake Minnetonka is one of many bodies of water within the watershed. She questioned if Lake Minnetonka could be singled out from the plan, noting the importance of all public agencies to comments on it.

Babcock stated that the LMCD has never received this level of support from the MCWD before, acknowledging that the risks have been present for the past 20 years. The LMCD has proposed similar AIS programs in the past and that the MN DNR has not supported such programs. He questioned what the MN DNR's support will be for the plan amendment.

Whalen stated that the LMCD should have a better idea of the MN DNR's position at the upcoming AIS Task Force meeting. Additionally, she stated that the MN DNR has been considering statewide AIS programs as well.

MOTION: Babcock moved, Page seconded for the LMCD to take an official position on the MCWD Minor Plan Amendment as follows: 1) that the LMCD is not in favor of the MCWD unilaterally taking over the programs noted within the Minor Plan Amendment, 2) that the LMCD encourages the MCWD to work with the LMCD, MN DNR, and other local agencies (including the member cities) to come up with a way to use the funding on a proactive basis for Lake Minnetonka, 3) that the LMCD realizes the MCWD has to do something for other surrounding lakes (other than Lake Minnetonka), 4) that Lake Minnetonka would be an exception to the Minor Plan Amendment in that a high degree of cooperation amongst the regulating agencies for Lake Minnetonka needs to be achieved, and 5) that the MCWD going off on its own and proposing to manage and implement the noted programs is not the direction the LMCD is in favor of at this time.

Baasen concurred with Babcock's comments and believed the LMCD should provide firm comments for the record.

Woodruff stated that he was not aware of the MCWD's motives; however, he commented that their tax capacity pails to what the LMCD's capacity is. He concurred with a number of the comments noted above and felt it was important to point out that the MCWD's Board of Managers are not representatives of the cities surrounding Lake Minnetonka, in which the LMCD Board is. Therefore, if the MCWD proceeds without the cooperation of the LMCD or local agencies, the cities surrounding the lake lose any influence and control of what might happen on this lake.

Kask concurred with the comments made above. Additionally, he reiterated that the Board has expressed an interest in maintaining public relations while proceeding in the importance of LMCD Code enforcement programs (as discussed under item 11A).

Olson stated that it is his understanding that the primary existence of the MCWD was flood control and water quality. As AIS has become more prevalent, the watershed districts needed to consider programs for the prevention of AIS that are currently not present (examples of such were provided); acknowledging the need to look further into AIS programming. The MCWD's goal is to deal with 134 lakes and streams that flow into the Mississippi River. He believed that if the MCWD proceeded with the proposed plan amendment, they would be delighted to execute it through the LMCD. The MCWD's willingness to now become involved with AIS is encouraging and that their intention is not to overlap other regulatory agencies.

Babcock questioned how the MCWD can propose such an amendment without coming to the Board and soliciting the LMCD's input. He did not believe the LMCD deserves such an action.

Page stated that the proposed amendment (specific to Lake Minnetonka) should be a policy that is approved by the LMCD. With that said, he believed it was unpalatable that an agency would take it upon themselves to adopt a plan that cannot be undertaken in the first place (due to its scope), and expect the LMCD to carry the plan out.

Klohs stated the MCWD has a larger scope than what is charged by the LMCD. Therefore, the LMCD has to be sensitive to the scope of their jurisdiction. He acknowledged the MCWD's funding capabilities that they have, which has always been the main issue in the prevention of AIS programming. Therefore, he recommended the LMCD be cautious in making sure we are sensitive to the larger scope of the concern or they may just take over the LMCD's jurisdiction.

Hartwich stated that one can never communicate enough; providing clear expectations of the LMCD.

Woodruff stated that he has been involved on the AIS Task Force for two years and recognized that funding has always been a significant issue, along with understanding the latitude the LMCD has maintained under the approval of the MN DNR. He believed that the discussion held at this meeting was beneficial and necessary.

Baasen stated, for the record, that if the LMCD condoned the actions outlined within the plan amendment for the purpose of being nice, he believed it was the second step in the process of undermining the authority of the LMCD and exposing elimination of the agency.

VOTE: Motion carried unanimously.

C. Chair update of LMCD's 44th anniversary "Save the Lake" Recognition Banquet Dinner:

- Schedule Date and Location
- 2010 Hennepin County Sheriff's Water Patrol Special Deputy Candidate

Nybeck stated that two matters need to be resolved by the Board at this meeting. First, the date and location of the banquet needs to be scheduled, offering the Bay View Event Center or the Lafayette Club on specific dates. Second, a decision on the special deputy to be recognized needs to be made, adding that Lt. Steve Hartig from the Sheriff's Water Patrol has recommended Special Deputy Laurent Wickland.

The consensus of the Board was to hold the Banquet Dinner at the Lafayette Club on Wednesday, February 2, 2010.

MOTION: Kask moved, Johnson seconded to recognize Laurent Wickland as the LMCD's special deputy honoree to be recognized at the 44th Anniversary "Save the Lake" Recognition Banquet Dinner.

VOTE: Motion carried unanimously.

D. Discussion of Personnel Committee recommendations for:

- Updated LMCD Personnel Policy
- 2011 Employee Benefit Package

Whalen stated this agenda item was removed from the consent agenda at Babcock's request. She asked Babcock to proceed with his comments.

Babcock directed the Board to Section 11 in the proposed Updated LMCD Personnel Policy relating to

“sick leave”. In particular, the last sentence in the first paragraph that outlines a maximum accrual of 720 hours (90 days) of sick time. He believed that if the LMCD is going to provide its full-time employees short-term disability insurance, a conflict existed in maintaining the current sick leave accrual rate. However, in understanding that the proposal is for long-term disability insurance, he rescinded his comments. He believed the sick leave accrual rate continues to be unusually high and a liability, as documented previously by the LMCD auditor.

Woodruff believed that the liability is a balance sheet item and not a major concern for the LMCD.

Nybeck stated that the current sick leave accrual rate falls in line, and even below, with what is provided by a number other public sector agencies in the surrounding area. With regards to a liability to the LMCD, the maximum buy-back for the agency is 180 hours (25% of accrued sick leave, with a cap of 720 hours that may be accrued by an employee).

Babcock questioned how the costs of providing long-term disability insurance in 2011 (\$1,257) could be paid with anticipated bookkeeping savings when he believed that these savings will not be realized until 2012.

Nybeck stated that when the Board decided to change the bookkeeping from contracted to primarily within the LMCD office, the costs savings were projected for 2011. In these cost savings estimates, the Board approval allowed for an additional eight hours on a weekly basis for the part-time Administrative Clerk position (Diane Agnew). Additional funds are available in 2011 since Ms. Agnew’s weekly hours were increased by four rather than eight.

Kask stated that if the Board decides to provide long-term disability insurance to its full-time employees, he recommended that it be implemented where any benefit claim would not require taxes that would need to be paid by the employee. If this is a benefit paid by the LMCD rather than the employee, he believed that any benefit claims would need to have taxes paid by the employee. However, he believed that these taxes would not need to be paid by the employee if this benefit was paid by the employee themselves. The Board would have the option to gross up the employees pay to offset this increased cost to the employee.

Woodruff concurred with Kask’s comments.

MOTION: Woodruff moved, Babcock seconded to adopt the updated LMCD Personnel Policy and 2011 Employee Benefit Package for its full-time employees, subject to the following three additional minor changes as outlined in the staff memo dated 12/8/10: 1) In Section 5-Compensation, the heading for “Temporary Employees” should be changed to “Temporary/Permanent Employees” on page 5, 2) In Section 13-Unpaid Leaves, the word “other” in the second to the last sentence in the Parenting Leave paragraph on page 10 should be changed to “otherwise”, and 3) In Section 21-Non-Disciplinary Separation, the words “30 days” in the last sentence in the Benefit Continuation paragraph on page 16 should be changed to “60 days.”

VOTE: Motion carried unanimously.

The consensus of the Board was to further check into the points raised by Kask relating to long-term disability insurance. LeFevere stated that he would check with a benefits counsel in the office, in which Nybeck will report the outcome to the Personnel Committee in January.

12. EXECUTIVE DIRECTOR REPORT

Nybeck directed the Board to the MN DNR Report in the handout folders relating to the number of car/trailer launches through Lake Minnetonka public accesses during the 2010 boating season. He stated that he was very active in this project this past boating season and he encouraged the Board to review the Report. Board members were encouraged to contact Nybeck with questions. Additionally, he offered to invite Tim Kelly from the MN DNR to provide a short presentation of this project if the Board so desired.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:53 p.m.

Lisa Whalen, Chair

Tom Scanlon, Treasurer