

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, November 10, 2004
Tonka Bay City Hall

CALL TO ORDER

Skramstad called the meeting to order at 7:03 p.m.

ROLL CALL

Members present: Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Paul Knudsen, Minnetrista; Bob Ambrose, Wayzata; Orv Burma, Mound; Bert Foster, Deephaven; Pete Nelson, Victoria; Tom Scanlon, Spring Park; Tom Seuntjens, Minnetonka Beach; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician.

Members absent: Doug Babcock, Tonka Bay; Jose Valdesuso, Excelsior; the cities of Greenwood and Orono have no appointed member.

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad announced that the 11/24/04 LMCD Board Meeting would be cancelled due to the Thanksgiving Holiday.

READING OF MINUTES- 10/27/04 LMCD Regular Board Meeting

MOTION: Nelson moved, Knudsen seconded to approve the minutes from the 10/27/04 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (7), Abstained (3; Burma, Foster, and Scanlon); motion carried.

PUBLIC COMMENTS - Persons in attendance, subjects not on agenda (5 min.)

There were no comments from the public on subjects not on the agenda.

1. WATER STRUCTURES

There was no discussion.

2. LAKE USE & RECREATION

- A.** Discussion of options on how to proceed from the Lake Minnetonka Boat Density Sub-Committee Final Report.

Skramstad stated that at the 10/27/04 Board Meeting, the Board discussed that a second sub-committee was necessary to take the next steps from the first Lake Minnetonka Boat Density Sub-Committee. The second sub-committee would use the valuable information prepared by the first sub-committee and that some Board members have offered to be on it, including Babcock, Van

Hercke and Foster. A fourth committee member is needed from the Board and the purpose of the second sub-committee is to distill the good data that has been collected gathered by the first sub-committee and come together with some options and recommendations to present to the Board.

Skramstad stated that there were members of the public that have expressed their interest in commenting on this topic.

Ms. Pat McGoldrick, 19575 Chimo West, stated that she believed that the 1974 density policy has given the LMCD a foundation to protect the Lake. She believed that the 1991 LMCD Management Plan did not supersede the 1974 policy and that it seemed illogical that the LMCD would relax the 1974 policy.

Mr. Randy Boyd, 19960 Minnetonka Blvd., commented on boat density on Lake Minnetonka. He believed the 1974 boat density policy should be left as is. He stated that the only city that had a problem with the density policy was Deephaven and that there is still a pending LMCD application from Deephaven awaiting changes to the 1974 density policy. Any changes to the 1974 policy should include a hearing to get public input on any changes being considered by the Board.

Seuntjens stated he would volunteer to be on the new density subcommittee.

Skramstad stated that the members of the subcommittee should set an initial meeting date and pick a member to chair the new subcommittee.

B. Discussion on whether to increase the number of on-sale Intoxicating Liquor Licenses for charter boats on Lake Minnetonka (previously discussed at the 8/11/04 Board Meeting).

Skramstad asked Nybeck for background on this agenda item.

Nybeck made the following comments:

- At the 8/11/04 Regular LMCD Board Meeting, there was an agenda item concerning whether there was an interest of the LMCD Board to increase the number of on-sale intoxicating liquor licenses that can be issued to charter boats. The current number of on-sale intoxicating liquor licenses the LMCD can issue to charter boats on Lake Minnetonka is restricted to 14.
- At the 2/11/04 Regular LMCD Meeting, Charlie LeFevere updated the Board on Minnesota Statutes, Section 340A.413, Subd. 4 that lists the kinds of establishments that can be issued on-sale intoxicating liquor licenses in excess of the statutory limit, pointing out that "restaurants" were added to this list. To assist in clarifying this for 2004, the Board directed LeFevere to prepare a Code amendment to limit the number of on-sale intoxicating liquor licenses that could be issued to charter boats to 14 and the number of wine and non-intoxicating malt liquor licenses to an undetermined number. This ordinance was adopted by the Board at the 2/25/04 Regular Meeting, which included restricting the number of wine and non-intoxicating malt liquor licenses to 28.
- At the 8/11/04 Regular LMCD Meeting, the Board directed Chair Skramstad to send a letter out to the 14 member cities to solicit their feedback on whether the LMCD should increase the number of on-sale intoxicating liquor Licenses from 14.

- Based on the letter, written responses were received from Excelsior and Mound. Excelsior commented that if the LMCD would like to increase the number of liquor licenses issued, there is a need to further define what qualified as a restaurant utilizing the recent exception allowed by state statute. The city also commented that the LMCD Board should discuss requiring charter boats to have adequate staff on board to handle incidents that occur. In 2004, an incident occurred at the Excelsior municipal dock involving intoxicated passengers of a charter boat in which the South Lake Minnetonka Police and the Hennepin County Water Patrol responded to the incident. The City of Mound responded that they support increasing the number of on-sale intoxicating liquor licenses to meet the current number of charter boats on Lake Minnetonka.
- There are a number of fundamental questions for the Board to address. Some of these include: (1) Does the Board believe that the number of on-sale intoxicating liquor licenses should be increased from 14? If so, should the increase be for a limited number or an unlimited number? (2) How does the Board feel about the request made by the Lake Minnetonka Charter Boat Association to increase the number of on-sale Intoxicating Liquor Licenses to the current number of charter boats on Lake Minnetonka? (3) What method would the Board prefer to increase the number of on-sale intoxicating liquor licenses? The Board could increase the number by either amending Laws 1986, Ch. 437, Section 6 or by utilizing the statutory exception for restaurants as outlined by LeFevere. (4) If the Board decides to utilize the statutory exception rather than amending the 1986 legislation, is there a need to better define a restaurant? LMCD Code currently does not define a restaurant in Chapter 1. However, it makes reference in Chapter 5 to Minnesota Statutes, 340A concerning restaurants.
- Staff does not have a recommendation on this topic because it is a policy question that needs to be decided by the Board. If the Board decides that it would like to increase the number for the 2005 season, there is a need to keep moving on this topic because renewal applications are typically sent out in the next 30 days.

Skramstad stated that he did not see a groundswell of interest in expanding the number of liquor licenses issued by the LMCD. However, he did see the value of the charter boat operators controlling the dispensing of liquor.

Foster stated that the Lake Minnetonka Charter Boat Association has requested the increase and to that extent there is a groundswell from those individuals. He believed that the 14 on-sale intoxicating liquor licenses for charter boats on Lake Minnetonka were in high demand, similar to the medallion situation for taxicabs in New York. He believed that the free market system should be used for charter boats and that an adequate supply of on-sale intoxicating liquor licenses should be made available. He believed that charter boats with full liquor licenses could manage passenger alcohol consumption with their professional servers that typically undergo extensive alcohol service training.

There was Board discussion on the reluctance to increase the number of available intoxicating liquor licenses to just the current number of charter boats on Lake Minnetonka as requested by the Lake Minnetonka Charter Boat Association. Some Board members felt that it would create an unfair disadvantage to new companies potentially operating on the Lake.

Knudsen stated he was concerned that if there was an increase in available intoxicating liquor licenses, there may be an influx of new charter boats operating on Lake Minnetonka.

Foster stated that until 2004, there was not a limit of non-intoxicating malt liquor, wine and consumption and display licenses and the number of charter boats on the lake has remained somewhat constant. The charter boat business is very competitive and there is only so much market that can take place.

Nelson stated there should be a question added to the 2005 renewal non-intoxicating malt liquor and wine licenses to ascertain the level of interest in current operators in acquiring intoxicating liquor licenses. This would give the Board more time to make a decision and get feedback from the remaining cities. Otherwise it may be too late to make a change for the 2005 boating season.

Burma stated that letter to the cities requesting their comments was sent approximately 10 weeks ago, which was enough time to respond. The lack of response indicates that they do not have an opinion. He stated setting a limit on the current need bothered him because it would give an unfair advantage to the existing charter boats on the lake and that the Board should look at increasing the number of available intoxicating liquor licenses to a certain number.

Ambrose stated that the City of Wayzata has the same number of intoxicating liquor license that there is a demand for, noting that this could change in the future. With regards to the Wayzata dock being used as a port of call, he was not aware of any problems with public intoxication.

Knudsen stated that it makes sense to level that playing field for the existing charter boats by allowing the charter boats that have beer or wine licenses to 'upgrade' to an intoxicating liquor license and possibly limiting it to a couple over the existing need for potential new businesses.

LeFevere stated state law restricts the Board to issuing no more than 14 intoxicating liquor licenses. However for restaurants, there are no longer restrictions on the number of intoxicating liquor licenses that can be issued. The Board could allow the 14, plus an infinite number of charter boats that meet the definition of a restaurant. Another option that the Board has is that they could allow the 14, plus a limited number of charter boats that meet the definition of a restaurant. If the Board chooses to allow an unlimited number of charter boats that met the definition of a restaurant, at any time could put a limit on additional licenses issued. So the number can be revisited at a later date. He stated that the Board currently has an indication on the interest of charter boats wanting an intoxicating liquor license by the liquor license lottery list of approximately five charter boats. This list is used if a current liquor license becomes available. He stated that timing restraints of this decision has been discussed by the Board to possibly implement it for the 2005 season. He stated that there is no reason why the Board couldn't decide to expand the number at any time and then any interested charter boat company that is ready at that time could apply for the license if they meet all of the requirements. If the Board decides to expand the number of available liquor licenses, a definition of restaurant must be further defined. The definition must meet the minimum state definition of restaurant but the Board may be more restrictive. At the very least, the Board must define the minimum number of seats to qualify as a restaurant and possibly add a percentage of food and liquor sales.

Seuntjens stated that many of the charter boats might have trouble qualifying as a restaurant by

the state definition because the food is not typically prepared on the boats. If some of the charter boats that currently have an intoxicating liquor license qualify as a restaurant, it would free up their (of the 14) intoxicating liquor license that does not require the boat to qualify as a restaurant. That way a boat that currently does not have an intoxicating liquor license and does not qualify as a restaurant could obtain an intoxicating liquor license.

LeFevere stated that it was doubtful that the charter boats that currently have liquor licenses would want to give up their license if they could qualify as a restaurant in case their business operation changed in the future.

Suerth expressed his concern with the possible expansion of numbers of charter boats on Lake Minnetonka.

Nelson stated that he agreed with LeFevere and the current companies that have the 14 liquor licenses will not want to give them up. The Board must find out what the state definition of a restaurant is and if charter boats on Lake Minnetonka would meet this definition. The Board must then determine if existing charter boats without intoxicating liquor licenses would be interested in obtaining one by adding a question to the renewal non-intoxicating malt liquor and wine applications. If the board feels strongly about increasing the number, rather than trying to see if some of the charter boats would qualify as a restaurant through the exception, the Board should go to the state legislature to increase the number of liquor licenses allowed to be issued.

Seuntjens stated that making the changes through the legislature may take a long time and may not actually occur. He stated he would like the Board to continue with investigating the interest and the definition of restaurant so in December the Board can decide whether to continue on. He believed that the Board needs to direct LeFevere to investigate the definition of restaurant from the Liquor Control Division and to direct staff to contact the charter boat companies to determine what food is served, how it is served, and where it is prepared.

Ambrose stated that he would like to issue a caution on the legislative approach. He believed there might not be support in the legislature for this type of change to the LMCD enabling legislation especially after the incident that occurred near Big Island.

The consensus of the Board was for LeFevere to contact the Liquor Control Division and report back to the Board.

- C. Ordinance Amendment**, first reading of an ordinance relating to the use of alcohol and controlled substances; amending LMCD Code Sections 3.16 and 3.17, subd. 12.

Skramstad asked LeFevere for background on this agenda item.

LeFevere stated that the change was recommended by the LMCD's prosecuting attorney to be consistent with changes in state law.

MOTION: Foster moved, Nelson seconded to approve first reading of the ordinance amendment, waive second and third readings, and adopt it.

VOTE: Motion carried unanimously.

D. Additional Business.

There was no additional business.

3. **FINANCIAL**

A. Audit of vouchers (11/1/04 – 11/15/04).

Knudsen reviewed the audit of vouchers as submitted.

MOTION: Nelson moved, Van Hercke seconded to approve the audit of vouchers (11/1/04 – 11/15/04) as submitted.

VOTE: Motion carried unanimously.

B. Additional Business.

There was no additional business.

4. **ADMINISTRATION**

A. **Appointments for 2005:**

- Auditor Selection
- Legal Counsel
- Prosecuting Attorney
- Bookkeeper
- Official Newspaper
- Bank Depository for fiscal year 2005

MOTION: Foster moved, Burma seconded to approved the following 2005 appointments: 2004 Auditor Selection- Abdo, Eick, & Meyers; Legal Counsel- Kennedy & Graven; Prosecuting Attorney- Tallen & Baertschi; Bookkeeper- SB Management, Inc.; Official Newspaper- Lakeshore Weekly News; and Bank Depository for the beginning of the 2005 fiscal year- First National Bank of the Lakes (This will change to U.S. Bank sometime during the 2005 fiscal year when the LMCD becomes fully invested in the 4M fund through the League of Minnesota Cities).

VOTE: Motion carried unanimously.

Seuntjens stated the fees proposed by Abdo, Eick, and Meyers seemed high. He asked when the last time the LMCD solicited for competitive bids.

Nybeck stated approximately seven years.

Seuntjens suggested that a request for proposal should be sent out next fall to verify whether Abdo, Eick and Meyers was competitive.

B. Chair update of 11/9/04 annual meeting with the Hennepin County Sheriff's Office Water Patrol.

Skramstad asked Nybeck for background on this agenda item.

Nybeck made the following comments:

- Steve Tallen, LMCD Prosecuting Attorney, recommended a Code amendment that would require boaters to produce fire extinguishers, life jackets, or other safety equipment at the request of the Sheriff's Water Patrol. Failure to produce this equipment would be a crime. Those in attendance discussed the recommendation made by Tallen. The consensus was for Tallen to work with LMCD legal counsel Charlie LeFevere on a draft Code amendment for consideration by the Board of Directors at an upcoming LMCD Regular Board Meeting.
- There was discussion of future improvements in signage of LMCD Rules at public accesses and possibly channels due to the Bill Cooper/Thomas Jasper winter speeding ticket that was recently ruled on at the Minnesota Court of Appeals.
- Lt. Storms gave a code enforcement operational review at the meeting.
- Sheriff McGowan stated that 100 percent funding of the two additional deputies is included in the base budget for 2005. He envisioned that funding of this program would likely continue in 2005 unless the Hennepin County Commissioners delete it. Further details on this program for 2005 should be known by December 15th or 16th.
- The Big Island Buoy layout was discussed and the group consensus was that it accomplished the goals of both the Sheriff's Water Patrol and the LMCD and to keep the existing configuration for 2005. The feedback from the public on this project has been encouraging over the years. The project will continue in 2005 and it is possible that it could be expanded.
- Skramstad recommended that Lt. Storms work with Nybeck on the preparation of a list of potential new equipment purchases for the Sheriff's Water Patrol to enhance their safety efforts in 2005.
- Those in attendance discussed the placement of private buoys on Lake Minnetonka. The consensus was that the LMCD should work more proactively with the Sheriff's Water Patrol in 2005 in identifying unauthorized buoys. Once these buoys have been identified, it was recommended that letters should be sent to these residents, preferably from the Sheriff's Water Patrol, requesting the resident to remove the buoy.
- There was discussion on the recently adopted moratorium on new deicing sites on Lake Minnetonka. The Sheriff's Water Patrol agreed that there are safety concerns at deicing sites and they would participate in the review of the current LMCD ordinance with the Board.

C. Additional Business.

There was no additional business.

5. EWM/EXOTICS TASK FORCE

A. Minutes from the 10/08/04 EWM/Exotics Task Force Meeting.

Skramstad asked for any comments on this agenda item.

Nelson stated that the Board should be aware of current activities. He and staff have been working with David Gillete and obtained a proposal to incorporate some of the Zebra Mussel PowerPoint

presentation into the LMCD website. The redesign of the Zebra Mussel portion of the website would also include incorporating some of the "Zebra Mussels and Lake Minnetonka" video.

MOTION: Suerth moved, Knudsen seconded to approve the proposal by David Gillette to upgrade the LMCD website, not to exceed \$1500.

VOTE: Motion carried unanimously

Nelson stated that he was working on an overview document of the proposed "Black Lake-Green Lake" program. He stated he would bring the draft before the Board at a future meeting for comments.

Suerth stated he believed it was questionable that the zebra mussel program would receive funding from the state legislature. He emphasized the importance of involving stakeholders that live on Lake Minnetonka or around it. He suggested possibly sending a donation solicitation letter to a sample of the residents on and around Lake Minnetonka or a letter asking if they would consider financially supporting the zebra mussel program.

B. Additional Business.

There was no additional business.

6. SAVE THE LAKE

Nybeck stated that the fall solicitation letter would be sent out in the next few weeks.

7. EXECUTIVE DIRECTOR REPORT

Nybeck stated that the lake level as of 10/22/04 was 928.46', with the dam closed. Second, the LMCD office would be closed in observance of Veteran's Day. Third, enclosed in the handout folder was a resume of qualifications for Diane Lynch who is proposed to be the mediator for the Miles Canning civil law suit. He stated that the attorney representing Canning recommended her. He pointed out that she was a past Minnehaha Creek Watershed District Administrator. He asked if the Board was comfortable with her as the mediator.

The consensus of the Board was that they were comfortable with Diane Lynch acting as the mediator.

Knudsen suggested that a representative from the City of Greenwood be involved with the mediation process to ensure that any resolution option would comply with the city rules and regulations.

LeFevere stated that it would be a good thing to inform George Hoff of possible city code issues with any land boat storage options. He could possibly have a telephone conversation with the city administrator prior to the mediation proceeding.

8. OLD BUSINESS

Skramstad stated that there was discussion at the 10/27/04 LMCD Regular Board Meeting on a pending complaint and possible non-compliance of a dock with an approved variance. He believed that some of the facts might have changed based on conversations he and others Board Members have

had with the party that filed the complaint. He recommended there was a need to discuss this again.

The Board discussed this matter and directed Nybeck to check further into this matter, subject to the party filing the complaint signing a consent form authorizing the use of the survey they had submitted.

9. NEW BUSINESS

There was no new business.

10. EXECUTIVE SESSION- Performance Evaluation of Executive Director.

11. ADJOURNMENT

MOTION: Seuntjens moved, Ambrose seconded to: (1) go into executive session at 8:55 p.m. to conduct a performance evaluation of the Executive Director, as allowed by the Open Meeting Law and (2) adjourn the Board Meeting following completion of the executive session.

VOTE: Motion carried unanimously.

Tom Skramstad, Chair

Jose Valdesuso, Secretary