

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, February 22, 2006  
Wayzata City Hall

**CALL TO ORDER**

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

**ROLL CALL**

**Members present:** Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Tom Seuntjens, Minnetonka Beach; John Berns, Wayzata; Leigh Harrod, Excelsior; Steve Johnson, Mound; Andrew McDermott, Orono; Pete Nelson, Victoria; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Emily Herman, Administrative Assistant.

**Members absent:** Doug Babcock, Tonka Bay; David Gross, Deephaven; Paul Knudsen, Minnetrista; Tom Scanlon, Spring Park; Cree Zischke, Greenwood. Also absent: Judd Harper, Administrative Technician.

**CHAIR ANNOUNCEMENTS**, Chair Skramstad

Skramstad made the following announcements:

- The City of Excelsior has recently appointed a new Board member to the LMCD. He welcomed Leigh Harrod on behalf of the Board and asked LeFevere to administer the oath of office.

LeFevere administered the oath of office to Leigh Harrod. She was seated as representative for the City of Excelsior.

- Recognized former Board Member Michael Maloney for his service to the LMCD from 6/05 to 1/06 as a representative for the City of Excelsior. Michael served the remaining tenure for former Board Member Jose Valdesuso. Skramstad invited Maloney up to the podium, thanked him for his service, and provided a framed picture of Lake Minnetonka as a token of appreciation.
- Recognized William Schutt as the 2006 Sheriff's Water Patrol Special Deputy of the Year. Mr. Schutt has served as a Special deputy since the year 2000 and had logged over 1,900 hours of service to the lake and community. Skramstad invited Schutt up to the podium, thanked him for his service, and provided an engraved plaque as a token of appreciation.

**READING OF MINUTES**- 2/8/06 LMCD Regular Board Meeting

McDermott stated he would like the minutes to reflect that he abstained from the approval of the consent agenda at the 2/8/06 LMCD Regular Board Meeting.

**MOTION:** McDermott moved, Nelson seconded to approve the minutes from the 2/8/06 LMCD Regular Board Meeting as amended, to include McDermott abstaining from the consent agenda.

**VOTE:** Ayes (8), Abstained (1, 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.

Nybeck clarified two items on the consent agenda. First, he requested removing agenda Item 1A from the consent agenda. Second, he clarified that the EWM/Exotics Task Force Minutes under the agenda item were for a meeting conducted on 2/10/06 rather than 12/9/05.

**MOTION:** Van Hercke moved, Johnson seconded to approve the agenda as amended, removing agenda item 1A from the consent agenda and amending the date for Item 2A to reflect minutes from the 2/10/06 Exotics Task Force Meeting. Motion carried unanimously. Items so approved include: **2A**, Minutes from the 2/10/06 EWM/Exotics Task Force Meeting, **3A**, Audit of Vouchers (2/16/06 – 2/28/06), and **3B**, January financial summary and balance sheet.

#### **PUBLIC HEARING**

- Pheasant Lawn HOA, new multiple dock license application to reconfigure a conforming multiple dock facility on Carmans Bay.

Skramstad asked Nybeck for background on this agenda item.

Nybeck reviewed the staff memo, dated 2/16/06, which summarized a request by Tim Mahoney, representing Pheasant Lawn Homeowners Association, for a new multiple dock license application to reconfigure a conforming multiple dock in a lagoon off of Carmans Bay by increasing the number of Boat Storage Units (BSU's) by transferring 929.4' of shoreline from a nearby island. He requested clarification from LeFevere on how the Board might conclude that the proposed site plan was within the authorized dock use area for Lot 14. If the Board concludes that the proposed site plan was within the authorized dock use area for Lot 14, the Board could approve the application with the three conditions included in the staff memo.

LeFevere provided background on how authorized dock use areas are established by Code and the need to maintain setbacks from the extended setback line. With the use of visual aids depicting Lot 14, he outlined the straight-line measurement and documented at which point the measurement leaves the lakeshore, noting the closest point of the dock was not within the required 20' setback. He stated an argument could be made that a boundary arch be established allowing all the docking to be within a 20' setback. The established boundary arch would be consistent with how the Board has measured other lakeward setbacks at the right angle to allow compliance, provided it does not interfere with any other dock use areas.

Van Hercke asked for clarification of condition number three in Code Section 2.02, subd. 5.

Nybeck stated that this condition states that total boat storage at the "transferee" site may not exceed one restricted watercraft for each 25 feet of continuous shoreline. For the Pheasant Lawn HOA proposal, BSU density at the transferee site would be 10 BSU's at 276 feet of continuous shoreline, with a BSU density of one restricted watercraft for each 28 feet of continuous shoreline.

Berns asked how the condition of maintaining the island in a natural state would be enforced.

LeFevere confirmed that the condition would be on the license, which is inspected annually. Non-compliance with this license condition would prevent the applicant from transferring shoreline from the island and the outlot would need to revert back to the 1:50' General Rule.

Skramstad invited the applicant to come forward and provide further background on the new multiple dock license application and to address questions raised by the Board.

Mr. Tim Mahoney, 2760 Pheasant Road, spoke on behalf of the applicant. He provided a brief history of the ownership of Pheasant Lawn HOA and documented the 10 properties involved in the HOA. The creation of the HOA was required by the City of Orono and granted permanent easements to all lots across the street to the lake. Mr. Mahoney stated that his lot was granted an easement to Lot 14, which the shoreline has been dedicated to the multiple dock license for the HOA. He stated 2700 Pheasant Road was also granted a permanent easement.

Skramstad opened the public hearing at 7:37 p.m. and invited the public to comment on the application.

Mr. Tom Seifert, 2725 Pheasant Road, stated he had lived at this residence since 2003. He commented that: 1) the replacement of the docks are needed as they are in disrepair and unsafe, 2) the number of boats to be stored at this site would not change, 3) these boats are used only by Pheasant Lawn HOA property owners, and 4) the use is strictly for the homeowner and cannot be used for commercial purposes.

There being no further comments, Skramstad closed the public hearing at 7:40 p.m.

Skramstad asked if the condition to keep the island in its natural state would pertain to the entire island.

Nybeck stated that the area owned by the HOA, not the entire island, would need to remain in a natural state.

Nelson stated that one of the conditions to transfer the shoreline was that the transferor site needs to be within 300 feet of the transferee site. He questioned if all of the shoreline on the transferor site had to be within 300 feet from the transferee site.

LeFevere clarified that the dock use area of the two sites had to be within 300 feet.

**MOTION:** Berns moved, McDermott seconded to approve the Pheasant Lawn HOA new multiple dock license application for the 2006 season, with the following three conditions: 1) docking and boat storage must be consistent with the approved site plan, dated 2/1/06, 2) all 930' of shoreline associated with Lot 14 on the island has been transferred to 276' of shoreline associated with Lot 14 of the main land, and 3) the 930' of shoreline associated

with Lot 14 on the island must be maintained in a natural state and not be used for residential dwelling units or commercial uses.

**VOTE:** Motion carried unanimously.

- Sailors World, Inc., variance application for adjusted Authorized De-icing Area from LMCD Code Section 2.09

Skramstad asked Nybeck for background on this agenda item.

Nybeck reviewed the staff memo, dated 2/15/06, which summarized a request from Gary DeSantis of Sailors World, Inc. for a variance application for adjusted ADA from LMCD Code Section 2.09. He believed that there were adequate hardships and difficulties to grant a variance from Code. However, he recommended that the Board needs to determine what was reasonable and what conditions should be included in the draft Findings, if the Board was inclined to approve the application. One recommendation Nybeck offered was to require a deicing curtain for the full length of the dock structure on both sides. He entertained questions and comments from the Board.

Skramstad asked Nybeck to explain what other conditions the Board might consider in addition to the deicing curtain.

Nybeck stated that one additional condition could include signage at the abutting Orono winter access to divert traffic away from the deicing installation. If the Board decides to require such a condition, he recommended that this should be coordinated with the Sheriff's Water Patrol.

McDermott asked if neighboring properties were notified of the public hearing.

Nybeck confirmed the neighboring properties were notified through the public hearing notification process.

Concern was raised by some Board members of the proposal to adjust the ADA 40' over both extended side site lines. With the help of visual aids, discussion was held amongst the Board on what would be a reasonable adjustment of the ADA for setbacks. An additional condition discussed by the Board was whether to require a flashing light, or alternative, on the winter public access side of the facility to warn the public of the deicing facility.

LeFevere stated the application was an application for variance and does not create a legally binding precedent. However, it could set a political precedent. He reviewed LMCD Code for setback requirements for commercial and non-commercial facilities on Lake Minnetonka and how they would comply with the ADA requirement. He reminded the Board that this application is likely the first in a series of variance applications to be considered and cautioned the Board to take that into consideration when establishing the adjusted ADA for the applicant.

Skramstad welcomed a representative from Sailors World, Inc. to comment on the application. There being no representation of the applicant, Skramstad opened the public hearing at 8:12 p.m. and invited the public to comment on the application.

Mr. Bob Stierna, 1930 Shoreline Drive, stated he resides two properties to the east of Sailors World. He has witnessed deicing operations at this facility for over 20 years and believed that a number of deicing concerns in recent years would be greatly improved by requiring a deicing curtain on both sides of the dock. He believed that adjusting the ADA 40' over both extended side site lines was reasonable if the abutting property owners consent to this.

There being no further comments, Skramstad closed the public hearing at 8:15 p.m.

**MOTION:** Seuntjens moved, McDermott seconded to direct LMCD legal counsel to prepare draft Findings of Fact and Order to approve the Sailors World, Inc. adjusted ADA variance application, subject to the following conditions: 1) reducing the proposed adjustment for the ADA on the sides from 40 feet to 20 feet, 2) the use of a deicing curtain for the full length of the dock on both sides, 3) the installation of a flashing light, or alternative, near the Orono public winter access, and 4) to direct staff to research the side setbacks for commercial facilities on Lake Minnetonka.

Berns asked if staff's report would entail documentation that might confirm the need for a 10-foot side setback.

Nybeck stated he would prepare a spreadsheet documenting the side setbacks at all commercial facilities on Lake Minnetonka.

**VOTE:** Motion carried unanimously.

## 1. WATER STRUCTURES

A. 2006 Multiple Dock Licenses, staff recommends Board approval of 2006 renewal without change applications as outlined in 2/16/06 staff memo.

Skramstad asked Nybeck for background on this agenda item.

Nybeck requested removing Presbyterian Homes on Lake Minnetonka from the 2/16/06 staff memo.

**MOTION:** Van Hercke moved, Nelson seconded to approve 2006 renewal, without change, multiple dock license applications as outlined in the 2/16/06 staff memo, removing Presbyterian Homes on Lake Minnetonka from this memo.

**VOTE:** Motion carried unanimously.

B. Shorewood Yacht Club (Sites 1 and 2), consideration of 2006 new multiple dock license, with minor change, applications.

Skramstad asked Nybeck for background on this agenda item.

Nybeck reviewed the staff memo, dated 2/17/06, which summarized applications submitted by Shorewood Yacht Club (Sites 1 and 2). The only proposed change was to clarify a change in ownership of the property. He recommended that the Board approve these applications for the

2006 season.

**MOTION:** Van Hercke moved, Johnson seconded to approve the Shorewood Yacht Club new multiple dock license, with minor change, applications for the 2006 season.

**VOTE:** Motion carried unanimously.

- C. Marvin and Nancy Blair, consideration of draft Findings of Fact and Order for approval of bridge application and dock length/adjusted bridge use area variance application.

**MOTION:** McDermott moved, Johnson seconded to approve the draft Findings of Fact and Order as submitted, approving the Marvin and Nancy Blair bridge and variance applications.

**VOTE:** Motion carried unanimously.

- D. Additional Business

There was no additional business.

## 2. EWM/EXOTICS TASK FORCE

- A. Minutes from the 2/10/06 EWM/Exotics Task Force Meeting.

Suerth provided a recap of this meeting, although the minutes were approved under the consent agenda. The meeting recapped the 2005 LMCD/MN DNR inspection program on Lake Minnetonka. Some of the details he touched on included:

- Approximately 50,000 boats are launched through the public accesses each boating season on Lake Minnetonka according to MN DNR statistics.
- In 2005, approximately 14,000 boats were inspected by this program on Lake Minnetonka.
- Based on MN DNR statistics, 198 of these boats had been launched previously in waters that are known zebra mussel infested waters. Of these 198 boats, 150 of them were inspected by the LMCD/MN DNR and educated prior to launching into Lake Minnetonka.
- Changes are being considered for the 2006 LMCD/MN DNR inspection program. One of the changes being considered was to reallocate hours from the Wayzata Bay public access used in past years to a rotational schedule for all other public accesses on Lake Minnetonka, which would include Wayzata Bay.
- There was discussion of the Lake Minnetonka Association (LMA) restarting the veliger sampling program that was discontinued a few years ago, with possible "Save the Lake" funding assistance.

Skramstad asked Nelson for an update on the 2006 Milfoil Demonstration Project.

Nelson reminded the Board that this was a public/private treatment program to be coordinated by the LMCD and the LMA. He asked Nybeck for an update on the LMCD's "Public Treatment Areas" aspect of the project.

Nybeck stated that the permits for the three "Public Treatment Areas" have recently been approved by the MN DNR. Additionally, LMCD staff will likely execute the contract for the "Public Treatment

Areas” aspect of this project in the near future once all the required documents have been received from Lake Management, Inc.

Nelson asked LMA Director Dick Osgood to provide an update of the “Private Treatment Areas” aspect of this project.

Osgood stated that a packet has been recently mailed to 93 homeowners that abut the three “Public Treatment Areas”. This packet included a cover letter, basic information about the program, and a sign-on sheet. A letter was also included to 12 of these 93 homeowners from Kevin Kretsch from Lakeshore Restoration because these homeowners are established customers of his. The purpose of this letter was to provide clarification of this project to his customers. He believed that the LMA would be preparing a MN DNR permit application soon for those residents that agree to participate in the “Private Treatment Areas” aspect of this project.

**B. Review of 2005 LMCD Zebra Mussel Inspection Program, plans for 2006.**

Skramstad asked Nybeck for background on this agenda item

Nybeck directed the Board to a letter in their packet from MN DNR Watercraft Inspection Program Coordinator Heidi Wolf, and a draft 2006 contract for services between the LMCD and the MN DNR. Via a power point presentation, Nybeck outlined the following key areas:

- The LMCD coordinated with the MN DNR, beginning with the 2002 boating season, on the inspection and education of watercraft prior to entering Lake Minnetonka.
- The program has continued to expand in the number of inspection hours, with the exception of 2004. The number of hours dedicated for inspection purposes include: 508 hours in 2002; 1,600 hours in 2003, 946.25 hours in 2004, and 2,041.5 hours in 2005.
- One contributing factor in the decrease in inspection hours in 2004 was the change to focus on high-volume public accesses, during peak days and times, from mid May through mid September. In 2004, the MN DNR was having problems finding inspectors for the hours contracted with the LMCD.
- In 2005, funding for the inspection program included: \$15,000 from the zebra mussel line item in the Exotics Budget, \$13,000 of pre-paid zebra mussel expenses; and \$4,497.75 of Bob Searles’ memorial contributions in the “Save the Lake” Budget.
- The 2006 inspection program would essentially remain the same as 2005, with the exception of the changes already reported by Suerth. Possible funding sources for the 2006 inspection program include: \$15,000 from the zebra mussel line item in the Exotics Budget, the remaining \$1,700 of pre-paid zebra mussel expenses, the remaining \$2,600 Bob Searles’ memorial contributions, and possible “Save the Lake” funds.
- Two questions for the Board to consider include: 1) Does the Board want to enter into a contractual arrangement with the MN DNR in 2006 to continue the Watercraft Inspection Program conducted the past four boating seasons, and 2) If so, does the Board want to continue with the contractual arrangement for 2,280 inspection hours or make some changes?
- He entertained questions and comments from the Board.

Osgood asked to comment on this agenda item. He handed out a letter from LMA, dated 2/22/06, which addressed zebra mussel protection action for Lake Minnetonka. He provided an analysis of

the average number of boats, the sources of boats, the estimated total number of boats entering Lake Minnetonka, 2005 inspection results, comments and conclusions, and a recommended prevention plan to assure adequate protection program for Lake Minnetonka. The two elements of this protection program included:

1. Inspections at commercial facilities and at special events.
2. A comprehensive public access inspection program, which should include:
  - Close or restrict some access to facilitate the inspections.
  - Charge fees to help pay for the program.
  - Have a goal of at least 95% of all watercraft inspected.
  - Include access inspections on tributary lakes.
  - Consider MN DNR trained and LMCD administered inspection program.

Berns questioned whether the LMCD has either the authority or funding to accomplish the closing of public accesses and increased inspections the LMA has proposed.

Osgood acknowledged that the LMCD does not have the authority to close or restrict public accesses. However, he believed that the LMCD has the voice to change state policies, with the LMA's assistance. With regards to funding, he recommended closing or restricting public accesses to funnel the number of inspections and to establish a user fee.

Nybeck stated that from a previous meeting the LMCD and the LMA had with the MN DNR in January, their staff was going to verify whether the current administration concurred with previous administration's position relating to the consolidation of public accesses and user fees. To date, he had not heard back from the MN DNR.

Nelson expounded on the need to take action on the prevention of zebra mussels this summer and recommended another meeting be scheduled with legislative representatives.

Van Hercke and Seuntjens agreed with Nelson's recommendation to schedule a meeting with Congressman Ramstad and MN DNR officials.

**MOTION:** Suentjens moved, Nelson seconded to approve executing a contract between LMCD and the MN DNR for 2,280 hours of inspections during the 2006 boating season.

**VOTE:** Motion carried unanimously.

### C. Additional Business

Skramstad expressed an interest in discussing financing for the 2006 Milfoil Demonstration Project. He reminded the Board that at the last meeting, approval was given to submit two versions of an educational letter to the LMCD member cities requesting their support in: 1) educating the public on the demonstration project, and 2) fundraising efforts. Skramstad stated that those letters would be going out soon and he was looking for the Board's approval to establish a database of stake stakeholders (marinas, restaurants, charter boat operators, dock installers, etc.) that would receive a letter from the LMCD asking them to contribute to the 2006 Milfoil Demonstration Project.

The consensus of the Board was to go forward in establishing the database and drafting a letter for Board review. The Board discussed the need to utilize advertisement and other educational media that are available to have a successful campaign.

**3. FINANCIAL**

**C. Additional Business**

There was no additional business.

**4. ADMINISTRATION**

**A. Discussion on potential topics for spring LMCD Newsletter.**

Skramstad asked Nybeck for background on this agenda item.

Nybeck reminded the Board that staff was provided the direction, at the last Board meeting, to initiate plans for the first LMCD Newsletter, with a distribution target date of late March or early April. He solicited input on the following: 1) potential topics- Chair's column, invasive species activities, summary of relevant LMCD regulations, or other miscellaneous additions, and 2) whether the Board like LMCD staff to work with a Board liaison on this project. Nybeck circulated sample design templates of the newsletter and asked Herman for an update on an offer received for printing the newsletter.

Herman stated that Kathleen Kinney, the individual that had offered her time to format the newsletter on a free-well basis, informed the LMCD that she works with a printing company that had offered to print 7,000, four page, four color newsletters for the price of the paper alone. The estimate was around \$700, which compares to a previous quote received from Techna Graphics for the printing of 7,500 four page, two color newsletters for the price of \$753.

The Board discussed contents and the targeted audience for the LMCD newsletter. The consensus was to have Skramstad work with LMCD staff on this project as a Board liaison, with Van Hercke assisting as a second Board liaison.

**B. Additional Business.**

There was no additional business.

**5. LAKE USE & RECREATION**

There was no discussion.

**6. SAVE THE LAKE**

Seuntjens questioned why discussion for a new "Save the Lake" Chair was not on the agenda as requested at the last Board Meeting.

The Board briefly discussed this and the consensus was to schedule this as an agenda item for the 3/8/06 Board Meeting.

## 7. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First, an obituary was included in the handout folders for the wife of former LMCD Board member Bert Foster. Second, he updated the Board on the recent on-site tour of the Sweat property on Grays Bay. He believed that the tour was beneficial and he would schedule a second tour if the Board expresses an interest.

## 8. OLD BUSINESS

### Future of the Lake Day

Berns stated that planning for the event has begun and was being organized in three phases. These include: 1) a date was currently being researched, 2) there will be an effort to find out who participated in 2005 and whether they plan on participating in 2006, and 3) new activities will be planned for 2006. The plan for 2006 was to continue working with Michael Deering and Crystal-Pierz Marine.

### Smithtown Bay Culvert

Nelson stated there was no new update on this project.

### Kurak Application Update

Skramstad stated that he and Nybeck attended a Shorewood Planning Commission meeting on 2/21/06, in which a portion of their agenda was to discuss docking plans for the pending Thomas Kurak new Multiple Dock License and Variance Application. He informed the Board that Shorewood maintains more restrictive ordinances pertaining to dock issues and they invited us to attend to help interpret LMCD's rules and regulations. Skramstad stated that he would keep the Board apprised.

## 9. NEW BUSINESS

There was no additional business.

## 10. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:32 p.m.

Tom Skramstad, Chair

Tom Seuntjens, Secretary