

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, August 8, 2007
Wayzata City Hall

CALL TO ORDER

Skramstad called the meeting to order at 7:05 p.m.

ROLL CALL

Members present: Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Tom Scanlon, Spring Park; Tom Seuntjens, Minnetonka Beach; David Gross, Deephaven; Steve Johnson, Mound; Andrew McDermott, Orono; Jeff Morris, Excelsior; Pete Nelson, Victoria; Kelsey Page, Greenwood; Tom Tanner, Wayzata; Lisa Whalen, Minnetrista. Also present: Greg Nybeck, Executive Director; Judd Harper, Administrative Technician.

Members absent: Doug Babcock, Tonka Bay; Herb Suerth, Woodland; Charles LeFevere, LMCD Counsel.

CHAIR ANNOUNCEMENTS, Chair Skramstad

- Skramstad stated that Nybeck had requested going into an executive session at the end of the meeting. He asked Nybeck to expound on this.

Nybeck stated that the LMCD had received a proposed settlement agreement from the Cannings for Board consideration. He recommended that the Board go into an executive session at the end of the meeting, with Justin Templin from Hoff, Barry, and Kuderer, who was in attendance, to review it and answer Board questions.

- Skramstad stated that the City of Excelsior had recently appointed a new Board member to the LMCD. He administered the oath of office to Jeff Morris, at which time he was seated as representative for the City of Excelsior. Skramstad welcomed him on behalf of the Board.

READING OF MINUTES- 6/27/07 LMCD Regular Board Meeting
 7/25/07 LMCD Regular Board Meeting

MOTION: McDermott moved, Seuntjens seconded to approve the minutes from the 6/27/07 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (10), Abstained (2, Nelson and Tanner); motion carried.

MOTION: Van Hercke moved, Scanlon seconded to approve the minutes from the 7/25/07 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (11), Abstained (1, Gross); 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.

1. WATER STRUCTURES

A. **Mark and Kati Lovaas**, dock length and side setback variance application at 17840 Breezy Point Road:

- **Ordinance Amendment**, first reading of an ordinance relating to dock use areas on the Lake; amending LMCD Code Section 2.01, Subdivision 2.
- Consideration of draft Findings of Fact and Order to approve a dock length and side setback variance.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that he would provide background in LeFevere's absence. He made the following comments:

- In May, the Board conducted a public hearing on the Lovaas variance application. Based on Board discussion at that meeting, LeFevere prepared draft Findings of Fact and Order approving a dock length and side setback variance.
- In June, these draft Findings were brought back for consideration by the Board. At that meeting, legal counsel for the Lovaas' requested that the Board take no action on the draft Findings and consider an ordinance amendment that would further clarify the term "site". The Board granted the Lovaas' request and LeFevere prepared a draft ordinance amendment addressing the term "site", which was discussed at the July 25th Board meeting. No action by the Board was taken at this meeting, although LeFevere had updated the draft ordinance amendment based on the discussion.
- He believed that there were three options for the Board to consider relating to the draft ordinance amendment and the draft Findings. First, the Board could adopt first reading of the draft ordinance, with any changes deemed necessary. Additionally, the Board could waive second and third readings, and adopt the ordinance. If the Board were to choose this option, there would be no need for a variance from LMCD Code and the applicants should consider withdrawing their variance application. Second, the Board could decide not to take action on the draft ordinance amendment and consider taking action on the draft Findings. Third, the Board could decide to amend the draft Findings for a reduced side setback variance, such as the five foot setback proposed originally by the Lovaas'. One advantage to this option was that the Board could restrict the number of restricted and unrestricted watercraft that could be stored at this site.
- He entertained questions and comments from the Board.

Skramstad stated that Bert Foster had requested the opportunity to comment on this agenda item.

Although this was not a scheduled public hearing, he stated that he would provide Foster this opportunity.

Mr. Bert Foster stated that he represented the abutting neighbor to the west, Peter Hajas. He summarized an e-mail that he sent to the LMCD office on July 29th. First, the current dock

installation is 60' in length rather than 56'. Second, he believed that the four feet of water depth was at 48' from the 929.4' shoreline rather than 56'. He encouraged the Board to approve the draft Findings for a dock length of 48' rather than 56'. He stated that he had raised the water depth concern to Nybeck in the past couple of weeks and that he had offered to measure water depths with LMCD staff. He expressed concern about the ordinance amendment because of the possible gains that a property owner might receive if it were adopted. He encouraged the Board to carefully think through the process and that the variance process might be the better means to address these issues at this time.

Van Hercke stated that she believed it would be appropriate to allow the Lovaas' to comment on this agenda item at this time.

Mr. William (Skip) Dickel, Attorney at Law, stated that he represented the Lovaas'. The testimony from Mr. Foster was new to Dickel and he stated that he could not speak knowingly to it. He requested that the Board take no action on that representation of fact at this meeting. He believed that this was an example of an unhappy neighbor attempting to strike another neighbor by using the Board as a tool, which he believed was an offensive abuse of this process. He did not believe that the draft ordinance amendment would not make any significant change to the existing ordinance. He believed that the draft ordinance amendment would better define what constituted a change to a "site". This ordinance amendment would allow for grandfathered rights to continue provided a "site" was not offended or abused, including changing the lot line extensions to improve the layout of the dock use area. He requested that the Board adopt the ordinance amendment as submitted.

Nybeck stated that there had been two different opinions on the location of the water depths within the Lovaas' dock use area. First, the applicants documented that four feet of water depth was somewhere between 48' and 56' from the 929.4' shoreline. Second, Foster has documented that four feet of water depth existed at 48' from the 929.4' shoreline. He raised a concern of LMCD staff involvement in clarifying water depths at this site because the location of the 929.4' shoreline was an unknown. The best means to resolve this would be to involve a surveyor to conduct this fieldwork.

Seuntjens recommended that the Board could proceed with the making of a decision at this site because he believed that the length of the dock use area to reach four feet of water depth was relatively minor. He questioned whether the Board was clear on the draft ordinance amendment and suggested that the Board approve first reading at the most at this meeting. However, he believed that the draft Findings were clear and he recommended that the Board should act on them.

McDermott asked for clarification of LMCD Code for length of dock use areas.

Nybeck stated that for sites in existence in February of 1970 with less than 40' of lakeshore frontage, the dock use area is allowed to extend 60' from the 929.4' shoreline or four feet of water depth, whichever is less. For sites in existence in February of 1970 with shoreline between 40' and 60', the dock use area is allowed to extend 60' from the 929.4' shoreline. For all other non-grandfathered sites on Lake Minnetonka, the dock use area extends the same distance into the Lake that there is 929.4' shoreline at the site, provided no dock use area can extend beyond 100'

without a variance from LMCD Code.

Seuntjens asked for clarification of LMCD Code for the number of restricted watercraft that may be stored within a dock use area.

Nybeck stated that four restricted watercraft may be stored at all sites on Lake Minnetonka, provided a number of requirements were met. Two of these requirements include: 1) all restricted watercraft must be owned and registered to residents of the site, and 2) there can only be one residential structure on the site. There is a grandfathered exception that allows two restricted watercraft at a site, without reference to ownership, for sites in existence on August 30, 1978.

McDermott stated that if the Board were to conclude that the addition of the small amount of shoreline at the Lovaas' site did not do away with the grandfathered exception for side setbacks, the applicants could withdraw their application and the issue would be resolved.

Tanner stated that he supported the 56' dock length in the draft Findings. Additionally, he suggested the idea of establishing a Task Force to further study any proposed ordinance changes.

Nybeck stated that he believed LeFevere previously recommended that an ordinance amendment should be adopted by the Board if it were the desire to interpret that the addition of shoreline at the Lovaas site did not constitute a change in site for grandfathering purposes. Another option for Board to consider was to grant a five foot side setback variance. One advantage to amending the variance Findings over the ordinance amendment option was the ability to restrict the number of watercraft at the Lovaas site. Because there appeared to be some legal questions that LeFevere would be more qualified to answer, he believed that it might make sense to approve first reading of the draft ordinance amendment at this meeting. He reminded the Board that the applicants had signed an indefinite waiver to the 60-day rule for their variance application.

Gross expressed concern about the Board adopting an ordinance amendment in a hurry for a specific case. He believed that it might make more sense to handle cases that do not happen frequently through the variance process. In this case, the argument was whether they should qualify for five foot side setbacks and he believed that the Lovaas' would have plenty of space to install a dock and store watercraft with 10 foot side setbacks.

Page concurred with comments made by Gross and Seuntjens that the Board should take action on the draft Findings as proposed and not take action on the draft ordinance amendment. He expressed concern about adopting an ordinance amendment specifically for the Lovaas' situation and he believed that the Board should approve the draft Findings. He stated that he was willing to make such a motion.

Whalen questioned what would happen if the Board were to approve the draft Findings and the Board subsequently adopted the ordinance amendment that would not require such a variance.

Page stated that he believed that was a question that LeFevere should address.

Whalen believed that the Lovaas' situation had raised some valid shortcomings of this ordinance. This was the reason why she was in favor of reviewing the ordinance amendment prior to taking

action on whether to approve the draft Lovaas Findings of Fact and Order

Seuntjens stated that he did not believe that adopting a future ordinance change would lock a residential property owner with an approved variance from LMCD Code. If adoption of the ordinance amendment does not release this property owner from such a variance, he believed that they could request this from the Board.

Harper questioned whether it would be appropriate to determine the exact location of the four feet of water depth at the Lovaas site.

Seuntjens stated that he believed the only way to resolve that would be to have water depth readings conducted by a surveyor.

MOTION: Van Hercke moved, McDermott seconded to approve first reading of the ordinance amendment relating to dock use areas as submitted, amending LMCD Code Section 2.01, Subdivision 2.

Whalen proposed a friendly amendment to the motion to change the words "a change" for event number 2 to "an increase". Van Hercke and McDermott did not accept this.

Seuntjens questioned whether the Board had reviewed paragraphs a) and b) as noted in event number 3. He stated that he had not reviewed these paragraphs and he believe that the ordinance should be reviewed in its entirety.

Van Hercke stated that the motion was for only first reading and that Code Section 2.01 was included in the July 25th Board meeting packet.

Nelson encouraged the Board to deny the motion until LeFevere could be present to address some of the concerns raised by the Board relating to the ordinance amendment and to possibly resolve the conflicting water depth readings submitted.

VOTE: Ayes (6), Nays (5; Gross, Nelson, Page, Seuntjens, and Tanner), Abstained (1, Morris); motion carried.

MOTION: Page moved, Tanner seconded to approve the draft Lovaas Findings of Fact and Order to approve a dock length and side setback variance as submitted.

Gross proposed a friendly amendment to the motion to require that surveyed monument markers be added to the draft Findings as a condition to assist the applicants, the neighbors, and LMCD staff to establish the details of the variance at the site. Page and Tanner did not accept this.

The Board discussed the motion, with some of the discussion included:

- Whether not approving the motion would result in not approving the Lovaas variance application.
- Whether the Board should resolve the draft ordinance amendment prior to approving draft Findings of Fact.
- Whether language could be added to the draft Findings stating that this site would revert

back to its grandfathered side setback status if the ordinance amendment were adopted by the Board in the near future as discussed at this meeting.

- Whether approval of the Lovaas Findings would lock them into 10 foot side setbacks or whether they would qualify for the grandfathered five foot side setback if the draft ordinance amendment were adopted in the future.

MOTION: Nelson moved, Johnson seconded to table consideration of the motion to approve the draft Lovaas Findings of Fact and Order to approve a dock length and side setback variance until the 8/22/07 Regular LMCD Board Meeting.

VOTE Ayes (9), Nays (3;Page, Seuntjens, and Tanner); motion carried.

B. Additional Business.

There was no additional business.

2. FINANCIAL

A. Audit of vouchers (8/1/07 – 8/15/07).

MOTION: Seuntjens moved, Van Hercke seconded to approve the audit of vouchers for the period of 8/1/05 – 8/15/07 as submitted.

VOTE: Motion carried unanimously.

B. Additional Business.

There was no additional business.

3. EWM/EXOTICS TASK FORCE

There was no discussion.

4. LAKE USE & RECREATION

There was no discussion.

5. ADMINISTRATION

There was no discussion.

6. SAVE THE LAKE

Whalen reported that she was unable to represent the LMCD on the June 15th "River Night" event coordinated by Minnesota Waters

Skramstad stated that he believed Tanner would be in attendance at this event representing the LMCD.

7. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on three items. First, the lake level as of August 8th was 928.25', with the dam closed. He estimated that the current lake level was approximately nine inches lower than at this time during the 2003 through 2006 boating seasons. Second, the MN DNR has planned an open house on August 30th to discuss docking issues with the public. This meeting will be conducted at the Wayzata Community Room from 4 to 7 p.m. Third, progress was being made on the 2007 partial Lake Vegetation Management Plan (LVMP) project that the LMCD was partnering with the Lake Minnetonka Association. He envisioned that the stakeholder survey would be sent out in the near future along with the dates for the three stakeholder meetings. These dates included September 5th, September 26th, and October 24th. He pointed out that the last two dates were the same evening as a regularly scheduled LMCD Board meeting and he recommended conducting the LVMP stakeholder meetings in their place.

The Board discussed Nybeck's recommendation and cancelled the September 26th and October 24th LMCD Board Meeting as recommended. The Board also recommended that staff notify local dock installers of the August 30th MN DNR open house.

8. OLD BUSINESS

Gross updated the Board on progress of the Environmental Committee. In addition to committee members and Nybeck, LeFevere and Eric Evenson were in attendance at the last meeting. First, the general consensus of the committee, after conferring with LeFevere, was that the existing meandering shoreline ordinance was enforceable and did not require any updates. Second, the committee also discussed whether shoreline should be used for boat density purposes if it requires dredging. The MCWD was reviewing its dredging policies and has requested LMCD participation in this process. Third, the committee was receiving better wetland mapping and was interested in looking at environmentally sensitive shoreline, including what boat density standard was appropriate.

Van Hercke stated that the City of Minnetonka was considering amending its shoreland ordinance to be more consistent with the MN DNR. She updated the Board on what was being considered, including promoting more natural shorelines. She stated that she would keep apprised of this and keep the Board up to date.

9. NEW BUSINESS

Notification Requirement for Firework Displays

Nelson stated that he had been recently copied by the LMCD office on a fireworks display to be conducted on Smithtown Bay on August 11th. There was no public notification requirement for public announcement because it was a licensed special event. He recommended that the Board might want to consider this as a special event permit condition for firework displays where a barge was involved.

The Board discussed this and the consensus of the Board was to discuss this at future Board meeting.

Chair Update

Skramstad updated the Board on three items. First, the LMA had recently sent out their quarterly newsletter. Second, there was an article in the recent Sunday edition of the Minneapolis Star Tribune

relating to changing boating trends in Minnesota. Third, there was a article in the recent Navigator that talked about the number of buoys on Lake Minnetonka, which he believed was useful and informational.

Nybeck stated that there was a lot of discussion during the recent 2008 LMCD Budget process on how the information from past Boat Density and User Attitude Surveys was used. A good part of the information included in the Minneapolis Star Tribune article was an indirect result of past surveys conducted on Lake Minnetonka, in partnership with the MN DNR.

Canning Proposed Settlement Agreement

Templin stated that the purpose for closing the meeting and going into executive session, as an exception to the Open Meeting Law, was attorney/client privilege to discuss the Canning litigation. Upon completion of the executive session, the Board most likely would adjourn the meeting.

MOTION: Whalen moved, McDermott seconded to: 1) go into executive session at 8:20 p.m. to conduct an executive session to discuss pending litigation, as allowed by the Open Meeting Law, and 2) to adjourn the meeting upon completion of the executive session.

VOTE: Motion carried unanimously.

Tom Skramstad, Chair

Tom Scanlon, Secretary