

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, May 24, 2006
Wayzata City Hall

CALL TO ORDER

Skramstad called the meeting to order at 7:08 p.m.

ROLL CALL

Members present: Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Tom Seuntjens, Minnetonka Beach; Paul Knudsen, Minnetrista; Gene Altstatt, Greenwood; Doug Babcock, Tonka Bay; David Gross, Wayzata; Leigh Harrod, Excelsior; Steve Johnson, Mound; Andrew McDermott, Orono; Pete Nelson, Victoria; 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.

Member absent: John Berns, Wayzata.

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad made two Chair announcements. First, a meeting has been scheduled in the LMCD office on May 25th at 12 NOON to review the draft 2007 LMCD Budget. He encouraged Board members to attend this meeting if they were interested. Second, he reminded the Board that the annual Lake Inspection Tour was scheduled for June 6th at 6:00 p.m. Further details of this Lake Inspection Tour will be forwarded to Board members once they have been finalized.

READING OF MINUTES- 04/26/06 LMCD Regular Board Meeting
05/10/06 LMCD Regular Board Meeting

MOTION: Seuntjens moved, McDermott seconded to approve the minutes from the 4/26/06 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (10), Abstained (2, Babcock and Scanlon); motion carried.

Nybeck stated that the 5/10/06 LMCD Regular Board Meeting minutes had not been finalized. These minutes will be included in the packet for the June 14th Board meeting.

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.

Van Hercke moved, Knudsen seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **3A**, Audit of vouchers (5/16/06 - 5/31/06), and **3B**, April financial summary and balance sheet.

PUBLIC HEARINGS

- **St. Albans Bay Villas**, new multiple dock license application to reconfigure the non-conforming multiple dock facility on St. Albans Bay utilizing LMCD Code Section 2.015.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 5/19/06, which summarized the continuation of a public hearing that was conducted at the May 10th Board Meeting. The public hearing was continued to resolve two issues. These included: 1) the need to clarify who was the representative of the applicant, with a need to provide documentation as to their authority, and 2) the need to clarify whether they would be proceeding with the proposed site plan or submitting a revised proposed site plan. These two issues have been resolved in the following manner: 1) Bill Slattery is the new contact for St. Albans Bay Villas, and 2) a revised proposed site plan has been submitted for Board consideration. He recommended approval of the new multiple dock license application for the 2006 season, subject to bringing the dock structure into compliance with the approved site plan within 30 days of approval. He entertained questions and comments from the Board.

Harrod arrived at 7:09 p.m.

Mr. Bill Slattery, 21955 Minnetonka Boulevard (#5), thanked Altstatt for his time in working with him to resolve the issues. He stated Harper thoroughly addressed the proposal in his presentation and he welcomed questions or comments from the Board.

Skramstad asked Slattery to confirm that he was the representative from St. Albans Bay Villas.

Slattery stated that the association had appointed him representative for St. Alban's Bay Villas after Mick Nedegaard resigned as Property Manager.

Skramstad opened the public hearing at 7:12 p.m. There being no comments, he closed the public hearing at 7:13 p.m.

Seuntjens questioned why the staff recommendation did not require the Board to direct LeFevere to prepare Findings of Fact and Order for approval of the application.

Nybeck stated Findings of Fact and Order are usually required for approved variance and special density license applications only.

MOTION: Knudsen moved, Altstatt seconded to approve St. Albans Bay Villas new multiple dock license application for the 2006 season as proposed.

Babcock recommended a friendly amendment to bring the dock structure into compliance with the approved site plan within 30 days of approval. Knudsen and Altstatt agreed to this.

VOTE: Motion carried unanimously.

- **Tom Niccum**, variance application to amend a previously approved variance for a permanent dock at 5351 Three Points Blvd. on Harrisons Bay.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 5/19/06, which summarized a request from Tom Niccum for a variance from LMCD Code to amend a previously approved variance for a permanent dock at this residence. The proposed change was to relocate the origin of the walkway for the dock from the center of the dock structure to the west end to allow a boat to be parked on the backside. A particular hardship was not documented; however, it was approved in 2003 with hardships of a narrow and congested lagoon, converging lot lines, and overlapping dock use areas. He recommended that the Board: 1) approve the permanent dock license application as submitted, and 2) direct LMCD legal counsel to prepare Findings of Fact and Order for approval of the variance application, with conditions deemed necessary by the Board. The Board should decide whether it was comfortable with the hand drawn change on the proposed site plan or if it would like the change documented by the surveyor on an updated site plan. He entertained questions and comments from the Board.

Mr. Tom Niccum, 5351 Three Points Blvd., stated that Harper provided a thorough overview of the proposed change. He welcomed comments and questions from the Board.

Seuntjens asked what type of boat would be stored on the back side of the dock. He recalled that this lagoon area was quite shallow.

Niccum stated the water depth in this area was typically four feet. The length of boat to be stored on the back side of the dock was 18'.

Skramstad opened the public hearing at 7:20 p.m. There being no comments, he closed the public hearing at 7:21 p.m.

MOTION: Babcock moved, Seuntjens seconded to direct LMCD legal counsel to prepare Findings of Fact and Order for approval of the Tom Niccum variance application with the following conditions: 1) all past conditions from the previously approved variance shall be continued, 2) adding a condition that would restrict the granting of a temporary low water variance during declared low water situations, and 3) to allow for the hand drawn change on the proposed site plan to be sufficient and not require an updated certified survey.

VOTE: Ayes 12, Nays (1; Seurth); motion carried.

- **Bayshore III HOA**, new multiple dock license application to reconfigure a conforming multiple dock facility on Smithtown Bay.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 5/18/06, which summarized a request from Bayshore III HOA for consideration of a new multiple dock license application. Three proposed changes have been proposed to reconfigure the conforming dock structure to correct discrepancies that have been observed by LMCD staff. These include: 1) to reconfigure the docks for the two residential docks that are to the west of Outlot A, 2) to add one 24' long finger south of Boat Storage Unit 5 on Outlot A, and 3) to reconfigure the dock on the residential lot east of Outlot A. He recommended approval of the application and entertained questions and comments from the Board.

Ms. Annette Troy, 6357 Cliffwood Circle, stated she was the agent representing Bayshore III HOA. She believed that Harper provided a thorough overview of the application and she welcomed comments and questions from the Board.

Skramstad opened the public hearing at 7:26 p.m. There being no comments, he closed the public hearing at 7:27 p.m.

MOTION: Nelson moved, Seuntjens seconded to approve Bayshore III HOA's new multiple dock license application for the 2006 season as submitted.

VOTE: Motion carried unanimously.

- **T. Michael Miller**, a new multiple dock license application to reconfigure a conforming multiple dock facility on Carsons Bay.

Skramstad asked for background on this agenda item.

Harper reviewed the staff memo, dated 5/18/06, which summarized a request from Mr. Chad Bowers, representing T. Michael Miller, for a new multiple dock license application. He stated the facility maintains a status of legal, conforming and was currently approved for six Boat Storage Units (BSU's) on 485' of continuous shoreline. The BSU's broke down to four at 19640 Cottagewood Road (Miller resident) and two for a neighboring resident at 19680 Cottagewood Road (Behrendt resident), which does not have lakeshore frontage. The following two changes were proposed to correct discrepancies documented on an as-built survey submitted by the applicant: 1) to relocate the Behrendt dock so that it was within 100' from the 929.4' shoreline, and 2) to reconfigure the same dock so that it has two, three-sided slips. He recommended that the Board approve the new multiple dock license application for the 2006 season, subject to the docks being constructed in compliance with the proposed site plan. He entertained questions and comments from the Board.

Nybeck stated that one new trend observed by LMCD staff was that multiple dock facilities were making changes prior to getting approval by the Board to do so. These facilities are notified that changes needed to be approved in advance by the Board. He believed that this was becoming problematic and that the Board should consider discussing how to deal with these types of situations.

Babcock stated the responsibility falls to the applicant and it was not the Board's responsibility to find the non-compliant situations. He stated the annual inspection was a good audit; however, it should not relieve the applicant of their responsibility.

Mr. Chad Bowers, M. A. Peterson Architecture, stated he was the agent representing T. Michael Miller. He believed that Harper provided a thorough overview of the application and he welcomed questions and comments from the Board.

Babcock questioned whether it would be acceptable to request a second as-built survey from the applicant after the docks have been installed.

Bowers stated that he would not have problems submitting a second as-built survey. Mr. Miller previously secured approval from the LMCD by another agent. After the docks were constructed, Bowers took over

as agent and provided an as-built survey to the LMCD office in hopes of releasing the contract. At that time, Harper informed him that the dock installation was not consistent with the approved site plan.

Skramstad opened the public hearing at 7:38 p.m. There being no comments, he closed the public hearing at 7:39 p.m.

MOTION: Babcock moved, McDermott seconded to approve the new multiple dock license application for the 2006 season, subject to the LMCD receiving an as-built survey upon completion of the dock installation.

Seuntjens proposed a friendly amendment requiring that the dock remain within 100' of the 929.4' shoreline. Babcock and McDermott agreed to this.

VOTE: Motion carried unanimously.

- **Tim Burke and Mark Klesk**, variance application from LMCD Code for side setback and dock length requirements, plus an adjusted dock use area at 19820, 19860, and 19900 Cottagewood Road on Carsons Bay.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 5/19/06, which summarized a request from Mr. Tim Burke (19820 Cottagewood Road) and Mr. Mark Klesk (19900 and 19860 Cottagewood Road) for a variance from LMCD Code on dock length, side setbacks, and an adjusted dock use area. The proposed hardship was emergent vegetation and he updated the Board on historical action taken in 2005 for a variance request from Mr. Burke, which was tabled at the request of the Board. Subsequently, the current application before the Board was an amendment to the previous variance and provided for the storage of four 10' x 24' watercraft on a combined dock structure, extending approximately 376', from approximately 424' of shoreline at the three sites to reach open, navigable water. He recommended ended that the Board direct the LMCD attorney to prepare Findings of Fact and Order for approval of the Burke/Klesk variance, subject to: 1) the continuing agreement of the owners of 19820, 19860, and 19900 Cottagewood Road for the storage of no more than four restricted watercraft and 2) that the docks be installed in strict compliance with the proposed site plan. He entertained questions and comments from the Board.

Altstatt questioned how the continuing agreement would work if a party chose to split from the combined dock arrangement.

Harper stated that the variance would become null and void and would have to be amended by the remaining parties in the arrangement.

Skramstad asked the Board if they had any concerns about the two walkways.

The Board discussed this and the consensus was that they were pleased that the neighbors worked together resulting in a combined dock arrangement, which lessened the impact on the wetlands.

Mr. Tim Burke, 19820 Cottagewood Road, stated that Harper provided a thorough overview of the application. He welcomed comments and questions from the Board.

Skramstad opened the public hearing at 7:56 p.m. There being no comments, he closed the public hearing at 7:57 p.m.

MOTION: Gross moved, Knudsen seconded, to direct LMCD legal counsel to prepare Findings of Fact and Order for the approval of the Burke/Klesk variance application.

Gross stated that the City of Deephaven expressed support of the variance application and would like to see it approved. He and other Board members expressed their appreciation.

Babcock asked staff to review the proposed site plan and report back at the next Board meeting as to whether an Environmental Assessment Worksheet would be required due to closing in an area of the public waters.

VOTE: Motion carried unanimously.

1. WATER STRUCTURES

- A. **City of Minnetonka Beach (Dock Site 10)**, consideration of draft Findings of Fact and Order for approval of a dock length variance.

Skramstad asked LeFevere for background on this agenda item.

LeFevere stated he prepared draft Findings of Fact and Order consistent with the discussion at the last Board meeting. This document, if approved, would be good for only the 2006 boating season.

Babcock stated he was on the Board when the variance was approved for Dock Site 10. He believed that the LMCD placed the City of Minnetonka Beach on notice at that time that if a neighbor expressed any objection to the dock configuration, the dock placement agreement would become null and void. The Board acknowledged that the dock was encroaching on the dock use areas of the abutting properties and would be allowed only if the city had mutual consent from both properties.

Skramstad stated that some of the issues raised by Babcock were discussed already at the May 10th Board. He believed that a one-year temporary variance was a good compromise to allow for a long-term solution at this site in 2007.

MOTION: Gross moved, Seuntjens seconded to approve the draft Findings of Fact and Order as submitted, approving the City of Minnetonka Beach's dock length variance application for Dock Site 10 for the 2006 season.

VOTE: Ayes 11, Nays (2; Babcock and Altstatt); motion carried.

- B. Additional Business

There was no additional business.

2. LAKE USE & RECREATION

- A. Wake Tonka Waterski/Wakeboard School, consideration of LMCD special event application.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that the LMCD received a telephone call from Patrick Davis inquiring on the LMCD's needs in operating a waterski/wakeboard school on Lake Minnetonka. He directed the Board to their packet that included the submittal of a Special Event application and an attached informational sheet that further outlined the nature of the business. He reviewed the requirements of LMCD Code Section 3.09 for special events on Lake Minnetonka. He recommended that the Board consider the following questions when reviewing the proposal: 1) Does the business qualify as a special event, 2) If it qualifies as a special event, are there any conditions deemed necessary, 3) Is the business a type of activity the Board would like to see on Lake Minnetonka, and 4) Does the business require a watercraft for hire permit? Based on his and LeFevere's review, he believed that there was a need for a watercraft for hire permit. However, the question of whether a special event permit was needed was a question for the Board to address. He outlined comments and concerns communicated by Lt. Storms from the Water Patrol and Mike Pavelka from the City of Minnetonka. He entertained questions and comments from the Board.

The Board discussed the four questions raised by Nybeck. Some of the discussion included: 1) the proposal has similarities to sailing schools and they are not required to get a special event permit, 2) consolidated race schedules for the yacht clubs on Lake Minnetonka are required to secure a special event permit from the LMCD, and 3) whether a watercraft for hire permit was necessary.

Mr. Patrick Davis, 17901 Maple Hill Road, thanked the Board for an opportunity to comment on the proposal. He stated that he and his brother had an interest in running a small-scale business on various lakes to spread the positive, safe aspects about water skiing and wake boarding. Public safety would be the first goal of this program and he entertained questions and comments from the Board.

The Board asked Davis a series of questions relating to the proposal, to which he responded. Three of these questions included:

Q. Has the business operated on other lakes prior to this request?

A. Davis stated that the business had never operated as a commercial operation. He envisioned a close knit, mom and pop enterprise, educating the children on safety, operation of the boat, and educating them on buoys. He estimated 100 students that have unofficially been trained.

Q. What are the businesses parking needs?

A. Davis stated that parents would drop off their children and that they would take two students out for approximately 20 minutes.

Q. What was the age of proposed customers?

A. Davis stated that he envisioned the majority of the students would fall into the age category of eight to 15 years old.

LeFevere suggested that the use of a charter boat license to address concerns such as authorized ports of call, use of boat launches, annual inspection of safety equipment, etc was needed. He stated there might be some issues for the applicant to coordinate relating to this. The first question for the Board was whether a special event permit was needed.

The Board discussed whether a special event permit should be required for the proposal. The consensus of the Board was that a special event permit should not be required and that the application and fees should be returned to the applicant. With regards to whether a watercraft for hire was needed for the

proposal, the consensus of the Board was that this should be decided by LeFevere and LMCD staff.

B. Staff update on plans for 2006 Lake Minnetonka Shoreline Inventory Project

Skramstad asked for an update on this agenda item

Nybeck stated that he anticipated a start date of June 12th or 16th. The methodology would change a little due to incorporating the LMCD Code enforcement efforts during the shoreline inventory. He stated typically that this project was completed by July 4th, but this was unlikely in 2006 because of the added work. He stated that a tentative schedule was being prepared and that this would be forwarded to interested Board members that would like to participate in this activity.

Skramstad encouraged interested Board members to participate in this project.

C. Additional Business.

Scanlon asked when the solar lights would be installed on top of selected navigational buoys.

Nybeck stated that the solar lights should be installed by mid June.

3. FINANCIAL

C. Additional Business.

There was no additional business

4. EWM/EXOTICS TASK FORCE

A. Environmental Sentry Protection, LLC, staff update on I-LIDS Proposal

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that the Board approved up to a \$2,000 grant to Environmental Sentry Protection (ESP) for the I-LIDS proposal at the May 10th Board meeting. At that meeting, it was clarified by the Board that ESP would be responsible for all work associated with this project, including making the necessary contacts with the governmental agencies, including the MN DNR and the City of Minnetonka, and securing all permits that are determined necessary. Mr. Lindberg has made contacts with the MN DNR and they have requested that the LMCD make an official request to the MN DNR to proceed with the I-LIDS proposal. Since this was outside of the scope of the Grant Agreement, he believed that this request from the MN DNR needed to be made by the Board.

Skramstad stated that he concurred with the assessment of Nybeck that this was a Board decision since it was outside of the scope of the Grant Agreement.

MOTION: Knudsen moved, Nelson seconded to draft a letter, with Chair Skramstad's signature, to the MN DNR requesting the MN DNR to proceed with the I-LIDS proposal.

VOTE: Ayes (13), Nays (1: Altstatt) motion carried.

B. Additional Business

Nelson asked Lake Minnetonka Association (LMA) Executive Director Dick Osgood to update the Board on residences that opted in with the "Private Treatment Area" aspect of the 2006 Milfoil Demonstration Project.

Osgood stated that 60 percent participated in Carman's Bay (30 out of 50), 20 percent had opted in Grays Bay to date (six of 30), and 83 percent had opted in Phelps Bay (10 of 12).

4. ADMINISTRATION

- A. Consideration of staff recommendation of compensation adjustment for Administrative Assistant, Emily Herman.

Skramstad asked Nybeck for background on this agenda item.

Nybeck reviewed his recommendation for a compensation adjustment for Herman. He stated that Herman was recently given an overall grade of "Exceed Expectations" for the past year, the top category. She was currently compensated at an hourly rate of \$16.25 and he recommended adjusting her hourly rate to \$17.50, a 7.7 percent increase. This takes into consideration her high level of performance and her added responsibilities relating to the LMCD's proactive Code enforcement effort this upcoming summer.

MOTION: Harrod moved, Babcock seconded to go into executive session at 9:06 p.m. to discuss the performance of Emily Herman, as allowed by the Open Meeting Law.

VOTE: Ayes (9), Nays (4; Scanlon, Seuntjens, Skramstad, and Van Hercke); motion carried.

MOTION: Knudsen moved, Seuntjens seconded to close the executive session at 9:12 p.m. and reconvene the Regular Board Meeting.

VOTE: Motion carried unanimously.

MOTION: Babcock moved, Harrod seconded to: 1) approve a \$1.25 per hour adjustment to Herman's hourly rate from \$16.25 to \$17.50, retroactive to 4/19/06, and 2) to re-evaluate her position next fall to factor in her added work responsibilities relating to the LMCD's proactive Code enforcement efforts this summer.

VOTE: Motion carried unanimously.

MOTION: Gross moved, McDermott Seconded to express appreciation for efforts made and work performed by Herman for the LMCD.

VOTE: Motion carried unanimously.

- B. Additional Business

There was no additional business.

6. SAVE THE LAKE

There was no discussion

7. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First, he recently attended a Minnetonka Power Squadron member meeting at the request of Board member Altstatt. He believed that the discussion was beneficial and that this should be done on a more frequent basis. Second, the lake level as of 5/24/06 was 930.00'. Because of this, the "High Water Declaration" will remain in effect through the Memorial Day weekend. He recommended that the Board re-evaluate this ordinance at a later date after the "High Water Declaration" has been terminated.

8. OLD BUSINESS

Smithtown Bay Culvert

Nelson stated that the Victoria City Council would conduct a formal vote on May 25th relating to the replacement culvert between Smithtown Bay and Lake Virginia.

LMCD/MCWD Joint Meeting

Nybeck stated there had been discussion about a joint Planning/Workshop Session in the near future between the LMCD and MCWD Boards. If the Board did not object, a date will be scheduled and updated at the June 14th Board meeting. There were no objections.

9. NEW BUSINESS

There was no new business.

10. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:26 p.m.

Tom Skramstad, Chair

Tom Seuntjens, Secretary