

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, January 26, 2005
Wayzata City Hall

CALL TO ORDER

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

ROLL CALL

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

Members absent: Doug Babcock, Tonka Bay; Pete Nelson, Victoria; Tom Scanlon, Spring Park; the City of Orono has no appointed member.

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad made two Chair announcements. First, he reminded the Board of the 38th Annual "Save the Lake" Recognition Banquet on 2/10/05 at the Bayview Event Center. Second, the City of Greenwood has appointed a new Board member to the LMCD, Cree Zischke. He welcomed Zischke on behalf of the Board and asked LeFevere to administer the oath of office.

LeFevere administered the oath of office to Cree Zischke. She was seated a representative for the City of Greenwood.

Ambrose and Burma stated that their replacements on the LMCD Board of Directors were in the audience and would be sworn in at the 2/9/05 LMCD Regular Board Meeting. The City of Wayzata has appointed John Berns and the City of Mound has appointed Steve Johnson.

READING OF MINUTES- 1/12/05 LMCD Regular Board Meeting

MOTION: Foster moved, Knudsen seconded to approve the minutes from the 1/12/05 LMCD Regular Board Meeting as submitted.

VOTE: Motion carried unanimously.

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.

Ambrose moved, Foster seconded to approve the consent agenda submitted. Motion carried unanimously. Items so approved include: **3A**, Audit of vouchers (1/16/05 – 1/31/05), and **3B**, December financial summary and balance sheet.

Skramstad stated that Van Hercke had requested moving agenda item 2A in front of 1A. Without an objection from the Board, he stated that he would do so accordingly. No objections were expressed.

Suerth arrived at 7:08 p.m.

2. LAKE USE & RECREATION

A. Chair update of 1/20/05 Lake Minnetonka Boat Density Sub-Committee Meeting.

Skramstad asked Van Hercke for background on this agenda item.

Van Hercke provided an overview of the 1/20/05 Lake Minnetonka Boat Density Sub-Committee meeting. This discussion is outlined in the Meeting Report for this sub-committee meeting. She stated that the next sub-committee meeting was scheduled on 2/3/05 at 7:30 a.m. in the LMCD office.

Skramstad stated that he would like to discuss membership to this sub-committee. Similar to the first sub-committee, the Board has established that membership to the second sub-committee would be limited to Board members. This Board direction would not prohibit new Board members from actively participating on this sub-committee as long as they can catch up quickly. The City of Deephaven and their newly appointed LMCD Board member, David Gross, have requested that outgoing LMCD Board member Bert Foster be allowed to continue on the sub-committee. Skramstad stated that Foster had communicated to him that he was interested in continuing to participate on the subcommittee and a question for the Board was whether to provide an exception for him.

Van Hercke stated that there had been other citizens and organizations that have frequently attended sub-committee meetings. The Board has previously discussed this and the consensus was that discussion at the sub-committee meeting should be limited to Board members, with public input planned for a later date. She stated that if the Board would like to keep the prior decision to limit discussion at sub-committee meetings to Board members, then David Gross should represent Deephaven. If an exception is provided for Foster, she questioned whether exceptions should be provided for those citizens and organizations that have attended past sub-committee meetings. She recommended that the discussion should be limited to the Board level because of fairness and dual representation for Deephaven on this sub-committee.

MOTION: Suerth moved, Valdesuso seconded to allow Bert Foster to continue to serve on the Lake Minnetonka Boat Density Sub-Committee as an ex-officio Board member until completion of the sub-committee's work and recommendations are made.

Burma and Seuntjens asked for clarification on whether Foster would be able to only participate or whether he would be able to both participate and vote at the sub-committee level.

Suerth stated that he envisioned that only one representative for Deephaven would have the ability to vote at a sub-committee meeting. However, this would not preclude Deephaven from having two members on the sub-committee.

VOTE: Ayes (2, Suerth and Valdesuso), Nays (7), Abstained (1, Foster); motion failed.

1. WATER STRUCTURES

A. LMCD Code Section 2.09, discussion of Code relating to deicing installations on Lake Minnetonka.

Skramstad stated that the Board declared a one-year moratorium this past August to review existing Code relating to deicing installations. Staff has prepared a spreadsheet that summarizes existing Code and he asked Nybeck for an overview of it.

Nybeck provided an overview of the spreadsheet through a PowerPoint presentation. Code provisions he reviewed in this PowerPoint presentation included: 1) area to be deiced, 2) fencing requirements, 3) signage requirements, 4) lighting requirements, 5) the no permit date, 6) permanent versus seasonal docks, 7) buoys (informational purposes), and 8) charter boats (informational purposes). He entertained questions or comments from the Board.

During the course of the presentation, a number of questions were made by Board members and addressed by staff. Some of these include:

- Are people properly educated on how to operate deicing equipment?
- Is it realistic to have fencing within dock use areas, especially early and late in the winter?
- Is deicing appropriate at narrow lots because of potential impacts on adjacent properties?
- How many deicing permits are issued by the LMCD annually, with a breakdown of residential versus commercial?
- Should the Code further define which sites can deice safely and which sites cannot?
- Should deicing be allowed at seasonal docks that are left in the lake 12 months a year?
- Is there a need for added enforcement of current Code for problematic sites?
- Should more current deicing equipment, including deicing curtains, be required at problematic sites?
- Should the no permit date be moved back to an alternative date, such as April 1st?

Skramstad stated that he believed that there was a need to distinguish between deicing at permanent docks versus seasonal docks. Additionally, he believed that Board should discuss how to deal with deicing at narrow lots where the activity could occur outside of extended side site lines.

Valdesuso stated that he believed that any changes should take into consideration public safety for children enjoying the lake.

Seuntjens questioned how potential deicing at recently issued permanent docks, such as fencing, could be addressed.

Harper stated that language has been placed on recently approved permanent dock permits that current and future LMCD deicing regulations would apply to these sites. This language was placed

on these permits because it was anticipated that there would be a Board review of current deicing regulations.

Seuntjens stated that he generally believed the existing Code was adequate if the licensees purchased the newer deicing equipment and managed the sites properly. However, he would like the Board to discuss whether to move the no permit back to another date, such as April 1st.

Harper stated that the vast majority of commercial docks are permanent docks and the Board might want to consider scaling back how close the applicant can construct in vicinity to the edge of the dock use area for that site if they plan to deice.

Zischke stated that she believed a number of the points raised by staff could be addressed through added enforcement. She also supported the idea of moving the no permit date back to April 1st.

Foster expressed concern about moving the no permit date back to April 1st because of ice-out history dates changing from year to year, with an average of April 15th. There are a number of current property owners that deice without permits that would be affected by moving this date from March 15th.

Seuntjens stated that he believed there is a significant amount of human activity that takes place on the ice during the month of March after fishing houses are required to be removed by state law.

Skramstad stated that based on the discussion, he believed there were three points for the Board to consider. These included the idea of changing the no permit date back to an alternative date, deicing at permanent versus seasonal docks, and how to deal with deicing at narrow residential sites.

Knudsen expressed his concern about granting future permits for permanent docks, except at commercial marinas. Additionally, he expressed his concern about deicing at seasonal docks because these docks should be installed and removed each boating season or should not have an expectation to deice if they are kept in the lake 12 months a year.

Harper reminded the Board of two commercial sites where the Board has granted zero foot side setback variances. Both of these sites deice so it is impractical to deice with extended side site lines.

LeFevere stated that based on the discussion, it appears that deicing within dock use areas as established in current Code is problematic, especially at commercial marinas, because docks and poles are installed right up to the edge of a dock use area. The current Code is not being enforced because it does not work. One alternative approach would be to allow deicing with authorized deicing areas. For example, the Board could require fencing to be within both extended side site lines and to limit fencing to either the end of the dock use area or 30' out beyond the end of the dock, whichever is less. The Board could require the applicant to submit an application for a change to these requirements on a case by case basis, for special circumstances. This concept could also be applied to narrow residential sites. If a site becomes problematic, the Board could require a deicing site to turn off deicing equipment if open water or weakened ice extends out

beyond the fence. This deicing equipment would not be able to be turned back on until the problems are resolved and the Executive Director could require additional fencing in the interim.

MOTION: Ambrose moved, Van Hercke seconded to direct LeFevere to prepare an ordinance amendment that summarizes the concepts he outlined earlier in the meeting for discussion purposes at a future Board meeting.

VOTE: Motion carried unanimously.

The Board discussed the idea of moving the no-permit date back from March 15th. The consensus of the Board was for staff to further research this and report back to the Board on feedback from those facilities that deice after March 15th without a permit, on the possibility of making a change to this date.

MOTION: Knudsen moved, Foster seconded prohibit the issuing of deicing permits to seasonal docks or multiple dock licenses with less than 10 Boat Storage Units (BSU's) that utilize seasonal docks.

LeFevere asked if there would be any grandfathering for those facilities that are outside the boundaries of the motion.

Knudsen stated that he would prefer no grandfathering.

The Board discussed the motion and the consensus was that it would be beneficial for staff to prepare a spreadsheet that summarizes deicing permits for the 2004-2005 season. This spreadsheet should include the name of each facility, whether the facility is commercial or residential, whether the dock is permanent or seasonal, and whether the facility is a licensed multiple dock (including the number of BSU's). Knudsen and Foster agreed to withdraw their motion.

The Board briefly discussed whether deicing should be allowed at narrow residential sites. The consensus of the Board was to allow for the construction of permanent docks at narrow residential sites, provided deicing can be done with LMCD regulations.

Van Hercke left at 8:48 p.m.

B. Discussion of LMCD Code that regulates dock installations on Lake Minnetonka.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that he had discussed with Skramstad the idea of forwarding a letter, and possibly coordinating a meeting, with dock installers and local realtors on LMCD Code pertaining to dock installations on Lake Minnetonka. There appears to be a greater number of docks on Lake Minnetonka that do not comply with LMCD Code and the Board might want to review its Code prior to either sending a letter out or coordinating a meeting. He reviewed LMCD Code for an authorized dock use area, including length and setback restrictions, and dock construction standards. He stated that LMCD Code prohibits a dock from exceeding six feet, excluding posts in either its length or width, but not both. The State of Minnesota has a similar restriction; however, it

is eight feet rather than six feet. There are a number of docks that do not meet deck construction standards, with the majority of non-compliance taking place for dock width and platforms at the end of docks. He suggested that the Board might want to consider updating the six-foot restriction to eight feet so that it would be consistent State of Minnesota rules. Possible rule changes could be forwarded to dock installers for their comments and a public hearing could be scheduled at a later date. He entertained questions or comments from the Board.

The Board discussed the recommendation made by Nybeck. There was consensus of the Board that changing the six-foot requirement to eight feet for the platform made sense. However, the consensus of the Board did not believe that a similar change was necessary for dock width leading out to the platform.

Nybeck stated that he would prepare a letter, with attachments necessary, to be reviewed at the 2/9/05 Board meeting. This letter, after review and comments from the Board, would be sent out to dock installers and local realtors in the near future.

C. Discussion of LMCD Code relating to bridges on Lake Minnetonka.

The consensus of the Board was to move this agenda item to a future Board Meeting.

D. Additional Business.

There was no additional business.

2. LAKE USE & RECREATION

B. LMCD Code Section 3.021, discussion of Code relating to "High Water Emergencies" on Lake Minnetonka.

The consensus of the Board was to move this agenda item to a future Board meeting.

C. Additional Business.

There was no additional business.

3. FINANCIAL

C. Additional Business.

Valdesuso stated that he would like to have discussion at this or another Board meeting on whether it feasible to have a credit or debit card instead of petty cash because he believed that petty cash is a thing of the past. There are better way to protect funds in the office and to track expenses incurred by the LMCD office.

The Board discussed and the consensus was that no changes were necessary at this time.

4. ADMINISTRATION

A. Staff update on appointment of LMCD Board members whose term expired in January 2005.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that a letter was sent out in October to nine member cities informing them that the term for their appointed Board member would expire on 12/31/05. Confirmation has been received from eight of the nine cities, with four cities re-appointing their existing Board member and four cities appointing a new Board member. The City of Orono is currently working on finding a replacement for Debbie Halvorson and he stated that he would keep the Board informed on this.

B. Additional Business.

There was no additional business.

5. EWM/EXOTICS TASK FORCE

There was no discussion.

6. SAVE THE LAKE

Nybeck stated that donations received from the winter solicitation letter were \$9,615.

7. EXECUTIVE DIRECTOR

There was no Executive Director Report.

8. OLD BUSINESS

"High-Water" Discussion

Seuntjens requested historical background on "High Water" declarations when this ordinance is brought back for Board discussion.

City of Minnetrista

Knudsen stated that the Minnetrista Planning Commission had recently discussed a draft ordinance relating to Six Mile Creek. He attended this meeting, as well as representatives from the MCWD and the LMA. The Minnetrista Planning Commission tabled action on this draft ordinance until their February meeting. He stated that he would like to have the Board discuss this draft ordinance at the 2/9/05 Board meeting to see whether it supports the draft ordinance.

Skramstad stated that this draft ordinance amendment would be on the agenda for the 2/9/05 Board meeting.

City of Greenwood Issues

Zischke asked for an update on the Canning litigation and the possible non-compliance at a residential dock that was granted a variance in the past few years.

LeFevere stated that a mediation session had recently took place with the Cannings and the abutting property owners. The mediation session did not result in a settlement and the mediator agreed that the parties were at an impasse.

Foster updated the Board on the possible non-compliance at the residential that was granted a variance. He and Nybeck visited the site and he believed that there was conflicting survey information between the two parties, possibly because of problems locating the 929.4 shoreline at the common side site line because of the installation of rip rap in this area. He stated that he did not have a specific recommendation on how to proceed; however, it makes sense to take no further action at this time.

The Board discussed this matter and the consensus was to take no further action at this time. The Board directed Nybeck to contact both parties indicating this.

9. NEW BUSINESS

Skramstad provided an overview of a map that he had prepared that delineated the shoreline for the 14 cities on Lake Minnetonka.

10. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:45 p.m.

Tom Skramstad, Chair

Jose Valdesuso, Secretary