

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, August 10, 2005
Wayzata City Hall

CALL TO ORDER

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

ROLL CALL

Members present Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Tom Seuntjens, Minnetonka Beach; Paul Knudsen, Minnetrista; John Berns, Wayzata; David Gross, Deephaven; Steve Johnson, Mound; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Herb Suerth, Woodland. 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; Michael Maloney, Excelsior; Cree Zischke, Greenwood.

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad announced that the 8/24/05 LMCD Regular Board Meeting was cancelled at the 7/27/05 LMCD Regular Board Meeting.

READING OF MINUTES- 7/27/05 LMCD Regular Board Meeting

Berns stated that he would like the minutes to reflect that he had concerns about advocating for a statewide boat operator's license at this time. He believed that this could be added just above Task C on page 5.

Van Hercke requested adding to the minutes on page 4 and 5 to reflect that Doug Babcock, Pete Nelson, and Cree Zischke were assigned as Team Leaders to their specific tasks, although they were not in attendance at the 7/27/05 Board meeting. She pointed out that these Board members have not confirmed their commitment to these tasks to date and should be reflected in the minutes.

MOTION: Seuntjens moved, Gross seconded to approve the minutes from the 7/27/05 LMCD Regular Board Meeting with the changes proposed by Board members Berns and Van Hercke.

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.

1. WATER STRUCTURES

- A. Ordinance Amendment**, first reading of an ordinance relating to de-icing equipment, amending LMCD Code Section 2.09

Skramstad asked LeFevere for background on this agenda item.

LeFevere made the following comments:

- The Board has already discussed most of the changes proposed in the draft ordinance amendment. However, there were some changes that LeFevere provided further review of.
- Subd. 4 sets forth the factors that the Board can consider in granting or denying a license to de-ice.
- Subd. 4, paragraph a) establishes a new concept, which is the "Authorized De-icing Area" (ADA). The ADA is bounded on the side by the side site line and a line that is less than 100' beyond the end of the dock structure. It allows for the Board to establish a smaller ADA if it deems such adjustment reasonable or prudent in the interest of public safety or protection of reasonable access to, and use of, the Lake by the public and other riparian owners. Furthermore, the Board may establish a larger ADA by a variance process in accordance with Code Section 1.07.
- Subd. 4, paragraph c) continues to require a snow fence or approved alternative four feet in height and a minimum of six reflectorized signs. However, the draft ordinance amendment would now provide for a process if open water or weakened ice stretches outside of the ADA. This process requires the applicant to turn off all de-icing equipment until sound ice is reestablished outside of the ADA and all open water or weakened ice is enclosed by a second, temporary fence beyond the original fence establishing the ADA. The temporary fencing can be removed when sound ice is reestablished and at which time the equipment could be turned back on.
- Section 2, subd. 10 provides for a change from the current ordinance. Currently, March 15th is the date established for deicing without a license. At the recommendation of the Board member Babcock, the third Monday in March has been proposed as a change in the draft ordinance amendment.
- Section 3, Subd. 11 provides for a new Section to the existing ordinance. This Section would limit the circumstances under which licenses could be granted. This Section has been included as proposed by staff and has not previously been discussed by the Board. It would allow for permits to be issued only to: a) Commercial docks (including new or existing as outlined in Section 1.02, subd. 8), b) Dock facilities that were issued deicing licenses for the winters of 2002/2003, 2003/2004 or 2004/2005, and c) permanent docks initially issued permanent dock permits between August 17, 2003 and August 17, 2004. He stated that paragraphs b and c mirror the exceptions provided for in the existing moratorium ordinance.
- He entertained questions or comments from the Board.

Skramstad questioned why setbacks from the side site lines were not included in the draft ordinance amendment since problems would likely occur in these areas as well as out beyond the end of the dock.

LeFevere stated that there was testimony received from the public that maintaining deicing activity within the side site lines was easier because of deicing curtains. However, the same public testimony indicated that deicing curtains are more problematic to maintain on the lakeward extension.

Scanlon asked how the LMCD would enforce violations of regulations pertaining to deicing.

LeFevere stated that LMCD staff would monitor enforcement of deicing regulations and that

violation of the Code is a misdemeanor. The LMCD could revoke licenses; however, a misdemeanor brings them into compliance much quicker.

Skramstad stated that he believed paragraph g) was confusing and needed to be changed. The consensus of the Board was to change the wording from "... the applicant will provide the District with a 24 hour and an emergency telephone number" to "... the applicant will provide the District with a primary number and a 24 hour emergency number."

Knudsen asked if the Board was bound to Section 3, Subd. 11 relating to Eligible Facilities should the Board not want to grant a de-icing permit to a grandfathered site, such as a seasonal dock.

LeFevere stated that the Board would not have a greater authority to deny an applicant of a permit than what is offered in the criteria of the ordinance. Should violations be involved, the Board would deal with the violations as they arise.

Berns asked LeFevere a series of questions. They included: 1) If it was possible to remove grandfathering rights for a seasonal dock and what the public policy would be, 2) Would the LMCD be allowed to authorize deicing at a seasonal dock, and 3) Could a deicing permit be issued to a resident that installs a new permanent, non-commercial dock.

LeFevere stated that it was possible for the LMCD to remove grandfathering rights for seasonal docks because deicing on public waters is not a vested right. With regards to issuing a deicing permit at a seasonal dock, this would only be allowed for at a commercial dock unless the Code is amended. A Code amendment would also be required to deice at a new permanent, non commercial dock. He stated that any further changes to LMCD Code relating to prohibiting deicing at seasonal docks would likely require redefining seasonal and permanent docks in LMCD Code.

Skramstad stated that the draft ordinance amendment, if adopted, would not prevent a homeowner from constructing a permanent dock that could be destroyed by the ice because they are not allowed to be granted a deicing permit, especially on the main parts of the lake. He asked Harper how many of these types of permits have been issued by the LMCD in recent years.

Harper stated there has been a handful of permanent dock licenses granted within the last five years to residences that might fit the conditions referenced to by Skramstad. During the one-year period that the deicing moratorium has been in effect, there has been a disclaimer placed on licenses notifying the licensee that the current LMCD Code is subject to possible change and might hinder their ability to deice in the future.

Skramstad asked Lt. Jeff Storms for his comments on the draft ordinance amendment from the Water Patrol's standpoint.

Lt. Storms stated that he supported the concept of allowing deicing activity to extend 100' out beyond the end of the dock because it takes into consideration public safety concerns, especially those individuals utilizing the lake during the winter. He expressed concern about the utilization of deicing equipment in channel areas because this would likely pose additional public safety concerns.

LeFevere stated that there was testimony received from deicing licensees that they would like to

have the ability to install alternatives to fencing, such as reflectorized roping. He pointed out that paragraph c) already provides for the area to be deiced to be enclosed by a snow fence or approved alternative four feet in height and a minimum of six reflectorized signs. If alternatives are proposed, he believed that staff would seek guidance from the Board on them.

Gross asked for clarification on the applicant's responsibility in deicing after the third Monday in March as stated in Section 2, subd. 10.

LeFevere stated that applicants are not subject to the licensed conditions outlined in the amended ordinance after the third Monday in March and only need to provide warning signs as directed in that Code Section.

Nybeck questioned whether the Board would like to maintain the March 15th date in which a license is not required or if the Board would like to maintain the proposed change in the draft ordinance amendment of the third Monday in March. He stated that it is easier to communicate to the public on a set date, such as March 15th. The Board discussed this and the consensus was to maintain the March 15th no permit date.

Seuntjens and McDermott stated that they believed the wording in subd. 4 c) should be clarified that the signs shall state "Thin Ice" and that there should be "one every 50' or a minimum of six". This would be consistent with subd. 10.

Nybeck stated that Board member Babcock was unable to attend this meeting. However, he communicated that Board member Babcock believes that a seasonal dock should be removed each year and that deicing should not be allowed at these sites.

MOTION: Seuntjens moved, Knudsen seconded to approved first reading of the draft ordinance amendment, to waive second and third readings, and adopt the ordinance amendment with the following changes: 1) on page 1, change the verbiage in subd. 4 c) to read, "A snow fence or approved alternative four feet in height and a minimum of six reflectorized "Thin Ice" signs and at least one sign for every 50', 2) on page 2, change the verbiage in subd. 4g) to read "Applicant will provide the District with a primary telephone number and an emergency 24-hour telephone number", and 3) to maintain the March 15th date and delete Section 2 in the draft ordinance amendment.

VOTE: Motion carried unanimously.

B. Additional Business

There was no additional business.

2. LAKE USE AND RECREATION

A. Proposed ordinance relating to watercraft equipment on Lake Minnetonka.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that the draft ordinance amendment had been prepared in response to concerns raised by Lt. Storms at the 7/27/05 Board meeting. The Board directed staff to schedule continued

discussion of safety checks conducted by the Water Patrol on this agenda and it made sense to prepare a draft ordinance amendment for review by the Board because the changes would be minimal and LeFevere had already discussed this with LMCD Prosecuting Attorney Steve Tallen. Although a draft ordinance amendment has been prepared, first reading of it was not scheduled, although this would not preclude the Board from approving a reading of it.

Skramstad asked LeFevere for review of the draft ordinance amendment.

LeFevere stated that he essentially prepared a draft ordinance based on the verbiage that he received from Steve Tallen. The intent of the draft ordinance amendment is more of an enforcement tool to remove any question about whether an operator is required to display safety equipment upon the demand of a law enforcement officer.

Skramstad asked Lt. Storms if he was in agreement with the wording of the draft ordinance amendment and if it would meet the needs of the Water Patrol.

Lt. Storms stated he was in agreement with the draft ordinance amendment.

Gross asked if the ordinance amendment, if adopted, would allow a peace officer to stop a boater for the sole purpose of checking on safety equipment.

Lt. Storms stated that the draft ordinance amendment does not allow a peace officer to stop a boater for the purpose of checking on safety equipment. In order to stop a boater, there needs to be probable cause. Once probable cause has been established, the ordinance amendment would provide the Water Patrol the ability to verify that there is proper safety equipment on the watercraft.

Berns stated he would like the Board to have the MN Statutes available for review prior to adopting the draft ordinance amendment.

Gross stated that the words, "upon request" are referenced twice in the first sentence in the draft ordinance amendment.

LeFevere stated the words "upon request" should not be referenced twice in the first sentence and that he would recommend removing the second entry.

MOTION: Berns moved, Seuntjens seconded to: 1) approve first reading of the draft ordinance amendment as amended, removing the second entry of the words "upon request" in the first sentence, and 2) to schedule second reading of the draft ordinance amendment for the 9/14/05 LMCD Regular Board Meeting and to direct staff to provide MN Statutes 86B.501 and MN Rules 6110.1200 subparts three, four, and five.

VOTE: Motion carried unanimously.

B. Update on 8/13/05 "Future of the Lake Day" Special Event

Skramstad asked Berns for an update on this special event.

Berns updated the Board on the following:

- All Board members should have received posters promoting the event. He requested Board members drop these posters off at their local city hall and businesses.
- He encouraged all Board members that are in town to be present and help in a manner that they are comfortable
- The event will be from 9:00 a.m. to 12 NOON. Activities include, but are not restricted to, the Hennepin County Sheriff's Water Patrol, fire boats from various municipalities, local sailing schools, educational stations, demonstrations from fishing pros, and a free charter boat ride from Al & Almas.
- It is estimated that there will be approximately 150 kids bussed in for the event, in addition to kids from the local communities. Those kids in attendance will receive a free T-shirt and a free gift bag.
- Food will be provided by Al & Alma's during the charter boat ride.
- Media interviews are scheduled in advance of the event, including a radio interview on the Pat Miles show and a spot on KARE 11 on the morning of the event.
- He thanked LMCD staff for their leadership on this project.

C. Update from Team Leaders on Lake Minnetonka Boat Density Committee Action Plan.

Skramstad asked Van Hercke for an update on this agenda item.

Van Hercke stated that she was hoping to receive an update on any action taken by the various Team Leaders. She reminded the Board that Board members Babcock, Nelson, and Ziscke had not yet committed to the tasks that they were assigned as Team Leaders.

The following updates were received from Team Leaders:

Task A: Develop/refine communication strategy, plan, and timeline. Oversee team members performing the following tasks.

Team Leader Scanlon stated that he did not have an update and had not been in touch with the committee members.

- **Develop/improve new materials that clarify LMCD rules.**

There was no update provided by Team Leader Nelson.

- **Review/update signage at public accesses & marinas.**

Team Leader McDermott stated he had reviewed the summer and winter rules for the purpose of signage. After the new rules and regulations have been confirmed by the Board, he stated that a Request for Proposal would be brought to the Board for review and approval. This in turn would be sent out to possible sign companies requesting them to submit a quote in for new signage.

- **Review/update LMCD publications and web site, MN DNR Boating Guide, and regular mailings.**

There was no update provided.

- **Develop advertising campaigns utilizing key messages by partnering with the State of MN, the MN DNR, and the Water Patrol.**

There was no update provided by Team Leader Suerth.

- **Continue to form strong partnerships with local realtors, local dock installers, marinas, lake organizations, etc.**

There was no update provided by Team Leader Skramstad.

- **Expand safe boater classes for adults.**

There was no update provided by Team Leader Gross.

Van Hercke asked Scanlon for an update on this task at the 9/14/05 LMCD Regular Board Meeting.

Task B Proactively advocate for a Boat Operator's License. This will most likely require the forming of a coalition that will determine the strategy including key tasks, timelines, and contacts needed to work with the state legislature.

Co Team Leader Paul Knudsen stated that he discussed this task with Co Team Leader Johnson. An initial conversation has taken place with Gabriel Jabbour, who has expressed a strong interest in establishing an operators license and maintains a wealth of information to prepare for the process. He provided an overview of initial research that he had conducted for other states with a mandatory boat operators licensing requirement, primarily Alabama and Connecticut. One possible incentive to the public for requiring a mandatory boat operators licensing program is reduced insurance rates for those that get their license. He recognized that there are a number of hurdles to be addressed, including the resort communities and out of state residents that visit these places.

Seuntjens stated that he would likely support mandatory boat licensing statewide as long as there is an exclusion for boats at resort communities with a motor size less than a horsepower yet to be determined.

Berns stated that he appreciated the additional information provided by Co Team Leader Knudsen. However, he stated that he continued to have reservations on this task at this time and he recommended changing the verbiage in this task from "Proactively advocate" to "Investigate."

MOTION: Berns moved, Scanlon seconded, to redefine the first sentence of Task B to read "Investigate the need for a boat operators license and if determined necessary, proactively advocate for such a license or an appropriate alternative."

VOTE: Motion carried unanimously.

Van Hercke stated that she had previously briefly communicated with Deephaven Mayor Tom Anderson relating to this task. She believed that the City of Deephaven has expressed an interest in initiating their own program and she would appreciate regular communication with Mayor Anderson on the progress of this task so that the efforts are coordinated.

Knudsen stated that he would keep in contact with Mayor Anderson.

Task C Water Patrol liaison. Keep in contact to continue to support the Water Patrol, particularly in their efforts to identify, track, and notify discourteous boaters about their lake use behaviors.

Team Leader Seuntjens stated that he had met with Lt. Storms to discuss this task. The intent is to meet frequently, quarterly, and to patrol the lake with a deputy more frequently.

Task D Enforcement.

- **Develop and implement a process for enforcing storage ordinances.**

There was no update provided by Team Leader Zischke.

- **Work with 14 LMCD member cities to actively involve them in common enforcement related issues.**

There was no update provided by Team Leader Maloney.

Task E Work with the LMCD Executive Director on a redraft of the 1974 Boat Density Policy Statement and the Lake Use and Recreation Chapter of the 1991 Management Plan for Lake Minnetonka.

Van Hercke stated that Nybeck has been appointed as Team Leader for this task, with Board members Babcock and Gross assisting him. There is no update on this task at this time because work will likely begin sometime this upcoming fall or winter.

D. Additional Business

There was no additional business.

3. FINANCIAL

A. Audit of Vouchers (8/1/05 – 8/15/05)

Knudsen provided an overview of the vouchers for payment for the period for of 8/1/05 – 8/15/05.

MOTION: Van Hercke moved, McDermott seconded to approve the audit of vouchers for the

period of 8/1/05 – 8/15/05 as submitted.

VOTE: Motion carried unanimously.

B. Additional Business

There was no additional business.

4. EWM/EXOTICS TASK FORCE

There was no discussion.

5. ADMINISTRATION

There was no discussion.

6. SAVE THE LAKE

There was no discussion

7. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on three items. First, the lake level as of 8/8/05 was 928.91, with the dam discharging at 30 c.f.s. Second, he stated that he would be attending a seminar on 8/11/05 at the Grays Freshwater Center, hosted by the LMA and MN Lakes Association, relating to milfoil and the use of chemicals to further treat them. Third, an agenda item will be placed on the agenda for the 9/14/05 LMCD Regular Board Meeting relating to issues observed by LMCD staff during recent years during multiple dock license inspections.

8. OLD BUSINESS

Canning Update

Skramstad asked LeFevere for an update on the pending Canning litigation.

LeFevere stated that the Order of the Court carries with it the removal of the docks. However, the appeal time has not expired and staff is waiting for the appeal time to expire, which is at the end of September, before requesting the dock and boat storage to be removed.

Congressman Ramstad Meeting

Van Hercke updated the Board on a meeting that will be facilitated by Congressman Jim Ramstad to discuss solution-oriented milfoil concerns. She indicated that Commissioner Gene Merriam, Chip Willing, and Jay Randall from the DNR will be present, along with herself, Skramstad, Nybeck, Nelson, and Suerth.

Media Topics

Seuntjens asked staff to provide an update at 9/14/05 LMCD Regular Board Meeting on two items. First, there has been information circulated by the media that the MN DNR is proposing changes to their regulations for dock lengths in proportion to the amount of shore at the site and reducing the

amount of chemical treatment that could be done at a residence. Second, there was a recent article from the MCWD that they are re-studying the flow of the Minnehaha Creek, with a potential proposal of a more continuous flow and restricting some of the creek, which could impact the lake levels on Lake Minnetonka. He believed that these two items should be checked into further by staff and reported back to the Board.

9. NEW BUSINESS

There was no discussion.

10. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:37 p.m.

Tom Skramstad, Chair

Katy Van Hercke, Vice Chair