

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, November 8, 2006  
Wayzata City Hall

**CALL TO ORDER**

Skramstad called the meeting to order at 7:14 p.m.

**ROLL CALL**

**Members present:** Tom Skramstad, Shorewood; Paul Knudsen, Minnetrista; Gene Altstatt, Greenwood; John Berns, Wayzata; 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.

**Members absent:** Doug Babcock, Tonka Bay; David Gross, Deephaven; Leigh Harrod, Excelsior; Tom Seuntjens, Minnetonka Beach; Katy Van Hercke, Minnetonka.

**CHAIR ANNOUNCEMENTS**, Chair Skramstad

Skramstad reminded the Board of the annual meeting with the Sheriff's Water Patrol at the Water Patrol office in Spring Park on November 15<sup>th</sup> at 7:30 a.m. He encouraged all Board members to attend, if available. He asked Nybeck to comment on the December LMCD Board Meeting schedule.

Nybeck stated that there were two Regular LMCD Board Meetings scheduled for the month of December, 12/13/06 and 12/27/06. He did not believe that there was a need for both meetings and he recommended that the Board cancel the 12/27/06 Regular LMCD Board Meeting. The Board discussed the recommendation of Nybeck and the consensus was to cancel the 12/27/06 Regular LMCD Board Meeting.

Skramstad reminded the Board that the 11/22/06 Regular LMCD Board Meeting had already been cancelled.

Nybeck stated that he and Lake Minnetonka Association (LMA) Executive Director Dick Osgood had scheduled a meeting with local legislators to discuss a more comprehensive aquatic invasive species (AIS) plan for Lake Minnetonka. This meeting was scheduled for November 17<sup>th</sup> from 9-11 a.m. at the Wayzata Community Room.

Berns requested that this meeting be rescheduled due to mandatory training meetings scheduled for the November 17<sup>th</sup> and 18<sup>th</sup> in St. Paul for newly elected House of Representative members. The Board discussed this and the consensus was to re-schedule this meeting.

**READING OF MINUTES-** 10/25/06 LMCD Regular Board Meeting

**MOTION:** Nelson moved, McDermott seconded to approve the minutes from the 10/25/06 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (7), Abstained (1, Scanlon); motion carried.

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

Mr. Gabriel Jabbour, 985 Tonkawa Road, stated that he had recently discussed an issue with Nybeck and Harper on a matter he was trying to solve on a proactive basis. At the recommendation of Nybeck, he stated that he was soliciting Board feedback on a property that he owned north of Coffee Cove channel in a wetland area adjacent to County Road 19. Coffee Cove channel has a reputation of being one of the most dangerous channels on Lake Minnetonka during the winter months due to open water. A number of years ago, there was a near fatal accident involving a snowmobile at this channel. In response to this, Jabbour stated that he purchased an adjacent property with the idea of working with the LMCD and possibly donating land to the MN DNR to allow for safer passage during the winter. Immediately adjacent to this land, there is a property that he has exclusive rights to through an easement. The problem was that this property had been sold and the new property owner was storing a houseboat at this site. In the City of Orono, property owners are not allowed to install a dock and store a boat at a site unless there is a primary structure, a house. This lot is not buildable and the City of Orono has informed the property owner of this ordinance. However, this property owner has stored the boat at this site by anchoring it and the City of Orono has concluded that they do not have jurisdiction. It appeared that the property owner intended to store the boat in the water during the winter months and he questioned whether this was something that the LMCD wanted to occur on the lake.

Suerth arrived at 7:20 p.m.

The Board discussed the issue raised by Jabbour. Some of the discussion included: 1) how the property was accessing the houseboat, 2) whether the anchoring of the houseboat was creating a hardship, and 3) whether the anchoring of the houseboat qualified as a mooring. The consensus of the Board was for Nybeck and LeFevere to further investigate into this and report back to the Board.

Altstatt requested that the Board go into executive session at the end of the meeting to discuss pending Canning litigation.

Nybeck stated he and LeFevere were going to make a similar recommendation based on discussions that they had with LMCD legal counsel George Hoff.

**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, Johnson seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **3A**, Audit of vouchers (11/1/06-11/15/06); **4A**, Minutes from the 11/3/06 EWM/Exotics Task Force Meeting.

## 1. WATER STRUCTURES

A. **Trillium Bay HOA**, review of draft Environmental Assessment Worksheet (EAW) document for

new multiple dock license applications for 17 BSU's on 850' of continuous shoreline in Halsteads Bay.

Skramstad asked Harper for background on this agenda item.

Harper stated that Trillium Bay HOA had submitted a new multiple dock license application for the purpose of increasing the size of all of their boat storage units (BSUs) to 16' x 40'. The approved site plan provides for nearly 20,000 square feet for structure and maneuvering space. The proposed site plan increases the square footage to nearly 26,000 square feet for structure and maneuvering space. The Environmental Quality Board requires all marina projects that exceed 20,000 cumulative square feet to have a mandatory Environmental Assessment Worksheet (EAW) completed. For that reason, Harper directed the Board to a draft EAW document provided in their packet. He reviewed the proposed application, the EAW timeline, the logistics involved in processing the EAW, and the agencies that would be included in the distribution list. Comments from this distribution list will be provided at the January 10<sup>th</sup> Board meeting with a recommendation on whether an Environmental Impact Statement (EIS) needs to be completed for this project. He entertained questions and comments from the Board.

**MOTION:** Knudsen moved, McDermott seconded to approve the draft Trillium Bay HOA EAW document and to direct staff to proceed accordingly.

**VOTE:** Motion carried unanimously.

**B. Ordinance Amendment**, first reading of an ordinance relating to deicing licenses; amending LMCD Code Section 2.09; Subd. 11(c).

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that LeFevere had prepared a draft ordinance amendment based on comments received from Mr. Jeff Engler and the Board at the 10/25/06 Board Meeting. At this meeting, Engler stated that he was not considered an eligible facility to deice and the Board directed LeFevere to prepare an ordinance that would make Mr. Engler's deicing site eligible. He entertained questions and comments from the Board.

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

**VOTE:** Motion carried unanimously.

Nelson questioned what the next step would be for approval of Engler's deicing application.

Nybeck stated that the processing of deicing applications were handled at staff level. Once the ordinance amendment is published in the official newspaper, staff may process the application.

Nelson questioned if the fines paid by Mr. Engler were reimbursable.

LeFevere stated that the court fines for the finding of guilt in a criminal offense were not refundable.

**C. Additional Business**

There was no additional business.

**2. ADMINISTRATION**

**A. Appointments for 2007**

- Auditor Selection
- Legal Counsel
- Prosecuting Attorney
- Bookkeeper
- Official Newspaper
- Bank Depository for fiscal year 2006

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that quotes have been received for 2007 to conduct the 2006 LMCD audit, legal counsel, a prosecuting attorney, and a bookkeeper. Additionally, there was a need to appoint an official newspaper and bank depository for 2007. A summary of these quotes received, with recommendations, was outlined in the staff memo, dated 11/2/06. Current LMCD prosecuting attorney was invited to attend this meeting to address questions raised by Berns relating to the Vikings case this past year. Tallen was unable to attend this meeting; however, he will attend the December 13<sup>th</sup> meeting to address the Board. He believed that the Board could consider approving appointments as outlined in the staff memo or possible holding off on the appointment for 2007 prosecuting attorney to the December 13<sup>th</sup> Board meeting.

The consensus of the Board was to hold off on the 2007 prosecuting attorney appointment until the December 13<sup>th</sup> Board meeting.

**MOTION:** Nelson moved, Knudsen seconded to approve the following 2007 appointments: 2006 Auditor Selection – Abdo, Eick, and Meyers; Legal Counsel – Kennedy and Graven; Bookkeeper – SB Management, Inc.; Official Newspaper – Lakeshore Weekly News; and Bank Depository Resolution – U.S. Bank.

**VOTE:** Motion carried unanimously.

**B. Review of 2006 LMCD special and on-going projects list (initiate planning process for 2007).**

Skramstad asked Nybeck for background on this agenda item.

Nybeck reviewed the list of special projects conducted in 2006 by the LMCD. This list included: 1) the 2006 Milfoil Demonstration Project, 2) the 2006 Shoreline Inventory Project, 3) the 2006 "Future of the Lake" Day Event, 4) the creation of the LMCD Newsletter, 5) the 2006 Public Access Inspection Program, 6) the 2006 I-LIDS Project Grant, and 7) implementation of some tasks outlined on the Boat Density Committee Action Plan.

Skramstad acknowledged that the special projects have increased and staff size has decreased; recognizing the efficiency in current LMCD staff. As the need arises, he supported staff placing the 2007 special projects list on the agenda for Board discussion.

**C. Additional Business**

There was no additional business.

**3. FINANCIAL**

**B. Additional Business**

There was no additional business.

**4. EWM/EXOTICS TASK FORCE**

**B. Chair update of the 11/3/06 EWM/Exotics Task Force Meeting.**

Skramstad asked for background on this agenda item from Suerth.

Suerth encouraged the Board to review the minutes from the October 13<sup>th</sup> and November 3<sup>rd</sup> Exotics Task Force meetings. Some of the information he highlighted included:

A presentation from Eric Lindberg, CEO of Environmental Sentry Protection, LLC, (ESP) regarding the 2006 I-LIDS Project with a suggestion to request Lindberg provide the Board a 2007 proposal for discussion at the 12/13/06 Regular Board meeting. Suerth suggested multiple units being used in 2007.

The interest to work with the MN DNR to: 1) rotate inspection times at various accesses on Lake Minnetonka for the 2007 boating season, and 2) balancing the inspection of boats that are entering and exiting Lake Minnetonka.

The concept of conducting a Lake Vegetation Management Plan on Lake Minnetonka, including pursuing possible grants for funding purposes.

A review of the 2006 Milfoil Demonstration Project. He cautioned the Board that the apparent reduction in milfoil in 2006, based on harvesting statistics, could provide a false interpretation of this project. He asked Board members to reserve their observations until the final report was received from the MN DNR and the Army Corps of Engineers.

Skramstad asked what the time line was in receiving a 2007 I-LIDS Project proposal.

Nybeck stated he intended to schedule a meeting in November to discuss an overall aquatic invasive species program for 2007. Most likely, this program would include continuation of the MN DNR inspection program, the use of volunteers for inspections, and the possibility of expanding

the use of I-LIDS. He believed that discussion of this comprehensive program for 2007 would take place at the December 13<sup>th</sup> Board meeting.

Suerth expressed an interest in addressing potential enforcement issues with the Sheriff's Water Patrol.

Skramstad stated he supported the concept of pursuing grant funds. However, he reminded the Board that an individual experienced in grant writing needs to be designated to follow through on the project.

Nybeck stated that if the Board could provide a well-designed program, which would include goals and objectives, components, and desired outcomes, the preparation of an application for grant funding was not problematic as long as adequate time is allowed.

Nelson stated that Lindberg had brought to his attention that Legislative-Citizen Commission on Minnesota Resources (LCCMR) grant funds were available for 2007. Lindberg has expressed an interest in pursuing these funds for the 2007 season for I-LIDS and he has requested support from the LMCD. Nelson requested that the Board approve a resolution supporting the efforts of he and Lindberg submitting a LCCMR grant application, with the LMCD being a supporting organization. The deadline for the LCCMR grant submittal was November 17<sup>th</sup>.

**MOTION:** Suerth moved, McDermott seconded to support the idea of LMCD Board members assisting ESP in the submittal of a 2007 LCCMR grant application.

**VOTE:** Motion carried unanimously.

**C. Additional Business.**

Nelson stated that he had recently met with the MCWD staff regarding the Draft 509 Plan. The MCWD communicated to him that space would be made available for the LMCD to prepare language regarding invasive species. Specifically, the language pertaining to the prevention of invasive species and the use of the I-LIDS Program on Lake Minnetonka. He stated that MCWD staff had agreed in principle with a quarantined program on Lake Minnetonka and has offered lobbying support in that area. He would keep the Board apprised of developments.

**5. LAKE USE & RECREATION**

There was no additional business.

**6. SAVE THE LAKE**

Nelson informed the Board that it was time to prepare a "Save the Lake" solicitation letter and he will be working with Nybeck on sending a more traditional letter this time. Once the letter was complete, he asked Board members to make a personal commitment to solicit a handful of businesses and citizens in their respective city that they represent.

Knudsen questioned if the solicitation of funds could be advertised before or after the airing of LMCD meetings on Lake Minnetonka Communications Commission (LMCC).

LeFevere stated unless the LMCC had concerns, he believed that the LMCD could advertise for "Save the Lake" funds.

Scanlon stated that he would check with the LMCC on this and the following two suggested fundraising efforts: 1) public service announcements, and 2) the playing of the zebra mussel tape coordinated with the Freshwater Society and Twin Cities Public Television, with a brief message before and/or after the playing of the video.

Suerth recommended that the LMCD should consider the use of Pay Pal in conjunction with "Save the Lake".

Nelson agreed and stated that he would look further into this.

## 7. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First, the LMCD office would be closed on November 10<sup>th</sup> in observance of Veterans Day. Second, he reminded the Board that there was a need to go into executive session to discuss pending litigation with the Cannings.

## 8. OLD BUSINESS

### Beddor Property Update

Knudsen stated the City of Minnetrista currently has a moratorium in place on new developments because of housing density issues that they needed to resolve with the Met Council. He indicated that he would keep the Board up to date on this.

### Tom Kurak New MDL Application Update

Nybeck stated the LMCD continues to wait for updated survey work from the applicant.

### City of Deephaven Docking Update

Nybeck stated that in Board member Gross' absence, he attended the November 6<sup>th</sup> city council meeting to discuss rules pertaining to tenure leases for the purpose of establishing some turnover with their docking list. A town meeting is anticipated after the first of the year.

## 9. NEW BUSINESS

Nelson stated that there was a position statement from the LMA, 11/8/06, included in the handout folders. He encouraged the Board to discuss this at the December 13<sup>th</sup> meeting.

Berns announced that he was recently elected to the Minnesota House of Representative and would be resigning from the LMCD Board after the first of the year due to a conflict of interest. He stated that serving on the Board had been extremely informative and requested that the LMCD keep him informed

as the LMCD and Lake Minnetonka would remain a priority to his agenda. He thanked all involved and for those that supported him.

On behalf of the Board, Skramstad stated he looked forward to having Bern's skills represent the LMCD and the Lake Minnetonka community.

**10. PERFORMANCE EVALUATION**-Performance evaluation of the Executive Director (Note-the Board may vote to conduct the evaluation in closed session).

**11. ADJOURNMENT**

**MOTION:** Nelson moved, Scanlon seconded to go into executive session at 8:25 p.m. to: 1) conduct LMCD vs Canning litigation strategies, as allowed by the Open Meeting Law, 2) to discuss the annual performance evaluation of the Executive Director, and 3) to adjourn the meeting following completion of the executive session.

LeFevere stated that the purposes for closing the meeting, as an exception to the Open Meeting Law, was: 1) attorney/client privilege discussion for pending Canning litigation strategies, and 2) to discuss the annual performance evaluation of Executive Director Greg Nybeck.

**VOTE:** Motion carried unanimously.

Tom Skramstad, Chair

Paul Knudsen, Secretary