

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, January 24, 2007  
Wayzata City Hall

**CALL TO ORDER**

Van Hercke called the meeting to order at 7:02 p.m.

**ROLL CALL**

**Members present:** Katy Van Hercke, Minnetonka; Paul Knudsen, Minnetrista; Gene Altstatt, Greenwood; Doug Babcock, Tonka Bay; Mary Bader, 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:** David Gross, Deephaven; Leigh Harrod, Excelsior; Tom Skramstad, Shorewood; Tom Seuntjens, Minnetonka Beach.

**CHAIR ANNOUNCEMENTS**, Vice Chair Van Hercke

Van Hercke reminded the Board of the 40th Annual "Save the Lake" Recognition Banquet on 2/8/07 at the Bayview Event Center. She stated the invitations were sent out and she welcomed both the Board and the public to attend this event.

**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.

Nybeck requested that agenda item 1C, January 12<sup>th</sup> EWM/Exotics Task Force Minutes, be removed from the consent agenda because changes have been proposed by Chip Welling from the MN DNR that should be included.

McDermott moved, Knudsen seconded to approve the consent agenda as amended, removing agenda item 1C. Motion carried unanimously. Item so approved included: **2A, 2007 Multiple Dock Licenses**, staff recommends Board approval of 2007 renewal, without change, multiple dock license applications as outlined in 1/18/07 staff memo; **3A**, Audit of vouchers (1/16/07 - 1/31/07); **3B**, December financial summary and balance sheet, and **5A**, Hennepin County Sheriff's Water Patrol Significant Activity Report.

**1. EWM/EXOTICS TASK FORCE**

- A.** Review of 2006 Milfoil Demonstration Project Report by Chip Welling, MN DNR.

Van Hercke asked Welling to provide an overview and she welcomed him on behalf of the Board.

Welling stated that he was the Coordinator of the Eurasian Watermilfoil (milfoil) Program with the MN DNR. He was a member of the LMCD's EWM/Exotics Task Force and he thanked the Board for the opportunity to provide an overview of this Report. The Report was a collaborative effort with John Skogerboe from the U.S. Army Corps of Engineers, with Skogerboe conducting the majority of the work. In August of 2005, concern was expressed about the amount of milfoil present in Lake Minnetonka. In response to this, a meeting was scheduled that included state and local representatives. The meeting resulted in: 1) the MN DNR expressing an interest in becoming more aggressive in the control of milfoil, 2) caution being expressed that actions could worsen the problem, and 3) a request to assess risk and reward utilizing the stakeholders and partners of the industry. All of which resulted in the 2006 Milfoil Demonstration Project. The herbicides chosen for this project were well known to the MN DNR and the Demonstration project was viewed as such, not a scientific research project. The assessment of the project included: 1) assessing what demonstrates the control that could be produced by the herbicide's use, 2) potential impact on non-target plants, and 3) water quality. Potential impact included: 1) the possibility of not needing re-treatment in the following year resulting in a savings, and 2) the increase of undesirable species, such as curlyleaf pondweed. He reviewed the three test sites, the chemicals used, and results of species found. Significant information that warranted being pointed out included: 1) in 2005, the LMCD reported 395 acres of milfoil harvested compared to 267 in 2006, 2) the numbers of harvester loads went from 321 in 2005 compared to 195 in 2006, 3) mechanical problems in the harvesters themselves existed, resulting in downtime, and 4) 2006 provided for three times more precipitation than other years. He thanked the Board and entertained questions or comments.

Nelson stated that the 50' rule was relaxed for those residents that participated in the LMA's "private treatment areas" of the 2006 Milfoil Demonstration Project. He asked Welling if the MN DNR would continue to relax this rule for private residents.

Welling stated the MN DNR was looking at allowing more aggressive control of milfoil, especially with selective products that the MN DNR was familiar with.

Nelson believed that some of the data could be utilized as scientific data. He suggested that the MN DNR could utilize the data as a basis for treatment in other lakes.

Welling stated that the data does supplement other experimental data on prior projects and could potentially be helpful in other treatment projects.

Van Hercke commented on the positive collaboration of agencies and residences that opted in on this project. She questioned how the MN DNR was going to apply the information and how would it affect lake users.

Welling stated that the MN DNR facilitates projects that local stakeholders initiate.

Nybeck asked Welling to review the fieldwork that was planned for 2007.

Welling stated the goal of this project was to receive long term control at the three test sites. He added that Skogerboe would be collecting another round of sampling in this upcoming June and this would be added to the Report.

Discussion was held amongst the Board as to: 1) the re-treatment at the subject sites and the conclusion that re-treatment cannot be done in 2007 until data collection is finalized, 2) confirmation that the final Report would be available to the public, pending the approval of the Army Corp of Engineers, 3) the need to establish a funding source for the continuation of other projects; specifically future treatments of entire bays, 4) the interest that was present amongst various entities to establish a lake-wide vegetative management plan, and 5) the interest in soliciting the MN DNR's input in what efforts are considered viable in taking the time to discuss various plans of action vs. starting from scratch and finding a plan that was not viable.

Nybeck publicly recognized the MN DNR as an active partner in the LMCD's harvesting program by providing an annual grant of approximately \$40,000.

Van Hercke thanked Welling for his time and efforts on this project.

**B. Environmental Sentry Protection (ESP), review of draft Agreement for 2007 I-LIDS Project.**

Van Hercke asked Nybeck for background on this agenda item.

Nybeck stated that he and LeFevere had prepared a draft Agreement as directed by the Board at the January 10<sup>th</sup> meeting. He reviewed the following information:

- Areas of the draft Agreement contract included: 1) Contractor Services, 2) Agreement Specifications, 3) Indemnification, 4) Insurance Requirements, 5) Payment for Services, 6) Termination of Agreement, 7) Other Terms of Agreement, and 8) Execution of Agreement.
- Highlights of the project included: 1) the installation of one I-LIDS unit at four public accesses in 2007 (Grays Bay (2 footings), Maxwell Bay, North Arm, and Spring Park), 2) the Agreement would run from May 12<sup>th</sup> through October 11<sup>th</sup> in the amount of \$35,376, 3) 100% of car/trailer video sequences to be reviewed prior to entering Lake Minnetonka (excluding time when the MN DNR inspectors are present). 4) 50% goal of MN DNR watercraft and/or license plate number being visible when the car/trailer is within the field of view of the I-LIDS unit, and 5) weekly written and website updates of the prior week on a variety of statistical information. The receipt of a verbal, mid-season report and a written summary report within 30 days after completion of the project.
- Potential funding sources for this project included: 1) 2007 LMCD "Save the Lake" Funds, 2) successful grant application (NRICH to be reviewed at the February 14<sup>th</sup> Board meeting, and 3) the suggestion to reduce the scope of work by eliminating the second footing at Grays Bay (\$2,300).
- He entertained questions and comments from the Board.

Nelson thanked Nybeck and LeFevere for the preparation of the draft Agreement and he believed that there were four points that needed to be made. First, it was important for viewers to understand why vegetation entering Lake Minnetonka was being monitored because there is a high correlation to zebra mussels attaching themselves to vegetation. Second, funding would not be needed in 2007 for the Milfoil Demonstration Project; therefore, the Board would be voting on funding for this one project alone. Third, he expressed concern about the word "probable" in specification number 5 on page 2. Fourth, he requested confirmation on ESP's reporting being received every week rather than every other week.

Nybeck stated that the word "probable" was utilized to establish a performance standard level that ESP would have to maintain. With regards to weekly reporting rather than every other week reporting, this was included in the draft Agreement to ensure that weekly review of the video sequences was being done to identify problems quicker with the I-LIDS unit that occurred in 2006.

The Board discussed a number of details relating to the draft Agreement. Some of these included:

- Nybeck's clarification of why video sequences of "boats/trailers" were being required rather than "trailer" only.
- The confirmation that the LMCD was not legally responsible for the I-LIDS equipment and footings, and that language had been included to clarify that.
- The dollar amount of the Agreement does not include for change orders.
- Babcock recommended three wording changes to the draft Agreement. First, the last sentence in specification 2 on page 1 should be clarified that the I-LIDS should be designed to meet that specification. Second, the words "in writing" should be added to the third condition under "Payment For Services" on page 4. Third, in the second bullet point under "Other Terms of Agreement" on page 4, it should be clarified that the LMCD had no ownership or responsibility for I-LIDS or any related equipment, including wiring and footings.
- The recommendation to change the wording to specify goals and rewards.
- The importance of inspecting watercraft both coming and going from the lake.
- Funding options and ways to lesson the contractual amount.
- Discussion of the NRICH grant option with Hennepin County.
- What the LMCD was going to do with the data and how the legislature and MN DNR may utilize the data.
- How the I-LIDS program meets the Board's set objectives.

**MOTION:** Nelson moved, Suerth seconded to approved the draft 2007 I-LIDS Agreement with Environmental Sentry Protection, LLC in the amount of \$35,376, subject to amending the Agreement to include language changes to address the three areas recommended by Babcock.

Scanlon asked for an estimate of the "Save the Lake" fund balance, if there were other project in 2007 planned for "Save the Lake" funding, and if there was a reserve policy relating to a minimum reserve level.

Nybeck stated "Save the Lake" had a fund balance of approximately \$250,000, with annual solicitations of \$25,000 to \$30,000. Currently, \$15,000 to \$20,000 of "Save the Lake" funds were planned for the MN DNR inspection program, although this could be reduced by approximately \$8,000 by reducing the public accesses covered from five to four. Another potential project in 2007 was "Future of the Lake Day" event.

Altstatt stated that if the Board had budget concerns, one option to reduce costs would be to reduce the number of public accesses with an I-LIDS unit from four to two.

Lindberg stated that the Board could decide that, although it would increase the risk of introducing a new aquatic invasive specie into Lake Minnetonka.

Scanlon recommended a friendly amendment to eliminate the second I-LIDS footing at the Grays Bay public access. Nelson did not accept the friendly amendment.

**VOTE:** Ayes (7), Nays (3; Altstatt, Babcock, and Scanlon); motion carried.

C. Minutes from the 1/12/07 EWM/Exotics Task Force Meeting.

Van Hercke asked Nybeck for an update as to why he requested that this agenda item be removed from the consent agenda.

Nybeck stated that changes were recommended by Chip Welling that he believed should be incorporated in the draft minutes. There were two approaches for the Board to consider this recommendation. First, the Board could take no action on the draft minutes at this meeting and have the corrected minutes brought back for Board consideration at the February 24<sup>th</sup> meeting. Second, the Board could approve the draft minutes as amended, which would include the changes recommended by Welling.

**MOTION:** Suerth moved, Scanlon seconded to approve the 1/12/07 EWM/Exotics Task Force meeting minutes as amended, making the changes recommended in an e-mail from Welling, dated 1/12/07.

**VOTE:** Motion carried unanimously.

D. Chair update of the 1/12/07 EWM/Exotics Task Force Meeting.

Van Hercke asked Suerth for an update on this agenda item.

Suerth stated that the LMCD received a setback in the Volunteer Inspection Program because a commitment had not been made relating to a volunteer supervisor from the LMA. He reported that Three Rivers Park District had up to 800 volunteers that put in an estimated 1,000 hours a year. The MN DNR has offered to train the volunteer inspectors and he recommended that the Board members consider volunteering a couple hours a week or month during the 2007 boating season. He and Nelson recently completed airing a program entitled, "LMCD Presents Lake Minnetonka's Future: Zebra Mussels" with the LMCC on Channel 12. Within that airing, Suerth provided an option to the viewing audience to volunteer their time for inspection hours. He stated that he would solicit further information from the MN DNR on what was involved in the training and performance of volunteer inspectors and report back to the Board. He updated the Board on discussions with the MCWD, the MN DNR, the Freshwater Society, and a number of other governmental agencies and organizations, regarding the Lake Vegetation Management Plan. He asked for Board support to proceed with this project.

**MOTION:** McDermott moved, Altstatt seconded to grant Suerth concept approval to proceed with communications relating to a Lake Vegetation Management Plan on Lake Minnetonka.

**VOTE:** Motion carried unanimously.

Van Hercke invited LMA Executive Director Dick Osgood to speak at his request.

Mr. Dick Osgood, Executive Director of the Lake Minnetonka Association (LMA), requested procedural clarification on the approval of the January 12<sup>th</sup> EWM/Exotics Task Force minutes because changes were made to them and they had not been approved by the Task Force. He clarified that the primary purpose why the LMA had not committed to the Volunteer Inspector Program was that they were not prepared to fund this, which he estimated at \$40,000. For some years, the LMCD has required special event participants to sign off on an affidavit form relating to invasive species. He did not believe that this procedure was effective and it should be re-evaluated.

Babcock suggested that the Board address the questions raised by Osgood at a future LMCD Board meeting.

**E. Additional Business**

There was no additional business.

**2. WATER STRUCTURES**

**B. City of Mound (Lost Lake Channel-Overnight Storage), consideration of 2007 renewal, without change, multiple dock license application.**

Van Hercke asked Nybeck for background on this agenda item.

Nybeck reviewed the staff memo, dated 1/18/07, which summarized the City of Mound renewal, without change, multiple dock license application. Typically, LMCD staff recommends Board approval of these applications through consent agenda; however, there was non-compliance of the approved site with a 2005 Order for a dock length variance. He reviewed the two options for the Board to consider addressing this situation. He made no recommendation on the 2007 renewal, without change, multiple dock license application because of the non-compliance with the 2005 Variance Order. He believed that the Board should decide what was the best means for the City of Mound to clean this up prior to the 2007 season. He entertained questions and comments from the Board.

Van Hercke asked the applicant to address the Board.

Ms. Sara Smith, Mound Community Development Director, spoke on behalf of the applicant. She stated that Mounds Parks and Dock Superintendent Jim Fackler and representatives from the development company were also in attendance. One of the options provided by LMCD staff was to reduce some of the fingers in length to comply with the Variance Order. This was problematic because the docks were being manufactured at the time of that discussion. She stated that the City of Mound was a statutory city that manages a 500 plus dock program. This docking program exists with an established employee base of a community service officer, dock inspector, and administrative staff. There was no intent by the City of Mound to construct docks that do not comply with the 2005 Variance Order. She expressed her appreciation to the LMCD for the cooperation that the City of Mound had received from LMCD staff. She asked Fackler to address the Board to provide further background.

Fackler stated that the application process had been approached with a great deal of thought. The Mound docking program for the 2007 season has been initiated to include an application process, check verification via the internet and Hennepin County, and winds down to enforcement and compliance starting in the month of June. Fackler stated that non-compliance of a dock permit results

in loss of permit. With regards to the subject application, the City of Mound not only has to communicate with the individuals but also the homeowners association. He entertained questions and comments from the Board.

Scanlon asked how the City Mound planned on delineated the 26' and 30' slips for the owners of the townhome development.

Fackler stated that each unit gets either a 26' or 30' slips, and would be issued on a first come, first served basis. If a townhome sells, the new owner maintains the slip ownership.

Babcock stated that he was supportive of the Mound docking program overall because it reduce workload of LMCD staff. He was comfortable with the commitment of Mound to ensure that three 30' long slips had 26' long boats stored in them. However, he was supportive of a reminder, similar to a "No Parking Zone", where the last four feet of these three slips would be painted. He believed that this was an appropriate compromise from a rope barrier.

**MOTION:** Nelson moved, Babcock seconded to approve the City of Mound (Lost Lake Channel-Overnight Storage) 2007 renewal, without change, multiple dock license application, subject to delineating the last four feet of three 30' long slips as "No Parking" with paint.

**VOTE:** Motion carried unanimously.

**C. Pheasant Lawn HOA**, consideration of 2007 new multiple dock, with minor change, application.

Van Hercke asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 1/18/07, which summarized the Pheasant Lawn HOA new multiple dock license, with minor change, application. The applicant proposed to slightly reconfigure the dock because the actual dock installed in 2006 did not fit within the cove as depicted on the approved site plan. He believed that the Board must decide whether the proposed change was substantial enough to require a new multiple dock license application, with public hearing. If the Board believed that the change was minor, he recommended approval of the application for the 2007 season carrying over the four license conditions outlined in the memo. He entertained questions and comments from the Board.

**MOTION:** McDermott moved, Babcock seconded to approve the 2007 Pheasant Lawn HOA's new multiple dock, with minor change, application, subject to 1) maintaining the boat storage density for the 930' of shoreline associated with Lot 14 on the island that has been transferred to 276' of shoreline on the mainland, 2) no docks or boat storage is permitted on the island shoreline, 3) the island be maintained in essentially a natural state and may not be used for residential dwelling units or commercial uses and 4) a screen barrier must be maintained on the last 8' dock section of the north side of BSU #1.

**VOTE:** Motion carried unanimously.

**D. Lake Minnetonka Association**, discussion of request to establish a moratorium on new multiple dock license applications.

Van Hercke asked Osgood to address the Board on the LMA's request.

Osgood directed the Board to the LMA's memorandum, 1/10/07, which highlighted concerns for multiple dock applications with respect to meandering shores vs. straight line assessment and environmental impacts, undeveloped shoreline protection, and the nature of boating and its impacts. The LMA believed the moratorium would address those concerns by providing time for impact research.

Van Hercke asked LeFevere to provide input on this matter prior to Board discussion.

LeFevere stated a moratorium typically was used in a land-use context to prevent development from occurring while providing time for studies on issues such as zoning. Establishing a moratorium on Lake Minnetonka was different as legally one does not get a grandfathered right on public water. Therefore, a moratorium ordinance was not needed to protect one's right to plan something. However, as a practical matter, it is difficult to take away something that has been given, but does not preclude the Board from doing so. He cautioned the Board about imposing such an ordinance as a result of not knowing what to do as it imposes a hardship and legally can be challenged. He anticipated a concern with the moratorium proposed by the LMA as it creates long delays for development without practical effect. If the Board proceeded with the drafting of an ordinance, the Board needs to stipulate when the ordinance would expire, what is going to be prohibited during the interim ordinance, and have an active, concrete research program in place. He advised the Board to consider ordinance changes rather than an establishing a moratorium to address topics such as the straight line measurement.

Babcock questioned whether the LMCD could establish a partial moratorium.

LeFevere stated it was important to make the moratorium as narrow as possible.

Nelson stated the MCWD would like their Lake Management Plan to outline rules and regulations for environmentally sensitive areas. However, they would prefer to utilize the LMCD's ordinances as a mechanism by which they implement their objectives. He questioned whether it would be advisable to specifically allow the MCWD a couple months during a moratorium period to review those areas.

Van Hercke asked how those environmentally sensitive areas would be determined.

Nelson suggested starting with areas that have previously had an Environmental Impact Statement done.

Nybeck stated that if the Board believed that there was a need to establish a moratorium, the Board may want to consider excluding pending new multiple dock license applications from this moratorium that were not for an increase in Boat Storage Units. He used the pending Trillium Bay HOA new multiple dock license application as an example.

LeFevere stated that although the LMCD was not operating under the Municipal Land Planning Act, it was advisable to have a plan of action tied to the moratorium, such as establishing a committee or work session.

**MOTION:** Babcock moved, Nelson seconded to direct LeFevere to prepare a draft ordinance amendment to establish a moratorium on new multiple dock applications that would be triggered when: 1) the meandering measurement of the shoreline exceeds the straight-line measurement by 125 percent, 2) any part of a slip within a multiple dock facility that had less than three feet of water depth from the 929.4' lake elevation, or 3) if the application required the relocation of slips rather than dredging.

**VOTE:** Ayes (8), Nays (2; Knudsen and Scanlon); motion carried.

**E.** Staff update on 2006-2007 LMCD De-icing License Inspections.

Van Hercke asked Harper for background on this agenda item.

Harper stated that 33 licenses have been issued, with 26 inspections completed and correspondence submitted to date. Of the 26 inspections, four sites were not deicing at that time, 12 passed on first inspection, three had minor violations (lack of sufficient signage, etc), and seven had major violations and were not in compliance with Code Section 2.09. He entertained questions and comments from the Board.

**F.** Preliminary update on 2006 LMCD Code Enforcement Efforts.

Harper stated LMCD staff continued to refine a database of information collected during the 2006 Shoreline Boat Storage Count, in which 287 registration numbers have been processed through the MN DNR. A more in-depth Report would be available for the February 28<sup>th</sup> Board meeting.

**G.** Additional Business

There was no additional business.

**3. FINANCIAL**

**C.** Additional Business

There was no additional business.

**4. ADMINISTRATION**

**A.** 2007 LMCD Board Members, staff update on terms that expire in January 2007.

Van Hercke asked Nybeck for background on this agenda item.

Nybeck stated that a letter was sent out in October to eight member cities informing them that the term for their appointed Board member would expire on 1/31/07. Confirmation had been received from all eight-member cities, with seven of them all re-appointing their Board member. He reported that Wayzata had recently appointed Mary Bader to replace John Berns and to continue serving for another three years.

**B.** Staff update on 2007 "Future of the Lake Day" Event.

Nybeck stated that in follow-up to a request by the Board at the January 10<sup>th</sup> meeting, he met with

Michael Deering with Crystal-Pierz Marina. He reported that it was the consensus to schedule a second meeting with Chair Skramstad and another representative from Crystal-Pierz Marine prior to making a decision for 2007. A further update would be provided at the February 14<sup>th</sup> Board meeting.

**C. Additional Business.**

There was no additional business.

**5. LAKE USE AND RECREATION**

**B. Additional Business**

Scanlon asked for an update on the status of the two additional deputies for the 2007 boating season.

Nybeck stated he would check with Hennepin County Sheriff's Department Inspector Storms and report back to the Board.

**6. SAVE THE LAKE**

There was no discussion.

**7. EXECUTIVE DIRECTOR REPORT**

There was no Executive Director Report.

**8. OLD BUSINESS**

There was no old business.

**9. NEW BUSINESS**

There was no new business.

**10. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:58 p.m.

Katy Van Hercke, Vice Chair

Paul Knudsen, Treasurer