

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, December 8, 2004  
Tonka Bay City Hall

**CALL TO ORDER**

Skramstad called the meeting to order at 7:01 p.m.

**ROLL CALL**

**Members present:** Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Paul Knudsen, Minnetrista; Jose Valdesuso, Excelsior; Doug Babcock, Tonka Bay; 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.

**Members absent:** Bob Ambrose, Wayzata; the cities of Greenwood and Orono have no appointed member.

**CHAIR ANNOUNCEMENTS**, Chair Skramstad

Skramstad stated that the second Board meeting in December was scheduled for 12/22/04. He indicated that Nybeck has recommended cancelling this meeting due to the holidays and that he would proceed accordingly, unless a Board member objected. The Board did not object to the recommendation made by Skramstad. Skramstad asked Nybeck for an update on possible dates for the LMCD's 38th anniversary "Save the Lake" Recognition Banquet.

Nybeck stated that the Banquet has taken place in recent years on either the first or second Thursday in February. He recommended that the Banquet be scheduled at the Bayview Event Center based on positive feedback from the previous year.

The Board discussed this and the consensus was to hold the LMCD's 38th anniversary "Save the Lake" Recognition Banquet on 2/10/05 at the Bayview Event Center.

**READING OF MINUTES-** 11/10/04 LMCD Regular Board Meeting

**MOTION:** Seuntjens moved, Burma seconded to approve the minutes from the 11/10/04 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (9), Abstained (2, Babcock and Valdesuso); motion carried.

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

Mr. Gabriel Jabbour, 685 Tonkawa Road, brought two issues to the Boards attention. First, there was a large focus on public access and the goal of 700 car/trailer spaces on Lake Minnetonka in the late 1980's and early 1990's. Because of this work, new public accesses have been opened on Maxwell and Grays Bays. Jabbour stated that he supported other ways to access Lake Minnetonka, such as trail systems, fishing piers, and the Minnehaha charter boat. He provided background on the attempt to maintain the Minnehaha on Lake Minnetonka and the transfer of ownership to the local level. Second, he brought the Board up to speed on the possible sale of the Veterans Camp on Big Island. The City of Orono has

supported operating the Veterans Camp status quo by maintaining it in the public sector, and attempts are being made to accomplish this. Orono has expressed an interest in purchasing the Camp but Orono has not been provided a sale price, although it has recently been listed to sell it to the general public for an undetermined price.

Babcock asked what the comprehensive plan for the City of Orono would allow at this site.

Jabbour stated that this site was designated as parkland within a residential area. He reviewed the idea of Three Rivers Park District purchasing this site, including potential concerns.

Babcock asked Jabbour what the LMCD could do to ensure that the Big Island Veterans Camp continues to be maintained in the public sector.

Jabbour recommended that it would be beneficial for the interested governmental agencies to speak as one on this issue, possibly through adopted resolutions. He believed that the City of Orono might be able to assist on a sample resolution sometime in the near future.

Mr. Alan Greenwood, 6500 Bayview Drive, updated the Board on recent events that have taken place within the Bayview HOA development. Two residences have recently sold, including John Thomas, the contact for the new multiple dock license application. Discussion of the pending application has been scheduled for recent Board meetings; however, it has been removed at the last minute by the applicant. He expressed concern about delaying action on the application any further and he encouraged the Board take action on it as soon as possible.

Nybeck reminded the Board that the Bayview HOA application was tabled this last summer, at the request of the applicant, so that they could work on a variety of issues with its legal counsel. On October 20th, Mr. Thomas asked to be placed on the agenda for the October 27th Board Meeting. This could not be accomplished because of the late request and the difficulty of coordinating it with packets being sent out. Mr. Thomas then requested that the pending application be scheduled for the November 10th Board meeting; however, it was removed from the agenda at his request. Mr. Thomas then requested that the pending application be scheduled for this Board meeting; however, it was removed at the request of Mr. Thomas. Nybeck stated that a second form to waive the 60-day rule has been signed and received from Mr. Thomas. He recommended that the Board review the pending application sometime in January, which has been communicated to Mr. Thomas.

The Board discussed this matter and the consensus was to place the pending Bayview HOA multiple dock license application on the agenda for the January 12, 2005 LMCD Regular Board meeting.

### **PUBLIC HEARINGS**

- **City of Mound**, new multiple dock license application for 40 overnight Boat Storage Units (BSU's) on Lost Lake Channel.

Skramstad opened the public hearing at 8:38 p.m. and asked Nybeck for background.

Nybeck made the following comments:

- The City of Mound has submitted a new multiple dock license application for consideration by the Board. The application is for 40 BSU's for a 37-unit townhouse development in the Lost

Lake District on the northeast end of the Lost Lake Channel. One 26' long BSU has been proposed for each townhouse, with the remaining three BSU's reserved for visitors and guests of the townhouse complex.

- Mound currently has two multiple dock licenses approved by the LMCD. First, Mound has 590 BSU's approved for its commons docking program, with 32,801' of non-continuous shoreline dedicated to it. Second, Mound has 24 transient BSU's approved on the north end of the Lost Lake Channel, with 1,500' of non-continuous shoreline dedicated to it. The proposed dock would have 2,000' of non-continuous shoreline dedicated to it. The two approved facilities comply with the 1:50' General Rule and the proposed facility would also comply with the 1:50' General Rule. Further details of these shoreline calculations are outlined in a Mound Shoreline Lineal Footage Study, dated 11/19/04.
- Code Section 2.03, subd. 1 states that "No person may locate, construct, install or maintain a multiple dock or mooring area or commercial dock or launching ramp on the shoreline of the Lake, or into waters of the Lake, unless licensed to do so". A multiple dock on Lake Minnetonka is any dock constructed or maintained for the storage of five or more restricted watercraft. Thus, the request for 40 overnight storage BSU's requires a new multiple dock license application, with public hearing.
- Code Section 2.01, subd. 1 requires docking and boat storage to be contained within an authorized dock use area. Docking and boat storage would be contained within the authorized dock use area for this site.
- Code Section 2.03, subd. 3 has a number of subjective criteria that the Board may consider in exercising its discretion in granting or denying of licenses. One subjective criterion for the Board to consider is "Whether the proposed facility is compatible with the LMCD watercraft density classification criteria". This criterion refers to the 1974 Boat Density Policy Statement that is currently being reviewed by the Lake Minnetonka Boat Density Sub-Committee. Although the analysis indicates that the area should be designated "Critical" based on the 1974 policy, he did not believe that remedial action was necessary by the Board at this time because the policy was being reviewed for possible updates and the analysis conducted was for Cooks Bay, not Lost Lake Channel.
- The Environmental Quality Board (EQB) requires a mandatory Environmental Assessment Worksheet (EAW) when dock structure and maneuvering space exceed 20,000 square feet. For the proposal, dock structure and maneuvering space would be 35,490 square feet, which results in the need for a mandatory EAW. Mound has prepared an Alternative Urban Areawide Review (AUAR) for the entire downtown revitalization project, including the proposed docking. Nybeck stated that he did not believe that a mandatory EAW should be required because the review for the docking in the AUAR would exceed the review conducted by the LMCD in a mandatory EAW. Gregg Downing from the EQB has agreed with this assessment and does not believe that an independent EAW should be required.
- The MN DNR and the MCWD were provided a copy of the application on 11/19/04, with comments due on 12/2/04. Comments were received by both agencies after 12/2/04 and both agencies have expressed concern about the proposed site plan and the amount of dredging associated with it.
- The application submitted by Mound complies with LMCD Code. However, comments on the Mound AUAR will be received until 12/22/04, with final action by the Mound city council likely in early January. There are two approaches the Board could consider in its decision making process. First, the Board could conduct the public hearing and take no action on the application until after the Mound city council has taken action on the AUAR, which was his preferred

approach. Second, the Board could take a conditional action on the application, pending the outcome of the AUAR. If the Board chooses this option, he recommended approval of the new multiple dock license application for 2005.

- He entertained questions or comments from the Board.

Babcock asked whether the area where the docks are proposed was currently emergent vegetation.

Nybeck stated that he believed the applicant would be better prepared to address the question raised by Babcock.

Ms. Sarah Smith, Mound Community Development Director, stated that she and her project team had been working on the Mound Visions project for approximately three years. She made the following comments:

- Mound Visions is a downtown redevelopment project that has been in the works for approximately 12 years and a developer has been located. Three Districts have been proposed for the redevelopment project. These include: 1) Lost Lake District- townhomes along the Lost Lake greenway, with small mixed-use commercial, 2) Auditor's Road District- mixed-used retail, office, housing, and hotel in line with the Lost Lake harbor, and 3) Lake Langdon- mixed use retail with senior housing, condos, and townhomes.
- The first phase of the project is the Lost Lake District, with construction tentatively planned for next summer. This first phase is subject to securing permits from a number of agencies.
- She stated that Mound has received the comments from the MN DNR and the MCWD. The design team has not reviewed these comments because of the late date that they were received. She believed that Mound was able to address the comments received regarding the ultimate dock design and the dredging of emergent vegetation in the area.
- The Mound design team considered the dock layout proposed by the MCWD a number of months ago. The design team abandoned this site plan because it would require a variance from LMCD Code, it could cause navigability problems in the area, and the marina like appearance was not desired. The proposed plan is more passive and would be adjacent to the scenic greenway.
- With regards to wetlands and the vegetative mat, she was aware of the related issues. Geologists and soil scientists are working on mitigation strategies to minimize possible impacts, including the dredge itself. She pointed out that the dredge in the proposed site plan, approximately two acres, is similar to the dredge required in the MCWD proposal. No riprap or shoreline alteration will be required along the shore for this project, with shoreline erosion control mats placed above and below the 929.4' elevation.
- She believed that Mound had some of the same interests that MN DNR, the MCWD, and the Army Corps of Engineers have. To address questions by the Board, Bruce Chamberlain, Jim Fackler, and Chuck Alcon were in attendance. She entertained questions, comments, suggestions, or revisions on the proposed project.

Foster asked for an explanation of how the city's docking program would be associated with the townhouse development.

Smith stated that docks would be owned and operated by the City of Mound through its commons docking program. The owners of these townhouses would have dockage via a development agreement, very similar to other townhouse or residential agreements at other locations in Mound.

Nelson asked if the deeded dock right would stay with a townhouse if the property were sold.

Smith stated that she believed that was the intent, although this has not been formally finalized. If this were the outcome, it would be consistent with other townhouse and residential properties in Mound.

Van Hercke stated that she concurred with the recommendation made by Nybeck to delay action on the application until after the AUAR has been finalized by the Mound city council.

Mr. Bruce Chamberlain, of Hoisington and Koegler, addressed the location of the proposed docks. He stated that an aerial view indicates that there exists a narrow area of open water in this area.

Smith stated that she believed one of the intriguing elements of this project would be the significant improvements to water quality and soil related issues on this site. This includes working with the MCWD and the Met Council on innovative stormwater strategies. It has been estimated that the in-flow of phosphorous would be reduced by 75 percent with the implementation of these strategies.

Foster stated that the new townhouse project would need to comply with the 1:50' General Rule to determine the number of Boat Storage Units (BSU's) that could be stored at that site. In this application, the City of Mound controls the shoreline at this site and Code allows municipalities to consolidate non-continuous shoreline throughout the city for density calculations. For cities that have special density licenses, LMCD Code would prohibit tying a dock space up to a specified riparian property.

Babcock stated that tying dock spaces to the specified riparian property, such as townhouses, would not be a problem because Mound complies with the 1:50' General Rule overall. He asked the applicant where the 2,000' of shoreline that has been proposed to be dedicated for this application was located.

Smith stated that the 2,000' of shoreline is within the Lost Lake area.

Foster stated that he had concerns about the number of BSU's proposed in front of the townhouse development and the means that the 40 BSU's would be approved by the Board. Without the city's involvement and their ability to consolidate non-continuous shoreline, he believed that this site would have significantly less BSU's than proposed. He questioned how the Board might want to deal with this.

Smith stated that all but approximately 200' dedicated to this application is contiguous.

Mr. Jim Fackler, Mound Parks Superintendent, stated that this site would be very similar to approximately another 160 abutting sites that are designated docking by ordinance to those homes that abut the commons.

Seuntjens stated that he believed the proposal for docking would involve an association approach rather than an abutting approach.

Babcock expressed concern about the dock design because it creates a safety problem for fire purposes because it has only one entrance point from the land.

LeFevere stated that the most restrictive storage allowance in LMCD Code is the 1:50' General Rule. If an applicant can comply with the 1:50' General Rule, there is no restriction on who can use this dock. For example, this could be tied to a resident in Bloomington by deed if it complies with the 1:50' General Rule. For special density licenses, there is a prohibition against tying docking to specified riparian property.

Babcock stated that the general premise behind the restriction that does not allow special density licenses to be tied to specified riparian property is that these facilities should be open to the public.

Knudsen asked Fackler if Mound had a waiting list for its commons docking program.

Fackler stated that Mound has a waiting list with approximately 140 names on it.

Seuntjens asked if there were other private lots within Lost Lake that have docks.

Fackler stated there are a few private docks adjacent to the transient dock and there are some docks to the south near Bartlett Blvd.

LeFevere stated that based on the shoreline calculations provided by the applicant, Mound has 1,888' of continuous shoreline dedicated from Lost Lake Channel for this application. If continuous shoreline were required for this site, it would require the number of BSU's to be reduced from 40 to 38.

Nelson applauded the efforts to reduce the amount of phosphorous in-flows into Lost Lake. However, he expressed concern about resuspending nutrients from the base of the channel through prop dredging, especially with the larger boats to be stored at these docks. He asked the applicant for comments on the proposed boat sizes and whether they had considered smaller boats.

Mr. Chuck Alcon, Project Manager, stated that the plans were designed for a 30' boat length maximum.

Babcock stated that he had an expectation that Mound would be a good steward of the lake, especially because of the amount of non-contiguous shoreline that they have. He expressed concern about placing docks in wetland areas and the impacts they have on them. He stated that he and other Board members were concerned about docks in wetland areas and he encouraged Mound to re-evaluate the proposed plan.

Mr. Vic Potter, 5452 Bartlett Blvd., stated that he had previously expressed concern about increased boat traffic on Lost Lake Channel. He pointed out that Fackler had agreed to budget funds for the placement of "Minimum-Wake" buoys for this area in the future.

Skramstad stated that the placement of these buoys would need to be discussed with the Board sometime in the future.

Potter stated that he had environmental concerns similar to those raised by Babcock. He supported the townhouse and the dredging of Lost Lake Channel by the City of Mound. However, he was one of the six owners on the Channel Town Association and he would like to have Mound dredge their private channel, similar to Lost Lake Channel. The last time this channel was dredged, it was funded by the private residents.

The consensus of the Board was that Mr. Potter should make this request to the City of Mound.

There being no further comments, Skramstad closed the public hearing at 8:25 p.m.

**MOTION:** Knudsen moved, Van Hercke seconded to table action on the Mound new multiple dock license application, pending outcome of the AUAR and addressing the concerns raised by the MN DNR and the MCWD.

Valdesuso asked what would happen if the MN DNR or the MCWD did not approve the permit request from Mound.

Knudsen stated that Mound would not be able to dredge without permits from both the MN DNR and the MCWD.

Babcock encouraged the Board to review the merits of the application under LMCD Code, not MN DNR or MCWD rules. There comments are encouraged and he recommended that Nybeck review the application under LMCD Code criteria that deal with wetlands.

Foster suggested that splitting the motion might make sense. He supported tabling action on the application pending the outcome of the draft AUAR. However, he expressed concern about tabling action on the application to address the concerns of the MN DNR and the MCWD because the application should be reviewed by the Board under LMCD Code. He pointed out that a typical condition of a Board approval would require the applicant to secure permits from all other jurisdictional agencies. He recommended a friendly amendment to the motion that would eliminate tabling the application requiring the applicant to address the concerns raised by the MN DNR and the MCWD. Knudsen and Van Hercke agreed to this.

Nelson stated that he would like to have the size of boats to be stored at the proposed dock reduced.

Burma stated that he believed the size of boat discussion should take place when the application is brought back to the Board for discussion.

**VOTE:** Motion carried unanimously.

The meeting was recessed at 8:30 p.m. and reconvened at 8:37 p.m.

- **Shorewood Yacht Club (Sites 1 and 2)**, new multiple dock license, special density, and variance applications to install a lift bridge between the two sites and to amend the public amenities in the approved special density license order, dated 1/24/01.

Skramstad opened the public hearing at 8:38 p.m. and asked Nybeck for background.

Nybeck made the following comments:

- Mr. John Cross, Manager of Shorewood Yacht Club (SYC), has submitted applications for both multiple dock facilities on Gideon Bay. The applicant has proposed two changes. These

included: 1) installing a lift bridge between Sites 1 and 2, and 2) amending the approved public amenities in the Special Density License and Variance Order, dated 1/24/01, for Site 2.

- A new multiple dock license application has been submitted at Site 1 because there is a lift bridge proposed within the extended side site line. At Site 2, new multiple dock license and special density license applications have been submitted. The variance application has been submitted for both sites.
- This past spring, the 2004 renewal without change for Site 2 was forwarded for consideration by the Board. The primary reason why this application was forwarded to the Board was that the applicant had not provided all of the amenities required by the 1/24/01 Order for a number of boating seasons. At the 5/12/04 meeting, the Board approved the renewal application for 2004. The applicant was put on notice by the Board that he would need to provide the public amenities in 2004, unless a new special density license application was submitted and approved by the Board to amend the approved public amenities.
- Code Section 2.03, subd. 7 requires a new multiple dock license application when there is any change in slip size, ownership, width, height or location of a structure under this section. In the proposal to add a lift bridge between Sites 1 and 2, structure would be added to both sites. Thus, there is a need for a new multiple dock license application, with public hearing, for both sites.
- Code Section 2.01, subd. 1 states that “no new docks or mooring areas shall be constructed or established after 5/3/78 which provide space for or are used for mooring or docking a greater number of watercraft than one for each 50’ of continuous shoreline in existence on 5/2/78, unless authorized to do so by a special density license”. Section 2.05 allows applications for docking of watercraft up to one for each 10’ of continuous shoreline, provided the increased above the 1:50’ General Rule provides public benefit. To achieve this, the applicants need to provide public amenities each boating season. For special density license applications, the applicant is required to provide .5 amenity points for each slip over the 1:50’ General Rule, with a minimum of 20 public amenity points.
- For the Shorewood Yacht Club special density license application, LMCD Code requires that the applicant provide a minimum of 20 public amenity points each boating season. When the special density license was initially approved in 2001, there were a significant number of amenities that provided more than the required 20 points. The applicant stated that he did not believe that he needed to provide these amenities annually and the consensus of the of the Board discussion this last spring was that he should only be required to provide 20 points. The applicant has proposed one Public Access public amenity, at 10 points, and three Environmental Protection public amenities, at five points each. With a total of 25 proposed public amenity points, he believed that these would be consistent with the Board direction last spring.
- Code Section 2.01, subd. 1 requires docking and boat storage to be contained within an authorized dock use area. The lift bridge would not be within the authorized dock use area for either Site 1 or 2.
- Code Section 1.07 allows the Board to permit a variance, with conditions deemed necessary, where practical difficulties or particular hardships are caused by application of LMCD Code. The applicant has proposed a practical difficulty or particular hardship that the two sites are contiguous and that side setbacks from the common extended side site line should not be applicable. Nybeck did not agree with the hardships because there is a parcel of land between the two sites, with a 30’ wide access corridor, and there are no Code provisions that allow an applicant to construct docks and store boats up to the common extended side site line. In

reviewing the variance application, he recommended the Board use decision standards. These decision standards include: 1) Is the proposed use reasonable, 2) Would it be unreasonable to require conformance to the ordinance, 3) Is the difficulty of conforming to the ordinance due to circumstances unique to the property, 4) Is the problem one created by the applicant, and 5) Will the variance, if granted, alter the essential character of the locality. He reviewed the Shorewood Yacht Club variance application with these decision standards, as outlined in the 12/3/04 staff memo.

- In compliance with MN DNR General Permit 97-6098, the MN DNR and the City of Shorewood were provide a copy of the proposed applications on 11/19/04, with comments due by 12/2/04. The City of Shorewood states that they have no objections to the pedestrian bridge, although there might be a need to review the conditional use permit for the applicant. No comments have been received from the MN DNR.
- He entertained questions or comments from the Board.

Mr. John Cross stated that Brian Wagner, who has conducted the kids sailing camp in recent years, was in attendance and distributing literature on the camp. This literature describes the sail school activities taking place on Site 2, which have been approved by the City of Shorewood. He stated that his legal counsel, Jim Walston, was in attendance to provide some further background on the applications.

Mr. Jim Walston stated that he was in attendance to address the staff memo prepared by Nybeck. The business operates on both sites; however the majority of the activities occur on Site 1. He provided background on how to access both sites, pointing out that Shorewood prohibits accessing Site 2 from Timber Lane. Site 2 is currently used by the sail camp as described by his client, including a lunch site for youth associated with this sail camp. He expressed concern about how to get from Site 2 to Site 1 as described by Nybeck because this distance is approximately one fourth of mile and it could become more problematic for the handicapped. He believed that the two properties are contiguous; however, LMCD Code does not deem them contiguous. He pointed out that there is a property between the two sites that is under the control of the Hennepin County Regional Rail Authority. He circulated a photo of the drainage ditch area in question and where the bridge would connect the two sites. This bridge will be used strictly for pedestrians to access both sites and will not be used to moor boats. He addressed the 30' wide corridor pointed out by Nybeckf, noting that it was impacted by the decision by the Board in 2001 to allow the two docks to be connected. He questioned what the practical use of this corridor might be at this time.

Babcock stated that he believed it was a slippery slope for the applicant to interpret that the 30' wide corridor is unusable and it has been negated with the variance approved in 2001 that connected the two docks.

Walston stated that the corridor would still be usable because the proposed bridge would lift up. However, he questioned how usable the Hennepin County Regional Rail Authority would be because of the steep slopes. He questioned whether Code Section 2.01, subd. 1 applied to this project because the bridge would not be used for the docking and storage of watercraft. He recommended that the Board should consider a hardship of access for the handicapped. He believed that the proposed use was reasonable, that the problems were not created by the use of the property by his client, and that the use of a lift bridge would not alter the essential character of the locality. He entertained questions or comments from the Board.

Skramstad asked why a lift bridge has been proposed at this time.

Walston stated that a lift bridge would allow the area to be remained open to the public, if desired by the Board. In the proposal, a canoe could be launched from this site; however, a boat would be problematic because of water depths in the area.

Foster stated that he believed the lift bridge would address the concerns that the Board previously had relating to access to the Rail Authority site. He supported the proposed lift bridge because it would benefit the sailing school kids. If the Board desired to approve the lift bridge, he suggested a condition that would require the removal of the structure if requested by the Rail Authority.

Babcock stated that he would be troubled with limiting the type of watercraft that could be launched from the Rail Authority property because water depths could be improved in this area in the future through a dredge.

Seuntjens asked LeFevere to address the comments raised by Walston that the two sites are contiguous.

LeFevere stated that the two sites are contiguous only below the 929.4' elevation.

Seuntjens asked Walston to address how steep the bank to the trail is from Site 1 and why Site 2 cannot be accessed from the trail prior to Timber Lane.

Walston stated that the trail could be accessed from Site 1; however, the slope is relatively steep.

Babcock stated that the Board in 2001 discussed a number of the issues raised by the applicant. In 2001, the Board concluded that Site 2 was not a good place to put docks from or to have people associated with them. Because of this, the Board granted a side setback variance to attach the new docks for Site 2 to Site 1. The intent of the Board was that traffic on Site 2 was not a good place and the site needed to be maintained in an unimproved state. The applicant has since improved Site 2, which conflicts with the approved variance order, because it had the approval of the City of Shorewood. He believed that the solution was to move all related activities of the sailing school to Site 1, as he previously agreed to.

Walston stated that access to Site 2 from the trail prior to Timber Lane was problematic because of a ravine and standing water.

Seuntjens asked how the kids from the sailing school currently access Site 2.

Cross stated that the kids access Site 2 from Site 1 using a rope and dingy.

Seuntjens asked the applicant to comment on the docks that originate from Site 2.

Cross stated that the dock for BSU #1 was approved for the previous owner of this site. The dock for BSU #35 is taken in and out seasonally. The previous property owner had a dock site between these two docks that has been eliminated. The sailboats for the sailing school are stored at Site 1 and Site 2 is used for picnic purposes for the kids.

Mr. Nick Ruehl, 456 Lafayette Ave., stated that he was a resident of Excelsior for nearly 30 years and he lived nearby. When Mr. Cross was developing the Shorewood Yacht Club in the mid 1970's, Cross had trouble complying with the Shorewood ordinances. However, he agreed with the use proposed by Cross at that time, with a few concerns. These included no late night parties, no gas sales, and no powerboats because it was shallow water. He believed that Cross has run a good facility, with the exception of noise in recent years. He stated that he has objected to an increase in powerboats in past years, including the proposed public amenity for powerboats with outboard motors.

Babcock stated that the powerboat public amenity was approved in 2001; however, it might need to be addressed with the issues pending with the City of Shorewood.

Foster stated that he believed these boats would be rental sailboats with outboard motors on them.

Babcock stated that there was a restriction at Site One when a variance was approved around 1979 that limited boats stored at this facility to sailboats only. Because of this, he believed that the proposed public amenity should be amended accordingly.

Mr. Jim Hancock, 23800 Lawtonka Drive, stated that he represented the 12 townhouse property that own lakeshore frontage immediately to the west of Site 2. He stores his sailboat at Shorewood Yacht Club and the only way to access the docks are through Site 1. He expressed his support for the proposed bridge between Sites 1 and 2 because the City of Shorewood was quite specific that they did not want access to Site 2 via vehicle access.

There being no further comments, Skramstad closed the public hearing at 9:35 p.m.

**MOTION:** Foster moved, Valdesuso seconded to direct LeFevere to prepare Findings of Fact and Order for approval of the special density license application to amend the public amenities in the approved 1/24/01 Order.

Babcock stated that facilities with special density licenses are supposed to be open to the public by providing public amenities. He expressed concern about approving the special density license application because public amenities will be greatly reduced compared to when the facility was originally approved. He believed that the applicant should be able to amend approved public amenities; however, they should be required to maintain the same number of points.

Foster stated that he had met with the applicant regarding a laundry list of public amenities with the applicant reporting after the season to the office which amenities he provided. He believed that staff had recommended that the applicant consider a new direction.

Nybeck stated that the laundry list of public amenities was discussed last spring by the Board and the applicant. He expressed concern about a laundry list of public amenities because it would make it more difficult for staff to monitor which amenities were being provided. For this facility, all three Environmental Protection amenities will be provided annually because they are physical characteristics of the site. The only amenity that the applicant would need to provide documentation of annually would be the five rental sailboats. If the Board would like to allow the applicant to have a laundry list of public amenities to be provided from annually, he believed the list originally provided by the applicant would

need to be evaluated significantly because a number of them would either need to be deleted or consolidated.

Babcock stated that he believed providing public amenities is the responsibility of the applicant, not the responsibility of staff enforcing them. He questioned why the sailing school public amenity is being proposed to be deleted from list to be provided when the applicant is proposing sailing as part of the activities on Site 2, which has resulted in the application for the lift bridge.

Skramstad recommended a friendly amendment to the motion clarifying that the five rental boats are sailboats rather than motorboats. Foster and Valdesuso agree to this.

**VOTE:** Ayes (10), Nays (1, Babcock), motion carried.

**MOTION:** Foster moved, Suerth seconded to direct LeFevere to prepare Findings of Fact and Order for approval of the side setback variance application for the lift bridge between Sites 1 and 2, subject to the lift bridge being removed if a problem arises in the future from the Hennepin County Regional Rail Authority.

Babcock asked what the particular hardship was that would merit approval of the variance application. This hardship needs to be associated with the physical property, not how the owner is using the property. He asked LeFevere for background on this.

LeFevere stated that primary dock for Site 2 is not connected to the land at the request of the applicant. Because of this, Board granted a side setback variance in 2001 that allowed the dock for Site 2 to be connected to the dock at Site 1. One of the justifications for the Board in 2001 was the applicant's desire to keep Site 2 in its natural state.

Foster stated that the particular hardship was topography of the land and reasonable access to it.

Babcock recommended a friendly amendment to add language to the Order stating that the bridge would be constructed at the applicants peril as represented by his legal counsel. Foster and Suerth agreed to this.

**VOTE:** Ayes (9), Nays (2, Babcock and Van Hercke); motion carried.

## 1. LAKE USE & RECREATION

A. Discussion on whether to increase the number of on-sale Intoxicating Liquor Licenses for charter boats on Lake Minnetonka.

Skramstad asked LeFevere for background on this agenda item.

LeFevere stated that the Liquor Control Division has provided the Board some leniency with regards to the definition of a restaurant on a charter boat. Based on his review with the Liquor Control Division, he believed that the Board could expand the number of on-sale intoxicating liquor licenses beyond 14, as long as these charter boats meet the definition of a restaurant. Two questions for the Board to consider include: 1) Whether there is a need to better define the term restaurant in LMCD Code, and 2) Whether the Board would like to expand the number of

intoxicating liquor licenses. There currently is an ordinance that restricts on-sale intoxicating liquor licenses to 14.

Skramstad asked Nybeck if there would be further challenges for staff to process and administer additional on-sale intoxicating liquor licenses.

Nybeck stated that he did not believe that there would be further challenges.

Seuntjens stated that he believed the Board should focus its discussion on whether to increase on-sale intoxicating liquor license beyond 14, and if the Board chooses to so, by how many.

Foster stated that the Lake Minnetonka Charter Boat Association has requested the Board to expand the number of intoxicating liquor licenses to the current demand of the charter boats already operating. Although he supported expanding the number of on-sale intoxicating liquor licenses, he did not support the request made by the Lake Minnetonka Charter Boat Association.

Babcock stated that if the Board would like to increase the number of on-sale intoxicating liquor licenses from 14, he encouraged the Board to tie it to additional enforcement. This might be accomplished through the additional revenue received.

LeFevere stated that the LMCD became involved with the issuing of liquor licenses initially because the licenses were issued by the State of Minnesota. Enforcement by the Sheriff's Water Patrol became a problem because they did not have an idea of which boats either had or needed a license. He reminded that enforcement on a charter boat is more problematic compared to a land establishment because a charter boat is fully contained.

Skramstad stated that although the increase in revenue by expanding the number of intoxicating liquor licenses is minimal, it might be a good gesture to share this income with the Sheriff's Water Patrol and the local police departments for added enforcement.

Scanlon expressed concern about revenue sharing with local police departments because the vast majority of passengers embark and disembark in Excelsior and Wayzata. He reminded the Board that both of these cities support the proposal to expand the number of intoxicating liquor licenses from 14.

Babcock stated that he believed the charter boat owners self-police their businesses much better than a number of years ago. He recommended that the Board should look at the fee structure for intoxicating liquor licenses and work out an agreement with the Sheriff's Water Patrol to fund a better enforcement program.

**MOTION:** Foster moved, Burma seconded to direct LeFevere to prepare an ordinance amendment that would repeal the existing LMCD ordinance that restricts the number of on-sale intoxicating liquor licenses that can be issued to charter boats on Lake Minnetonka to 14.

Babcock stated that he would like the Board to establish a timeline for tying added enforcement with an increase in the number of intoxicating liquor licenses.

**VOTE:** Motion carried unanimously.

**B. Additional Business.**

Miles Canning Update

Skramstad asked Nybeck for an update on the Miles Canning pending litigation.

Nybeck that both sides have agreed to a mediator and that dates for the LMCD have been forwarded to George Hoff. These dates have been forwarded to the attorney representing Mr. Canning and Hoff is awaiting feedback.

Lake Minnetonka Lake Bottom Clean-Up Project

Skramstad stated that he had participated in the Lake Minnetonka Lake Bottom Clean-up project in 2003 and that he was not aware if the project took place in 2004. He stated that he would like the Board to discuss whether the LMCD should be a supporting organization for this project in the future and that this would be placed on the agenda sometime in the near future.

Lake Minnetonka Boat Density Sub-Committee Update

Skramstad asked for an update from Van Hercke.

Van Hercke stated that a sub-committee meeting took place on 12/7/04 and the consensus was that a facilitator would benefit the process. She stated that discussions with Tom LaForce from Team Creations have already been initiated and he has expressed an interest in facilitating future sub-committee meetings, at a rate of \$425 per session. She estimated that there would be approximately eight sessions and that agreeing to this would be non-binding. She stated that the next sub-committee meeting was scheduled for 12/16/04 and that LaForce was available for that meeting.

Skramstad stated that he agreed with Van Hercke that contracting with LaForce to facilitate future sub-committee meetings was a great idea. However, he questioned what line-item this would be paid out of since it was not budgeted for.

Nybeck stated that he believed it could be paid out of either contingency funds from the Administrative Budget or Administrative reserve funds.

**MOTION:** Foster moved, Babcock seconded to enter into a contract with Tom LaForce with Team Creations for eight sessions, at a rate of \$425 per session, to facilitate future Lake Minnetonka Boat Density Sub-Committee meetings.

**VOTE:** Motion carried unanimously.

**2. EWM/EXOTICS TASK FORCE**

**A. Consideration of sealed bids received for the purchase of a new Aquatic Plant Harvester.**

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that he believed the staff memo was pretty self-explanatory. He recommended that the Board award the contract to Aquarius Systems for the purchase of a new Aquatic Plant

Harvester, with an 11' wide cutting width and hydraulically lifted paddlewheels, for a net total bid of \$110,695 (excluding federal, state, and local taxes). He entertained questions or comments from the Board.

Skramstad stated that he believed the maintenance contract for 2005 should be addressed since the number of harvesters would be reduced and the equipment would be newer.

Seuntjens expressed concern about reducing the number of harvesters associated with the program, even though the newer equipment is more productive and efficient. He suggested that the Board might want to consider purchasing a fourth paddlewheel harvester in the near future.

**MOTION:** Knudsen moved, Van Hercke seconded to authorize the Chair Skramstad to enter into a contractual agreement with Aquarius Systems for an 11' wide cutting width, with hydraulically lifted paddlewheels, for a net total bid of \$110,695 (excluding federal, state, and local taxes).

**VOTE:** Motion carried unanimously.

**B.** Discussion of "Black Lake – Green Lake" concept.

Skramstad asked Nelson for background on this agenda item.

Nelson stated that he had prepared a draft concept paper at the request of Senator Gen Olson. He encouraged Board members to forward him recommended changes, comments, or additional information in the next couple of days. He stated that this draft concept paper would be discussed at the 12/10/04 EWM/Exotics Task Force meeting.

**C.** Additional Business.

There was no additional business.

**3. FINANCIAL**

**A.** Audit of vouchers (11/16/04 – 11/30/04) and (12/1/04 – 12/15/04).

Knudsen reviewed the audit of vouchers as submitted.

**MOTION:** Knudsen moved, Seuntjens seconded to approve the audit of vouchers as submitted.

**VOTE:** Motion carried unanimously.

**B.** October financial summary and balance sheet.

The Board accepted the October financial summary and balance sheet as submitted.

**C.** Additional Business.

There was no additional business.

**4. ADMINISTRATION**

- A.** Chair update of 11/10/04 Executive Session to discuss the performance of Executive Director, Greg Nybeck.

Skramstad stated that he would like to update the Board on discussions he and Van Hercke had with Nybeck on his performance in executive session.

**MOTION:** Babcock moved, Knudsen seconded to go into executive session at 11:12 p.m. to discuss the performance of Executive Director, Greg Nybeck, as allowed by the Open Meeting Law at 11:12 p.m.

**VOTE:** Motion carried unanimously.

The meeting was re-opened to the general public at 11:15 p.m.

- B.** Staff update on proposal to relocate the meeting space for Regular LMCD Board of Director Meetings.

Skramstad asked for an update from Nybeck.

Nybeck stated that he and Harper had recently met with Board member Ambrose and officials from the City of Wayzata and the Lake Minnetonka Communications Commission to conduct a mock meeting. This mock meeting went well and he believed that the LMCD was prepared to relocate LMCD Board Meetings from Tonka Bay to Wayzata, as soon as 1/12/05.

**MOTION:** Scanlon moved, Van Hercke seconded to relocate LMCD Board Meetings to Wayzata City Hall, effective 1/12/05.

**VOTE:** Ayes (9), Nays (2; Seuntens and Babcock); motion carried.

Babcock stated that he would like the record to reflect that he appreciated the use of Tonka Bay City Hall for Board meetings over the years. If there are excessive costs involved in the use of Wayzata City Hall in the future, he supported moving the meeting location back to Tonka Bay in the future.

- C.** Additional Business.

There was no additional business.

**5. SAVE THE LAKE**

- A.** Consideration of 2004 Hennepin County Sheriff's Office Water Patrol Special Deputy award candidates.

Skramstad stated that the Sheriff's Water Patrol has recommended that Michael Baldwin be recognized as the LMCD Special Deputy at the 2/10/05 "Save the Lake" Recognition Banquet.

**MOTION:** Valdesuso moved, Knudsen seconded to recognize Michael Baldwin as the LMCD's Special Deputy at the 2/10/05 "Save the Lake" Recognition Banquet.

**VOTE:** Motion carried unanimously.

**B. Additional Business.**

There was no additional business.

**6. WATER STRUCTURES**

There was no discussion.

**7. EXECUTIVE DIRECTOR**

There was no Executive Director Report.

**8. OLD BUSINESS**

Skramstad stated that there was a list of planning topics that was partly discussed at the last Board Planning/Workshop Session. He indicated that he would like to have the Board keep working on this list.

**9. NEW BUSINESS**

Babcock stated that he would like to have the 1:50' General Rule discussed for a future Board Planning/Workshop Session.

**10. ADJOURNMENT**

Tom Skramstad, Chair

Jose Valdesuso, Secretary