

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, January 12, 2005
Wayzata City Hall

CALL TO ORDER

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

ROLL CALL

Members present: Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Paul Knudsen, Minnetrista; Jose Valdesuso, Excelsior; Bob Ambrose, Wayzata; Doug Babcock, Tonka Bay; Orv Burma, Mound; Bert Foster, Deephaven; Tom Seuntjens, Minnetonka Beach; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician.

Members absent: Pete Nelson, Victoria; Tom Scanlon, Spring Park; the cities of Greenwood and Orono have no appointed member.

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad reminded the Board of the 38th Annual "Save the Lake" Recognition Banquet on 2/10/04 at Bayview Event Center. He stated that invitations would be sent out in the near future and he welcomed both the Board and the public to attend this event.

READING OF MINUTES- 12/8/04 LMCD Regular Board Meeting

MOTION: Burma moved, Knudsen seconded to approve the minutes from the 12/8/04 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (9), Abstained (1, Ambrose); 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.

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.

Nybeck stated that agenda item 2B should be removed from the consent agenda.

Skramstad moved, Knudsen seconded to approve the consent as amended, deleting agenda item 2B. Motion carried unanimously. Items so approved include: **1A, 2005 Multiple Dock Licenses**, staff recommends Board approval of 2005 renewal without change applications as outlined in 1/6/05 staff memo,

3B, November financial summary and balance sheet, and **4A**, Minutes from the 12/10/04 EWM/Exotics Task Force Meeting.

1. WATER STRUCTURES

- B. Tonka Bay Sales (Sites 2 & 3)**, consideration of 2005 new multiple dock license minor change applications.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 1/6/05, that summarized the 2005 Tonka Bay Sales (Sites 2 & 3) new multiple dock minor change applications. He recommended the Board approve both applications for the 2005 boating season.

MOTION: Babcock moved, Ambrose seconded to approve the Tonka Bay Sales (Sites 2 & 3) new multiple dock license minor change applications for the 2005 boating season, subject to carrying over previous license conditions for both facilities.

VOTE: Motion carried unanimously.

- C. Gideons Point Homeowners Association**, consideration of 2005 new multiple dock license minor change application.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 1/6/95, that summarized the 2005 Gideons Point HOA new multiple license minor change application. This included correcting erroneous survey information at Lots 1 and 2, and minor dock changes at Lots 4, 8, and 12. He recommended the Board approve the application for the 2005 season.

MOTION: Foster moved, Babcock seconded to approve the Gideons Point HOA new multiple dock license minor change application for the 2005 season, subject to carrying over prior license conditions.

Babcock thanked the applicant for submitting a concise application.

VOTE: Motion carried unanimously.

- D. Shorewood Yacht Club (Sites 1 & 2)**, consideration of draft Findings of Fact and Order for approval of: 1) side setback variance application, and 2) special density license application for Site 2.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that a public hearing and discussion of special density license and side setback variance applications took place at the 12/8/04 Board Meeting. In accordance with Board direction, LeFevere has prepared draft Findings for consideration by the Board.

MOTION: Foster moved, Valdesuso seconded approval of the Findings of Fact and Order, as submitted, for Shorewood Yacht Club (Sites 1 and 2).

Babcock made three comments on the draft Order. First, he believed further detail was needed in condition 5 clarifying how the previously approved variances have been amended. This would clean up the LMCD records for future reference purposes. Second, he asked for clarification on the 4/27/83 variance order that would be rescinded if these draft Findings were approved. He believed that this variance was granted for the previous property owner at Site 2 and he supported this. Third, he suggested that the Board might want to consider tabling action on the motion to allow staff to further clarify the exact changes from the 1/24/01 Variance Order in the proposed Findings.

LeFevere stated that the rescinding of the variance approved in 1983 was for Site 2 that was owned at that time by Michael Arvidson.

Van Hercke stated that she was not clear on the particular hardship or practical difficulty to approve the side setback variance application.

LeFevere stated that a particular hardship or practical difficulty was not included in the draft Findings because he believed there was a question initially on whether a side setback variance was required for the draw bridge. Staff made the advertisement for the public hearing as broad as possible so that a second public hearing would not need to be advertised at a later date. Based on the testimony and discussion at the 12/8/04 Board meeting, he concluded that a variance was not required because the bridge was within the dock use area for one of the two sites because of overlapping dock use areas.

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

- E. Bayview Homeowners Association**, new multiple dock license application submitted on 9/22/76 to back license 10 Boat Storage Units (BSU's) on a 100' wide outlot on Smithtown Bay (The applicant has amended their request to seven BSU's).

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that the Board conducted a public hearing for this application last spring. Discussion continued through the summer and the applicant tabled the pending application late in the summer. To allow for this to occur, the applicant signed a waiver to the 60-day rule. At the 12/8/04 Board meeting, comments were received from a resident in Bayview HOA that two homes had recently sold in the development and that there was a need for the Board to take action on this application. The Board directed staff to schedule consideration of this application at this meeting and this has been done accordingly. The contact for the applicant, John Thomas, was notified of this and he requested that the agenda item be moved to the first Board meeting in February. Mr. Thomas was notified to put his request in writing and that the Board would make the decision on whether to consider the pending application at this meeting or to move it to a future meeting.

MOTION: Foster moved, Valdesuso seconded to table consideration of the pending Bayview HOA

new multiple dock license application to the 2/9/05 LMCD Regular Board Meeting.

Mr. John Thomas, 6520 Bayview Drive, stated that he owned one of the two properties that have recently sold. The sale should close in the near future and he believed that the new owners should be involved in the Board discussion. He believed that the development had the same interests as the LMCD to get the pending application processed in the near future. He understood that LeFevere would not be at the 2/9/05 LMCD Regular Board Meeting and that Bayview HOA would be agreeable to table consideration of the pending application to the 2/23/05 LMCD Regular Board Meeting.

Foster and Valdesuso agreed to amend the motion to table consideration of the pending Bayview HOA new multiple dock license application to the 2/23/05 LMCD Regular Board Meeting.

Skramstad stated that he believed the Board would like to see some form of resolution on this application sometime in the near future.

Babcock stated that he believed the LMCD has discovered evidence, including deeds and covenants, that contradicts the claim made by the applicant that either the LMCD or the developer did not follow through on the pending application submitted in 1976. When this application is considered in February, he recommended that the development should clearly state their position.

VOTE: Motion carried unanimously.

Mr. Allan Greenwood, 6500 Bayview Drive, encouraged the Board to process the pending application in the near future. He voiced his displeasure because he had rearranged his schedule to attend Board meetings on multiple occasions and the applicant has pulled discussion of the pending application off the agenda at the last minute.

F. Additional Business.

There was no additional business.

2. LAKE USE & RECREATION

A. Ordinance Amendment, first reading of an ordinance relating to the sale of alcoholic beverages on Lake Minnetonka; amending LMCD Code Sections 5.02 and 5.22.

Skramstad asked LeFevere for background on this agenda item.

LeFevere stated that this draft ordinance amendment, if adopted by the Board, would repeal the limits on the number of on-sale intoxicating liquor, wine, and non-intoxicating malt liquor established by the Board in the past year. He pointed out that these limitations of the LMCD are more restrictive than those of the State of Minnesota.

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

Babcock stated that he would reluctantly support the motion. There might be a need for the Board

to readdress this issue sometime in the future if the State of Minnesota reconsiders the definition of a restaurant on charter boats. He reminded the Board that he would like the Board to consider tying additional intoxicating liquor licenses to added law enforcement.

VOTE: Motion carried unanimously.

C. Chair update of Lake Minnetonka Boat Density Sub-Committee.

Skramstad asked for background from Van Hercke.

Van Hercke provided an overview of the discussion and outcomes that took place at the 12/7/04, 12/16/04, and 1/6/05 Lake Minnetonka Boat Density Sub-Committee meetings. This discussion is outlined in the Meeting Report for all three sub-committee meetings. At the conclusion of her overview, Van Hercke suggested that the Board should consider declaring a moratorium for new and pending multiple dock license applications while the sub-committee completes its work.

MOTION: Van Hercke moved, Ambrose seconded to direct LeFevere to prepare an ordinance amendment on new and pending multiple dock license applications while the Lake Minnetonka Boat Density Sub-Committee completes its work.

Valdesuso expressed concern about what a moratorium would accomplish.

Knudsen asked how a moratorium would impact new multiple dock license applications that have been either submitted or are forthcoming.

Nybeck stated that there are some new multiple dock license applications that would be impacted by the proposed moratorium.

Babcock reminded the Board of the pending Bayview HOA new multiple dock license application scheduled for Board discussion in February. It might be more appropriate to declare a moratorium on new multiple dock license applications and exclude pending applications.

Harper stated that there are other pending new multiple dock license applications. Some of these include the City of Deephaven, the City of Tonka Bay, the City of Mound, and Eagle Bluff HOA.

Babcock stated that if the Board has a desire to declare a moratorium, a reason or goal should be identified.

Burma stated that he did not support a moratorium because it would make the statement that density is a problem before the sub-committee reviews it. A moratorium is generally declared when a governmental body believes that there will be a large in flux of application, which he did not believe would happen.

Seuntjens stated that he was sympathetic to the Bayview HOA situation and that any moratorium should exclude this pending application.

Foster stated that he did not believe that a moratorium was needed at this time.

Ambrose stated that he would be troubled with a moratorium that would apply to pending applications that already had been submitted. He asked LeFevere to comment on this.

LeFevere stated that he was unclear of the intent of legislature at the last legislative session on the effect of changes to the 60-day rule as applied to pending applications under a moratorium. The worst case scenario would be that a moratorium would not apply to these applications. If the Board decides to declare a moratorium, there should be discussion on what the Board would like to prevent. In land use situations, moratoriums are declared to protect and preserve the planning process when it has been determined that the current controls are not adequate to protect the public from adverse impacts. For boat density on Lake Minnetonka, the Board should give thought to what it is protecting and where the sub-committee might be going if a moratorium is declared. He stated that he recalled there have been other similar moratoriums declared in the past that did not result in any ordinance changes.

Babcock stated that if the Board has a desire to declare a moratorium, the Board might want to consider it for a certain number of boats over a certain length. He proposed a friendly amendment that the moratorium would apply to new or pending multiple dock license applications with four or more watercraft that are 25' or greater in length overall, with a 10/1/05 date limitation on the moratorium. Van Hercke and Ambrose agreed to this.

VOTE: Motion denied unanimously.

D. Additional Business.

There was no additional business.

3. FINANCIAL

A. Audit of vouchers (12/16/04 – 12/31/04) and (1/1/05 – 1/15/05).

Knudsen reviewed the audit of vouchers as submitted.

MOTION: Burma moved, Van Hercke to approve the audit of vouchers as submitted.

VOTE: Motion carried unanimously.

C. Additional Business.

There was no additional business.

4. EWM/EXOTICS TASK FORCE

B. Report from the 12/10/04 EWM/Exotics Task Force Meeting.

Skrumstad asked for an update from Suerth.

Suerth stated that there was discussion at this meeting relating to the LMCD's contract with the MN DNR in 2004 for public access inspections to assist in preventing the introduction of zebra mussels

into Lake Minnetonka. In 2004, the MN DNR could not meet the contracted hours, 2,200, because of the problems associated primarily with recruiting. In response to the 2004 inspection program, the MN DNR has proposed a supplemental pay program for the LMCD to consider for 2005 in which the supplemental pay would go directly to the inspectors to work the peak hours desired. In 2004, the inspectors were paid \$7.00 per hour, excluding bonuses, and the MN DNR has proposed a supplemental pay program that would allow these inspectors to be paid up to an additional \$4.00 per hour. He stated that the LMCD paid the MN DNR \$12.50 per hour for these inspections, including administrative overhead. He commended the efforts made by the MN DNR and recommended that the Board authorize the staff to enter into a contract for 2,200 inspection hours in 2005, with a \$4.00 per hour supplemental pay for these inspections.

Skramstad asked how the recommendation made by Suerth would be financed.

Nybeck stated that there was an outline in the handout folders that included potential funding sources for 2005 zebra mussel inspections. Possible funding sources include: 1) \$10,000 already in the 2005 Exotics Budget for Zebra Mussel expenses, 2) \$13,000 carryover from the 2004 Exotics Budget unspent for Zebra Mussels, 3) a \$5,000 reduction in expenses for the 2005 EWM Harvesting Program Budget, and 4) approximately \$6,700 donated in 2004 in memory of past LMCD Board member Bob Searles, which were earmarked for zebra mussel expenses. This subtotal is \$34,700 and does not include possible funds from the 2005 "Save the Lake" Budget.

Babcock expressed concern about the \$5.50 per hour administrative overhead cost charged by the MN DNR to the LMCD in 2004. He stated that he supported the recommendation made by Suerth to increase the hourly rate for inspectors; however, he would like the administrative overhead addressed. He was under the impression that all funds contributed in recent years to the MN DNR were being earmarked for inspection purposes. He stated that he would like to check with the MN DNR whether the administrative overhead hourly rate could be renegotiated to a lineal or flat rate.

Suerth stated that the Board should consider that the MN DNR is recruiting, training, and supervising these inspectors. He indicated that he would get clarification from the MN DNR on what is included in the administrative hourly rate.

MOTION: Knudsen moved, Valdesuso seconded to enter into a contract with the MN DNR for 2005 zebra mussel inspections for 2,200 hours, including an additional \$4.00 per hour supplemental pay rate.

VOTE: Ayes (9), Abstained (1, Babcock); motion carried.

Suerth stated that two other items discussed at this meeting included the "Red Lake – Green Lake" program and the viability of weevil populations in Lake Minnetonka. The Board briefly discussed these two items.

C. Additional Business.

There was no additional business.

5. ADMINISTRATION

A. 2005 LMCD Board Officers, consideration of recommendations from the nominating committee.

Skramstad asked for background on this agenda item from Seuntjens.

Seuntjens stated that the nominating committee had met to discuss recommendations for 2005 LMCD Board Officers. The nominating committee recommends the following for 2005 LMCD Board Officers: Chair- Tom Skramstad, Vice Chair- Katy Van Hercke, Treasurer- Paul Knudsen, and Secretary- Jose Valdesuso.

MOTION: Seuntjens moved, Babcock seconded to accept the slate of 2005 LMCD Board Officers as recommended by the nominating committee and to approve them.

Seuntjens asked if there were nominations from the floor for other Board members for 2005 LMCD Board Officer positions. He stated that there were no nominations from the floor.

VOTE: Motion carried unanimously.

B. Chair update of 11/10/04 and 12/8/04 Executive Sessions to discuss the performance of Executive Director, Greg Nybeck.

Skramstad stated that he had not accurately explained the annual vacation leave request by Nybeck at the 12/8/04 executive session. He stated that the current policy allows for 10 days annually for one to five years of service, 15 days annually for six to 10 years of service, and one additional day for each successive year of service beyond 10 years, with a cap of 20 vacation days annually. Skramstad stated that Nybeck is currently at 16 days of vacation annually and he has requested the Board to consider amending this to 20 days as a non-cash benefit. Skramstad asked if there was flexibility of the Board to grant the request made by Nybeck.

Babcock stated that if the Board would like to grant the request made by Nybeck, he believed that a change should be made to the personnel policy because the Board cannot grant bonuses.

LeFevere stated that prohibition against bonuses is to prevent making a contribution to an employee that the LMCD is not legally obligated to make. For example, the Board cannot give a bonus to an employee at the end of the calendar year for good performance. This request would not qualify as a bonus because the contract for Nybeck would be amended prospectively and would provide for additional vacation leave from this time forward. He did not believe that a change to the personnel policy was required for the request made by Nybeck.

Foster stated that he supported the request made by Nybeck because increasing vacation leave is a non-cash expenditure for the LMCD and it would not reduce the workload for Nybeck.

Babcock asked Skramstad if the request made by Nybeck would become permanent.

Skramstad stated that he envisioned the request, if granted by the Board, would be enjoyed by Nybeck as long as he was employed by the LMCD. Another option for the Board to consider would be to review vacation leave each year for Nybeck.

MOTION: Foster moved, Knudsen to adjust annual vacation for Executive Director, Greg Nybeck, from 16 days to four weeks, effective immediately.

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

C. Additional Business.

There was no additional business.

6. SAVE THE LAKE

Babcock stated that a second solicitation letter was sent out in December; however, he did not have specifics on donations received in response to this letter.

Nybeck stated that he would update the Board on the amount of donations received at the 1/26/05 LMCD Regular Board Meeting.

7. EXECUTIVE DIRECTOR

Nybeck updated the Board on the following:

- A 2005 LMCD meeting calendar was included for informational purposes.
- 2004-2005 deicing inspections are currently being conducted and should be completed in the near future. Discussion on the moratorium is planned for the 1/26/05 Board meeting and he encouraged Board members to forward comments relating to this.
- A mediation session has been scheduled for the pending Miles Canning litigation on 1/19/05. George Hoff, legal counsel on this case for the LMCD, was in attendance to discuss this with the Board. He recommended that this discussion be conducted in executive session after "New Business" on the agenda.
- He provided the Board an update on the pending complaint in St. Albans Bay on possible non-compliance with an approved variance, the jurisdictional letter sent out to Senator Olson on Lake Minnetonka near County Road 110 and Jennings Bay, and the status of the certified surveys required for Howards Point Marina for the changes approved in 2004 for "off-lake" storage and the commercial marina in the water.

8. OLD BUSINESS

2005 LMCD Board members

Skramstad asked for an overview on new or re-appointed members to the Board, effective February.

Nybeck stated that he would provide an update on this at the 1/26/05 LMCD Regular Board Meeting.

Lake Minnetonka Ice Safety

Suerth reminded the Board of the unfortunate accident a couple of winters ago when the two teenagers fell through the ice and died. At that time, Suerth stated that the Chair Foster authorized him to work with the Sheriff's Water Patrol on ice safety program and identifying problem areas. These discussions took place with the Sheriff's Water Patrol and he has been working with other parties on identifying problem areas on the lake for ice. There are a couple of local residents whom he knew that fly the

Lake Minnetonka area, including the winter months. When these residents identify potential problem areas, they will take a digital picture of them and forward them to the Sheriff's Water Patrol and LMCD offices.

Tonka Bay City Hall

Babcock stated that he and Chair Skramstad had attended the 1/11/05 Tonka Bay City Council Meeting to thank them for use of the council chambers for many years by the LMCD Board. He thanked Skramstad for coordinating this agenda item at this city council meeting.

2005 Improved Signage Project

Skramstad asked Nybeck for an update on this project.

Nybeck stated that the final design and quotes were being worked on and that this should be brought back for review by the Board in February.

9. NEW BUSINESS

Knudsen stated that there was a situation that has recently occurred at the Eagle Bluff HOA development that would have implications on their 2005 multiple dock license. Although he did not expect any formal action by the Board at this meeting, he stated that he would like to bring it to the Board's attention. The development consists of three outlots and a fourth lot on which a house has been constructed. The shoreline was originally dedicated to the multiple dock license for continuous shoreline purposes; however, these property owners have indicated that they do not want to continue to participate in the multiple dock license. Because of this, it causes the shoreline to become non-continuous and the development might need to relocate some Boat Storage Units (BSU's) from an outlot on Halsteads Bay to an outlot on Priests Bay. The development would prefer not to have to do this because of safety concerns related to crossing County Road 44. The development has requested the Board to consider a Code change to allow the BSU's in question to remain on Halsteads Bay rather than moving them to Priests Bay.

The Board discussed the request made by Eagle Bluff HOA and the consensus was to discuss this request in conjunction with the submittal of an application.

Ms. Janet Hanson, representing Eagle Bluff HOA, provided a brief overview of the situation in the development. She stated that she would work with staff to submit an application to allow the Board to discuss this matter in the near future.

10. ADJOURNMENT

MOTION: Foster moved, Suerth seconded to adjourn the Regular Meeting at 9:45 p.m., to reconvene into executive session to discuss pending Miles Canning litigation as allowed by the Open Meeting Law exception, and not reconvene the open session of Regular Board Meeting.

VOTE: Motion carried unanimously

Tom Skramstad, Chair

Jose Valdesuso, Secretary