

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, June 28, 2006  
Wayzata City Hall

**CALL TO ORDER**

Skramstad called the meeting to order at 7:01p.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; John Berns, Wayzata; David Gross, Deephaven; Steve Johnson, Mound; Andrew McDermott, Orono; Pete Nelson, Victoria; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; George Hoff, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

**Members absent:** Leigh Harrod, Excelsior; Tom Scanlon; Spring Park.

**CHAIR ANNOUNCEMENTS**, Chair Skramstad

The following Chair announcements were made:

Skramstad stated that George Hoff would be in attendance later in the meeting to give an update on the pending Canning litigation. Most likely, this discussion would take place in an executive session.

Skramstad asked Nybeck for an update on the July LMCD Board Meeting schedule.

Nybeck stated that there were two Regular LMCD Board Meeting scheduled for the month of July, 7/12/06 and 7/26/06. He did not believe that there was a need for both meetings and he recommended that the Board cancel the 7/12/06 Regular LMCD Board Meeting.

The Board discussed the recommendation of Nybeck and the consensus was to cancel the 7/12/06 Regular LMCD Board Meeting.

Skramstad asked Nybeck to update the Board on the joint planning workshop session of the LMCD and the MCWD planned for July 20th.

Nybeck stated he and MCWD Administrator Eric Evenson were in the processing of finalizing agenda items for discussion at the joint planning workshop session. Three agenda items were tentatively scheduled. They included: 1) lake level readings on Lake Minnetonka and their impact on the "High Water Declarations", 2) discussion of invasive species on Lake Minnetonka and the role of each organization in dealing with them, and 3) discussion of a joint dredging policy statement adopted in the early 1990's and whether updates and revisions were appropriate.

Skramstad stated that he would like one additional agenda item added to discuss the projects and responsibilities of each organization.

**READING OF MINUTES-** 06/14/06 LMCD Regular Board Meeting

**MOTION:** Seuntjens moved, Altstatt seconded to approve the minutes from the 6/14/06 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (7), Abstained (5; Altstatt, Babcock, Nelson, Skramstad, 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.

Gross moved, Johnson seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **2C**, Hennepin County Sheriff's Water Patrol Significant Activity Report; **3A**, Audit of vouchers (6/16/06 - 6/30/06); **3B**, May financial summary and balance sheet; **4A**, Minutes from the 6/9/06 EWM/Exotics Task Force Meeting.

**1. WATER STRUCTURES**

- A. Foxhill HOA**, consideration of draft Findings of Fact and Order amending a previously approved dock length variance for the multiple dock facility on Smiths Bay.

**MOTION:** McDermott moved, Knudsen seconded to approve the draft Findings of Fact and Order approving Foxhill HOA's dock length variance application as submitted.

Babcock stated that he would like staff to prepare a slip size report as part of the approval. He recommended a friendly amendment that this should be included as a condition to ensure that the slip sizes constructed do not exceed the slip sizes documented on the slip size report. McDermott and Knudsen agreed to this.

**VOTE:** Motion carried unanimously.

- B. Additional Business**

There was no additional business.

**2. LAKE USE & RECREATION**

- A. Ordinance Amendment**, consideration of draft ordinance amendments of regulations relating to Watercraft for Hire on Lake Minnetonka.

Skramstad asked LeFevere to provide background on the agenda item.

LeFevere made the following comments:

The Board received comments from two citizens at the last Board meeting relating to LMCD charter boat regulations. The comments were received from a proposed water-ski/wakeboard school and a pontoon used in conjunction with the Lake Minnetonka Sailing School (LMSS). Based on the discussion, three separate transitory ordinance amendments were prepared for Board consideration.

An ordinance was prepared to exempt charter boats from LMCD licensing requirements if operating only in the Carsons and St. Louis Bays. The draft ordinance would only be limited to the current boating season. He stated that the LMCD and State of Minnesota requirements mirror one another, outside of the local requirement of a marine radio or cell phone on board. State law only applies to watercraft carrying passengers for hire when the watercraft is 21' long or longer, providing for an exemption to State and local licensing requirements only to watercraft for higher under 21'.

Ordinances were prepared to exempt watercraft for hire boats that are 20' in length or smaller from the LMCD licensing requirements. At the previous Board meeting, LeFevere stated that he was directed to prepare an ordinance amendment that would exempt smaller boats, yet continue to provide a level of safety. He reviewed the current LMCD code requirements pertaining to pilot licensing, which currently required a State pilot license involving traveling with a certified pilot for 15 hours prior to taking a written exam. He presented two draft ordinances with different piloting certification options for the Board's review. One ordinance required a classroom course with a proctored written examination, while the second required an internet course. LeFevere stated he spoke with a representative of the Power Squadron, which provided for on-site training and testing, with classroom participation provided for a more thorough education. To that end, LeFevere stated both ordinances required the pilot to be at least 18 years of age and to provide proof of insurance.

He entertained questions and comments from the Board.

The Board discussed the draft ordinance amendments prepared by LeFevere. Some of the discussion included: 1) the difference in pilot regulations, 2) whether the exemption from LMCD Code for watercraft for hire should be increased from 21', with 26' being discussed as a possibility, 3) whether the reference to "four or fewer passengers" in Section 1 of one of the transitory ordinance amendment should be changed, and 4) what courses are available to satisfy the pilot requirements in the ordinance amendments. During this discussion, the Board received comments from Patrick Davis, the representative for the Wake Tonka Water-ski/Wakeboard School, and Dan Crear from the LMSS.

**MOTION:** Seuntjens moved, Gross seconded to approve first reading of transitory ordinance relating to the regulation of watercraft for hire on Lake Minnetonka (version 292769v1) as submitted, to waive second and third readings, and to adopt the ordinance amendment.

Babcock proposed a friendly amendment that the ordinance would be rescinded should the "Quiet Waters" designation for St. Louis and Carsons Bays be changed. Seuntjens and Gross agreed to this.

Nelson stated that he appreciated the comments from the LMSS regarding safety. He asked Crear to put together a list of certification needs for the LMCD's consideration.

Van Hercke concurred with Nelson's comments and recommended that feedback should be solicited from all other yacht clubs on Lake Minnetonka, possibly through a survey.

**VOTE:** Motion carried unanimously.

**MOTION:** Knudsen moved, Nelson seconded to approve first reading of a transitory ordinance relating to the regulation of watercraft for hire on Lake Minnetonka (version 292779v1) as amended by inserting the words "six or few occupants of the boat" under Section 1 in the place of "four or fewer passengers", to waive second and third readings, and to adopt the ordinance amendment.

Babcock proposed a friendly amendment that a pilot would not be qualified to operate a watercraft for hire if their pilot license had been previously revoked.

LeFevere stated he had similar thoughts when he was preparing the draft ordinance amendments. However, LMCD Code does not currently have that clause and pilots could always get re-certified, which would make it difficult for the LMCD to monitor.

Knudsen did not accept the friendly amendment proposed by Babcock.

**VOTE:** Motion carried unanimously.

**B.** Update on 2006 "Future of the Lake Day" event.

Skramstad asked Nybeck to provide background on this agenda item.

Nybeck stated that it was communicated at the last Board meeting that Berns could no longer serve as a Board liaison for this project in 2006 and there was a need to find a replacement. Since that meeting, Altstatt had volunteered to serve as the Board liaison for the project in 2006. No date had been confirmed, although September 9th was being considered in conjunction with Apple Days in Excelsior. Other dates being considered included August 19, September 23, and September 30. He recommended that the Board review the draft 2006 "Save the Lake" Budget later in this meeting to recognize what had been proposed for a budget in 2006. He believed that a more through update would be provided at the July 26th Board Meeting.

**MOTION:** Skramstad moved, Van Hercke seconded to authorize Altstatt and Nybeck to proceed with obtaining the required permits upon confirmation of the date for the 2006 "Future of the Lake Day" event.

McDermott asked how much the permit fees were.

Nybeck estimated between \$500 and \$1,000.

**VOTE:** Motion carried unanimously.

**D.** Additional Business

There was no additional business.

**3. FINANCIAL**

**C. Final review of draft 2007 LMCD Budget.**

Skramstad asked Nybeck to provide background on this agenda item.

Nybeck stated that the state enabling legislation for the LMCD requires the Board to adopt the 2007 LMCD Budget and distribute to the 14 member cities by July 1st. At the June 14th Board meeting, the Board reviewed the draft budget, including comments received from the City of Tonka Bay. At the same meeting, the Board adopted the 2007 LMCD Budget and directed staff to send it out on June 29th. That approval allowed the Board to make changes at this meeting, if deemed necessary. If no changes were made, he did not believe another motion was necessary to adopt the 2007 LMCD Budget .

Altstatt stated that the City of Greenwood believes that the proposed 10% levy increase compared to 2006 was too high and that the raising of the reserve level was a self-imposed matter and not a requirement of the state enabling legislation.

Skramstad reviewed the LMCD budget process. He believed that it was a Board member's obligation to explain and defend the proposed budget to their representative city.

Babcock stated a number of years ago, the LMCD and the 14 member cities discussed what reserve levels were appropriate for the Administrative and Exotics Budgets. At that time, it was agreed to have a six month reserve for the Administrative Budget and a 12-month reserve for the Exotics Budget. He discussed why these reserve levels are necessary for the LMCD, including the fact that funding of the LMCD is generally done through annual permit fees and an annual levy to the 14 member cities. The LMCD does not have the ability, unlike the municipalities, to raise funds through bonding and there is a need to have a reserve fund to deal with unanticipated expenses, such as legal fees.

Gross reminded the Board that the proposed 2007 LMCD Budget would reduce the Exotics Budget reserve level from 12 months to six months. By doing so, this reduced the 2007 Exotics Budget to the 14 member cities by approximately \$30,000.

Berns expressed appreciation to Nybeck for thoroughly educating the member cities on the 2007 budget. Due to the LMCD's size, he stated that he believed it was fiscally responsible to rebuild the Administrative reserve level, although he was concerned about 10% levy increase to the member cities.

**D. Additional Business**

There was no additional business.

**4. EWM/EXOTICS TASK FORCE**

**B. Chair update of the 6/9/06 EWM/Exotics Task Force Meeting.**

Skramstad asked Seurth to provide an update on the agenda item.

Seurth stated that he believed the minutes approved under the consent agenda provided a thorough

review of the meeting. He updated the Board on the progress being made between Environmental Sentry Protection and the MN DNR on the I-LIDS proposal at the Grays Bay Public Access. Although progress has been made, he hoped that it would be further along than it was. He asked Nelson for an update on the 2006 Milfoil Demonstration Project.

Nelson stated that Dick Osgood from the Lake Minnetonka Association was in attendance to comment on this.

Osgood made the following comments:

Overall participation for private opt-ins for this project was about 50%, with Carman Bay having the highest percentage and Grays Bay having the lowest percentage. The herbicide treatments have taken place on all three bays.

He stated that he had recently visited the test sites on Phelps and Carman Bays and offered his observations to date, although he recognized that they were his personal opinions and not intended to be a substitute for the forthcoming Report from the Army Corps of Engineers.

On Phelps Bay, the "Public Treatment Area" was impressive because there was no milfoil present. The outcome was similar for those properties that opted in the "Private Treatment Areas", although some of these property owners expressed concern about the presence of other vegetation. Some problems existed because some milfoil existed around lilly pads in this area and the MN DNR does not allow for the herbicide treatment within 50' of lilly pads.

On Carman Bay, he documented patchy results, especially for those properties that opted in the "Private Treatment Areas". He stated that he had talked to Lake Management, Inc. about this and they had concluded that the herbicide treatment had not taken affect as desired. He reported that Lake Management, Inc. would be checking with the MN DNR on the feasibility of a second herbicide application in the "Private Treatment Areas".

He believed that a technical report from the Army Corps of Engineers would be complete sometime this fall and available at that time.

**C. Additional Business.**

There was no additional business.

**5. SAVE THE LAKE**

**A. Consideration of draft 2006 "Save the Lake" Budget.**

Skramstad asked Nybeck for background on this agenda item.

Nybeck provided an overview of the draft 2006 "Save the Lake" Budget. This included: 1) projected revenue of \$32,000, with solicitation contributions of \$25,000, 2) projected expenses for the 2006 Public Access Inspection Program, 3) projected expenses for the 2006 Milfoil Demonstration Project, 4) projected expenses for the I-LIDS Demonstration Grant, and 5) projected expenses for the 2006 "Future of the Lake Day" event. Total projected expenses for 2006, \$42,463, exceed revenues for the first time in a number of years. The Board either needs to take this money from the "Save the Lake" reserve or recognize this and initiate Phase 2 of a fundraising campaign for these projects. He entertained questions and comments from the Board.

Nelson agreed that there was a need for phase 2 of a fundraising campaign and that he would look further into this.

**MOTION:** Nelson moved, McDermott seconded to approve the 2006 "Save the Lake" Budget as submitted.

**VOTE:** Motion carried unanimously.

**B. Additional Business**

There was no additional business.

**6. ADMINISTRATION**

**A. Consideration of staff recommendation of compensation adjustment for Administrative Technician, Judd Harper.**

It was the consensus of the Board to discuss the performance of Harper later in the meeting in an executive session, as allowed by the Open Meeting Law.

**7. EXECUTIVE DIRECTOR REPORT**

Nybeck stated that staff had initiated the 2006 Lake Minnetonka Shoreline Inventory Project. The project has begun on the west-end of the Upper Lake and would proceed to the east accordingly. To date, Knudsen had worked with Harper on this project. For those other Board members that have interest, staff will be sending out a tentative schedule as soon as possible once it has been determined.

**8. OLD BUSINESS**

**City of Mound**, consideration to make some minor adjustments to the approved site plan for the overnight storage dock on Lost Lake Channel.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that a request had recently been made by the City of Mound to make some minor changes to a dock approved for overnight storage on Lost Lake Channel near a new proposed townhome development. Normally, staff would require the City of Mound to submit a new multiple dock license application, with a required public hearing, for such a request. However, due to some unique circumstances, this request was placed on the agenda to allow the Board to make that decision. Mound Community Development Director Sarah Smith and Mound Harbor Renaissance Project Manager Chuck Alcon were in attendance to provide an overview of their request to the LMCD.

Smith thanked the Board for the opportunity to discuss the matter. She provided an update on where the project was to date and documented the other permitted approvals that were received from other agencies involved. For the past 30-60 days, Mound had been working on the final approval of the docks. She clarified that the proposal would not change any of the conditions of the approved dock length variance for this site, including slip sizes. However, the layout of some of the slips are proposed

to change and Alcon would be reviewing this with the Board. She requested that the Board consider approving the storage boxes on the proposed site plan. LMCD staff had brought it to Mound's attention that storage boxes are prohibited on Lake Minnetonka, although these storage boxes were on the approved site plan. She circulated a letter, dated 6/27/06, which provided an overview of their request.

Alcon reviewed the approved and proposed site plans, highlighting that the number of Boat Storage Units (BSU's) and size of these BSU's. He stated that the number and size of BSU's would remain the same. However, the proposed site plan would allow for a dock that was more standard from a construction standpoint than the approved site plan. He clarified that the dock had not been constructed to date.

Skramstad asked staff to comment on the proposal.

Nybeck stated the City of Mound originally contacted the LMCD office on June 22nd. Originally, staff believed that the proposed changes needed to be applied through the new multiple dock license process. However, after consulting with LeFevere, it was concluded that the changes were relatively minor and that the dock structure had not been constructed to date. Therefore, this was a judgment call for the Board to decide. He addressed the request to approved the storage boxes on the dock. He recognized that these were overlooked originally by the LMCD. However, LMCD Code currently prohibits storage boxes and he believed state law does too.

The Board discussed storage boxes on Lake Minnetonka, including what constitutes a storage box. The general consensus of the Board was equipment for the boat should either be stored within the boat or on land.

Alcon expressed concern that eleven of the townhomes had a signed purchase agreement, which included a dock slip and a storage box.

Babcock asked Smith how the City of Mound would allow for changes to occur without going through an application process.

Smith stated that Mound staff was allowed some design flexibility for construction standards as long as the approved variance remained in tact. She provided examples of where this might apply to projects being conducted within the City of Mound. In this example, she believed that the approved variance would remain in tact because the number and size of BSU's would remain the same, as well as the dock construction design was very similar.

Skramstad asked if the City of Mound would like a storage box for each BSU at the dock.

Smith confirmed that they would.

LeFevere stated that the issue of storage boxes was one that the Board could not ignore. Even if they were originally noted on the approved site plan, he hoped that the developer sold the slips with a notation that the dock owner was subject to ongoing regulations by the LMCD. He addressed the application process established by the LMCD to make changes such as those requested by the City of Mound. One issue for the Board to consider was whether approving the changes proposed by Mound without going through this application process was creating a slippery slope. One factor in Mound's favor was that the

dock had not been constructed to date.

**MOTION:** Nelson moved, Babcock seconded to approve the dock configuration changes proposed by the City of Mound, with the exception of the storage boxes.

Gross proposed a friendly amendment that the applicant submit a "to be built" survey to the LMCD with the same level of details as documented on the proposed site plan. Nelson and Babcock agreed to this.

**VOTE:** Ayes 11, Nayses (1, Van Hercke); motion carried.

## 9. OLD BUSINESS

### Sweatt Property

Skramstad asked Nybeck for an update on the Sweatt property.

Nybeck stated that he anticipated new multiple dock license applications would be submitted in the near future, with public hearings scheduled for the July 26th Board meeting.

### MN DNR Meeting

Skramstad asked Nybeck for an update on meeting with the MN DNR Commissioner Gene Merriam to discuss concerns about the introduction of zebra mussels into Lake Minnetonka.

Nybeck stated that this meeting had been coordinated for 7/21/06 at 3:00 p.m., in St. Paul.

## 10. NEW BUSINESS

Skramstad asked LeFevere to review the procedure for going into executive session.

LeFevere stated there were two different topics, yet to be discussed by the Board, which could qualify as exceptions to the Open Meeting Law. These topics included: 1) discussion of the pending Canning litigation, and 2) discussion of the performance of Judd Harper, LMCD Administrative Technician.

Hoff stated that he was in attendance to give the Board an update on the recent Minnesota Court of Appeals ruling on LMCD vs. the Cannings. Discussion of pending litigation is allowed in an executive session as an exception to the Open Meeting Law and he recommended that the Board do so accordingly due to attorney/client privilege.

**MOTION:** Babcock moved, Van Hercke seconded to go into executive session at 9:26 p.m. to discuss the LMCD's pending litigation of the Cannings.

LeFevere stated the LMCD was authorized, but not required, to close a meeting to discuss the performance of an employee. The closed sessions are handled differently as to the presence of the employee being discussed and that the subject employee has the opportunity to discuss the agenda item in open meeting.

**VOTE:** Motion carried unanimously.

Skramstad closed the Canning executive session and re-opened the meeting at 10:38 p.m. He asked Harper whether he would be opposed to closing the Board meeting and allowing the Board to discuss his performance in an executive session.

Harper stated that he was not opposed to the Board closing the meeting and going into executive session.

**MOTION:** Nelson moved, Knudsen seconded to go into executive session at 10:39 to discuss the performance of LMCD Administrative Technician Judd Harper.

**VOTE:** Motion carried unanimously.

Skramstad closed the Harper executive session and re-opened the meeting at 10:46 p.m.

**MOTION:** Knudsen moved, Nelson seconded to adjust the hourly rate of LMCD Administrative Technician from \$21.63 to \$22.84, retroactive to 5/1/06.

**VOTE:** Motion carried unanimously.

## 12. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:48 p.m.

Tom Skramstad, Chair

Katy Van Hercke, Vice Chair