

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
7:00 PM, Wednesday, September 24, 2003
Tonka Bay City Hall**

CALL TO ORDER

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

ROLL CALL

Members present: Bert Foster, Deephaven; Craig Nelson, Spring Park; Lili McMillan, Orono; Tom Skramstad, Shorewood; Doug Babcock, Tonka Bay; Orv Burma, Mound; Miles Canning, Greenwood; Paul Knudsen, Minnetrista; Pete Nelson, Victoria; Tom Seuntjens, Minnetonka Beach; Herb Suerth, Woodland; Jose Valdesuso, Excelsior; Katy Van Hercke, Minnetonka. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician.

Members absent: Bob Ambrose, Wayzata.

CHAIR ANNOUNCEMENTS, Chair Foster

Foster stated that he had discussed the October Regular Board Meeting schedule with Nybeck. Based on this discussion, he recommended that a Board Planning/Workshop Session be scheduled for 10/8/03 and that a Regular Board Meeting be scheduled for 10/22/03. If the Board did not object with this recommendation, he stated that he would direct staff to proceed accordingly. There were no objections.

READING OF MINUTES- 8/27/03 LMCD Regular Board Meeting

MOTION: Skramstad moved, Van Hercke seconded to approve the minutes from the 8/27/03 Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

McMillan arrived at 7:06 p.m.

PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda.

Mr. Judd Mowry, 445 Lakeview Avenue, provided an update on the pending Hary Kreslins new multiple dock license application. The applicant is currently addressing issues with the Greenwood Planning Commission and concerns have been raised by Greenwood relating to the proposed survey and the placement of the dock along Minnetonka Blvd. He circulated a photograph of a violation of storing too many watercraft at the site because an unauthorized personal watercraft was being stored at the private access ramp. He encouraged the District to follow-up on this.

CONSENT AGENDA- Consent agenda items identified with a (*) will be approved in one motion unless a Board member requests discussion of any item, in which case the item will be removed from the consent agenda.

Canning moved, Babcock seconded to approved the consent agenda, removing agenda item 1A. Motion carried unanimously. Items so approved included: **3B**, August financial summary and balance sheet, and **4A**, Report from the 3/5/03 Lake Minnetonka Boat Density Sub-Committee Meeting.

1. WATER STRUCTURES

- A. Staff recommends Board approval of partial refund of \$250 deposits of approved variance applications as outlined in 9/18/03 staff memo.

Foster asked for comments from Canning on why he had this agenda item removed from the consent agenda.

Canning stated that he was concerned about the policy of the District of deducting costs for the preparation of Findings, whether they are for approval or denial of a proposed variance application, from the \$250 deposit. He believed that deducting expenses from the \$250 deposit should be extraordinary. Because all variance applications require the preparation of Findings, he believed that it should be included in the \$250 base fee and might require increasing it.

Nybeck stated that Canning had raised similar concerns when staff made recommendations on refunds for the \$250 deposits for variance applications reviewed by the Board this past summer. When these concerns were raised, the consensus of the Board was for staff to schedule an agenda item this fall to review the fee resolutions for District applications. He reported that the review of fee resolutions would be scheduled at the 10/22/03 Regular Board Meeting.

Foster stated that he understood the comments of Canning that the \$250 base fee should either include the preparation of Findings for straight forward variance applications, or the base fee should be increased accordingly, to be up front with the public. He suggested that this could be discussed when the Board reviews the fee resolutions and he recommended Board approval of the recommendation by staff.

Canning questioned whether it was fair to pass the fees incurred in the review of variance applications because he believed that the levy paid by the member cities should cover these costs and the residents should have the right to file for a variance for relief from the District Code.

MOTION: Skramstad moved, Knudsen seconded to approve the 2003 variance application deposits as outlined in the 9/18/03 staff memo.

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

- B. **Richard Athmann and Robyn Kern**, consideration of draft Findings of Fact and Order for denial of

variance application to amend a previously approved variance from LMCD Code for side setbacks and an adjusted dock use area at 1701 Baywood Lane.

Foster stated that there was a copy of the draft Findings of Fact and Order in the packet to deny the proposed variance application. Additionally, there was a copy of a letter from the applicants,

dated 9/18/03. He stated that the applicants would like to have the Board provide them some direction on three positions relating to approved variances and consent arrangements. These positions include: 1) docking and boat storage must be consistent with an approved variance order, even if you can secure consent from the abutting neighbor(s), 2) docking and boat storage cannot be done through consent from the abutting neighbor(s) when there is a need to utilize certain aspects of the approved variance, citing dock length as an example, and 3) an approved variance would be a legal right that could be passed on to future owners of the property but would not limit abutting neighbors from consent arrangements from Code, especially encroaching of side setback requirements. He asked for feedback from the Board members on these three positions.

Babcock stated that he believed that neighbors should not be able to change the terms of the conditions of a variance approved by the District, such as the desire to store additional watercraft or install a canopy, when water depth is a concern at such sites.

Foster stated that he envisioned allowing mutual consent at sites for side setback requirements, noting that this was allowed in Code for sites that do not require a variance from Code. He agreed that this might be problematic for length purposes.

Van Hercke questioned why a property owner would secure a variance from Code if they could secure mutual consent from the abutting neighbor(s).

Seuntjens stated that there are mutual consent arrangements all over around the lake. However, once an application is submitted and approved for variance from Code, he questioned why the District would allow the property owners to change the conditions at will.

Canning questioned whether the discussion and the pending variance application was a result of a complaint situation. In general, he believed that the District would not get involved in consent arrangements as long as the neighbors got along with each other. Similar violations occur elsewhere around the lake and strict compliance with the conditions of an approved variance might result in the reluctance of the public to submit variance applications in the future. He believed that neighborhood consent is a fundamental issue that merits further discussion by the Board.

Nybeck stated that a complaint was received this past March for non-compliance with the approved variance order at the Athmann and Kern site.

Babcock stated that there are Code provisions that define where a dock can be placed. He expressed concern about creating a perception that there is a free for all on where you can place a dock and store watercraft. Although the Code allows a site to combine with its neighbor(s) for docking and watercraft storage, there are Code provisions that apply to these situations and the District is involved.

Foster stated that he believed there are a number of sites around the lake where properties have their own dock, rather than a combined dock, that do not meet the minimum side setback requirements. The majority of these sites comply with Code because the abutting neighbor(s) consent to it.

Babcock reminded the Board that the policy of the District has been voluntary compliance over the years and not getting involved in neighborhood agreements or disputes. However, when neighbors change or relationships between neighbors change, a valid complaint is received frequently and the District is left in the position of enforcing the Code.

Seuntjens stated that he would be concerned about the District approving a variance and encouraging the property owner to violate the conditions of the variance order. He did not believe that this would be allowed at any other public body, although he recognized that it was probably occurring. If the District supports the violation of the conditions of the approved variance, the Board should consider amending it.

Foster stated that he did not believe the question was whether the District was encouraging a property owner to violate the conditions of an approved variance. The Code already allows side setback and authorized dock use area requirements to be altered by neighbors through mutual consent between themselves. He believed the primary question was if a property owner had an approved variance and they would like to do something with the abutting neighbor(s) through mutual consent, should the ordinary Code be applied or should the conditions of the approved variance order be applied.

Babcock stated that the only aspect of the Code that he believed could possibly be done through mutual consent would be adjusting minimum side setback requirements. He questioned whether this should be allowed for the length of dock, the number of Boat Storage Units (BSU's), or whether a canopy could be installed. He suggested that maybe the Code should be clarified to indicate that all the maximum requirements of an approved variance need to be met.

Knudsen stated that he would not be troubled by allowing neighbors to move a dock structure a few feet, even if one of the property owners had an approved variance. However, he indicated that he would be troubled by increasing the size of the dock structure, increasing the number of BSU's, or allowing the installation of a prohibited canopy because it would be outside the intent of the Board.

Babcock stated that he believed the Code provisions that allowed combined docking situations between neighbors was to encourage less activity, primarily reduce dock structure, rather than encourage more activity.

LeFevere stated that there are two types of variances that the Board can approve. First, there is a permissive variance that allows a resident to do something. Second, there is a mandatory variance that clearly defines what can be done and takes away the rights of the abutting property or properties. The Athmann and Kern variance is an example of a permissive variance. This type of variance allows a property owner to do something, subject to certain conditions, that would not otherwise be authorized by Code. If a property owner wants to take advantage of this type of variance, they would need to comply with all of the conditions in the variance order and the neighbors could not alter them through consent. If the property owner does not want to take advantage of the variance and would prefer to abide by the rules, the Code would allow for this. He pointed out that the Code would prohibit a property owner from both utilizing the approved variance and altering the conditions through neighbor consent.

Babcock questioned why the Board would allow sites, with narrow shorelines at inside corners, the ability to store more watercraft than what was allowed within the authorized dock use area just by combining their dock use area with the abutting neighbor(s).

Canning stated that he believed there are a number of sites around the lake that predated Code for authorized dock areas that were able to place a dock and store a watercraft from the site historically. The District Code is artificial in nature and there is a need to ensure that it is fair and reasonable.

Babcock stated that what a property owner might perceive as fair and reasonable at a site with a small amount of shoreline might only be allowed through mutual consent with the neighbors. If this consent goes away at a future date, there will be a need to combine these sites with the abutting properties or secure a variance from Code.

McMillan stated that mutual consent arrangements are temporary in nature and a variance is a more permanent solution that describes the legal rights for a site.

Foster stated that if a complaint is received from the public relating to not waiving the minimum side setback requirement of the Code at a narrow lot, even if the site has historical use, the site would probably not be able to have a dock installed with watercraft stored at it.

Canning questioned whether that could be categorically stated because he questioned whether it would hold up legally in court for properties that have riparian rights.

McMillan stated that although she believed the conversation was helpful, she recommended that the Board focus on the scheduled agenda item. Although she did not support expanding the width of the dock use area beyond six feet on the north side, she indicated that she might be willing to amend the conditions of the draft variance order to allow two personal watercraft or a small fishing boat as long as they are fully contained within the established dock use area.

Babcock stated that the number of watercraft to be stored at the proposed dock was discussed at the 8/27/03 Board Meeting. The Board voted unanimously at this meeting to direct LeFevere to prepare the Findings of Fact and Order to limit watercraft storage on the north side of the dock to one personal watercraft or a small fishing boat.

McMillan stated that she might have viewed the variance differently if all of the proposed watercraft to be stored at the applicants dock were fully contained within the approved variance order.

Babcock questioned whether three restricted watercraft could be stored at lots with approximately 25' of lakeshore frontage on a lakewide basis.

Foster stated that he was inclined originally to support the storage of a second personal watercraft until he learned that the personal watercraft were to be stored side by side and would encroach in the dock use area established in the approved variance order. He suggested that he might be able to support the storage of the two personal watercraft end to end along the north side of the dock; however, the applicant has previously expressed concern about this.

MOTION: Seuntjens moved, Craig Nelson seconded to approve the Findings of Fact and Order to deny the Richard Athmann and Robyn Kern variance application as submitted.

Foster asked if there were any additional comments from the Board or if the applicants would like to comment on the proposed motion.

Ms. Robyn Kern, 1701 Baywood Lane, made the following comments:

- There was a lack of communication between themselves and the previous property owners when the property was purchased. She indicated that they had never intended to do as they pleased for docking and storage of watercraft from the property.
- When they closed on the purchase of the new home, there was a much larger dock at the site than what is currently installed. Additionally, they did not receive a document on what they could and could not do for docking and storage of watercraft at the site.
- A number of non-compliant concerns raised by Nybeck have been resolved. These include: 1) moving the dock over three feet, 2) reducing the length of the dock by eight feet, and 3) removing an "L" dock section. The remaining discrepancy from the approved variance order was the additional personal watercraft and this was the primary purpose for the proposed variance application. She indicated they would be willing to amend the variance application to store the two personal watercraft end to end if that was something the Board desired.
- She believed that two of the primary reasons the Board was inclined to deny the proposed variance application was the limited amount of lakeshore frontage at this site and the congestion in the area. She expressed concern about the permanent docks recently approved for the three sites on the north side of the lagoon. These docks have been installed and she indicated that they were huge, noting that boats being stored at them could impede access to theirs and other docks.

Nybeck provided an overview of the variances granted for the three sites on the north side of the lagoon area. All three sites have a permanent dock with an authorized dock use area that could extend approximately 30' into the lagoon. The docks are a "T" design with a small space inside the "T" along shore where smaller watercraft could be stored. Outside the "T", the dock use areas extend 20' into the lagoon area and there is no restriction on the number of watercraft that can be stored in them, as long as it complies with Code. The permanent docks require a permit that can be issued by staff; however, the applicant needed to secure a variance for all three sites before these permits were issued by staff.

Foster stated that one primary difference between the three properties on the north side of the lagoon and the applicants' property is the amount of 929.4' shoreline. He pointed out that the three properties on the north side of the lagoon each had approximately 100' of 929.4' lakeshore frontage, compared to the 25' of 929.4' shoreline at the applicants' property.

Kern questioned whether the Code was being applied consistently at their property compared to the properties on the north side of the lagoon area. She also questioned whether minimum side setbacks were not being met by a number of properties on the south side of the lagoon. She believed that the adding of a second personal watercraft at their site was a small distinction from a small fishing boat that is already approved in the variance order.

Babcock stated that he believed past lake use studies would indicate that the use of a personal watercraft requires a significant larger amount of surface area to operate than most other watercraft.

Kern stated that she was aware of the Code allowances for the number of restricted watercraft that can be stored at a site, four. She believed that four restricted watercraft could be stored at their site and that they submitted an application to amend the previously approved variance to store the additional personal watercraft. She indicated that Nybeck originally stated that he would support the proposed application and that they would not have submitted it if they understood the Board did not believe that it was a reasonable request.

Nybeck stated that the initial letter was sent in March communicating to the applicants that their dock installation and boat storage were not in compliance with the approved variance order. The applicants did not take the steps to bring the dock into compliance with the approved variance order until July when staff threatened a criminal complaint. He stated that he was encouraged the applicants removed the illegal dock structure for added dock length and the "L" section, although that was expected. He originally communicated that he would be supportive of the second personal watercraft on the north side of the dock as long as they were contained within the six foot wide dock use area. When the applicants indicated that the side by side lifts were eight feet wide, he expressed concern about further encroachment into the dock use area established in the approved variance order.

Canning stated that he was reluctant originally to expand the dock use area from the approved variance order. However, he questioned whether the request to add the second personal watercraft was monumental and that he would support amending the draft Findings to allow them to do so.

Burma stated that there was another situation in the City of Mound where a variance was approved that prohibited the installation of a canopy at the dock. He agreed that there was a need to be consistent about how ordinances or conditions of a variance order are enforced and that he would be troubled to allow deviation in this case and not in the other situation.

Valdesuso stated that he concurred with the comments of Canning that he would not be opposed to allow the applicants to store two personal watercraft back to back on the north side of the dock.

Kern stated that she believed the complaint received by the District was from Tim Becker, the previous property owner on the north side of the lagoon area. She asked Nybeck who submitted the complaint on their dock and he communicated that he could not comment on that because complaint data was covered by data privacy. She stated that the new owner of the property on the north side of the lagoon area forwarded her a letter, that was previously faxed to Mr. Becker, after it was submitted to the District expressing her concern about why these lots were not buildable.

Nybeck stated that he was not aware of receiving the letter that Kern was making reference to. In fact, that letter was more appropriate for the City of Mound because the re-platting was done by Mound and not the District.

Burma stated that the letter referred to Kern was probably submitted to the City of Mound and was likely public information.

Kern stated that she believed the complaint was filed because of this letter.

Canning recommended a friendly amendment to the motion to allow the storage of two personal watercraft or a small fishing boat on the north side of the docks, subject to it being contained within the six foot wide dock use area. Seuntjens and Craig Nelson did not agree to this friendly amendment.

MOTION: Canning moved, Valdesuso seconded to direct the attorney to prepare Findings of Fact **TO** and Order to amend the previously approved variance order to allow the storage of a **AMEND** personal watercraft on the north side of the dock, subject to it being contained within the six foot wide authorized dock use area.

LeFevere stated that motion was a substitute motion because the draft Findings of Fact and Order being considered by the Board for denial of the variance application, rather than approval of it. Rather than making a motion to amend the original motion to approve the draft Findings, he recommended that those Board interested in approving the variance oppose the original motion and offer a substitute motion if the original motion fails.

Canning and Valdesuso withdrew their motion to amend the original motion.

VOTE: Ayes (10), Naves (3, Canning, Knudsen, and Valdesuso); motion carried.

Foster stated that Steve Tallen, the District Prosecuting Attorney, and Lt. Brian Johnson from the Sheriff's Water Patrol were in attendance to discuss a recent case that the District might want to appeal. If the Board did not object, he recommended that agenda item 2D be moved in front of agenda item 1C. There were no objections expressed by the Board.

2. ADMINISTRATION

D. Steve Tallen, report on possible appeal.

Foster asked for an update from Tallen on a criminal case that the District might want to appeal.

Tallen made the following comments:

- He was in attendance to discuss a recent criminal case that the District might want to appeal. He indicated that he would explain the facts of the case, that Lt. Johnson was in attendance to explain the consequences of the outcome on the Water Patrol if an appeal does not take place, and then go into executive session to discuss whether the Board would like to authorize an appeal.
- Mr. Daniel McCloud early last November allegedly nearly struck a boat with a Sheriff's Water Deputy and MN DNR Conservation Officer in it. He continued to drive his boat to a dock, he left the boat and was leaving the dock, and the other passenger in the boat then was driving the boat away from the dock. The Water Patrol Deputy asked Mr. McCloud to come back to the dock by the Water Patrol Deputy and the MN DNR Conservation Officer

asked the other passenger to bring the boat back to the dock while they sorted through the issues. Both Mr. McCloud and the passenger complied with these requests.

- A safety check of the McCloud boat was conducted at that point by the Deputy and Conservation Officer, with two tickets issued based on it. No ticket was issued at that point for careless driving; however, two tickets were issued for the lack of a fire extinguisher and PFD's.
- These tickets eventually went to court and he believed that they had made a deal agreeable where Mr. McCloud would plead guilty to one of these tickets and pay the fine. Around that time, the Minnesota Court of Appeals released their opinion on the Colisimo case that upheld a District Court ruling that requires probable cause to check a livewell in a boat. The District Court in the McCloud case ruled that the stop at the dock of Mr. McCloud and the calling back of the passenger in the boat was warranted because of the careless driving incident. However, the District Court ruled that the safety inspection was unconstitutional citing the Colisimo case. He stated that the MN Supreme Court has reviewed the Minnesota Court of Appeals ruling on the Colisimo case on 9/25/02 and that an opinion should be due any time.
- Based on the facts, he questioned whether the Board would like to appeal the District Court ruling on the McCloud case. If the Board decides to appeal, he reminded the Board that this would be a pre-trial appeal and the District would be obligated to pay the other sides attorney fees, win or lose. He concluded that the ruling was important and that Lt. Johnson could further elaborate on this.
- He entertained questions or comments from the Board.

Babcock questioned what legal ground the District was on because the search was conducted before the issuing of the citations for the lack of a fire extinguisher and PFD's.

Tallen stated that both citations are misdemeanor offenses that authorize the Water Patrol to issue a custodial arrest. The standard in the past has been that if a legitimate misdemeanor arrest occurs, that a safety inspection can be conducted. The misdemeanor arrest occurred when the Deputy and the Conservation Officer asked Mr. McCloud to return to the dock because he was not free to leave.

Canning stated he was concerned that the original citations were later amended to include careless driving.

Tallen stated that the defendant in this case was detained or seized on a constitutional basis. The question for the court to answer was whether the seizure was reasonable.

Foster stated that it has been common practice for the Water Patrol historically to conduct safety checks for life jackets and fire extinguishers when a stop has been made. He believed that there is gray area in the interpretation of the Code for careless driving while it is generally black and white for violations observed through safety checks. The question for the Board is that the ruling of the District Court does not allow for safety checks to occur.

Pete Nelson asked how the District Court made its ruling on the McCloud case when the Minnesota State Supreme Court was reviewing the Colisimo case.

Tallen stated that he questioned what affect the Colisimo case should have had on the ruling of the McCloud case in the District Court because it was being appealed. At this time, the ruling from the Minnesota Court of Appeals in the Colisimo case is that the livewells cannot be searched by peace officers unless probable cause has been established, noting that this could probably be applied to safety checks.

Knudsen asked if the Water Patrol either looked or asked for PFD's and a fire extinguisher in the McCloud case.

Tallen stated that the Water Patrol Deputy asked the defendant whether they had an adequate number of PFD's and a fire extinguisher, adding that the defendant responded that he had neither. In the McCloud case, he believed that the District Court judge ruled that the Water Patrol Deputy should not have asked the defendant whether he had a proper fire extinguisher and PFD's because they did not have a reason to suspect that he did not. If the Colisimo case is the law of the land, it is quite possible that the Water Patrol will be done conducting safety inspections.

Foster asked for comments from Lt. Johnson prior to the Board considering closing the Regular Meeting and going into executive session to discuss whether to appeal the McCloud case.

Lt. Johnson stated that the ruling on the McCloud case was far reaching and could impact all Conservation Officers and Water Patrol Deputies from other counties within the State of Minnesota. The Water Patrol enforces the laws of the State of Minnesota and the District, especially those for public safety purposes. The District Court ruling on the McCloud case will have an impact on the Water Patrol enforcing the laws of the State of Minnesota and the District. During safety inspections, the Deputies ask the occupant for pieces of equipment and only board a boat when a person is being taken into custody. The ruling of the District Court greatly impacts how safety inspections can be conducted, especially if the Board decides not to appeal the case. He concluded that there was a need for clarification from the court on the legal standard because the word will get out and the Water Patrol will be faced with this issue again in the future.

McMillan asked if there were any similarities or differences between stops on land and on the water.

Tallen stated that one primary difference between violations on Lake Minnetonka and those on land was that violations of District Code are misdemeanors by ordinance and the majority of violations on land are petty misdemeanors. One key distinction is that a petty misdemeanor stop does not give the arresting officer the opportunity to search your vehicle; however, a misdemeanor stop does.

MOTION: Canning moved, Babcock seconded to close the Regular Board Meeting from the public and to convene into executive session at 8:55 p.m. to discuss pending litigation with the District attorneys, as allowed for client-attorney privileges by the Open Meeting Law.

VOTE: Motion carried unanimously.

Foster asked the public in attendance to leave the meeting room so that the Board could go into executive session.

MOTION: Babcock moved, Knudsen seconded to close the executive session at 9:51 p.m. and re-open the Regular Board Meeting.

VOTE: Motion carried unanimously.

Seuntjens left during the executive session.

The meeting was recessed at 9:51 p.m. and re-convened at 9:55 p.m.

MOTION: Suerth moved, Valdesuso seconded to direct the District Prosecuting Attorney to proceed with an appeal of the McCloud criminal case.

Suerth stated that he made the motion because he would like to support the Water Patrol and that he believed the vast majority of the 14 member cities would support the appeal of this case.

VOTE: Ayes (11), Nays (1, Canning); motion carried.

1. WATER STRUCTURES

C. Howards Point Marina, discussion of Board possible enforcement issues.

Foster introduced the agenda item and asked for comments from the Board.

Skramstad stated that there was a representative from Howards Point Marina in attendance before the executive session that was not in attendance at this time. He recommended that this agenda item be moved back to the 10/22/03 Regular Board Meeting.

The consensus of the Board was to move this agenda item back to the 10/22/03 Regular Board Meeting.

D. Additional Business.

There was no additional business.

2. ADMINISTRATION

A. Meeting Report from the 9/10/03 Board Planning/Workshop Session.

Foster stated that there was a copy of the draft Meeting Report in the packet from the 9/10/03 Planning/Workshop Session. He asked if there were any questions or comments from the Board on this meeting. There were no questions or comments.

B. Discussion of draft LMCD Data Practices Policy.

The consensus of the Board was to move this agenda item to the 10/22/03 Regular Board Meeting.

C. Discussion of process to establish nominating committee for 2004 LMCD Board Officers.

The consensus of the Board was to move this agenda item to the 10/8/03 Planning/Workshop Session.

E. Additional Business.

There was no additional business.

3. FINANCIAL

A. Audit of vouchers (9/1/03 – 9/15/03) & (9/16/03 – 9/30/03).

Skramstad reviewed the audit of vouchers as submitted.

MOTION: Skramstad moved, Suerth seconded to approve the audit of vouchers as submitted.

VOTE: Motion carried unanimously.

C. Additional Business.

There was no additional business.

4. LAKE USE & RECREATION

B. Additional Business.

There was no additional business.

5. EWM/EXOTICS TASK FORCE

There was no discussion.

6. SAVE THE LAKE

There was no discussion.

7. EXECUTIVE DIRECTOR

Nybeck stated that the lake level was 928.45' on 9/16/03, adding that the dam was closed. There were a couple of newspaper articles in the packet relating to District activities. He stated that he and Harper had recently removed the red and green solar-lights from the navigational buoys, noting there was some limited vandalism of them near the Arcola Bridge. A letter from the City of Shorewood, with a written response from Chair Foster, was included in the handout folders for informational purposes.

Skramstad stated that he had been contacted by the City of Shorewood and that they would like to have the Board discuss the letter and take the matter seriously. He indicated that he was at the Shorewood City Council Meeting that evening and that Foster had indicated to him that he was in attendance representing both himself as a Lake Minnetonka resident on certain issues and as Chair of the District on other issues. As the representative for City of Shorewood on the District Board, he

indicated that he would like to bring this matter forward to the Board and he encouraged feedback from other Board members.

Babcock stated that when a Board member attends a city council meeting, they should not attend as both a representative of the District and the public. Instead, there is a need for the Board member to chose one of the two roles and attend a second city council meeting if needed to represent the other role.

Foster stated that the minutes from the city council meeting clearly stated that he was in attendance representing both the District from a factual basis and his personal interest as a resident of Lake Minnetonka.

The Board briefly discussed this matter and the consensus of the Board was to further discuss procedures for when Board members attend city council or other governmental meetings at the 10/8/03 Board Planning/Workshop Session.

8. OLD BUSINESS

Van Hercke updated the Board that the City of Minnetonka had recently adopted a resolution that supports Hennepin County fully funding the two additional Water Patrol Deputies in 2004. She stated that Commissioner Koblick supports the project for the 2004 season and that she has recommended that an effort be made to contact the remaining Hennepin County Commissioners.

Suerth stated that he would like talking points memo that summarizes the key points to discuss when these contacts are made.

9. NEW BUSINESS

There was no new business.

10. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:19 p.m.

Albert O. Foster, Chair

Lili McMillan, Secretary

