

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS  
AGENDA**

7:00 PM, Wednesday, June 8, 2005  
Wayzata City Hall

**CALL TO ORDER**

Skramstad called the meeting to order at 7:04 p.m.

**ROLL CALL**

**Members present:** Tom Skramstad, Shorewood; Paul Knudsen, Minnetrista; Jose Valdesuso, Excelsior; John Berns, Wayzata; David Gross, Deephaven; Steve Johnson, Mound; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Tom Seuntjens, Minnetonka Beach; Cree Zischke, Greenwood. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

**Members absent:** Doug Babcock, Tonka Bay; Pete Nelson, Victoria; Herb Suerth, Woodland; Katy Van Hercke, Minnetonka.

**CHAIR ANNOUNCEMENTS**, Chair Skramstad

Skramstad made three Chair announcements. These included:

1. The City of Orono has appointed Andrew McDermott to the LMCD Board of Directors. Skramstad stated that McDermott was in attendance and he welcomed him on behalf of the Board.
2. The LMCD Board Lake Inspection Tour is planned for Wednesday, 6/15/05, from 6:30 p.m. to 9:30 p.m.
3. A Board Planning/Workshop Session has been scheduled at 5:30 p.m. on Wednesday, 6/22/05, prior to the Regular Board Meeting to discuss a variety of topics with Lake Minnetonka commercial marinas.

LeFevere administered the oath of office to Andrew McDermott. He was seated as representative for the City of Orono on the LMCD Board of Directors.

**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.

Scanlon requested that agenda item 3A be removed from the consent agenda.

Gross moved, Knudsen seconded to approve the consent agenda as amended, removing agenda item 3A. Motion carried unanimously. Item so approved include: **2D, 2005 Multiple Dock Licenses**, staff recommends Board approval of the 2005 renewal, without change, multiple dock license application for Big Island, Inc.

**1. EWM/EXOTICS TASK FORCE**

**A. PREFIX CLEAN WASH System PowerPoint presentation by Rob Birkeland,**

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that he and Suerth had recently met with representatives Rob Birkeland and Kim Zeile from PREFIX CLEAN WASH System. A request was made by Birkeland and Zeile to make a presentation to the Board, which was communicated at the 5/22/05 Board meeting and staff was directed to schedule an agenda item for this meeting. Others parties in attendance included: 1) Gary Montz, MN DNR Zebra Mussel Coordinator, 2) State Senator Gen Olson, and 3) State House Representative Barb Sykora.

Zeile made the following comments:

- Within the past year, he has become aware of the aquatic nuisance problems with the introduction of zebra mussels in Lake Ossawinnamakee. He stated that he had researched the aquatic nuisance problem and how the mussels are transported from lake to lake by boat.
- To assist in preventing the spread of zebra mussels from lake to lake, he and Birkeland have developed a system that would be a transportable, self-contained, wash station for washing boats. This wash station would be deployed at or near public accesses. He estimated that the system would wash approximately 300 boats before needing either water or propane.
- The system would wash boats with high pressure water that is approximately 140 degrees Fahrenheit, which exceeds the recommended standard from the MN DNR. The high pressure and hot water would clean weeds and grease from a boat prior to entering a lake. The system would include a high pressure wash for the bottom of the boat and trailer, a hand-held wand to allow the driver to hand detail other areas of the boat, and flushing ears for the motor.
- All of the water used in conjunction with the system will be collected, recycled, and reused on the next boat. The system is available and construction on the first pilot model will be delivered to the State of Montana, which has adopted legislation that requires boats to be washed. He stated that they would like also conduct a pilot program in the State of Minnesota and Lake Minnetonka would be an ideal lake.
- He entertained questions or comments from the Board.

Skramstad asked what the costs for these wash systems would be.

Zeile stated that the cost to manufacture the first couple wash systems is \$50,000 a piece. He believed that the cost per unit would likely be reduced to \$25,000 when they are produced on a high volume basis.

The Board asked a number of other questions, to which Zeile responded. Some of these questions included: 1) What happens to the wastewater?, 2) How long does a thorough cleaning take to wash a boat?, 3) What is the length of the unit?, and 4) What dialog has Prefix had with the MN DNR?

Mr. Gary Montz stated that the MN DNR had met with Prefix Corporation a number of times and they have been very receptive to addressing concerns raised by the MN DNR. The MN DNR has offered to work with Prefix Corporation on providing potential public access sites for a pilot project, provided that Prefix provides the wash system and the public access site is large enough. He stated that there is not currently legislation that requires all boaters to wash their boats and he was not aware of any pending legislation. The MN DNR supports the washing of boats as one tool to assist in preventing the

spread of invasive species from one body of water to another. At this time, the MN DNR does not have funding to purchase these boat wash systems, especially if they are first generation units.

Skramstad asked Senator Olson and Representative Sykora if they would like to comment on this topic.

Senator Olson stated that she had a very strong interest in the eradication of aquatic nuisances and appreciates the efforts by Prefix Corporation. She believed in innovation, creativity, and problem solving, and she believed that Prefix Corporation was leading down this path through a possible private/public sector partnership. During this legislative session, legislation has been introduced at the request of the Minnesota Lakes Association that would add a fee to the boat registration every three years. This legislation has been sent on to the budget committee and it has been changed greatly, including the dropping of the added fee that would be available to the lake associations. She stated that she did not believe that funding through additional boat license fees would be available for boat washing purposes at this time. The current legislative session has been hectic and she did not want to give up on funding at this legislative sessions, or more likely, future legislative sessions for exotics.

Skramstad thanked Birkeland and Zeile for their presentation. He believed that the LMCD supported the efforts being made on designing a boat washing station; however, the question is how to make this work from a financial standpoint.

**B. Additional Business**

There was no additional business.

**2. WATER STRUCTURES**

**A. Tim Burke**, considerations of draft Findings of Fact and Order for approval of a dock length variance application at 19820 Cottagewood Road.

Skramstad stated that LeFevere prepared draft Findings of Fact and Order for approval of a dock length variance as directed by the Board at the 5/25/05 meeting. He asked for Board comments or entertained a motion to approve them.

Seuntjens stated that he would oppose approving the draft Findings because he believed that a 627' long dock going over a wetland area was unreasonable and beyond his imagination. He expressed concern about the precedent that this approval could have on other wetland areas on the lake, such as the Ferndale Marsh area. He believed that the LMCD should require homeowners in this type of situation to work together on a combined dock situation.

Berns commented that he would be changing his vote to oppose approving the draft Findings because he questioned whether there was a particular hardship and he expressed concern that this dock would be one of the longest docks on the lake.

Skramstad stated that the dock length was discussed extensively at the previous Board meeting when the public hearing was conducted for this application. Although he believed that 627' was a long dock, he was not opposed to approving the application because each neighborhood is unique and should be looked at individually. He asked the Board to make a motion to approve the draft Findings of Fact and Order for approval of a dock length variance. He noted that there was not a motion and he asked LeFevere some background on procedure due to the lack of a motion.

LeFevere stated that if the application is not approved it is affectively denied. If there is a motion for preparation of Findings of Fact and Order to deny the variance application, the Board could consider those at a later date. If there is no motion at all, the 60-day rule would result in approval of the application at the end of the period of time. He recommended that the Board vote on the variance application one way or another. Under the Open Meeting Law, the LMCD could have a denial by stating the reasons prior to the 60-day period.

**MOTION:** Gross moved, Valdesuso seconded to approve the Findings of Fact and Order for approval of the Tim Burke dock length variance application as submitted.

**VOTE:** Ayes (4; Gross, Johnson, Skramstad, and Valdesuso), Nays (5), Abstained (1, McDermott); motion failed.

**MOTION:** Seuntjens moved, Berns seconded to direct LeFevere to prepare draft Findings of Fact and Order to deny the Tim Burke dock length variance application due to environmental concerns and the possible opportunity to apply for a multiple dock license application with the northerly neighbor who has approximately 300' of lakeshore.

The Board briefly discussed the timing of the 60-day rule compared to when the application was deemed complete by staff. The consensus of the Board was to prepare draft Findings of Fact and Order to deny the Tim Burke variance application, time permitting. If not, the Board deemed that the application was denied due to environmental concerns, the possibility of a combined dock with the abutting property to the north, and the lack of a particular hardship for this long a dock.

LeFevere stated that if it were not for the LMCD regulations, each riparian owner would have the ability to dock out to the point of navigability. The concern is that the LMCD Code as applied to this particular property does not leave a dock use area that includes navigable water. So it is the application of the Code to this property that results in not being able to dock out to navigable waters or having access for boats. The LMCD has treated this as a hardship in the past and it is unique to the subject property, not created by the landowner. However, simply because there is a hardship does not mean that the Board needs to grant the variance request. The next step is to determine whether the applicant is asking for too much, whether its environmental impacts are too great, or whether it has too much impact on the neighborhood. If the Board is inclined to deny the Tim Burke variance application, it should be recognized that a hardship exists; however the requested variance is not consistent with the spirit and intent of the ordinance because it is too extreme.

Seuntjens and Berns agreed with the legal advice made by LeFevere and wanted it reflected in the draft Findings of Fact and Order to deny the Tim Burke variance application.

LeFevere advised the Board that one option for the Board to consider would be to approve a motion that would direct staff to give the applicant notice of denial of the variance in writing as soon as possible stating that the reasons include that the applicant has not documented that there are not reasonable alternatives available, that there is an undue impact on an environmentally sensitive area, that the dock occupies too great an area of the lake for single use, and that this would be one of the longest docks on the lake. If the 60-day period would allow consideration of Findings by the Board at the next meeting, this

notice will not be sent and draft Findings of Fact and Order to deny the variance application will be considered at the 6/22/05 Board meeting.

Seuntjens and Berns agreed to the legal advice made by LeFevere as a friendly amendment.

**VOTE:** Ayes (7), Nays (2, Gross and Skramstad), Abstained (1, McDermott); motion carried.

Zischke left at 8:10 p.m.

**B. Howards Point Marina**, consideration of 2005 renewal without change application (previously discussed at the 4/13/05 Board meeting).

Skramstad asked LeFevere for background on this agenda item.

LeFevere made the following comments:

- The Board has recently considered the 2005 renewal, without change, multiple dock license application for Howards Point Marina. No action was taken because the survey submitted, dated 3/21/05, documented a number of violations that were not previously known because LMCD action had been based on drawings submitted by the applicant that did not document these violations.
- He reviewed the seven violations that were outlined in the staff memo, dated 3/31/05, which was prepared by Nybeck. No action was taken by the Board to allow the applicant to consider their options. Some of these options included submittal of a variance application, submittal of a reconfiguration of a non-conforming facility application, or bringing the facility into compliance with the approved site plan.
- The applicant has proposed no change to the existing dock structure; however, they have proposed a replat of the northerly extended side site line. Howards Point Marina has submitted a minor subdivision application to the City of Shorewood that would remedy the setback violations 4, 6, and 7 outlined in the 3/31/05 staff memo. The applicant has proposed no changes to violations 1, 2, and 3, and they have agreed to remove the piling violation that is documented as violation 5.
- He believed that the fundamental question is whether to approve or deny the 2005 renewal, without change, multiple dock license application submitted by Howards Point Marina. He entertained questions or comments from the Board.

Seuntjens stated that if the pending subdivision application is approved by the City of Shorewood, it will have an impact on what can be stored at the adjacent lot.

LeFevere stated that the pending Shorewood subdivision application would have an impact on the dock use area for the abutting property, if approved. This is a potential problem for that site; however, it should not affect the Boards consideration of the current application. If the abutting property to the north was platted prior to 1978, the site would maintain the ability to take advantage of the two-boat and four grandfathered exceptions to the 1:50' General Rule. He did not believe that the abutting property to the north should lose its grandfathered status just because the side site line was being relocated as long as the length of the shoreline was not changed, which he believed was the case for this application. He suggested that the applicant would be able to better clarify this.

Mr. Jack Strothman, legal counsel for Howards Point Marina, addressed the Board. He requested that the Board focus its attention on the commercial marina site rather than the abutting site to the north because he believed that it was a non-issue. He briefly reviewed the proposed minor subdivision application submitted with the City of Shorewood, noting that the Planning Commission had already reviewed it on 6/7/05 and that it would be reviewed by the City Council either on 6/13/05 or 6/27/05.

Seuntjens stated that he believed the pending application was an issue because violations 4, 6, and 7 will not be resolved if the City of Shorewood does not approve the minor subdivision application.

Strothman stated that if the Board was inclined to approve the 2005 Howards Point Marina renewal, without change, multiple dock license application, it could place a condition that the City of Shorewood approve the minor subdivision application. The only violations that would remain would be 1, 2, and 3, all of which he believed were minor. He addressed violations 1, 2, and 3, which were addressed in a letter he submitted, dated 5/13/05, and believed that they should be allowed to continue for safety purposes.

The Board discussed violations 1, 2, and 3, and whether they should be allowed to continue for safety purposes. There was discussion about allowing these violations to continue as long as they are corrected when the dock is reconstructed, to require compliance with LMCD Code for all three violations, and to reduce the length of the walkway at violation 1 to comply with the 10' setback.

Mr. Richard Baker, President of Howards Point Marina, stated that they purchased the facility in 1977. Since then, the only parts of the docks that have been reconstructed occurred in 1994 when the main walkway and gas dock were reconstructed.

LeFevere stated that the length of time a violation has existed does not create an entitlement or non-conforming use on the public water.

Skramstad stated that he believed that Howards Point Marina has provided the Board some options to consider their 2005 renewal, without change, multiple dock license application. He believed that one idea would be to approve this application, contingent on approval by the Shorewood on the minor subdivision application and not requiring Howards Point Marina to resolve violations 1, 2, and 3. Another option would be to take no action on the application until after the City of Shorewood acts on the minor subdivision application.

Berns stated that he would hope that the Board would also require the applicant to resolve violations 1, 2, and 3, with a greater emphasis on 3.

**MOTION:** Valdesuso moved, Johnson seconded to approve the 2005 Howards Point Marina Renewal, without change, multiple dock license application, subject to approval of the Shorewood minor subdivision application.

LeFevere stated that it appears that violation 1 encroaches approximately five feet into the 10 foot setback area. Staff already has problems resolving lesser setback violations and he believed that would hear about forgiving violation 1 if that is the decision of the Board. However, if the Board is inclined to approve a setback encroachment, a variance application should be submitted by Howards Point Marina. Another approach would be to amend the motion to require meeting all setback areas when the docks are reconstructed.

The Board discussed whether violations 1-3 are minor and whether a variance application should be required. The Board asked whether Howards Point Marina would be willing to bring violations 1-3 into compliance at this time.

Strothman stated that he believed that Howards Point Marina would be agreeable to the condition recommended by LeFevere to bring the docks into compliance with setbacks when they are reconstructed.

Nybeck clarified why the as-built survey was required in 2004 for the commercial marina in the water. Staff made this recommendation in 2004 to improve the drawings in the LMCD office and to ensure that the proposed dock plan complied with the setback area as documented on the hand drawing submitted in 2004.

**VOTE:** Ayes (4; Gross, Johnson, Skramstad, and Valdesuso); Nays (4), Abstained (1, McDermott); motion failed.

Strothman stated that Howards Point Marina has agreed to reduce the length of the walkway to comply with the 10' setback area to resolve violation 1.

**MOTION:** Knudsen moved, Valdesuso seconded to approve the 2005 Howards Point Marina renewal, without change, multiple dock license application, subject to approval of the Shorewood minor subdivision application and reducing the length of the walkway to comply with the 10 foot setback area and to resolve violation 1.

Baker asked for clarification to the motion on when violation 1 would need to be resolved.

Knudsen proposed a friendly amendment that would require violation 1 to be resolved by July 1st. Valdesuso agreed to this.

**VOTE:** Motion carried unanimously.

**C. LMCD Code Section 2.09**, review of considerations relating to deicing installations on Lake Minnetonka to be discussed at the 6/22/05 Board meeting.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that a public meeting was scheduled to discuss possible changes to LMCD Code Section 2.09 at the 6/22/05 Regular LMCD Board Meeting. The list of considerations and a public meeting notice will be sent out to the three local newspapers, current and prior deicing permit licensees, and all other multiple dock licensees holders that currently do not deice.

The Board briefly reviewed the list of considerations and directed Nybeck to send it out as submitted. The Board directed Nybeck to also send the public meeting notice and list of considerations to the properties that abut current deicing permit licensees.

**E. Additional Business**

There was no additional business.

**3. FINANCIAL**

**A. Audit of Vouchers (6/1/05 - 6/15/05).**

Skramstad asked Scanlon why he had this removed from the consent agenda.

Scanlon stated that there was check in the amount of \$4,246.40 to Kennedy and Graven. He asked for clarification on this.

Nybeck stated that this invoice was for the month of April. Although this invoice is a little higher than normal on a monthly basis, he believed it was primarily attributed to the work conducted by LeFevere on the Bayview HOA new multiple dock license application on Smithtown Bay.

**MOTION:** Seuntjens moved, Gross seconded to approve the audit of vouchers for the period of 6/1/05 – 6/15/05 as submitted.

**VOTE:** Motion carried unanimously.

**B. Review of draft 2006 LMCD Budget.**

Skramstad asked Nybeck for background on this item.

Nybeck stated this is the second review of the 2006 LMCD Budget, with the third and final review scheduled for the 6/22/05 LMCD Regular Board Meeting. The city officials meeting was held in the LMCD office on 6/3/05 and was lightly attended, with Board members Gross and Seuntjens, and two Deephaven City Council members in attendance. Board member Seuntjens has offered his comments in writing on the draft 2006 LMCD Budget, which have been confirmed in writing by the City of Minnetonka Beach.

Knudsen asked Gross for an update on comments from the City of Deephaven.

Gross stated that the Deephaven City Council discussed the draft 2006 LMCD Budget on 6/6/05. They have the following comments:

- The LMCD should not be charged \$2,000 to hold LMCD Board Meetings at the City of Wayzata. They have recommended deleting this from the draft 2006 LMCD Budget and they have offered to allow the LMCD to hold its meetings at Deephaven at no charge.
- The \$4,000 included in the draft 2006 LMCD Budget for office equipment, with a new copier to be purchased in 2007, should be deleted. They believe that technology will change in the next couple years for paperless technology.
- Although Deephaven supports the zebra mussel program, no money has been spent the past two years even though it was budgeted. Unless a specific plan is established to justify the increased budget from \$10,000 to \$15,000, Deephaven would like this budget reduced by \$5,000.
- Other interests that Deephaven has include funding educational and enforcement programs, and replenishing the capital equipment fund for the EWM Harvesting Program.

The Board discussed a number of aspects relating to the draft 2006 LMCD Budget. Some of the discussion included:

- Whether to reduce the increase in the levy to the 14 member cities from six percent to three

percent.

- Whether to establish a depreciation line item for replacement of all technology equipment.
- Whether the LMCD should fund added zebra mussel enforcement efforts from the "Save the Lake" Budget.
- Whether to continue to utilize the Wayzata Community Room for LMCD Board Regular Meetings, and what other alternatives might exist.

Skramstad reminded the Board that the third and final review of the draft 2006 LMCD Budget would take place at the 6/22/05 LMCD Regular Board Meeting. In the meantime, Nybeck and the Board members should check into the possibility of conducting LMCD Regular Board Meetings at Wayzata and Deephaven City Halls.

**C. Additional Business**

There was no additional business.

**4. ADMINISTRATION**

**A. Consideration of staff recommendation for compensation adjustment for Administrative Technician, Judd Harper.**

Nybeck requested that this agenda item be tabled to the 6/22/05 LMCD Regular Board Meeting. The Board concurred with this recommendation.

**B. Additional Business**

There was no additional business.

**5. LAKE USE AND RECREATION**

There was no discussion.

**6. SAVE THE LAKE**

There was no discussion.

**7. EXECUTIVE DIRECTOR REPORT**

Nybeck stated that the lake level was 929.66' on 6/6/05, with the dam discharging at 150 cfs.

**8. OLD BUSINESS**

Six Mile Creek

Skramstad asked Knudsen for an update on Six Mile Creek.

Knudsen stated that there was no new update.

Signage

Skramstad asked for an update on the development of new signage.

Nybeck stated that the new public access signage project was awaiting the outcome of the Lake Minnetonka Boat Density Committee.

## 9. NEW BUSINESS

### Interacting with Other Agencies

Gross stated that the City of Deephaven would like to see the LMCD be more proactive in dealing with other agencies in increasing the funding for the control of exotic species and the initiation of a operator licensing program.

Skramstad reported that he and Nybeck had met with the MCWD to try to collaborate on the use of various technologies.

### Valdesuso Resignation

Valdesuso reported that he would be resigning from the LMCD Board effective at the end of June.

Skramstad reminded the Board that Seuntjens has already been approved by the Board at a previous to meeting to replace Valdesuso as Secretary on the Board, effective upon his resignation from the Board.

## 10. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:37 p.m.

Tom Skramstad, Chair

Tom Seuntjens, Secretary