

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, May 9, 2012
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:02 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; James Doak, Woodland; David Gross; Deephaven; Gary Hughes, Spring Park; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Sue Shuff, Minnetonka; and Mark Sylvester, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Anne Hunt, Minnetrista.

3. APPROVAL OF AGENDA

Babcock proposed two items to be added to the agenda: First, he directed the Board to their handout folders in which there was a copy of the 2012 MN DNR Watercraft Inspection Grant Agreement. Second, he wanted to provide an informational update on the Ben and Judy Simmons new multiple dock license application that the Board considered at their April 25th meeting. He recommended those items be added as 9E and 9F, respectively.

MOTION: Baasen moved, McDermott seconded to approve the agenda as amended, adding agenda items 9E and 9F as noted above.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

Babcock stated that he had no Chair announcements.

Nybeck recommended the Board consider moving the May 23rd meeting to the LMCD office for consideration of any 2012 Temporary "Low Water" Dock Extension Permit applications; with the possibility of cancelling the meeting based on discussions held under agenda item 9A this evening and/or the receipt of no applications.

Babcock stated that the Board will consider this after discussions held under 9A this evening. However, for the record, the meeting location for May 23rd will be moved to the LMCD office.

**5. APPROVAL OF MINUTES – 4/18/12 LMCD Special Board Meeting
4/25/12 LMCD Regular Board Meeting**

MOTION: McDermott moved, Baasen seconded to approve the minutes from the 4/18/12 LMCD Special Board Meeting as submitted.

VOTE: Motion carried unanimously.

McDermott stated that he had received over 25 emails and half dozen calls from Carmans Bay residents who supported the treatment and expressed their complete satisfaction with the results. He recommended amending the minutes under Objective A-3 on page 7 to reflect this comment he made on May 9th.

MOTION: Baasen moved, Shuff seconded to approve the minutes from the 4/25/12 LMCD Regular Board Meeting as amended, incorporating McDermott's comments noted above.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Sylvester moved, Johnson seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: Audit of vouchers (5/1/12 – 5/15/12).

7. PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda (limited to 5 minutes)

There were no public comments.

8. PUBLIC HEARINGS

There were no public hearings.

9. OTHER BUSINESS

A. Consideration of 2012 temporary "Low Water" Dock Extension Permit Applications

Babcock asked Harper to provide background on this agenda item.

Harper made the following comments:

- An approved "Low Water" resolution exists, which provides for temporary dock extensions in 2012, when deemed appropriate.
- He highlighted the applications received, to date, for temporary dock extensions. Currently, 13 General Registration Forms, six Temporary Dock Extension Applications (for residential sites), and 15 Temporary Dock Extension Applications (for licensed multiple docks) have been approved. Three Temporary Dock Extension Applications are being considered within this agenda discussion.
- Staff conducted a tour of the Lower Lake on May 7th to assess whether current dock installations conform to normal dock use area (DUA) length regulations, or the 20' extension allowed by the General Registration Form. A number of sites with extended dock lengths were observed without a General Registration form on file. Additionally, the following areas were documented as being shallow: Lower Lake South and North (Greenwood and Minnetonka Beach); Wayzata Bay - along Ferndale Road (Wayzata); Smiths Bay - along County Road 15; Maxwell Bay; and Stubbs Bay

- (Orono). He provided a logistical overview, via photographs, of an approved dock extension in Minnetonka Beach (approximately 298' long), as well as an unauthorized dock extension in Stubbs Bay. He confirmed that staff would be enforcing compliance on the Stubbs Bay dock.
- He provided Lake level readings from April 11th to May 9th (providing for this date's reading to be 928.40'). Additionally, he provided historical Lake level readings from the year 2000 forward; confirming it has typically been about one foot higher this time of year.
 - He entertained questions and comments from the Board.

Babcock stated that he believed there were three options for the Board to consider because the Code allows the Board to terminate the "Low Water" resolution since current levels are above 928.0'. These options include: 1) process the three Temporary Dock Extension Applications and leave the resolution in place, 2) process the three applications and terminate the resolution (preventing the submittal of any new applications from that point forward), or 3) terminate the resolution and not approve the current applications before the Board. He questioned whether temporary dock extensions are needed since the Lake levels have risen.

Gross asked staff if there were any Lake level readings available during the mid to late summer of 2000 and 2004.

Nybeck stated that in the summer of 2000, the Lake level never rose above 928.6' and the dam was not opened. In 2004, Lake levels went above 930.0' (providing for significant precipitation that year).

Three Board members (McDermott, Page, and Sylvester) supported processing the three Temporary Dock Extension Applications and leaving the "Low Water" resolution in place. This was the consensus of the Board and Babcock asked staff to provide an overview on the applications before the Board.

Thomas Brostrom (2050 Shoreline Drive)

Harper stated the maximum DUA length for this residential site is 100'. During normal lake levels, the water depths are 4.13' at the end of the DUA. To reach a water depth of 4.13', an additional 160' of dock extension would be needed. The applicant has requested a 100' extension (for a total dock length of 200'). Staff has forwarded this request to the Board because the abutting neighbors have obtained an extension of 140' with similar water depth readings.

MOTION: Gross moved, Johnson seconded to approve the 2012 Temporary Dock Extension Application as submitted.

VOTE: Motion carried unanimously.

Cliff Swenson (2965 Casco Point Road)

Harper stated the maximum DUA length for this residential site is 56'. This site has 20' of shoreline and was granted a variance from the LMCD Code in 2007. An additional 54' dock extension would be needed to reach the water depths approved by the 2007 variance (3.92'). Staff has forwarded this request to the Board because of the approved 2007 variance. He clarified that the applicant has received a letter of consent to the proposed dock extension from both of the abutting neighbors.

MOTION: McDermott moved, Page seconded to approve the 2012 Temporary Dock Extension Application as submitted.

VOTE: Motion carried unanimously.

Miles and Pamela Canning (21100 Excelsior Blvd.)

Nybeck stated that this site has 11.8' of shoreline and its DUA is established by a 2007 Approved Court Settlement. Features of the established DUA include: 1) 9.8' wide x 28' long, 2) the storage of one watercraft, 3) the establishment of a navigation corridor for this dock, and 4) the abutting neighbors dock and boats cannot infringe in the navigation corridor. The 2007 Approved Court Settlement provides for the ability to request relief during "Low Water." The majority of the first 16' of the DUA length is beach or very shallow. Water depths at 28' during normal water conditions are 30". A 16' dock extension, for a total DUA length of 46', has been requested to reach a water depth of 24" (adjusted to the 929.4"). He believed that the proposed application would have minimal impact on the abutting properties and conforms to the spirit and intent of the 2007 Court Approved Settlement (as well as the Code). He recommended Board approval.

MOTION: Klohs moved, Page seconded to approve the 2012 Temporary Dock Extension Application as submitted.

VOTE: Ayes (12), Nays (1, Babcock); motion carried.

B. Charles Garnaas and Robert Schleider, proposal for low-impact snack bar, merchandise, and waste management service at Big Island (Cruiser's Cove)

Babcock asked Nybeck for background on this agenda item.

Nybeck directed the Board to his staff memo, dated 5/3/12, in which he confirmed the original request for the proposed snack bar was made by Mr. Robert Schleider under "Public Comments" at the April 25th Board's Meeting. At that time, the Board directed Schleider to work with LeFevere and staff on the logistics of the proposed business; confirming how the business falls within the LMCD Code. Since that date, a business proposal was provided (within the Board packet) in which staff forwarded that document to representatives of the Hennepin County Sheriff's Water Patrol (Water Patrol), City of Orono, Minnesota Department of Natural Resources (MN DNR), and the Three Rivers Park District (TRPD) for review and comments. Those comments were received (within the Board packet) and copied to Garnaas and Schleider. He recommended the Board invite them to present an overview of their proposal; after which, staff would answer any questions and comments the Board may have.

Babcock questioned if an application has been submitted.

Nybeck stated that the LMCD has never processed a Temporary Structure Application in his tenure and he was not sure one existed. He acknowledged that requests for temporary structures are typically handled by the Water Patrol.

Babcock invited Garnaas and Schleider to address the Board.

Mr. Charles Garnaas and Mr. Robert Schleider; 8911 Hidden Oaks Drive and 11761 Weltersway (Eden Prairie), respectively, thanked the Board for the opportunity to present their business proposal. Via a PowerPoint presentation, the following comments were provided:

- They congratulated the Board for having the goal to create a new Save the Lake identity to raise awareness of the Fund, in which their proposal would greatly increase that awareness (including the awareness of invasive species). They estimated that the proposal would potentially raise three times the current contribution level. They were aware of the current projects funded by Save the Lake and recognize the need to further purchase other items, i.e., a Remotely Operated Underwater Vehicle (ROV). An interest was communicated to being a subcontractor to Save the Lake for this proposal.
- An overview was provided of: 1) their mission statement, 2) statistical counts (Lake users and boats; specifically for weekends and holidays), 3) proposed food service, and 4) providing floating trash receptacles.
- They requested a temporary structure permit to be stationed at Big Island (Cruisers Cove); providing for a structure to be in line with other boats closest to shore to accommodate their needs as a nonprofit organization (200' radius of the shoreline). All funds raised (after expenses paid) would go to Save the Lake (including pre-packaged foods).
- No electricity, grills, propane, or cooking (of any kind) will be offered. They are working with the Minnesota Department of Agriculture regarding their ability to use electricity, which could possibly be a generator. Babcock expressed concern with the use of electricity around water and recommended communication with the Fire Marshall, as well.
- The structure would be placed on the north side of Big Island (Cruisers Cove); providing for the structure to be towed out each night. A computerized view of this process was provided.
- Their intention is to increase the awareness of Save the Lake via the selling of multiple products with the Save the Lake logo.
- An overview of their waste management plan was offered; specifically designed buoy trash cans with lids (constantly monitored), diving trash sweeps of Big Island, and the raking for trash.
- They entertained questions and comments from the Board.

The Board had a number of questions and comments, which are highlighted as follows:

- Discussion of maintaining the established vertical and horizontal "No Anchoring" navigational channels at Cruiser's Cove.
- The temporary structure would be in line with individually tied up boats; confirming the need to swim or walk to the platform (no drive through services). A review of the structure's removal procedure was provided.
- A sample advertising segment on K-FAN radio was provided to the Board.
- Confirmation that "simple foods" would be sold (pre-packaged, deli express, water, ice, etc.). The anticipation of breaking up the platform by generational needs; candy and ice cream on one side and more water and food on the other. They reiterated that current communication is in place with the Minnesota Department of Agriculture.

- Confirmation that they would take all products, containers, receptacles, and trash out every night; providing for funds to be made on the aluminum that is collected.
- Exact location of the structure is not necessary (should a watercraft be moored at their prior moored location upon arrival). They believed that very few boats camp at that location nightly.
- Reiteration that their intent is to be employed as a subcontractor to Save the Lake.
- Confirmation that the temporary structure has not been built. Funding for the structure will be provided through investors, as well as personal financing.
- A similar business operates on Lake Havasu, which was deemed as not having an impact on the environment.
- A request was provided for a business plan. Additionally, concern was expressed with the use of the trash receptacles as many parks are moving to the "pack in, pack out" concept.
- Expressed interest by some Board members in the proposed concept (which needs to be refined) and having food and water at that location. There was discussion on directing this matter to the Save the Lake Committee for review and comments back to the Board.
- Expressed concern that the LMCD Code currently does not allow this type of operation on a watercraft; questioning why we would allow it on a standalone platform. Additionally, concerns were expressed for electricity, daily re-supplying, public nuisance factors (trash), and not knowing the limits/liabilities. There was also expressed interest in hearing from other agencies.
- The current intent is to have people gain access on top of the temporary structure from the water; subject to working with the LMCD.

Nybeck stated that if the temporary structure was located close to shore, citing 60' as an example, this would be within the abutting property's DUA (Orono staff has already expressed opposition to this and the TRPD is currently taking the matter back to their commissioners). Based on LMCD Code, a temporary structure permit would have to be issued by the Water Patrol, who has communicated that they would not issue that permit. He provided an overview of the spirit and intent of the LMCD Code, which goes back to the 1980s; restricting commercial sales on Lake Minnetonka (other than gas docks and charter boat operations). He concurred with Babcock's comments that this proposal would be a "slippery slope;" providing examples of other commercial operations that have been proposed for Big Island in the past. He believed the proposal to help Save the Lake is admirable; however, stressed there are other ways to assist Save the Lake without approving the temporary structure permit request.

Garnaas and Schleider stated that they were instructed to submit a "very brief" outline of their operation to the various agencies listed within, including the MN DNR; not the "intent" of their operation. They believed that had the TRPD and the City of Orono been present this evening, they would have a different opinion on the matter.

Babcock asked Garnaas and Schleider if they reviewed the various agencies' comments, in which they confirmed they had. Babcock thanked them for their time and effort in presenting their proposal and he invited Sgt. Sedesky to address the Board.

Sgt. Clayton Sedesky, representing the Hennepin County Sheriff's Water Patrol, stated that he was in attendance on behalf of Lt. Art Saunders. He directed the Board to Lt. Saunder's memo, dated 5/8/12.

He stated that he supported staff's conclusion that a temporary structure permit would not be issued due to the viewpoints outlined within the memo. He entertained questions and comments from the Board.

Babcock stated that there have always been enforcement access concerns at this site; providing for the placement of navigational channel buoys to resolve some of the safety concerns. He asked if this proposal would cause more or less of an enforcement issue.

Sedesky confirmed that additional law enforcement resources would be required. He acknowledged that the safety lanes (noted above) have lessened enforcement response times.

Gross stated during the few times he has been present at Cruisers Cove, he has been "horrified" watching people within the water; surrounded by moving boats. He asked what types of accidents, without the proposed temporary structure, are addressed by the Water Patrol.

Sedesky confirmed minor cuts from props, drowning, etc.

Mr. Jack Gleason, MN DNR Hydrologist, directed the Board to an email that outlines his comments on the proposal. He reviewed the current State of Minnesota laws pertaining to structures placed on public waters. Additionally, he stated that consideration of navigational hazards pertaining to the placement of a structure are deferred to the surface water authority; acknowledging that more restrictive local ordinances apply. He entertained questions and comments from the Board.

Babcock asked if the LMCD Code had a provision on a structure that transforms to a watercraft.

LeFevere stated that the proposed structure is designed to be used as such (via the use of legs to hold the structure in place). Once the legs are removed, it is operating as a watercraft and prohibited for commercial sales. He stated that the proposed activity would not be allowed by the Code on structures (docks) tied to the land (i.e., marinas cannot sell ice cream, ice, etc, as well as have storage containers, signs, and vertically placed structures within). If the Board were to entertain this proposal, assuming all local agencies have provided their approval, multiple amendments to the Code would be required.

The Board finalized their discussion on this matter by making the following comments:

- Directing this matter to the Save the Lake committee for further review and consideration.
- Public safety should not be placed at risk for the purpose of making money for Save the Lake.
- There is a need for the applicants to provide a more comprehensive plan.
- Confirmation that only gas and oil can be sold at the end of a marina dock.
- The intent of this meeting agenda was for informational purposes; acknowledging there is not enough information to consider a ruling.

MOTION: Baasen moved, Page seconded to direct this matter to the Save the Lake Committee for further review and consideration.

Page stated that it is seldom we have something like this proposed to the Board; acknowledging we are not considering authorizing unlimited amounts of platforms. He believed the proposal was worth

pursuing.

McDermott stated the City of Orono would need to be approached at some point.

Garnaas stated that he spoke to Mayor McMillan and she has deferred the matter to the LMCD.

VOTE: Ayes (12), Nays (1, Babcock); motion carried.

C. Libbs Lake Property Owners Association (POA), staff update on 2012 Save the Lake Grant for Eurasian Watermilfoil (EWM) Treatment Project on Libbs Lake

Babcock asked Nybeck for background on this agenda item.

Nybeck stated that Bob Marcue, on behalf of Libbs Lake POA, submitted a 2012 Save the Lake grant proposal for management of EWM within Libbs Lake. At the January 11th Board Meeting, the Board partially approved the proposed request (in the amount of \$2,470) for one herbicide treatment during the 2012 boating season. This approval was subject to subsequent Board approval of a 2012 Save the Lake Grant Agreement. He directed the Board to a letter, dated 5/1/12, from Mr. Craig Dawson of the Minnehaha Creek Watershed District (MCWD). Dawson respectfully requested the Board not approve the grant agreement at this time based on serious reservations about chemically treating Libbs Lake (one of three lakes currently being considered for a three-year project to manage EWM biologically using native weevils). The coordination of the proposed weevil project is currently under discussion via a neighborhood meeting this evening, in which Marcue indicated they would not pursue herbicide treatments while exploring this management option. He provided two options for the Board to consider. First, take no action on the draft Agreement since the Libbs Lake POA does intend to pursue a herbicide treatment in 2012. Second, rescind the prior Board approval in the amount \$2,470. If the MCWD does not proceed with the weevil project in 2012, the Board could always re-consider the draft Agreement. He entertained questions and comments from the Board.

MOTION: Johnson moved, Page seconded to not take any action on the draft Libbs Lake POA 2012 Save the Lake Grant Agreement.

Shuff stated that she spoke with Marcue who relayed that the neighbors present have chosen not to go forward with the herbicide treatments (acknowledging he seemed supportive of the weevil project).

Babcock questioned why the Board would want to rescind the prior approval of the grant proposal, in which LeFevere explained that rescinding the approval would place the dedicated funds back into the budget.

Olson, a MCWD Board of Manager, stated that the proposed project is scheduled for four years (over \$200,000 expended with \$33,000 for Libbs Lake). The proposed areas being considered are Big Island Veterans Camp (open water concept), Libbs Lake (closed water concept - upstream from the dam), and Christmas Lake. There is a mass amount of protocol being proposed to prevent cross breeding of weevils.

VOTE: Motion carried unanimously.

Babcock requested staff to stay in contact with Libbs Lake POA on the withdrawal of their 2012 Save the Lake grant proposal.

D. 2012 EWM Harvesting Program, staff overview of project

Babcock asked Harper to provide an overview on this agenda item.

Harper provided an overview of the 2012 EWM Harvesting Program. This included 1) the Working Group that has assisted in the preparations and provided recommendations, 2) staff and independent contractors; providing a detailed overview of a change in the maintenance aspects of the program (site supervisor providing for basic maintenance, while contracting out for the diesel and advance repairs), 3) the EWM Harvesting Program budget, and 4) plans for the 2012 season. He recommended that the Board approve: 1) the hiring of Mike Heiland as Site Supervisor (at an hourly rate of \$16 per hour) and 2) the hiring of five additional seasonal employees (at an hourly rate of \$12 per hour). He entertained questions and comments from the Board.

McDermott asked if harvesting would be performed in any of the five treated bays.

Babcock stated that he did not believe that staff would harvest in Carmans, Grays, and Phelps Bays due to the Lake Vegetation Management Plans scheduled measurements of the EWM growth.

Page stated that due to the lack of EWM in St. Albans Bay last fall, he did not anticipate the need to treat or harvest that bay.

McDermott questioned the availability to initiate the program earlier should the need warrant it.

Nybeck stated that staff observed little EWM growth during a May 7th tour (acknowledging that the heavier growth was observed in Libbs Lake and Grays Bay).

MOTION: Morris moved, Johnson seconded to authorize the hiring of seasonal employees as recommended by Harper.

VOTE: Motion carried unanimously.

Harper stated he and Heiland are scheduled to attend an Aquarius System sponsored informational seminar on May 18th, which he believed would be beneficial to the program.

Sylvester asked if the program provided for the opportunity to re-harvest bays once initial harvesting was completed and, if so, what is the timeframe that staff would be able to coordinate that.

Harper confirmed the heavier areas are typically harvested twice a year.

Nybeck stated this process was more efficient in 2011 because of the five bays treated with herbicides. He acknowledged that the second round of harvesting is growth dependent and the schedule may be affected in 2012 due to when the new harvester is delivered.

Morris, a member of the Working Group, stated that staff has been very receptive of the group's efforts. He recommended staff provide a mid-season update; acknowledging the importance of amplifying the positives of the program via various avenues. He reminded the Board that the purchase of the new harvester was a unanimous vote and asked all to provide support to staff and assist in making this a positive season.

E. MN DNR, consideration of 2012 Watercraft Inspection Program Grant Agreement

Babcock asked Nybeck to provide an overview of this agenda item.

Nybeck stated the LMCD was contacted by the MN DNR for consideration of this Agreement after the Board's initial packet was distributed. The Agreement is consistent with past years (providing for \$7,750 in additional 2012 funding for the hiring of watercraft inspectors). He recommended approval and entertained questions and comments.

MOTION: Page moved, McDermott seconded to approve the State of Minnesota Grant Agreement to provide for \$7,750 of additional funding in the hiring of watercraft inspectors for the 2012 season.

VOTE: Motion carried unanimously.

F. Ben & Judy Simmons, staff update on new multiple dock license application for 8 Boat Storage Units on 731' of shoreline on Grays Bay

Babcock stated that the Board considered this application at the April 25th meeting, at which time a public hearing was conducted and LeFevere was directed to prepare draft Findings of Fact and Order denying the 2012 new multiple dock license application (based on the subjective criteria provided). He reported that the applicants have withdrawn their application and no further action will be considered on this matter.

Gross questioned if the application fee was refunded, in which staff confirmed it was not.

10. Update from standing LMCD Committees:

Babcock asked for an update from the Chair, or designated representative, of each committee (Save the Lake, AIS Task Force, Finance, Personnel, Public Safety, and Ordinance Review).

Page stated that an AIS Task Force meeting is scheduled for Friday, June 8th at 8:30 a.m. in the LMCD office. He anticipated substantial discussion on how to establish a Comprehensive Vegetation Management Plan for

Lake Minnetonka at this meeting.

Johnson stated that a Public Safety Committee meeting will be scheduled in the near future to provide for an overview of the upcoming 2012 boating season.

Olson stated a Save the Lake Committee meeting will be scheduled to accommodate the Board's direction given under agenda item 9B above.

Babcock stated that the Finance Committee met this evening for the purpose of purchasing another Certificate of Deposit. Additionally, the Personnel Committee will be meeting at the LMCD office on Thursday, May 17th at 5:30 p.m.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated that a petition has been received from Ms. Kathy Bryan to establish a Quiet Waters Area (QWA) on West Arm Bay. He communicated that he met with Ms. Bryan last year, at which time she expressed concern for watercraft not adhering to speed restrictions (including by shoreline and swimmers). A call has been received from Ms. Bryan in 2012, in which she was provided a copy of the LMCD's QWA policy (attached to packet). He reviewed the following two action items that need to be addressed prior to the Board's consideration of her request: 1) a review of accident/citation history for the subject area and 2) staff needs to observe the proposed area in 2012 (during at least three normal high-use periods). If the Board would like to schedule an agenda item to consider this matter, he recommended that item be scheduled after completion of staff's observation of the area. Additionally, he recommended Bryant receive an opportunity to address the Public Safety Committee once a meeting date has been established.

Sylvester asked if the LMCD received any comments from the neighboring property owners, in which Nybeck confirmed he had not.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:00 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary