

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, December 14, 2005
Wayzata City Hall

CALL TO ORDER

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

ROLL CALL

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

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad made two Chair announcements. First, the second Board meeting in December scheduled for 12/28/05 had been cancelled. Second, he asked Nybeck for possible dates on the LMCD's 39th anniversary "Save the Lake" Banquet Dinner.

Nybeck stated that the annual Banquet Dinner has taken place in recent years on either the first or second Thursday in February. Possible dates for 2006 include February 2nd and 16th, with possible venues of Bayview Event Center and the Lafayette Club. The Banquet Dinner has been held at the Bayview Event Center in recent years and there has been positive feedback on this venue.

The Board discussed this and the consensus was to hold the LMCD's 39th anniversary "Save the Lake" Recognition Banquet on Thursday, February 2 at the Bayview Event Center.

READING OF MINUTES- 10/12/05 LMCD Regular Board Meeting
11/9/05 LMCD Regular Board Meeting Report

MOTION: Knudsen moved, McDermott seconded to approve the minutes from the 10/12/05 LMCD Regular Board Meeting.

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

MOTION: Maloney moved, Nelson seconded to approve the Meeting Report from the 11/9/05 LMCD Regular Board Meeting.

VOTE: Ayes (5), Abstained (5, Knudsen, McDermott, Seuntjens, Suerth, and Van Hercke); motion carried.

PUBLIC COMMENTS - Persons in attendance, subjects not on agenda (5 min.)

There were no comments from the public on subjects not on the agenda.

CONSENT AGENDA- Consent agenda items identified with a (*) will be approved in one motion unless a Board member requests discussion of any item, in which case the item will be removed from the consent agenda.

Berns requested that agenda item 4A be removed from the consent agenda.

Seuntjens moved, McDermott seconded to approve the consent agenda as amended, removing agenda item 4A. Motion carried unanimously. Items so approved include: **1C**, Refund of \$125 to Jeff Engler for Denial of 2005-2006 de-icing application; **2A**, Minutes from the 10/14/05 EWM/Exotics Task Force Meeting; and **4B**, August, September, and October financial summary and balance sheets.

1. WATER STRUCTURES

A. City of Mound, consideration of 2006 new multiple dock license, with minor change, application.

Skramstad asked Harper to provide background on this agenda item.

Harper reviewed the staff memo, dated 12/5/05, which summarized the City of Mound's (Lost lake Channel – Transient) new multiple dock license (minor change) application. He recommended the Board approve the application for the 2006 season. He entertained questions or comments from the Board.

Berns asked why the applicant was changing the dock structure.

Harper stated that when the docks were initially constructed, the docks were not installed consistent to the site plan.

MOTION: Berns moved, Johnson seconded to approve the City of Mound's 2006 new multiple dock, with minor change, application as submitted.

VOTE: Motion carried unanimously

B. Harborage Homeowners Association HOA, consideration of 2006 new multiple dock license, with minor change, application.

Skramstad asked Harper to provide background on this agenda item.

Harper reviewed the staff memo, dated 11/3/05, which summarized the Harborage HOA's new multiple dock license (minor change) application. He indicated the Board should decide whether the proposed changes are substantial enough to require a public hearing. If the Board concludes that the changes are minor, he recommended approval of the application for the 2006 season, with a condition that the watercraft stored at BSU's 1 and 2 not exceed 23' in length. He entertained questions or comments from the Board.

Van Hercke asked if there had been any issue or complaints relating to this multiple dock facility?

Harper stated that he was not aware of any complaints or issues relating to this facility.

Nelson stated that he drives by the facility on a regular basis and that he was not aware of any problems.

Harper stated that the primary purpose for this application is that the inner slip has some water depth issues.

Skramstad asked if the current multiple dock license limits boats to 23' or less.

Harper stated the homeowners association currently restricts boats to 23' in length or less rather than conditions on the multiple dock license.

MOTION: Seuntjens moved, Nelson seconded to approve the Harborage HOA's 2006 new multiple dock license, with minor change, application as submitted.

VOTE: Motion carried unanimously

D. Chair update of sundecks being installed by local dock installers on Lake Minnetonka.

Skramstad provided a verbal update on this agenda item, reminding the Board of previous actions to update LMCD Code to allow for construction of docks that are eight feet in one dimension, but not both dimensions. There has been discussion with local dock installation companies of what sundecks are being installed and how they are interpreted from a LMCD Code and MN DNR rule standpoint. There will be discussion with these dock installation companies to further evaluate with an agenda item scheduled in the near future. He supported the concept of having some form of special rules on Lake Minnetonka, which would need to be approved by the MN DNR. The goal would be to get something approved that would work for the dock installation companies and their customers, yet be enforceable.

E. Ordinance Amendment, first reading of an ordinance relating to de-icing equipment; amending LMCD Code Section 2.09, subd. 4(e);

Skramstad asked LeFevere to provide an overview on this agenda item.

LeFevere stated that when Code Section 2.09 was recently amended, subd. 4(e) requires more restrictive insurance requirements for both residential and commercial properties. The Code amendment added that: 1) the insurance shall be in the amount of at least \$1,000,000 for persons and \$50,000 for property, 2) that LMCD be listed as an additional insured, and 3) that that LMCD be notified 30-days prior to any policy amendment or cancellation. He stated that upon further research, it was found that residential policy holders would need to obtain a commercial liability policy to comply with conditions two and three outlined above. This is problematic in a number of instances and he proposed relaxing the requirement of the LMCD being listed as an additional insured and notifying the District 30 days prior of an amended or cancelled policy for residential property owners only. The residential policy will maintain the same amount of insurance.

MOTION: Seuntjens moved, Van Hercke seconded to approve first reading of the draft ordinance amendment, to waive second and third readings, and to adopt the ordinance amendment.

VOTE: Motion carried unanimously.

F. Additional Business

There was no additional business.

2. EWM/EXOTICS TASK FORCE

B. Public discussion of proposed 2006 Milfoil Demonstration Project.

Skramstad welcomed those in attendance at the meeting. He outlined the format of this agenda by stating that: 1) Project Manager Pete Nelson would provide background on the proposed project, 2) time would be allotted to the Board for discussion and questions, 3) discussion would be open for public participation, and 4) the public discussion would be closed for further Board discussion.

Nelson made the following comments:

- The 2006 Milfoil Demonstration Project is on the agenda to ask for Board support to proceed with the project and to announce an interest in developing a public/private partnership to affectively provide for chemical treatment of milfoil on three specified areas of Lake Minnetonka. These include: 1) a 6.3 acre site in the northeast end of Phelps Bay, 2) a 13.2 acre site in the north end of Carmans Bay, and 3) an 11.3 acre site in the east end of Grays Bay.
- The intent of this program is to create a public/private partnership with the Lake Minnetonka Association (LMA). The LMCD will address the public areas out beyond 150' from shore in the proposed treatment areas in Phelps, Carmans, and Grays Bays. In conjunction with the LMCD, the Lake Minnetonka Association (LMA) has agreed to address the private areas within the 150' buffer from shore in the treatment areas.
- The LMA has indicated that milfoil is one of the primary concerns of their members. One of the goals of this project is to establish how much public support exists for future projects.
- He provided an overview of the key elements of the proposed project through a PowerPoint presentation. These elements included: 1) objectives, 2) organizational responsibilities, and 3) project highlights.
- He reviewed the three specified areas to be treated, the estimated time frame of treatment, along with the respective herbicide. He reviewed the two proposed untreated reference sites on Carmans Bay to evaluate the proposed 2,4-D and endothall treatment.
- He stated that he hoped this program would generate publicity and support to deal with milfoil and other invasive species on Lake Minnetonka in the future, with an emphasis on zebra mussels.
- The LMCD is the lead agency for this project, with partners including the LMA, the MN DNR, and the Army Corps of Engineers. This is a demonstration project rather than a scientific experiment, on a one-time basis. He estimated \$18,000 for the total project cost, not including the evaluation process.
- He entertained questions or comments from the Board.

Skramstad stated that he believed the MN DNR brings a lot of experience to this demonstration project because they have chemically treated milfoil on other bodies of water throughout the State of Minnesota.

Nybeck stated that there were representatives from three other organizations in attendance. These included: Neil Vanderbosch, Aquatic Plant Manager for the MN DNR; Wendy Crowell, Aquatic Invasive Species Specialist for the MN DNR; and John Skogerboe, Chemical Treatment Expert for the Army Corps of Engineers. He further recognized Chip Welling, Coordinator for the MN DNR's Eurasian Watermilfoil Program, who was not present.

Berns asked Nelson how he would rate the environmental safety of the proposed project?

Nelson stated that there would be restrictions on the eating of fish for a period of time after the chemicals have been applied. However, this time period is limited because the fish have a very fast past through. Because of this, he did not see a problem or risk on a long-term basis.

Skramstad stated that lakeshore owners have previously been permitted by the MN DNR to utilize the same chemicals that this project will be applying for.

Suerth stated that he had some concerns about proceeding with the proposed project at this time. He expressed concern about how the project would be funded and the lack of evaluating what chemicals have previously been utilized and their effectiveness on private properties on Lake Minnetonka.

Nelson stated that he believed two key elements to the success of the demonstration project would be: 1) the communication between the public and private sectors, and 2) the broad area in which the same treatment will cover.

Suerth stated that there have been between 800 and 1,000 permit requests on Lake Minnetonka for the past 30 years. A number of these years precede the milfoil introduction into Lake Minnetonka and it implies that it is an annual commitment by a number of property owners.

Nelson questioned what could be inferred by analyzing the historical permits issued by the MN DNR because the homeowners are not allowed to treat the entire shoreline. He hoped to determine through the demonstration how effective the project is when the public areas outside of 150' from the shoreline are treated in combination with those that have been historically treated.

Skramstad stated that if there were no further comments from the Board, he would like to get comments or questions from the public on the proposed project. He welcomed those members from the public in attendance for this agenda item.

Mr. Jeff Essen, 2648 Casco Point Road, stated that he was a property owner on Carmans Bay. He asked what would happen if 100% cooperation were not obtained from the affected property Owners within 150' from shore?

Skogerboe stated that it would be difficult to determine what would happen on non-target areas. The primary contributing factor would be the weather, with an emphasis on wind.

Essen asked what would happen to private mechanical harvesting in the treatment areas?

Nelson stated that private harvesting in the treatment areas would be discouraged. However, the LMCD has no authority to stop permits for private harvesting.

Essen stated that the treatment area in Carmans Bay is a popular recreational area, especially for water skiing and other towing devices. He asked if there would be buoys or restrictions to limit travel within the treatment areas?

Nelson stated that buoys are planned tentatively.

Skogerboe stated that impacts on water recreation in Carmans Bay would be minimal because the 2,4-D and endothall herbicide would need to be applied when the water temperature was around 50 degrees fahrenheit. This is generally too early for most recreational activities.

Essen asked if the chemicals to be used would be plant specific or if they would kill all aquatic vegetation?

Skogerboe stated that all three herbicides proposed are plant specific and could potentially enhance the native plant population. For example, the proposed herbicide treatment in Carmans Bay is designed to control milfoil and curly-leaf pondweed.

Essen asked how the chemical treatments would impact irrigation of lawns from the lake?

Nelson stated that he believed it would have little to no effect because the public aspect of the project would begin 150' from the shore and all affected property owners will be notified in advance of the chemical treatment.

Mr. Ted Chalupsky, 2530 Casco Point Road, stated he was pleased and thankful for the people working on the problem. Speaking on behalf of most of the neighboring properties in Carmans Bay, he stated that the neighborhood was in favor of the proposed project and he encouraged the Board to move forward. He offered his assistance to the LMCD if needed for communication purposes.

Skramstad stated that there were no further comments from the public on this proposed project. He asked Nelson for feedback on what he was seeking from the Board at this time.

Nelson stated that he would like Board approval to proceed with the project, which would trigger all of the other activities outlined on the schedule.

MOTION: McDermott moved, Van Hercke seconded to approve proceeding with the 2006 Milfoil Demonstration Project.

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

C. Additional Business

There was no additional business.

3. LAKE USE & RECREATION

- A. Discussion of proposed culverts being considered under Smithtown Road between Smithtown Bay and Lake Virginia

Skramstad provided background, via a PowerPoint presentation, of the proposed culverts being considered under Smithtown Road between Smithtown Road and Lake Virginia. Discussion included Met Council background; LMCD background; an overview of Options B, C, and D being considered; and the City of Victoria background. He stated that the Met Council at the 11/9/05 LMCD Regular Board Meeting made a presentation, with additional comments received from the City of Victoria and the MN DNR. These governmental agencies value the input from the LMCD and would like comments and feedback on the three proposed options. He stated that he would like to have the Board provide comments on the three options. He recommended that Option B made the most sense because it is the most similar to the culvert that exists today and would allow for the Met Council to replace the existing culvert for sanitary sewer purposes.

The Board discussed the proposed Options B, C, and D. There was discussion of Options B and C, including which option would be the safest for the public. The Board discussed current boating and snowmobile activity in this area and how it could be impacted if a larger culvert is installed compared to what exists today.

MOTION: Berns moved, Van Hercke seconded to authorize Chair Skramstad to work with the Executive Director to forward a letter to the Met Council, the City of Victoria, the MN DNR, and the MCWD stating: 1) the LMCD supports the Met Council's objective to replace the existing culvert between Smithtown Bay and Lake Virginia, and 2) the LMCD recommends replacing the existing culvert with Option B because it accomplishes the Met Council's objective and does not introduce additional public safety and navigational concerns.

VOTE: Ayes (7), Nays (2, McDermott and Seuntjens), Abstained (1, Nelson); motion carried.

- B. Ordinance Amendment, first reading of an ordinance relating to the speed of motor vehicles on Lake Minnetonka; amending LMCD Code Section 3.11, subd. 5 and Section 3.12, subd. 3.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that this agenda item was originally scheduled for the 11/9/05 Board Meeting; however, no action could be taken due to the lack of a quorum. This draft ordinance amendment has been prepared to simplify speed limits for all motorized watercraft during the winter within and outside of the established 150' shorezone on Lake Minnetonka. These changes would make some of the speed limits on Lake Minnetonka consistent with the rules for the State of Minnesota. The proposed ordinance amendment has been reviewed by the Sheriff's Water Patrol, pointing out that Lt. Storms was in support of it.

MOTION: McDermott moved, Knudsen seconded to approve first reading of the draft ordinance

amendment, to waive second and third readings, and adopt the ordinance.

VOTE: Motion carried unanimously.

C. Consideration of quotes received for new winter public access signage.

Skramstad asked Herman for an overview on this agenda item.

Herman reviewed the Request for Quotes (RFQ) process for the purchase of new winter public access signage. A RFQ was sent out to 14 vendors on November 10th, with an Addendum sent out on November 15th. The RFQ requested quotes for the purchase of 15 signs that were 2' x 3' on 1/8" thick aluminum, with rounded corners. The background color was to be blue, with white reflectorized lettering, at a font style and size proposed by the vendor. Quotes were to be received in the LMCD office by 12 NOON on December 7th, with signs to be delivered to LMCD office by January 11th for the vendor awarded the contract. Quotes were received by the December 7th deadline from eight of the 14 vendors, and she provided an overview of the quote tabulation spreadsheet for these vendors. She recommended that the Board approve the quote submitted by Lake Way Signs, Inc. in the amount of 1,269.34, for 15 winter public access signs. She entertained questions or comments from the Board.

Johnson stated that the Board might want to consider additional signs to properly notify snowmobilers and other users of the Lake of rule changes.

MOTION: Seuntjens moved, Nelson seconded to approve a contract with Lake Way Signs, Inc., for the purchase of 15 to 20 signs, at the quoted price of \$1,269.34 for 15 signs, with delivery as soon as possible or by January 11th.

VOTE: Motion carried unanimously.

D. Additional Business

There was no additional business.

4. FINANCIAL

A. Audit of Vouchers (10/16/05 – 10/31/05), (11/1/05 – 11/15/05), (11/16/05-11/30/05), and (12/1/05-12/15/05).

Berns requested background for the invoice received from Hoff, Barry & Kuderer, PA.

Nybeck stated that the invoice was for legal fees for the pending Canning litigation.

MOTION: Nelson moved, McDermott seconded to approve the Audit of Vouchers for the periods of (10/16/05 – 10/31/05), (11/1/05 – 11/15/05), (11/16/05 – 11/30/05) and (12/1/05-12/15/05).

VOTE: Motion carried unanimously.

C. Additional Business

There was no additional business.

5. ADMINISTRATION

A. Appointments for 2006.

- Auditor Selection
- Legal Counsel
- Prosecuting Attorney
- Bookkeeper
- Official Newspaper
- Bank Depository for fiscal year 2006

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that quotes have been received for 2006 to conduct the 2005 LMCD Audit, legal counsel, a prosecuting attorney, and a bookkeeper. Additionally, there is a need to appoint an official newspaper and bank depository for 2006. A summary of these quotes received, with recommendations, is outlined in the staff memo, dated 11/4/05. He entertained questions or comments from the Board.

Seuntjens asked for clarification of the 4M Fund.

Nybeck stated that the 4M Fund is coordinated through the League of Minnesota Cities and allows for the consolidation of funds for the LMCD. In the 4M Fund, the LMCD maintains a checking account with U.S. Bank, a number of Certificates of Deposit, and an account that draws a limited amount of interest, similar to the cash management account the LMCD previously had with Merrill Lynch.

Berns stated that 2005 LMCD prosecuting attorney Steve Tallen was in attendance at this meeting at the Board's request. He expressed an interest in educating the Board on the position of the prosecuting attorney because he believed they have the most amount of power within the system of the LMCD because they have an incredible amount of discretion without being reviewed by Board or anyone else. He believed that the prosecuting attorney needs to be fair and that justice needs to be upheld in an unbiased manner. The prosecuting attorney is responsible for holding defendants accountable and providing rehabilitation, when needed. The prosecuting attorney is responsible for always doing what is right. Therefore, it is important that they maintain good judgment. He expressed an interest that LMCD Board members be on the same page as to the responsibility of the contracted prosecuting attorney and thanked the Board for listening.

Tallen thanked the Board for inviting him to the meeting. He addressed the comments raised by Berns by providing the Board an overview of his philosophies on criminal prosecution matters. He stated that he was finishing his 20th year as prosecuting attorney for the LMCD and he hoped to continue. He entertained questions or comments from the Board.

Berns asked Tallen for an overview of the cases that he has annually, including the number of cases.

Tallen stated that the number of cases changes from year to year. In the first 15 years of his service, there was more emphasis by the Sheriff's Water Patrol on enforcement. This has changed somewhat in the past five years, which is reflected in fine revenue to the LMCD in 2005. Some of the higher profile cases that involve his time include driving under the influence on watercraft and snowmobiles.

Skramstad thanked Tallen, on behalf of the Board, for his longstanding service to the LMCD.

MOTION: Van Hercke moved, McDermott seconded to approve the following 2006 appointments: 2005 Auditor Selection – Abdo, Eick, and Meyers; Legal Counsel – Kennedy and Graven; Prosecuting Attorney – Tallen and Baertschi; Bookkeeper – SB Management, Inc.; Official Newspaper – Lakeshore Weekly News; and Bank Depository Resolution – U.S. Bank.

VOTE: Motion carried unanimously.

B. Update of 11/15/05 Annual LMCD/Hennepin County Sheriff's Office Water Patrol Meeting.

Skramstad stated the annual meeting with the Sheriff's Water Patrol took place at the Water Patrol Headquarters on November 15th. He believed that the meeting was productive and well attended. The Meeting Report documents the highlights of the meeting and he did not believe there was a need to discuss it.

Seuntjens concurred with the comments made by Skramstad.

C. LMCD Resolution 114, consideration of draft resolution accepting a donated watercraft, with outboard motor and trailer.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that Paul and Lynda Pedersen have proposed to donate a watercraft, with outboard motor and trailer, to the LMCD. He believed that the watercraft would serve the LMCD staff well and approval of the draft resolution would authorize him to execute all necessary forms to transfer ownership of the equipment to the LMCD.

MOTION: Knudsen moved, Van Hercke seconded to approve LMCD Resolution 114 as submitted.

VOTE: Motion carried unanimously.

The Board discussed how the LMCD could express their appreciation to the Pedersens for this donation. The consensus was to invite the Pedersens as guests to the upcoming "Save the Lake" Banquet Dinner in February.

D. Additional Business

LMCD Resolution 115, consideration of draft resolution setting fees for bridges on Lake Minnetonka.

Harper stated that the LMCD had recently adopted Code pertaining to bridges on Lake Minnetonka. An application needs to be prepared because a bridge request has been received from the public. He provided an overview of proposed fees for a LMCD Bridge Application.

MOTION: Seuntjens moved, Nelson seconded to approve LMCD Resolution 115, which sets fees for bridges on Lake Minnetonka, as submitted.

VOTE: Motion carried unanimously.

6. SAVE THE LAKE

- A.** Consideration of 2005 Hennepin County Sheriff's Office Water Patrol Special Deputy award candidates.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that two candidates have been received from the Sheriff's Water Patrol for the upcoming "Save the Lake" Banquet Dinner. Lt. Storms has communicated that both candidates are well qualified. However, Lt. Storms has recommended that the Board recognize William Schutt as the 2005 special deputy of the year.

MOTION: Seuntjens moved, Berns seconded to recognize William Schutt as the LMCD's special deputy of the year at the 2/2/06 "Save the Lake" Recognition Banquet Dinner.

VOTE: Motion carried unanimously.

- B.** Additional Business

There was no additional business

7. EXECUTIVE DIRECTOR REPORT

Nybeck stated that the lake level on December 9th was 928.90' when the dam closed for the winter. Based on conversations with MCWD staff, this lake level is high for this time of year. For comparison purposes, the lake level was 928.46' in 2004 when the dam was closed on October 22nd. In general, the MCWD likes to have a lake level between 928.00' and 928.60' when the dam is closed for the winter.

8. OLD BUSINESS

Skramstad stated that he and Nybeck had recently met with Dick Osgood regarding the upcoming LMA quarterly newsletter. Osgood has offered the LMCD the opportunity to include a guest column in the upcoming newsletter and Skramstad requested Board approval to allow this to occur.

MOTION: Suerth moved, Van Hercke seconded to authorize Chair Skramstad as a guest columnist

for the LMCD in the upcoming LMA newsletter.

VOTE: Motion carried unanimously.

9. NEW BUSINESS

There was no discussion.

10. EXECUTIVE SESSION- Performance Evaluation of the Executive Director.

11. ADJOURNMENT

MOTION: Van Hercke moved, Nelson seconded to: 1) go into executive session at 9:37 p.m. to conduct a performance evaluation of the Executive Director, as allowed by the Open Meeting Law, and 2) adjourn the meeting following completion of the executive session.

VOTE: Motion carried unanimously.

Tom Skramstad, Chair

Tom Seuntjens, Secretary