

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, April 11, 2007  
Wayzata City Hall

**CALL TO ORDER**

Skramstad called the meeting to order at 7:03 p.m.

**ROLL CALL**

**Members present:** Tom Skramstad; Shorewood; Katy Van Hercke; Minnetonka; Tom Seuntjens, Minnetonka Beach; Gene Altstatt, Greenwood; David Gross; Deephaven; Steve Johnson, Mound; Andrew McDermott, Orono; Pete Nelson, Victoria; Tom Scanlon, Spring Park; Herb Suerth, Woodland; Lisa Whalen, Minnetrista. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

**Members absent:** Doug Babcock, Tonka Bay; Mary Bader, Wayzata; Leigh Harrod, Excelsior.

**CHAIR ANNOUNCEMENTS**, Chair Skramstad

Skramstad stated that the City of Minnetrista had recently appointed a new Board member to the LMCD. He welcomed Lisa Whalen on behalf of the Board and asked LeFevere to administer the oath of office.

LeFevere administered the oath of office to Lisa Whalen. She was seated as representative for the City of Minnetrista.

**READING OF MINUTES-** 03/28/07 LMCD Regular Board Meeting

**MOTION:** Seuntjens moved, Johnson seconded to approve the minutes from the 3/28/07 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (7); Abstained (3; Altstatt, Gross, and Whalen); motion carried.

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

**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.

Seuntjens moved, Johnson seconded to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **2A, 2007 Multiple Dock Licenses**, staff recommends Board approval of 2007 renewal, without change, applications for Foxhill HOA, Jennings Cove DOA, North Shore Marina East (Sites 1 & 2), and North Shore Marina, and **3A, Audit of vouchers (4/1/07 - 4/15/07)**.

**1. LAKE USE & RECREATION**

- A. **Dr. Michael Flannery**, discussion of proposed Quiet Water Area request on the north end of North Arm Bay.

Skramstad asked Nybeck for an update on this agenda item.

Nybeck made the following comments:

- The request from Dr. Flannery had preliminary discussion by the Board at its March 28<sup>th</sup> Meeting, at which time, staff was directed to provide additional information for discussion by the Board at this meeting. This included: 1) the submittal of a Quiet Water Area map for all of Lake Minnetonka, 2) the solicitation of comments from the Hennepin County Sheriff's Water Patrol, 3) the solicitation of comments from Hennepin County Environmental Services (HCES), and 4) the analysis of the proposed request based on need criteria within the existing Quiet Water Area policy.
- For the submittal of the Lake Minnetonka Quiet Water Area map, he provided a map produced by HCES and a copy of LMCD Code Section 3.02, Subdivisions 4 through 16, which highlight existing Quiet Water Areas.
- Comments were received from the Sheriff's Water Patrol in an email, dated 4/3/07, from Capt. Ken Schilling. From a public safety standpoint, Schilling stated that he believed the area was large enough to sustain recreational use and did not justify for a Quiet Water Area status based on 2006 statistical data.
- Comments were received from HCES in an email, dated 4/4/07, from Tony Brough. In this e-mail, Brough acknowledged the lack of support from the Sheriff's Water Patrol and stated that the installation of buoys through their program was not an option.
- In 1986, the LMCD adopted a policy to consider Quiet Water Area requests. There are 10 need criteria outlined in this policy, which he used to evaluate Dr. Flannery's request. These criteria included: 1) determination of the need as expressed by the applicant, 2) determination of the boating safety record for the area, 3) determination of the boating safety index for the area, 4) observation of the proposed Quiet Water Area during at least three normal high-use periods during one boating season by the LMCD, 5) determination of any natural or special geographic features of this area which need to be considered, 6) determination of any special boating or use characteristics affecting the area, 7) conduct a public hearing to develop further information on the application, 8) determination of effects of the establishment of a Quiet Water on nearby areas, or the Lake as a whole, 9) determination of whether or not the establishment of a Quiet Water Area would be essentially private or of general benefit, and 10) determination of any effects on the public health, welfare, safety, and the general public use of the Lake. He reviewed each criteria in detail, which were outlined in a staff memo, dated 4/5/07.
- If the Board concluded that it wanted to keep Dr. Flannery's request active, Nybeck made two recommendations. First he believed that it would be premature to schedule a public hearing at this time because it appears that fieldwork needed to be conducted by LMCD staff as outlined in the need criteria. Perhaps staff could conduct this fieldwork sometime during the 2007 boating season and report back to the Board later this summer. Second, he believed that a request could be made to the Sheriff's Water Patrol to possibly increase deputy presence on a periodic basis in this area during the 2007 boating season.

McDermott asked if Dr. Flannery was aware that the agenda item was being discussed this

evening.

Nybeck confirmed Dr. Flannery was copied the agenda and supporting documentation.

The Board discussed Nybeck's two recommendations and agreed with them. The Board directed Nybeck to communicate this to Dr. Flannery and to follow-up with the Board in late summer or early fall.

Van Hercke arrived at 7:19 p.m.

**B. Additional Business**

There was no additional business

**2. WATER STRUCTURES**

**B. Cedarhurst Association**, consideration of 2007 new multiple dock license, with minor change, application.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 4/4/07, which summarized the Cedarhurst Association's 2007 new multiple dock license, with minor change, application. The proposed minor changes included: 1) to increase the width of Boat Storage Unit (BSU) 18 from 12' to 14' and 2) to decrease the width of BSU 19 from 10' to eight feet. He recommended approval of the application for the 2007 boating season and entertained questions and comments from the Board.

**MOTION:** Seuntjens moved, Van Hercke seconded to approve Cedarhurst Association new multiple dock license, with minor change, application for the 2007 season.

**VOTE:** Motion carried unanimously.

**C. Additional Business**

There was no additional business.

**3. FINANCIAL**

**B. Additional Business**

There was no additional business.

**4. ADMINISTRATION**

**A. 2007 LMCD Board Officers**, discussion of vacant Secretary position.

Skramstad stated that McDermott and Scanlon had expressed an interest in the Secretary position that former Board member Paul Knudsen filled. He circulated a ballot for voting purposes, and asked McDermott and Scanlon to clarify why they were interested in serving as the Secretary.

Whalen asked Skramstad to clarify the duties of the Secretary.

Skramstad stated that there was a written summary of the duties of all four LMCD Board Officer positions and that he would forward this to her.

McDermott stated he had resided in Orono for 20 years. He was dedicated to public service and has proven so by: 1) serving on the Orono Park Commission between 1995 and 2002 (including Chair in 1998 and working closely on the Highway 12 (394) extension project), and 2) he was on his third year as the LMCD Board representative for Orono. His work activities include reviewing and certifying governmental contract payments in the millions. Through his work, he has taken many hours of ethics training. He stated that he believed he would do a good job as Secretary to the LMCD Board.

Scanlon stated that he was on his fourth year with the LMCD Board. One of his goals was to help the citizens of the Lake Minnetonka community understand the issues and challenges facing Lake Minnetonka that the LMCD was dealing with. This was being done through: 1) educating and updating the 14 municipalities on issues pertaining to Lake Minnetonka (including Spring Park), 2) by assisting in the implementation of the zebra mussel documentary aired on TPT statewide and locally, and 3) by leading the effort for the LMCD meetings to be viewed publicly on the local cable channels.

Skramstad circulated a ballot to each Board member and stated that the results would be announced later in the meeting.

**B. Additional Business**

There was no discussion.

**5. EWM/EXOTICS TASK FORCE**

**A. 2007 EWM Harvesting Program, staff overview of project.**

Skramstad asked Nybeck for background on this agenda item.

Nybeck provided an overview of the 2007 EWM Harvesting Season. This overview included: 1) an update on 2007 EWM seasonal staff and independent contractors, 2) an update on the draft 2007 EWM Harvesting Program/Invasive Species Budget, and 3) proposed harvesting schedule. He recommended that the Board: 1) approve the draft 2007 Budget, and 2) authorize LMCD staff to approve the hiring of the seven seasonal staff positions as outlined in the Report. He entertained questions or comments from the Board.

Skramstad asked Nybeck to clarify the funding sources for the 2007 EWM Harvesting Program/Invasive Species Budget.

Nybeck stated that the overall draft 2007 Budget includes \$176,056 of expenditures, with \$109,000 dedicated to the EWM Harvesting Program and \$67,056 dedicated to the Zebra Mussel Program. The 2007 EWM Harvesting Program/Invasive Species Budget was originally budgeted for \$134,000 of expenditures, with \$20,000 budgeted for the Zebra Mussel Program. Adjustments

have been made to the 2007 EWM Harvesting Program to allow for an additional \$5,000 to be transferred to the 2007 Zebra Mussel Program. The shortfall in funding for the 2007 Zebra Mussel Program (\$42,056), will be funded by "Save the Lake" funds.

Skramstad stated that there were discussions at a previous Board meeting on the need to replace a motor for the EWM/Harvesting Program pontoon. He asked Nybeck to elaborate on this.

Nybeck stated that the last motor purchased for the pontoon was used and he could not speak to its condition when it was purchased. He anticipated the next motor purchased would be a new four-stroke motor because it is environmentally friendly. During the 2007 season, there will be limits to who can drive the pontoon, with these employees being adequately trained by professionals such as Tonka Bay Marina.

Nelson stated that he believed one could perceive that the EWM/Harvesting Program was being partially subsidized by Save the Lake. He questioned if funding of the EWM Harvesting Program for routine navigational aid falls within the funding criteria of Save the Lake. He expressed an interest that the future use of those funds being added to the municipalities' share of the LMCD budget.

Seuntjens stated that the Save the Lake funds included in the draft 2007 overall budget were for the Zebra Mussel Program, not the EWM Harvesting Program.

Suerth stated he had recently met with the Woodland city council and he had communicated that their might be a need to increase municipal funding in future LMCD budgets for aquatic invasive species.

Nelson stated that he believed that Save the Lake solicitation letters need to be very clear as to what donated funds would be used for.

**MOTION:** Van Hercke moved, Nelson seconded to: 1) approve the 2007 EWM Harvesting Program/Invasive Species Budget as proposed, and 2) to authorize Nybeck to hire the seven EWM Harvesting Program seasonal positions as outlined in the Report.

**VOTE:** Motion carried unanimously.

**B. Discussion of 2007 Lake Minnetonka Mayors Forum Meetings.**

Skramstad stated that a Mayors Forum was held on March 7<sup>th</sup> in which the Board received a meeting summary in their packet. He asked Nelson for an update on this agenda item.

Nelson stated that in implementing the 2006 Milfoil Demonstration Project, he believed that the Board moved into an area that was not specifically authorized under the LMCD's enabling legislation. He believed that it was not fair to ask just the 14 member cities to fund a program that benefits more than the residents residing on Lake Minnetonka. As the LMCD has limited charter abilities and does not have the levying authority or sufficient funds to initiate whole-scale programs, the mayors of the Lake Minnetonka community have initiated forum meetings, facilitated by Shorewood Mayor Chris Lizee', in an effort to obtain support and increased funding from the

legislators for the protection of aquatic invasive species (AIS). He stated that one of the first steps in soliciting support was the drafting of a community-wide resolution by the mayors forum that the LMCD will have a chance to comment on. The resolution encourages the designation of an entity, or entities working together, that would be given the authority and funding needed to initiate further AIS programs.

Skramstad stated he hoped that the mayors forum agendas broaden to not only AIS, but to community wide lake issues.

Nybeck stated that some of the facts outlined in the draft resolution were most likely not factual and should possibly be corrected. The one fact that he emphasized was "About 300,000 boats enter Lake Minnetonka each year". He suggested that this number should be reconciled after discussions with Tim Kelly from the MN DNR.

Nelson stated that the mayor forum was to be driven by the mayors and not the LMCD. In fact, he believed that it could be viewed as a conflict of interest if the LMCD were involved.

The Board asked staff to provide them with an email on the logistics of the next meeting, which was scheduled for April 19th.

**C. Additional Business,**

Additional business.

**6. SAVE THE LAKE**

There was no discussion.

**7. EXECUTIVE DIRECTOR REPORT**

Nybeck stated that at the February 28<sup>th</sup> meeting, LeFevere informed the Board of a concern raised by the LMCD's landlord regarding the office lease. He and LeFevere recently met with the landlord and he asked LeFevere to provide an update on that meeting.

LeFevere stated that litigation had been threatened by the landlord on this issue. Therefore, he recommended that this matter be added as a discussion item later in the meeting in closed session.

**8. OLD BUSINESS**

LMCD Newsletter

Nybeck stated that the newsletter was at print stage and was anticipated to be mailed out in the next week.

Lake Levels

Skramstad stated that he had recently sent an email to the MCWD asking for an update on the new measuring equipment for lake levels. To date, he had not received a response.

AIS Volunteer Inspection Program

Suerth stated that he had recently sent a letter out to Lake Minnetonka homeowner associations relating to the possibility of volunteer inspections in 2007. To date, responses to the letter have been disappointing. He stated that he would like each Board member to: 1) contact the homeowner associations in their respective city expressing an interest in soliciting their help, and 2) consider volunteering their own time and go through the MN DNR inspection training.

City of Deephaven (Pending new multiple dock and special density license applications)

Nybeck stated that a public hearing had been scheduled for the April 25<sup>th</sup> Board meeting.

Minnetonka Beach (Dock Site 10)

Seuntjens stated that a public hearing had also been scheduled for the April 25<sup>th</sup> Board meeting.

Legislative Update on HF 1235 and HF 1236

Nelson stated there was not an update since the March 28<sup>th</sup> Board meeting. He reiterated Senator Gen Olson's recommendation to contact State representatives.

## 9. NEW BUSINESS

Skramstad stated that the results of the ballots had been tallied by Harper and Herman. Based on these results, Scanlon had won the election as Secretary of the LMCD Board.

## 10. PENDING LITIGATION- LMCD vs. Canning

LeFevere stated that the purposes for closing this meeting and going into executive session, as an exception to the Open Meeting Law, included: 1) attorney/client privilege discussion for a settlement proposal on a pending litigation matter between the LMCD vs. Canning, and 2) threatened litigation by the LMCD landlord over terms of the lease being disputed. He believed that it was possible that the Board may take action yet this evening on the pending Canning litigation. If this were to occur, that action would be required in an open session. Therefore, he recommended that the Board go into Executive Session to discuss these matters, yet leave the possibility of re-opening the Board meeting to take action as determined by the Board.

**MOTION:** Van Hercke moved, Altstatt seconded to go into executive session at 8:06 p.m., as allowed by the Open Meeting Law, to discuss: 1) LMCD vs. Canning settlement proposal, and 2) threatened litigation by the LMCD landlord over terms of the current lease.

**VOTE:** Motion carried unanimously.

Skramstad announced at 9:14 p.m. that the executive session had been closed and that the Board was reconvened for the public. He expressed an interest in discussing the LMCD's relationship with the Lake Minnetonka Association (LMA). At the March 28<sup>th</sup> Board meeting, it was reported that he and Nybeck had met with the LMA to discuss each organization's newsletters and to maintain communications. He believed that the meeting went well, although he was concerned about a pending article in the upcoming LMA newsletter relating to the recent LMCD Board action on the LMA's request to establish a moratorium on new multiple dock license applications. He read the draft article to the Board and expressed his puzzlement about the negative aspect. He provided the Board with his

response to LMA Executive Director Dick Osgood on this draft and solicited Board input.

Nelson stated that he was aware of that article and had recently met with Osgood. Based on this meeting, he was told that the intent of the LMA was not to hurt the relationship between the organizations and that the article would be re-written.

The Board discussed this and it was the consensus of the Board to support Skramstad on this and they would support his efforts in resolving this matter with the LMA.

## **11. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:25 p.m.

Tom Skramstad, Chair

Tom Scanlon, Secretary