

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, October 25, 2006
Wayzata City Hall

CALL TO ORDER

Skramstad called the meeting to order at 7:02 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; John Berns, Wayzata; David Gross, Deephaven; Leigh Harrod, Excelsior; Steve Johnson, Mound; Andrew McDermott, Orono; Pete Nelson, Victoria. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Tom Scanlon; Spring Park; Herb Suerth, Woodland.

CHAIR ANNOUNCEMENTS, Chair Skramstad

Skramstad announced that the annual meeting with the Hennepin County Sheriff's Water Patrol was scheduled at the Water Patrol office in Spring Park on Wednesday, November 15th at 7:30 a.m. He encouraged all Board members to attend this meeting, if possible. He asked Nybeck to comment on the November LMCD Board Meeting schedule.

Nybeck stated that there were two Regular LMCD Board Meeting scheduled for the month of November, 11/8/06 and 11/22/06. He did not believe that there was a need for both meetings and he recommended that the Board cancel the 11/22/06 Regular LMCD Board Meeting.

The Board discussed the recommendation of Nybeck and the consensus was to cancel the 11/22/06 Regular LMCD Board Meeting.

READING OF MINUTES- 09/27/06 LMCD Regular Board Meeting

MOTION: Seuntjens moved, Johnson seconded to approve the minutes from the 9/27/06 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (9), Abstained (2; Nelson and Van Hercke); motion carried.

Babcock arrived at 7:10 p.m.

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

Mr. Jeff Engler, 2760 Shadywood Road, made the following comments:

He purchased his home at this residence in January of 2005. However, he did not move into this home until September of 2005.

During this period, the LMCD was considering changing its regulations pertaining to deicing facilities on Lake Minnetonka. He stated that he did not receive the public meeting notice for the 6/22/05 Board meeting when changes were being discussed, and the 8/10/05 Board meeting packet when the LMCD adopted the current deicing regulations, due to his mail being held at the post office.

In January of 2005, he initiated work with a local contractor to construct a permanent dock at this residence. This contractor informed him that he would not have problems with ice shifting in this area and that a permit was not required to replace the existing dock.

Construction for this permanent dock was initiated in February, at which time construction was stopped by LMCD staff because a permanent dock license permit had not been issued. Because he was out of state, Engler stated that the dock contractor submitted the necessary application to the LMCD and a permit was approved in March of that year. However, he did not receive his mail until September of that year, which included the approved permit from the LMCD and notification that there was a moratorium on new deicing.

In September of 2005, he applied for a deicing permit from the LMCD for his newly constructed permanent dock. LMCD staff denied this application because it was not an eligible facility as defined in the new deicing regulations. At that time, he spoke with LMCD staff and they informed him that the best means to become an eligible facility would be through a Code amendment.

At that time, the dock contractor recommended to wait it out and see what happens. Last February, the permanent dock sustained significant damage due to ice shifting. Because of this, the dock contractor initiated deicing at his residence. Within a day, LMCD staff contacted him and asked if he knew that deicing was taking place, which was a violation of LMCD Code. Engler stated that he was aware of the deicing activity and that he was in violation of LMCD Code, although he was unclear of how he was in violation. Because of this, deicing was stopped immediately.

In response to this violation, LMCD staff initiated a criminal complaint against him and the dock contractor for violation of LMCD Code relating to deicing regulations. He settled with the LMCD's prosecuting attorney this past July on this criminal complaint. Had he been aware that he could not deice, he would have chosen to go with a seasonal dock rather than a permanent dock.

He requested that the Board amend LMCD Code to allow him to deice his permanent dock for the upcoming winter.

Nybeck stated Engler had recently requested a variance application for deicing purposes. At that time, Engler was reminded that the Code amendment process was more appropriate than a variance request because his permanent dock currently was not eligible to deice.

LeFevre advised the Board that it would be difficult for the Board to grant Engler a variance to deice because his permanent dock was not an eligible facility as outlined in Code Section 2.09, subd. 11. He informed the Board that during the one-year moratorium, Engler and one other permanent dock license applicant were notified that their license was subject to the outcome of the deicing moratorium.

Nelson stated that he believed that the Board should amend LMCD Code as requested by Engler because the LMCD should not issue a permanent dock license without the ability to deice.

Harper stated that when the permanent dock license was granted, he communicated to Engler and the dock contractor that the dock was being installed at their own risk because the Board had declared a moratorium on new deicing permits and that changes were being considered by the LMCD Board. He estimated that the Engler permanent dock was about half constructed when the illegal dock was recognized by LMCD staff and eventually permitted.

Knudsen asked if LMCD had issued permanent dock licenses to other facilities that do not have the ability to deice.

Harper confirmed that other permanent docks have been issued a license that do not have the ability to deice.

Knudsen stated that he concurred with Nelson's comments that LMCD Code should be amended to allow Engler to deice.

LeFevere stated it was safe to assume that when a permanent dock was constructed at a residential site, the LMCD could anticipate a subsequent application to deice. At the time Engler initiated construction on his permanent dock, there was the ability to obtain a permit for the dock itself but not to deice. The same situation exists today for any new permanent dock applicant. The primary problem appears to be ignorance of the laws. He advised the Board to consider the precedent fixing this problem would set for the future.

Nybeck stated that if it was the consensus of the Board to allow Engler and the other residences to deice that were not currently eligible facilities, he recommended that the Board: 1) direct LeFevere to prepare an ordinance amendment for consideration at the next LMCD Board meeting, and 2) have Engler work with his neighbor that already deices on a combined deicing site.

MOTION: McDermott moved, Nelson seconded to direct LMCD legal counsel to amend the LMCD Code Section 2.09, subd. 11 to grandfather any residences that were issued a permanent dock license during the moratorium and to make these facilities eligible to deice.

VOTE: Motion carried unanimously.

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.

Altstatt requested that agenda item 3A be removed from the consent agenda.

Seuntjens moved, Gross seconded to approve the consent agenda as amended, removing agenda tem 3A. Motion carried unanimously. Item so approved included: **1B**, Staff recommends Board approval to

refund variance application deposits as outlined in 10/19/06 staff memo; **2A**, Minutes from the 10/13/06 EWM/Exotics Task Force Meeting; and **3B**, September financial summary and balance sheet.

1. WATER STRUCTURES

- A. Mark Prueter & Rich Anderson**, consideration of permanent dock license (residential) application and 2006-2007 deicing application for the residences at 3205 and 3215 Crystal Bay Road in the City of Orono.

Skramstad asked Harper to provide background on the agenda item.

Harper reviewed the staff memo, dated 10/20/06, which summarized these applications. If the Board believed the applicants could continue to qualify for a deicing license, he recommended approval of both applications with a number of conditions. These conditions included: 1) all deicing activity must comply with LMCD deicing requirements (including all deicing activity and fencing must be contained within the authorized deicing area), 2) the west portion of the existing dock must be removed to meet the 15' setback prior to any deicing activity, 3) all watercraft stored at the combined site must comply with current and future LMCD ordinances, 4) if agreement to maintain a common dock is taken away by either property owner, portions of the permanent dock must be removed and each property owner must meet their specific dock use area requirements for each individual lot, 5) boat storage at the combined site can only be for private, non-commercial use of the site owners, and 6) only one dock structure may be combined on the combined dock use area. He entertained questions and comments from the Board.

MOTION: Van Hercke moved, McDermott seconded to approve the Prueter/Anderson permanent dock license (residential) and 2006-2007 deicing applications for the residences at 3205 and 3215 Crystal Bay Road as submitted, with the recommendations made by Harper.

Seuntjens stated that he believed there were two decisions for the Board to make. First, part of the dock was already installed and he preferred that applications should be made and approved by the LMCD in advance, not after the fact. Second, part of the dock was for a future expansion and he questioned whether approving it at this time was appropriate.

Babcock stated he was not troubled with the applicants requesting Board approval of a future expansion of the proposed permanent dock. He proposed a friendly amendment that the applicants maintain a one-time letter on file in the LMCD office that: 1) the two property owners agree to a combined dock, and 2) both property owners agree to provide the LMCD access to the combined dock. Van Hercke and McDermott agreed to this friendly amendment.

LeFevere stated that there were a couple reasons why the applications were brought forward to the Board. First, the proposed dock would comply with LMCD Code because of mutual consent arrangements between the two property owners and staff wanted to confirm the Board's comfort level on this. Second, this deicing facility was considered an eligible facility because it had previously deiced. However, the permanent dock would expand and LMCD staff wanted Board

clarification on this.

Babcock expressed concern about the Board's action being accepted as a blanket approval for future deicing applicants. In this case, he believed that the facts supported the permanent dock license application and the expansion of the grandfathered deicing license.

LeFevere stated staff traditionally processed both of these applications. If the Board had the desire to review similar, future applications where expansions occur to a permanent dock, he believed that LMCD Code would need to be amended.

Babcock agreed with a code amendment to bring permanent dock and deicing applications to the Board due to the current state of the LMCD's deicing concerns.

VOTE: Motion carried unanimously.

C. Additional Business

The consensus of the Board was for LeFevere to draft an amendment to LMCD Code in the near future that would require Board review and approval of any grandfathered permanent docks that are eligible to deice.

2. EWM/EXOTICS TASK FORCE

B. Chair update on the 10/13/06 EWM/Exotics Task Force Meeting.

Nybeck provided a recap of the October 13th EWM/Exotics Task Force meeting. Some of the discussion at this meeting included:

A review of the 2006 EWM Harvesting Program Final Season Report.

Confirmation from the Army Corps of Engineers that the final Report of the 2006 Milfoil Demonstration Project Final Report would be presented to the Task Force and Board in December.

An update on the 2006 I-LIDS project with Environmental Sentry Protection.

An update on the LMA Comprehensive Prevention Plan document.

C. Environmental Sentry Protection (ESP), review of the 2006 I-LIDS Project Report by Eric Lindberg

Skramstad stated that Eric Lindberg of ESP was in attendance to provide the Board an update on the 2006 I-LIDS project. He welcomed Lindberg on behalf of the Board.

Lindberg thanked the Board for their participation in this 2006 project. He provided an overview of the Project Report via a power point presentation. During this presentation, he highlighted the following information:

The I-LIDS device itself and it's features.

The goals and objectives of the 2006 project.

The location of the footings and placement of the devices.

The participating governmental agencies.

The various view angles and images the I-LIDS was able to obtain.

2,500 videos were captured between 8/10/06 and 10/8/06, which were utilized to create a control group to work with. The findings included: 1) prior to signage being posted, 7.5% of 200 boats launched had weeds attached; 3% of which showed signs of inspecting, and 2) after signage was posted, the number of boat launched with vegetation decreased to 1.78%

A review of various footage and accompanying comments.

Examples of obstacles offered and suggestions to address them.

Final recommendations.

He entertained questions and comments from the Board.

Some of the questions and comments made by the Board included:

What the State of Wisconsin was currently doing and their fee structure for launching violations.

A recap of a quoted \$6,000 expansion cost was provided to include: the unit itself, the camera, the network integration (including back to the server), the server itself, the website, maintenance, access to website, and the review of the videos.

An interest in expanding the program in a combined effort with various local agencies.

The suggestion of utilizing the I-LIDS program for an education tool or the use by interns.

Nybeck stated that the I-LIDS Project was on the agenda for the November 3rd EWM/Exotics Task Force meeting. He suggested that Lindberg might want to invite the governmental agencies involved in this 2006 pilot project to this meeting.

- D. Update on the 10/4/06 MN DNR meeting to discuss possible efforts to prevent the introduction of zebra mussels and other aquatic invasive species into Lake Minnetonka.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that at the beginning of the October 4th meeting, LMA Executive Director Dick Osgood communicated four intended outcomes of the meeting, in which he requested a written response from the MN DNR. A letter has been received from Lee Pfanmuller, dated 10/13/06, in response to Osgood's request and he recommended that Osgood summarize this letter and the October 4th meeting.

Osgood provided a summary of the October 4th MN DNR meeting and the 10/13/06 Pfanmuller letter. He believed that the MN DNR agrees that there was a need to improve local enforcement efforts relating to invasive species. However, one of the challenges that the MN DNR faces was how to deal with this on a statewide basis rather than a local basis. Osgood believed that citations were currently being issued on a minimal basis. Although the MN DNR recommends that the continuation of educational efforts, Osgood stated that Minnesota Waters believes that any

additional funding should go towards enforcement or direct intervention methods. The MN DNR believes that access restrictions and the charging of fees need to be applied fair and equitably to all users, to which Osgood agreed to. The MN DNR believed that the overall goal to keep aquatic invasive species to known infested waters was a worthwhile goal. The MN DNR believes that the use of watercraft access inspectors on Lake Minnetonka was an important tool, although Osgood believed that the inspection of boats should focus more heavily on boats entering the lake and not departing.

Some of the comments made by the Board included:

The ratio of private launches compared to public launches are skewed and the ability to apply access fees equitably requires more research.

The Board was encouraged by the sense of increased openness from the MN DNR to discuss the prevention of invasive species.

State laws would need to be changed to incorporate some of the ideas included in the comprehensive plan.

There was a suggestion that Board members meet with the city that they represented to educate them on what was currently being done.

There was discussion of those who would support the program compared to those who would oppose the program.

There was discussion that the access fees were targeted to fund the local program on Lake Minnetonka, not on a statewide basis.

There was discussion on the need to coordinate a meeting(s) in the near future with local legislators and stakeholders to get their comments and feedback on this program.

Osgood stated that under the Water Quality section of the MCWD's 509 Plan, invasive species are mentioned (specifically milfoil and curly-leaf pondweed). Osgood recommended that the Board should become familiar with the MCWD's 509 Plan and point out that invasive species need to also be mentioned under the "Ecological Section" of the 509 Plan.

E. Additional Business

There was no additional business.

3. FINANCIAL

A. Audit of vouchers (10/1/06 – 10/15/06) and (10/16/06 – 10/31/06).

Altstatt requested clarification of check numbers 16290 and 16291.

Nybeck stated that: 1) check number 16290 was for LMCD's prosecuting attorney, and 2) check number 16291 was associated with the purchasing of GIS software.

Berns asked how much the LMCD had spent in the prosecution of the Vikings players on the charter boat last fall.

Nybeck stated LMCD Prosecuting Attorney Steve Tallen was tentatively scheduled to address the LMCD Board at the November 8th meeting. He believed that this update could be reported by Tallen at that time.

MOTION: Nelson moved, Van Hercke seconded to approve the audit of vouchers (10/1/06-10/15/06) and (10/16/06 – 10/31/06) as submitted.

VOTE: Motion carried unanimously.

C. Additional Business

There was no additional business.

4. LAKE USE & RECREATION

A. Review of 2006 Lake Minnetonka Boat Storage Shoreline Inventory Report.

Skramstad asked Herman to provide background on this agenda item.

Herman reviewed the 2006 Lake Minnetonka Shoreline Boat Storage Count. Some of the comments included:

1971 marked the beginning of the Shoreline Boat Storage Count.

All counts consist of riparian residences, multiple dock facilities, and district mooring areas.

The 2006 boating storage count provided for the 27th season.

A review of the three primary objectives, which included the establishment of the total number of watercraft stored, the outline of historical data collected, and the identification of observable trends.

The review of the parameters that have historically been adhered to in surveying all 125 miles of lakeshore frontage. Those parameters include dates and times, along with the avenue used to collect the data, the watercraft classifications and the identification of residents that have empty slips, and that store three or more boats.

The total number of watercraft inventoried in 2006 was 10,278, which further broke down to 6,688 watercraft stored at riparian residences and 3,590 at multiple dock/district mooring facilities.

Of the 6,688 watercraft stored at riparian residences, 57% fell within the runabout/cruiser category (32% and 25% respectively).

Of the 3,590 watercraft stored at multiple dock facilities, 59% fell within the runabout/cruiser category (35% and 24% respectively).

376 residences stored three restricted watercraft, compared to 398 in 2004.

269 residences stored four or more restricted watercraft, compared to 242 in 2004.

There were 490 empty slips documented in 2006, compared to 602 in 2004.

543 watercraft were stored within the Mounds Commons Docking Program.

The highest historical overall counts were highlighted as follows: 2002 (10,509), 1996 (10,475), and 2006 (10,278).

To obtain the observable trends, staff compared historical counts from 1998 to present, which is outlined under "Conclusions/Trends" in the 2006 Report.

She entertained questions and comments from the Board.

Van Hercke asked whether staff had delineated the number of hours to: 1) complete the 2006 Shoreline Inventory Project, and 2) the 2006 LMCD Code Enforcement Project.

Herman stated that the number of hours would be documented when the 2006 LMCD Code Enforcement Report was provided to the Board.

Nybeck stated that this Report would most likely be provided at the December Board meeting.

B. Additional Business.

There was no additional business.

5. ADMINISTRATION

There was no additional business.

6. SAVE THE LAKE

There was no discussion.

7. EXECUTIVE DIRECTOR REPORT

Nybeck asked LeFevere to provide an update on a new lawsuit pending with the LMCD.

LeFevere stated that LMCD had been served with a petition for Writ of Certiorari, which was a judicial review of the Board's decision in the Locust Hills matter. This challenge was served based on the grounds that the decision was arbitrary and capricious. He reviewed the two kinds of judicial review, which included the District Courts and a direct appeal to the Minnesota Court of Appeals. This review would be based strictly on the record of LMCD proceedings and he recommended that the Board go into executive session to discuss this matter further when the Board goes into executive session to discuss LMCD vs. Canning.

8. OLD BUSINESS

City of Deephaven Docking Update

Gross stated that the City of Deephaven had recently conducted a public hearing for the purpose of discussing whether the City should reorganize the municipal docks in St. Louis Bay. The City of Deephaven's goal was to have a boat storage facility more in line with the current market demand for

storage. He provided a brief overview of the various plans discussed at this public hearing. A second public meeting has been scheduled for November 6th for the purpose of discussing whether to change the rules of allocation prior to looking at a specific dock re-configuration.

Tom Kurak New MDL Application Update

Nybeck stated that LMCD was pending updated survey work sometime in the near future from the applicant.

9. NEW BUSINESS

There was no additional business.

10. EXECUTIVE SESSION –

11. ADJOURNMENT

MOTION: Altstatt moved, McDermott seconded to: 1) go into executive session at 9:44 p.m. to conduct LMCD vs. Canning and LMCD vs. Sanger litigation strategies, as allowed by the Open Meeting Law, and 2) to adjourn the meeting following completion of the executive session.

VOTE: Motion carried unanimously.

Tom Skramstad, Chair

Tom Seuntjens, Secretary