

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, March 8, 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; Paul Knudsen, Minnetrista; 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; Tom Scanlon, Spring Park; Cree Zischke, Greenwood. Also absent: Judd Harper, Administrative Technician.

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad announced that a quorum was unlikely at the March 22, 2006 Regular Board Meeting. He stated that he would cancel this Board meeting unless a Board member objected. There were no objections.

READING OF MINUTES- 2/22/06 LMCD Regular Board Meeting

MOTION: Seuntjens moved, McDermott seconded to approve the minutes from the 2/22/06 LMCD Regular Board Meeting as submitted.

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

Nelson arrived at 7:06 p.m.

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.

McDermott moved, Van Hercke seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **1A**, 2006 Multiple Dock Licenses, **3A**, Audit of Vouchers (3/1/06-3/15/06), and **4B**, Hennepin County Sheriff's Water Patrol Significant Activity Report.

1. WATER STRUCTURES

B. Excelsior Bay Harbor, New Multiple Dock License, with Minor Change, Application.

Skramstad asked Nybeck for background on this agenda item.

Nybeck reviewed the staff memo, dated 3/2/06, which summarized the Excelsior Bay Harbor new multiple dock license, with minor change, application. The two proposed minor changes included: 1) slightly extending BSU #1 further into the lake, yet maintaining the slip dimension of 14' x 32' and 2) hollowing out the triangular finger between BSU's 22 and 23. He recommended Board approval of the application if the Board concluded that the two proposed changes were minor in nature. He entertained questions or comments from the Board.

Seuntjens asked if there were adequate parking arrangements at this facility.

Nybeck stated that the LMCD has traditionally allowed the local jurisdiction, the City of Greenwood, to address that issue.

Berns stated that he appreciated staff's efforts to resolve dock construction issues that had not been approved by the LMCD Board in advance. He expressed an interest in providing for consequences to applicants that repetitively make changes prior to getting the necessary approval by the LMCD in advance.

Nybeck stated that he concurred with the comments made by Berns. He pointed out that this was the second time that Excelsior Bay Harbor had installed part of their dock prior to securing approval from the LMCD Board.

Berns stated that the Board would continue to rely on staff to inform them on repetitive, non-compliance issues because consequences need to be set in place for the sole purpose of accomplishing fairness. He recommended a verbal message be sent to Excelsior Bay Harbor informing them that future construction of non-approved site plans would not be tolerated.

MOTION: Seuntjens moved, Van Hercke seconded, to approve the Excelsior Bay Harbor new multiple dock application, with minor change, for the 2006 season, subject to strict compliance with the site plan dated 2/21/06.

VOTE: Motion carried unanimously.

C. Sailors World, Inc., consideration of draft Findings of Fact and Order for approval of an adjusted Authorized Deicing Area (ADA) variance application;

Skramstad asked LeFevere for background on this agenda item.

LeFevere stated that he prepared the draft Findings in accordance with the discussion at the February 22nd Board meeting. He pointed out that LMCD staff had prepared a spreadsheet evaluating the Authorized Deicing Area (ADA) for all commercial and residential facilities on Lake Minnetonka, which included approved setbacks from the extended side site lines. If the Board concurred with the original proposal by Sailors World to allow for a 40 foot adjustment over the extended side site lines, almost all facilities would need to secure an ADA variance. For that

reason, a 20' adjustment for the side site lines was included in the Findings.

Berns asked Nybeck if he believed it was feasible to reduce the ADA variance request from 20' to 10' from both extended side site lines.

Nybeck recommended maintaining the adjusted ADA variance that would allow for fencing and deicing activity to extend 20' over both extended side site lines.

MOTION: Seuntjens moved, McDermott seconded to approve the Findings of Fact and Order, as submitted, for the Sailors World, Inc. ADA variance application.

VOTE: Motion carried unanimously.

- D. **Ordinance Amendment**, first reading of an ordinance relating to the expiration of applications for licenses and permits; adding new Code Section 1.06, Subd. 13.

Skramstad asked LeFevere for background on this agenda item.

LeFevere reviewed three features of the draft ordinance amendment . First, it was prepared to allow a one-year timeframe for current applications that are pending with the LMCD. Second, the ordinance would be cited as the reason for the denial of the application(s) if adopted by the Board. Third, the Board could grant an extension to an applicant if they show good cause. He entertained questions or comments from the Board.

Van Hercke asked Nybeck for a review of the current, pending LMCD applications.

Nybeck stated that the LMCD has pending applications for three applicants. First, the City of Deephaven has pending new multiple dock and special density license applications. He believed the City of Deephaven was considering amending these applications for different proposals and that they would need to go through the full public hearing process. Second, Tim Burke has a pending variance application on the back side of Carsons Bay. Mr. Burke is investigating whether to amend his variance application for a joint dock for multiple properties over the wetland area. Third, Thomas Kurak has pending new multiple dock license and variance applications for boat storage in a lagoon area off of Phelps Bay. Progress has been made on the questions raised by the LMCD Board last fall.

Seuntjens expressed concern about the ordinance amendment because there was not a need for it. He preferred allowing staff to continue to work with the applicant to resolve the pending issues rather than deny these applications and not refunding the application fees.

LeFevere stated that the Board could always decide to refund application fees. For these types of pending applications, it is pretty common that the LMCD staff spends the most amount of time on them for administration and processing.

Van Hercke questioned whether municipalities have an expiration date for pending applications?

LeFevere stated it was not common for municipalities to adopt such an ordinance. However, it is

not unusual for a governmental body to invalidate an application rather than a permit issued.

Seuntjens requested clarification of when an ordinance amendment should be published.

LeFevere stated that some charter cities require publication of an ordinance amendment before they are adopted. However, ordinance amendments are not ordinarily required to be published until after it is adopted.

Harrod questioned whether language relating to the ordinance amendment should be included on all LMCD applications.

LeFevere stated that all applications are subject to the 60-day rule. The ordinance amendment would only come into play when the applicant has consented to, or requested, an extension to a 60-day rule. Therefore, the time to notify the applicant of the ordinance amendment is when the applicant is requesting an extension at that time.

Berns stated that the ordinance amendment would require the applicant and LMCD staff to be more pro-active in documenting timelines. He questioned when the applicant would get notified that the application was denied and would the term "withdrawn" be more appropriate than "denied" based on possible adverse affects.

LeFevere stated the ordinance amendment does not require LMCD to notify the applicant when the application expires. The LMCD would explain to the applicant why the application expired after the fact. The term "denied" was included in the draft ordinance amendment because he believed that the applicant would accept the denial based on reasons of the ordinance and not from Findings being made.

Nelson stated that he personally approved of the draft ordinance amendment based on the logistics of the Board changing over time and the lack of time warranting the applicant's situation change resulting in the need to deny the application.

Van Hercke concurred with the comments made by Nelson.

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

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

E. Staff update on 2005-2006 deicing inspections.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that he and Harper had conducted the first round of deicing inspections in January. Correspondence has been sent out to these licensees and follow-up inspections have been conducted, where needed. 32 de-icing installations were inspected, of which 30 were permitted by the LMCD. Of the 32 inspections, 17 passed on first inspection, 11 failed or needed further

consultation, and four were not de-icing. Inspections were done to insure compliance with Code Section 2.09; specifically viewing compliance with the Authorized De-icing Area, the placement of fencing, and proper placement of "Thin Ice" signs. Based on these inspections, he anticipated more variance applications this spring to adjust the Authorized De-icing Area (ADA). He provided an overview of deicing inspections conducted this winter through a series of photos. He entertained questions and comments from the Board.

Van Hercke asked Nybeck what reasoning was provided for sites that have moved their fencing closer to abutting properties and encroached with the ADA.

Nybeck stated that the primary concern of these licensees was public safety. Through individual meetings with a number of these licensees, the public safety concerns of the LMCD were communicated and he believed there would be a number of ADA variance applications submitted for Board consideration sometime in the near future.

Seuntjens asked if eligible facilities lose their right to deice if they do not apply for a permit annually. Additionally, he suggested that LMCD staff might want to further investigate setbacks for ADA analysis that were identified as unknown on the ADA spreadsheet.

LeFevere stated that eligible facilities would not lose their right to deice if they do not renew their permit annually.

F. Additional Business.

There was no additional business.

2. EWM/EXOTICS TASK FORCE

A. Curfman Trucking and Repair, Inc., consideration of maintenance proposal for the 2006 EWM Harvesting Program.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that a maintenance proposal has been received from Curfman Trucking and Repair, Inc. for the 2006 EWM Harvesting Program. Curfman Trucking and Repair, Inc. has served as the fleet mechanic and the flat rate has remained the same since 2002, \$26,250. Within the last five years, the maintenance program has improved significantly and the equipment has been turned over. A total of 453 maintenance hours were documented in 2005. This further breaks down to 340 hours prior to launching the equipment, 93 hours during the harvesting season, and 20 hours after the equipment was pulled from the lake. He envisioned that the shore conveyor and another harvester would be painted in 2006. He recommended that the Board approve the contract rate of \$26,250 for 2006. However, he foresaw an evaluation of that rate in the coming years, as maintenance needs become less. He entertained questions and comments from the Board.

MOTION: Suerth moved, Nelson seconded to enter into a contractual agreement with Curfman Trucking and Repair, as the 2006 EWM Harvesting Program Fleet Mechanic, for an amount of \$26,250.

VOTE: Motion carried unanimously.

B. Additional Business

Nelson stated that he had spoke with Lake Minnetonka Association (LMA) Executive Director Dick Osgood on the "Private Treatment Areas" in conjunction with 2006 Milfoil Demonstration Project. Osgood has communicated to him that 23 of the 93 private homeowners notified of this project have currently signed up to participate in the 2006 Milfoil Demonstration Project. Osgood anticipates that there will be a 75% to 80% participation rate from these private homeowners once all has been said and done. Nelson stated that the LMA was working on a zebra mussel containment plan that will be presented to the LMCD Board in the near future.

Skramstad informed the Board that the LMCD had mailed out letters to the 14 member cities requesting their support of the 2006 Milfoil Demonstration Project and that another draft letter is being produced for the Board's review for all other stakeholders on the lake.

Nybeck informed the Board that LMCD's contract with Lake Management, Inc. was fully executed.

3. FINANCIAL

C. Additional Business

Skramstad asked Nybeck when an analysis of 2005 LMCD expenditures would take place.

Nybeck stated review of the 2005 LMCD Audit was tentatively scheduled for the April 12th Board Meeting.

4. LAKE USE AND RECREATION

A. Consideration of quotes received for new summer public access signage.

Skramstad asked Herman for background on this agenda item.

Herman reviewed the Request for Quotes (RFQ) process for the purchase of new summer public access signage. A RFQ was sent out to 14 vendors on February 16th, with an Addendum sent out on February 22nd. The RFQ requested quotes for the purchase of 12 – 3'x3' summer rules signs, with an attached literature drop box, and 50 – 2'x3' summer rule signs without an attached literature drop box, all of which were 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 March 6th with signs to be delivered to LMCD office by April 14th for the vendor awarded the contract. Quotes were received by the March 6th deadline from three of the 14 vendors, and she provided an overview of the quote tabulation spreadsheet for these vendors. She recommended that the Board: 1) reject a quote received from Northern Traffic Supply, Inc., due to minimum specifications not being met, and 2) award the contract, in the amount of \$6,884, to Lakeway Signs, Inc., for the purchase of summer public access signs in compliance with the specifications. She further recommended that the Board should consider authorizing the purchase of up to 20 additional signs, at the same contracted rate of \$75 per sign, because of an excess of \$1,500 in funding available for this project. She entertained questions and comments from the Board.

MOTION: Seuntjens moved, McDermott seconded to: 1) reject the Northern Traffic Supply, Inc., quote due to not meeting minimum specifications, 2) approve a contract with Lakeway Signs, Inc., for the purchase of 12- 3'x 3' summer rule signs with the literature drop box and 50 - 2'x3' summer rule signs without the attached literature drop box, in the amount of \$6,884.00, and 3) to authorize the Executive Director to purchase up to 20 more 2'x3' signs at the same contracted rate.

VOTE: Motion carried unanimously.

C. Additional Business.

There was no additional business.

5. SAVE THE LAKE

A. Discussion of appointing a new Chair for the "Save the Lake" Advisory Committee.

Skramstad stated that this agenda item was requested by Seuntjens at the last Board meeting. Two informational documents were included pertaining to this committee. These documents included a "Save the Lake Vision Statement" and "Save the Lake Program Funding Criteria". He asked Seuntjens for comments or recommendations on how to proceed with this agenda item.

Seuntjens reviewed the two informational documents and how funding is available for educational and environmental projects. He opened the floor to Board members who would like to be considered as new Chair to the "Save the Lake" Advisory Committee to replace Interim Chair Doug Babcock.

Nelson stated that this Chair was an important position and he volunteered to serve as Chair to the "Save the Lake Advisory Committee."

MOTION: Seuntjens moved, Suerth seconded to appoint Pete Nelson as Chair of the "Save the Lake Advisory Committee" and to thank former "Save the Lake" Chair Babcock for his service.

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

B. Additional Business.

There was no additional business.

6. ADMINISTRATION

A. Discussion of LMCD Board member responsibilities.

Skramstad directed the Board to a document in their packet entitled, "LMCD Board and Officer Expectations," and reviewed his expectations of the Board as a Board Officer and as a general Board member. He suggested that the document be utilized as a template for future use and solicited comments and questions from the Board.

McDermott questioned if the Board typically helped during multiple dock inspections.

Skramstad encouraged the Board to help during on-site inspections, which should assist the Board member to better understand the day-to-day activities of LMCD staff.

B. Additional Business.

Nybeck stated the production schedule for the LMCD newsletter has been established and that progress has been made on this project.

7. EXECUTIVE DIRECTOR REPORT

There was no discussion

8. OLD BUSINESS

Smithtown Bay Culvert

Nelson stated the MCWD would be holding a public hearing on April 20th at Victoria City Hall. He believed that public testimony would be received on Options B, C, and D at this public hearing.

Smithtown Bay Association

Nelson stated that he believed there was a need to discuss the Smithtown Bay Association multiple dock license since there was question with regards to the LMCD's jurisdiction in this area.

Locust Hills Development, LLC

Skramstad asked Nybeck for an update on the development.

Nybeck stated that some Board member had recently conducted an on-site visit and that the City of Wayzata was preparing a draft Environmental Assessment Worksheet (EAW). This draft EAW will include docking and boat storage and the LMCD will be provided an opportunity to comment on it.

9. NEW BUSINESS

"Save the Lake" Fundraising

Suerth encouraged the "Save the Lake" Advisory Committee to recognize that the funding of special projects was on the rise and that this needs to be taken into consideration by the committee. He recommended that the LMCD should consider the use of the LMCD website as a means to solicit funds for special projects.

Nelson stated that the Board previously discussed the use of paypal software to allow contributions by credit card. He thanked Suerth for resurfacing the idea and stated that this would be taken into advisement.

Harrod recommended that the LMCD check into a fund managed by Hennepin County for conservation and environmental funding created by property transfer fees.

Skramstad thanked Harrod for her input and welcomed her to work with the LMCD staff to further check into this.

Environmental Sentry Protection (ESP) Monitoring System

Suerth stated that a proposal has been received from ESP, LLC to monitor and document boat landing activities for the prevention of introducing additional invasive species into Lake Minnetonka. He recommended that each Board member review the proposal and that this scheduled as an agenda item at the April 12th Board meeting.

Skramstad concurred with Suerth's recommendation and directed staff to schedule this as an agenda item on the 4/12/06 Regular LMCD Board Meeting.

10. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:49 p.m.

Tom Skramstad, Chair

Tom Seuntjens, Secretary