

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, February 23, 2005  
Wayzata City Hall

**CALL TO ORDER**

Van Hercke called the meeting to order at 7:05 p.m.

**ROLL CALL**

**Members present:** Katy Van Hercke, Minnetonka; Paul Knudsen, Minnetrista; Jose Valdesuso, Excelsior; David Gross, Deephaven; Steve Johnson, Mound; Pete Nelson, Victoria; 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; John Berns, Wayzata; Tom Scanlon, Spring Park; Tom Skramstad, Shorewood; the City of Orono has no appointed member.

**CHAIR ANNOUNCEMENTS**, Vice Chair Van Hercke

There were no Chair announcements.

**READING OF MINUTES-** 1/26/05 LMCD Regular Board Meeting  
2/9/05 LMCD Regular Board Meeting

**MOTION:** Seuntjens moved, Gross seconded to approve the minutes from the 1/26/05 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (8), Abstained (1, Nelson); motion carried.

**MOTION:** Seuntjens moved, Gross seconded to approve the minutes from the 2/9/05 LMCD Regular Board Meeting as submitted.

**VOTE:** Motion carried unanimously.

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

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.

Seuntjens moved, Nelson seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved include: **1C, 2005 Multiple Dock Licenses**, staff recommends Board approval of 2005

renewal without change multiple dock license applications as outlined in 2/17/05 staff memo, and **3A**, Audit of vouchers (2/16/05 – 2/28/05).

### **PUBLIC HEARINGS**

- **City of Mound**, new multiple dock license and variance applications for 40 overnight Boat Storage Units (BSU's) on Lost Lake Channel. The proposed variance application is for variance from LMCD Code for dock length requirements.

Van Hercke opened the public hearing at 7:06 p.m. and asked for background from Nybeck.

Nybeck reviewed the staff memo, dated 2/18/05, which summarized the City of Mound new multiple dock license and variance applications. This staff memo provided background, an evaluation of the application compared to LMCD Code, and a recommendation. He believed that there were three options for the Board to consider. These included: 1) directing LMCD counsel to prepare Findings of Fact and Order for approval of the dock length variance application, with conditions deemed necessary, 2) table a decision pending outcome of the dredging requests made by Mound with the MN DNR and the MCWD, or 3) directing LMCD counsel to prepare Findings of Fact to deny the dock length variance application because the Board does not believe that the applicant has documented a particular hardship or practical difficulty. He entertained questions or comments from the Board.

LeFevere stated that acting on a variance application is a two-step process. First, there is a need to determine whether there is a hardship within the meaning of the Code. Without a hardship, the Board cannot grant a variance. Second, if the Board decides that there is a hardship, there is a need to consider whether the request is within the spirit and intent of the Code or if the request is for too much. The Board has considered shallow water and emergent vegetation to be a hardship in the past. However, the LMCD could deny this request if the Board believed that Mound was requesting too much. He reviewed riparian rights and the ability to extend a dock to the point of navigability, subject to reasonable regulations. He stated that the Board has granted a number of variances from LMCD Code in the past based on hardships of shallow water, converging lot lines, and emergent vegetation.

Zischke asked if a Board decision on previous variance requests binds the current Board.

LeFevere stated that the Board acting on a variance application does not create a legally binding precedent. However, it is difficult to depart from past Board decisions because of public expectations to be treated equally and because different treatment may create the impression that Board action is arbitrary and capricious.

Nybeck stated that the current Mound plan would result in a 27% percent reduction in the dredge compared to the previous plan proposed in December.

Valdesuso asked if there would be a boat size and type restriction in this area because of the clearance of the bridge leading into Lost Lake.

Nybeck stated that he believed the applicant would be better able to address that question.

Knudsen asked for an overview of overall BSU's for Mound if the Board approved these applications.

Nybeck stated that if these applications were approved as proposed, there would be 40 BSU's at this site, there are 24 transient BSU's already approved adjacent to this site, and there are 590 BSU's approved throughout Mound for their Commons Docking Program.

Gross asked what the relationship would be between Mound and the townhomes in relationship to these docks. He questioned what would happen to these BSU's if the townhome owners do not use these docks.

Nybeck stated that he believed that Mound would continue to secure the renewal multiple dock license from the LMCD. With regards to the relationship between Mound and the townhomes, he believed that the applicant would be better able to address that. He reminded the Board that they could place any restrictions deemed necessary if the Board would like to approve the request, such as boat length restrictions.

Van Hercke asked for comments from the applicant.

Ms. Sarah Smith, Mound Community Development Director, stated that she and her design team were in attendance to present the modified dock plan. The design team included Bruce Chamberlain, Jim Fackler, Chuck Alcon, and Tom Stokes. She stated that a number of things had occurred since the 12/8/04 LMCD Board Meeting and she made the following comments:

- A meeting was conducted in the LMCD office in late December to address the concerns of the MN DNR and the MCWD, primarily shoreline impacts and the size of the area dredged. These comments were considered by the design team and a modified dock plan was produced from this discussion.
- She commented on the modified plan and how it addressed the concerns of the MN DNR and the MCWD. The plan significantly reduces the size of the dredged area and would move the dredged area further away from shore, which would allow for revegetation in this area.
- On 1/25/05, the Mound City Council approved a resolution adopting a final AUAR and mitigation plan for the Mound Commons Redevelopment Plan. This mitigation plan addressed potential environmental impacts and develops strategies to address them.
- She stated that Mound had recently been awarded a 1.2 million dollar grant from the Met Council for the second phase of this project. This grant promotes affordability and community enhancement goals. A multi-governmental agency effort has been coordinated to address strategies on how to address environmental issues at this site. Originally, Mound was going to address these issues by establishing a membrane at this site over the contaminated areas. However, Mound has taken an additional step in the mitigation process to remove the contaminated soils. This increased step in mitigation is being supported by these multi governmental agencies. Although this will add significant costs to this project, Mound believes that it is best for residents and the lake as a whole.
- Mound and the MCWD are currently entering into a joint partnership. A 1.5 million dollar grant has been secured to include comprehensive stormwater strategies in the downtown redevelopment project to improve lake water quality and to promote the MCWD's efforts to improve the overall lake conditions.
- She hoped that the final downtown development agreement would be completed in the near future. This redevelopment project is a cooperative effort amongst a variety of governmental agencies. This process lead to the request for a dock length variance and she believed that hardship has been established.
- She entertained questions or comments from the Board.

Nelson stated that it appeared that the construction of the townhomes was key aspect of the entire downtown redevelopment project. Without these townhomes, it is possible that this project might not proceed.

Smith stated that the Lost Lake Project, which includes the townhomes, is a key aspect of the entire redevelopment project because the funds generated from the townhomes will fund other parts of the redevelopment project.

Nelson complimented the environmental efforts made by Mound. He asked for further comments on what would be included in the comprehensive stormwater strategies.

Smith stated that Mound would be implementing other strategies over and above traditional catch basins. Some of these include permeable pavers, rain gardens, swales, roof top gardens, tree canopies, and underwater ground filtration systems. Part of the agreement Mound has with the MCWD already requires special things to be done along the greenway to deal with water quality and water quantity. She stated that the MCWD cannot meet its water quality goals on Lost Lake and Lake Landgon, through its normal regulations, without the partnership and cooperation of Mound.

Nelson asked if anyone had quantified how much these efforts will reduce the amount of phosphorous introduced into the lake, including the re-suspension of phosphorous caused by props.

Mr. Chuck Alcon, Project Manager, stated that one of the consulting companies of the MCWD, EOR, has concluded that the MCWD would not be able to meet some their phosphorous removal goals by 2020 utilizing existing techniques. Recognizing this, the MCWD has agreed to work with Mound on a pilot project in this area. Mound has come up with innovative techniques to address this, which will be funded by the MCWD, and EOR has estimated a 75 percent reduction in phosphorous. By changing the strategy to remove the landfill rather than encapsulating it, this should allow infiltration techniques to be utilized at the landfill. He stated that Mound understands that there will be some re-suspension of phosphorous in this area. The challenge will be to not add to it and hopefully diminish it.

Van Hercke asked the applicant to provide a history of the Lost Lake Channel area.

Mr. Bruce Chamberlain, of Hoisington and Koegler, stated that Lost Lake Channel was originally dredged around 1906 for excursion boat access to connect downtown Mound with Lake Minnetonka. The channel was re-dredged in 1999 after permits were secured from the MN DNR and the MCWD. With regards to water quality, there is a 70 acre watershed within the downtown areas that is draining into Lost Lake. This runoff is currently untreated and it would become treated if this project proceeds.

Seuntjens asked to what depth the dredge was done in 1999.

Chamberlain stated that the channel was dredged to 5.8', which is the maximum allowed for channel areas on Lake Minnetonka. If the proposed docking is approved by the LMCD, the dredge for that area would also be 5.8'.

Seuntjens asked if Mound would retain the ownership of the property between the townhomes and Lost Lake.

Chamberlain stated that Mound would continue to own the upland greenway area and the shoreline. Additionally, Mound would own the docks and there would be an agreement with the townhome developer to use these docks.

Seuntjens stated that the proposed slip length at these docks was 30'. He questioned whether there would be a restriction on the length of boats stored within these slips.

Alcon stated that the homeowners association for this development would manage the boat length at these docks, with a 30' maximum length restriction.

Seuntjens asked what the bridge clearance was leading into Lost Lake Channel.

Alcon stated that the bridge clearance is 11.5' at the 929.4' lake level.

Zischke asked the applicant to describe the proposed revegetation.

Alcon stated that the primary concern of the MN DNR and the MCWD with the original plan was the detachment of the mat. With the modified plan, he believed that these concerns have been addressed, with some of the area to be revegetated. He stated that the area dredged would be removed and disposed of in compliance with an MPCA permit.

Zischke stated that she needed further clarification of the covenants of the homeowners association, especially when a future sale takes place.

Alcon stated that Mound would own the docks and the homeowners association would function as a sublicense of Mound. The homeowners association would need to install the docks as approved and will be subject to an inspection by Mound. Any covenants of this homeowners association will be subject to review by the Mound city council prior to approval of the plat.

Knudsen asked what the distance was between the nearest dock in the proposed plan and the dock on west side of the channel.

Alcon stated that the distance between those docks was approximately 126'.

Knudsen asked if the boats to be stored in the slips would be 30' length overall.

Alcon stated that was the intent.

Gross asked if the homeowners association covenants would restrict the commercial rental or sale of these dock spaces.

Alcon stated that language would be included in the covenants that would prohibit commercial rental or sales of these slips.

Knudsen asked if there was a waiting list with the Commons Docking Program. If so, he questioned how these residents might feel about other properties getting a dock before them.

Mr. Jim Fackler, Mound Parks Superintendent, stated that there was a waiting list of approximately 120 on the Commons Docking Program. For these 590 BSU's, there are approximately 400 dock sites. Of these 400 docks sites, there are 170 docks sites that have similar characteristics where a resident abuts a site that is part of the Commons Docking Program.

Mr. Dick Osgood, Executive Director for the Lake Minnetonka Association (LMA), stated that the LMA had comments and concerns. The LMA has a standing position against adding additional access to Lake Minnetonka from areas not accessible to the lake. He believed that the Mound request fits these characteristics because the Lost Lake area is cattail marsh. Although the landfill clean-up and stormwater plans are commendable, he believed that the 75 percent reduction of phosphorous proposed is a reduction compared to the increase that will happen with development in the area. With increased hardcover in the area, coupled with new development and re-development, it is likely that the reduction of phosphorous would not be significant. Many of the strategies proposed by Mound do not adequately treat dissolved phosphorous that readily moves through soils and ground water into the lake. The removal of cattails in this area removes the last chance for absorption of phosphorous. He stated that the LMA was in opposition to the Mound proposal.

There being no further comments, Van Hercke closed the public hearing at 8:10 p.m.

Seuntjens stated that he has a couple of concerns because this is a wetland area and it is not an open area of water. He believed that the proposed number of BSU's, 40, exceeds what is reasonable in this area. Additionally, he expressed concern about the length of the boats to be stored in this area and believed that a 25' length restriction would be more appropriate.

Nelson stated that he liked the proposed project because it illustrates cooperation amongst a number of governmental agencies and previous concerns have been addressed. However, he expressed concern about the length of the boats proposed and believed a reduced length restriction, such as 25', would be appropriate for this area. He did not see a clear correlation between the value of the townhomes and a reduced boat length.

Knudsen stated that he had concern about making a decision on the proposed docking until the MN DNR and the MCWD make a decision on the Mound dredging request. He also expressed concern about the size and number of watercraft proposed. He questioned whether a slip could be approved for the 17 units that abut the shoreline, with a reduced number of slips for the units off the lake. At this time, he stated that he would be inclined to table the application pending the action of the MN DNR and the MCWD.

Nelson stated that he would support a conditional approval, provided the number and size of BSU's could be addressed.

Nybeck stated that he had talked to Ms. Smith prior to the Board meeting. If the Board is inclined to approved a reduced number and/or restrict the size of the boats to be stored in these BSU's, she has requested the Board to recess the meeting to allow her to discuss this with the design team prior to taking a vote. He stated in the past, the Board has approved applications on a conditional basis because the Code requires the applicant to secure requisite permits and licenses from all governmental agencies.

Valsdesuso stated that he was in favor of the proposal, provided there was a restriction on boat sizes. He recommended a 25' or 26' boat length restriction and he did not believe that there was a justification for more than 37 BSU's because this would provide one BSU for each unit.

Gross stated that he supported the idea of smaller boats, such as 25' or 26', because boats that exceed this length more commonly have multiple engines and increase prop dredging.

Johnson stated that a number of 24' long boats have a draft as deep as the draft of 30' long boats because 30' long boats generally are wider.

Van Hercke applauded the efforts made by Mound and she supported the project in general. However, she expressed concern about the LMCD approving the project on the grounds that it will assist Mound in funding the remaining aspects of the downtown redevelopment project. She believed that the Board should review the proposal utilizing the decision standards outlined in the staff memo and she did not believe the proposal met a number of them. She stated that maybe the density standard at an area that has emergent vegetation should be more restrictive than the 1:50' General Rule, citing 1:100' as an example.

Zischke stated that she had similar concerns to those expressed by Van Hercke. She expressed concern that this is a wetland area and she questioned how much change is appropriate. She questioned whether every unit of this development needs a slip and whether there is a need for the three visitor slips.

Seuntjens stated that this marsh is not a virgin marsh because it was dredged back in 1906 and transient docks have already been approved for Mound by the LMCD adjacent to the proposed docks. Because of this, he believed that the Board should proceed. However, he questioned how the Board would like to proceed.

**MOTION:** Valdesuso moved, Nelson seconded to direct LMCD counsel to prepare Findings of Fact and Order for approval of the Mound new multiple dock license and dock length variance applications, subject to: 1) reducing the number of BSU's from 40 to 37, 2) reducing the length of boats from 30' to 25' or 26' length overall, and 3) requiring the applicant secure all requisite permits and licenses from all governmental agencies, especially the dredging permit(s).

Smith requested the opportunity from the Board for the Mound design team to discuss any motion with restrictions prior to the Board voting on the motion.

**MOTION:** Zischke moved, Gross seconded to table the action on the original motion until later in the Board meeting.

**VOTE:** Motion carried unanimously.

- **Eagle Bluff HOA**, new multiple dock license application to reconfigure the multiple dock facility on Halstead and Priests Bays.

Van Hercke opened the public hearing at 8:31 p.m. and asked for background from Nybeck.

Nybeck reviewed the staff memo, dated 2/18/05, which summarized the Eagle Bluff HOA new multiple dock license application and the request to amend LMCD Code Section 2.02, subd. 5. He believed that the focus of the Board should be to address the request made by the applicant to amend LMCD Code. Based on this, the Board could direct LMCD counsel to prepare a Code amendment as requested by Eagle Bluff HOA or take action on Plan B. He believed that an argument could be made to either change or not change the Code as requested. One argument to change the Code would be that the transferring of shoreline from Outlot B to Outlot C would reduce the overall boat density for this site and would ensure that boats would not be stored along the channel, which could cause an impediment to navigation. Another argument could be made not to

change the Code because the non-continuous shoreline was caused by the developer in the late 1970's by not clarifying the docking rights at Lot 1, Block 1. He entertained questions or comments from the Board.

Seuntjens stated that the problem at Lot 1, Block 1 was created by the developer and he did not believe that an ordinance change was necessary.

Gross asked why the applicant preferred Plan A over Plan B.

Nybeck stated that he believed the primary reason why the association preferred Plan A over Plan B was to minimize the crossing of County 44 to Priests Bay to Outlot A.

Knudsen stated that if the request to change the ordinance were adopted by the Board, there would be no changes to boat storage from 2004, excluding boat storage at Lot 1, Block 1.

Nybeck stated that one advantage of making an amendment to Code Section 2.20, subd. 5 is that it would tie up all of the shoreline at Outlot B and there would be no subsequent requests for boat storage from Outlot B.

Knudsen stated that he had not heard back from the owner of Lot 1, Block 1 on whether they would oppose a Code change.

Nelson stated that he would not like to see boats stored at Outlot B because it is in a channel area. If amending the existing Code would preclude this, he expressed support to change it. However, he recognized that a Code change could set an undesired precedent.

Nybeck stated that he and LeFevere had previously discussed whether changing the Code would set an undesired precedent. He asked LeFevere to comment on this.

LeFevere provided historical background on the Code that Eagle Bluff HOA has requested to be amended. This Code provision was originally adopted for a development in Mound, Pelican Point HOA. This development included shoreline on the main land and a small undeveloped island in close proximity. The developer had the right to place docks on the shoreline of both the main land and the island. However, the developer expressed an interest in leaving the island in its natural state and placing all of the docks on the main land, with a higher density than the 1:50' General Rule. The Board agreed with this and the Board ultimately adopted a Code amendment, with a number of provisions to be met. Eagle Bluff HOA has expressed an interest in utilizing this ordinance; however, it does not meet two provisions. To make this ordinance work for their situation, Eagle Bluff HOA has requested the Board to: 1) amend the maximum distance allowed between the transferor and transferee sites from 150' to 300' and 2) amend the maximum density at the transferee site from 1:35' to 1:25'. He stated the original ordinance was adopted to deal with Pelican Point HOA and the Board should determine whether changing these figures for Eagle Bluff HOA would set an undesired precedent.

Zischke asked for clarification on possible future docking from Outlot B.

Nybeck stated that docking from Outlot B would require a multiple dock license if either five or more boats were stored at this site or if the shoreline was included with Outlot A and five or more watercraft are stored at this site.

Ms. Janet Hanson, 3380 Eagle Bluff Road, stated she was a resident of Eagle Bluff HOA and she was representing them. She stated that she did not have a lot to add to staff background; however, she requested the Board to approve Plan A. She recognized that Plan A would require a Code amendment; however, she proposed this because it would reduce pedestrian traffic across County Road 44 and there is parking established adjacent to Outlot C. If the Board does not desire to change the Code for Plan A, she expressed an interest in the Board considering Plan B. She entertained questions or comments from the Board.

There being no further comments, Van Hercke closed the public hearing at 8:56 p.m.

Gross asked LeFevere for clarification on why the Board should change the Code rather than granting a variance.

LeFevere stated that the Board has traditionally granted variances for length, side setbacks, and adjusted dock use areas. However, the Board has never granted a density variance for shoreline that does not exist at a site. He recognized that some Board members might be uncomfortable rewriting Code for specific applications. However, it is not uncommon to rewrite Code for applications that are more environmentally friendly and would not be inappropriate. Two questions for the Board to address include: 1) Whether the Board agrees with the original thought process for the Pelican Point HOA situation, and 2) Whether the Board wants to change the requirements as proposed by the applicant.

**MOTION:** Knudsen moved, Nelson seconded to direct LMCD Counsel to prepare a Code amendment for Code Section 2.02, subd. 5 with the two following changes: 1) changing the distance of the dock use areas of the transferor sites and transferee site from 150' to 300', and 2) changing the boat storage density at the transferee from 1:35' to 1:25'.

Seuntjens questioned whether the owner of Lot 1, Block 1 would be surprised if six boats are still stored on Outlot C if an ordinance amendment is adopted and Plan A is approved by the Board.

Nybeck stated that he had talked to the owner of Lot 1, Block 1 last spring. Their primary interest is that they do not want to be part of the multiple dock license to protect their property interests. At that time, this property owner stated that they supported allowing the association to continue to store six boats at Outlot C.

**VOTE:** Ayes (8), Nays (1, Zischke); motion carried.

- **City of Mound**, new multiple dock license and variance applications for 40 overnight BSU's on Lost Lake Channel.

**MOTION:** Seuntjens moved, Nelson second to remove the motion for the City of Mound applications from the table.

**VOTE:** Motion carried unanimously.

Valdesuso asked for clarification of the motion being considered by the Board.

Nybeck stated that the motion was to direct LMCD counsel to prepare Findings of Fact and Order for approval of the dock length variance application, with a number of conditions. These included: 1) reducing the number

of BSU's from 40 to 37, 2) restricting the length of the boats to be stored at these slips to 25' or 26', and 3) requiring the applicant to secure all requisite permits and licenses from all governmental agencies.

Gross proposed a friendly amendment to restrict boat lengths to 26', with single engines. Valdesuso and Nelson agreed to this.

LeFevere stated that reducing the slip length, in addition to the boat length, would likely result in a slight reduction of the area to be dredged. Additionally, it would be easier for staff to measure a slip length rather than a boat length. This is especially true since the Board has historically regulated boat lengths by the boats length overall, including add-ons, rather than the length specified by the boat manufacturer.

Valdesuso clarified the motion that the 26' length restriction would be on boats length overall.

Seuntjens proposed a friendly amendment that would restrict slips lengths to 26'. Valdesuso and Nelson agreed to this.

Smith estimated that the wetland area in Lost Lake area is approximately 70 acres and the proposal is to dredge less than two acres of it. After discussing the motion with the Mound design team, she proposed an alternative proposal for the Board to consider. Mound would agree to reducing the number of BSU's from 40 to 37. For the 17 units on the lakeshore, Mound still proposes to have a slip to store a 30' long boat. However, for the remaining 20 units, Mound would agree to reduce the length of the slips from 30' to 26.

Van Hercke asked for clarification on what the needs were for the 30' long boats.

Smith stated that Mound believed that the 30' long boats at the 17 units are necessary to clean-up the site and fund the remainder of the project, pointing out that it is somewhat tied to the Tax Increment Financing (TIF) schedule. If the boat lengths are reduced as proposed, the value of these units will likely decrease and have an impact on the TIF proceeds. She stated that the site clean-up added \$3,000,000 in costs to this project.

Van Hercke expressed concern about tying 30' long boats to Mound's ability to meeting their TIF obligations.

Knudsen asked what the projected price ranges would be for these units.

Alcon stated that the target market value for the 17 units on the lake is \$850,000. For remaining 20 units, the target market value is \$500,000.

LeFevere stated that the developer should understand that the lake is public and there are no guarantees in the future that the number and size of BSU's will be vested at 26' or 30', if approved by the Board.

Valdesuso and Nelson stated that they agreed with comments made by Mound and would like to amend their original motion, with the two friendly amendments. The amended motion would be to direct LMCD counsel to prepare Finding of Fact and Order for approval of the Mound new multiple dock license and dock length variance application, subject to: 1) reducing the number of BSU's from 40 to 37, 2) approving 30' long BSU's for the 17 units on the lake and 26' long BSU's for the 20 interior units (with boats fully contained within these slips, 3) requiring that boats to be stored within these BSU's shall have only single engines, and 4) requiring the applicant to secure all permits and licenses from all governmental agencies.

Johnson proposed a friendly amendment that would allow single or twin engines in the 17 BSU's that would be 30' long. Valdesuso and Nelson did not agree to this.

**VOTE:** Ayes (6), Nays (3; Knudsen, Suerth, and Van Hercke); motion carried.

LeFevere asked the applicant to submit an amended plan based on the amendments discussed this evening.

## 1. WATER STRUCTURES

**A. Bayview HOA**, 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).

Van Hercke asked Nybeck for background on this agenda item.

Nybeck stated that the applicant had recently requested the Board not consider discussing or taking action on this application at this meeting because of legal counsel concerns. Because the Board directed staff to schedule this agenda item this evening in January, he believed that the Board should consider this request.

Mr. Chris Mach, 6510 Bayview Drive, stated that Bruce Malkorson had been retained as legal counsel for Bayview HOA. Because of a conflict of interest with a resident in Bayview HOA, Malkorson cannot legally represent the association. Bayview HOA has targeted two other attorneys and he asked for a continuance to the 3/9/05 LMCD Regular Board Meeting.

Seuntjens stated that he would like to put a timetable on this application to have it resolved prior to the upcoming boating season.

Mr. Allan Greenwood, 6500 Bayview Drive, stated that he had little communications with Bayview HOA relating to this and he was a little confused because Mr. Thomas had been the association's contact to date. Homes are being sold in this development and he questioned whether this was a delay tactic to sell home while docking rights are being addressed. Although he initially agreed to the amended site plan with seven BSU's, he expressed some reservations at that time, especially with the number of boats. He questioned whether the association was formally organized and who would oversee this dock, if approved by the Board. He stated that he did not have a lot of confidence in the Bayview HOA that would oversee this dock.

Knudsen asked Mr. Greenwood if he would be opposed to continuing this agenda item as requested by Mr. Mach.

Greenwood stated that he would not be opposed to continuing this agenda item. However, he believed that the Board should focus on applying LMCD rules to the development and how it was set up, rather than focussing on what either the association or he wants. Because of this, he believed the Board could make a decision on this agenda item this evening.

LeFevere stated that courts generally want to be responsive to requests made similar to what has been made by Bayview HOA.. Because they are going through a change in legal counsel and they have

signed a consent form to the 60-day rule, he recommended that the Board grant the requested continuance.

Zischke stated that she would like better clarification that there is a homeowners association for this development.

LeFevere stated that LMCD has traditionally not required legal proof of authority to make an application, unless the authority is challenged. He pointed out that Mr. Mach had provided him with a Secretary of State certificate that documents that Bayview HOA is a legal entity and incorporated. He asked Mr. Mach to submit a copy of this certificate to the LMCD office.

**MOTION:** Knudsen moved, Suerth seconded to table consideration of the pending Bayview HOA new multiple dock license application to the 3/9/05 LMCD Regular Board Meeting.

**VOTE:** Motion carried unanimously.

**B.** Discussion of LMCD Code relating to bridges on Lake Minnetonka.

Van Hercke asked Nybeck for background on this agenda item.

Nybeck stated that he and LeFevere had recently discussed how to better guide discussion by the Board on LMCD Code relating to bridges. Rather than starting from scratch at the Board level, he recommended that the original discussion take place at the staff level with Charlie, with one or two Board members participating in this discussion, to better refine the issues and possibly to develop recommendations.

**MOTION:** Seuntjens moved, Valdesuso seconded to remove this agenda item from the agenda and schedule it for discussion at a future LMCD Board Meeting.

**VOTE:** Motion carried unanimously.

**D.** Additional Business.

There was no additional business.

**2. LAKE USE & RECREATION**

**A.** Chair update of 2/17/05 Lake Minnetonka Boat Density Sub-Committee Meeting.

Van Hercke provided an overview of the 2/17/05 Lake Minnetonka Boat Density Sub-Committee. This discussion is outlined in the Meeting Report for this sub-committee meeting. She stated that the 3/3/05 sub-committee meeting has been cancelled and the next sub-committee meeting is scheduled for 3/17/05. The primary focus of this meeting will be discuss how to include input and feedback from stakeholders in the near future, with Nybeck assembling a variety of background information.

**B.** Additional Business.

There was no additional business.

**3. FINANCIAL**

**B. Additional Business.**

Knudsen stated that the 2004 LMCD Audit was being finalized and he believed that this document would be reviewed at the 3/9/05 LMCD Regular Board Meeting.

**4. EWM/EXOTICS TASK FORCE**

**A. Curfman Trucking and Repair, Inc.,** consideration of maintenance proposal for the 2005 EWM Harvesting Program.

Van Hercke asked for background from Nybeck.

Nybeck stated that a maintenance proposal has been received from Curfman Trucking and Repair, Inc. for the 2005 EWM Harvesting Program. Curfman Trucking and Repair, Inc has served as the fleet mechanic for the past four harvesting seasons. The proposal is for a flat rate contract of \$26,250 for a 22-week season from April 15th through September 15th, at the same rate as 2004. With a reduction of one harvester from the fleet, and the equipment being newer, the Board has previously discussed the idea of this contract amount being slightly reduced. However, he recommended that the contract should remain the same because there are a number of mechanical tasks to be performed up and above normal activity. These tasks will need to be done by mid June and the contractor has agreed to allow the LMCD to withhold the last payment if this work is not completed or other work is not completed at the end of the season.

**MOTION:** Gross moved, Van Hercke seconded to direct staff to prepare a contractual agreement with Curfman Trucking and Repair, Inc. to serve as the 2005 EWM Harvesting Program Fleet Mechanic, for an amount of \$26,250.00.

**VOTE:** Motion carried unanimously

**B. Discussion of plans for 2005 LMCD Zebra Mussel Program**

- Update of "Red Lake – Green Lake" concept
- Discussion of distribution of TPT educational video
- Other

Suerth made two comments. First, he and Nybeck had been unable to set a meeting up with the MN DNR to discuss overhead rates associated with the zebra mussel inspection. He hoped to meet with the MN DNR on this sometime in the near future and he stated that he would keep the Board informed on this. Second, he stated that there are problems with collecting funds to expand inspections in the future in conjunction with the zebra mussel program. He proposed a test letter, to be sent to residents in two or three of the Lake Minnetonka cities, to see if they would be willing to send a donation to the "Save the Lake" fund based on the number of watercraft that they own. The purpose of this test letter would be to see how much financial support there is for this project.

**MOTION:** Valdesuso moved, Johnson seconded to direct Suerth to finalize this letter, working with Nybeck and Chair Skramstad, and send it out in the near future.

**VOTE:** Motion carried unanimously.

Nelson stated that he had been unable to discuss the status of the "Red Lake – Green Lake" concept with Senator Olson. He hoped to catch up with Senator Olson in the near future and he stated that he would keep the Board informed on any feedback he gets from her. He stated that there was a proposed distribution list of the TPT educational video included in the packet that was draft. This list is not a fixed list and additional videos could be purchased, if needed. He envisioned that these videos would be distributed in the next couple of week, with a cover letter from Chair Skramstad.

Zischke stated that she believed that a news release that this video is available would be beneficial for the public.

**C. Additional Business.**

There was no additional business.

**5. ADMINISTRATION**

There was no discussion.

**6. SAVE THE LAKE**

There was no discussion.

**7. EXECUTIVE DIRECTOR**

There was no discussion.

**8. OLD BUSINESS**

Valdesuso stated that he was going to an Excelsior City Council meeting in the near future and he believed that they would be asking for an update on the possibility of the MCWD funding the LMCD's harvesting program in the future. He believed that the LMCD had not received a definitive answer on this from the MCWD.

The consensus of the Board was for Nybeck to check with the MCWD on this issue and report back to the Board.

**9. NEW BUSINESS**

Staff update on recently discussed Board planning topics

- LMCD Code Section 2.09- Deicing Regulations
- LMCD Code Section 3.021- High Water
- LMCD Code relating to dock installations

Nybeck provided an update on these planning topics. For Code Sections 2.09 and 3.021, Babcock needs to work with LeFevere on some minor Code amendments. He believed that this should be brought back for review by the Board in the near future. For possible Code amendment(s) relating to dock installers, he and

Skramstad plan to coordinate a meeting with dock installers in the near future and the Board will be kept informed on this.

**10. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:37 p.m.

Katy Van Hercke, Vice Chair

Jose Valdesuso, Secretary