

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, February 13, 2008
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Kelsey Page, Greenwood; Richard Siakel, Shorewood; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Chris Jewett, Minnetonka.

3. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen stated that the 41st Annual "Save the Lake" Recognition Banquet was conducted on February 7th at the Bayview Event Center. Attendance was around 80 and she thanked LMCD staff for their efforts. Two LMCD member cities have recently appointed a new Board member to the LMCD. She welcomed Rich Siakel and Bill Olson, representing the Cities of Shorewood and Victoria, and asked LeFevere to administer the oath of office.

LeFevere administered the oath of office to Rich Siakel and Bill Olson. They were seated as representatives for the Cities of Shorewood and Victoria, respectfully.

Whalen stated that the agenda format for this and future LMCD Board meetings had changed in an attempt to make the meetings more efficient. In particular, the agenda will be approved by the Board at the beginning of each meeting and more agenda items will be included on the consent agenda. If a Board member would like to discuss something that is not on the agenda, this should be added to the agenda prior to the Board approving the agenda.

4. PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda (limited to 5 minutes)

Mr. Bert Foster, 19150 Park Avenue in Deephaven, stated that he was representing Seahorse Condominium Association relating to their multiple dock licensed by the LMCD. Last fall, the Board approved their 2007 renewal (without change) multiple dock license application with the requirements that the dock be brought into compliance by May 15th, as well as submitting a survey documenting this by May 15th. At the time of the 2007 LMCD approval, there were six slips that were wider than what was approved by the Board. He believed that these slips had been in existence for 25 to 30 years and that he had sworn affidavits documenting this. He requested that the Board schedule an agenda item at an upcoming LMCD Board meeting to address what he deemed a technical correction. Whatever the Board decides on, Seahorse Condominium Association will comply with.

Nybeck updated the Board on the conversations that he had with Foster on this request. In the past, the

Board has requested that changes to a licensed multiple dock facility be done through the pretense of an application. Since Seahorse Condominium Association was considered a legal, non-conforming multiple dock facility, the proper process would include a new multiple dock license application, with public hearing, utilizing LMCD Code Section 2.015.

Foster stated the Association does not want to submit new multiple dock license application because they believed that the matter was a technical correction.

Babcock stated he believed there were three application processes to consider when making a change to a multiple dock license. These include: 1) a renewal (without change) multiple dock license application, 2) a new (minor change) multiple dock license application, and 3) a new multiple dock license application, with public hearing, as recommended by Nybeck. He believed that a new multiple dock (minor change) multiple dock license application might be appropriate for Foster's request.

Nybeck stated that LMCD Code only allows legal, conforming multiple dock facilities to apply for a new multiple dock (minor change) license application. He clarified that Seahorse Condominium Association was a legal, non-conforming multiple dock facility; however, the Board could decide to deviate from LMCD Code.

The Board discussed this and the consensus was that Seahorse Condominium Association could apply for Foster's request through a new multiple dock (minor change) license application. The Board will deem, at that time, whether or not that is the proper application to consider Foster's request.

5. APPROVAL OF AGENDA

MOTION: Gross moved, McDermott seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

6. APPROVAL OF MINUTES- 01/09/08 LMCD Regular Board Meeting

Whalen stated that on page one, it should be clarified that "Skramstad" was chairing the meeting rather than "Seuntjens".

MOTION: McDermott moved, Tanner seconded to approve the minutes from the 1/9/08 Regular Board Meeting as amended, making the change recommended by Whalen.

VOTE: Ayes (11), Abstained (2; Morris and Page); motion carried.

7. APPROVAL OF CONSENT AGENDA

Babcock requested that agenda items 7A, 7C, and 7E be removed from the consent agenda.

Gross moved, Scanlon seconded to approved the consent agenda as amended, removing agenda items 7A, 7C and 7E. Motion carried unanimously. Items so approved included: **7B, Gideons Point HOA**, staff recommends Board approval of 2008 new multiple dock (minor change) application, as outlined in 2/5/08 staff memo; **7D**, December financial summary and balance sheet; and **7F**, Approval of 2008 LMCD Pay Equity Report.

8. ITEMS REMOVED FROM THE CONSENT AGENDA

Whalen asked Babcock to clarify why he had the following three agenda items removed from the consent agenda.

- **2008 Multiple Dock Licenses**, staff recommends Board approval of 2008 renewal (without change) multiple dock license applications, as outlined in the 2/7/08 staff memo.

Babcock expressed an interest in approving the 2008 renewal (without change) multiple dock license applications in three separate motions.

MOTION: Babcock moved, McDermott seconded to approve the 2008 renewal (without change) multiple dock license applications that had been paid in full, as outlined in the 2/7/08 staff memo.

VOTE: Motion carried unanimously.

MOTION: Babcock moved, Tanner seconded to approve the 2008 renewal (without change) multiple dock license applications for those that have not paid their full application fee as outlined in the 2/7/08 staff memo, subject to payment of the balance due by 3/31/08.

VOTE: Motion carried unanimously.

MOTION: Babcock moved, Tanner seconded to approve the 2008 District Mooring Area license applications, all of which had been paid in full, as outlined in the 2/7/08 staff memo.

VOTE: Motion carried unanimously.

- Audit of vouchers (1/16/08 – 1/31/08) and (2/1/08 – 2/15/08)

Babcock asked for clarification on check numbers 17003, 17018, and 17026.

Nybeck stated check number 17018 to SB Management, Inc. was for monthly bookkeeping for the LMCD. Check number 17026 was to replenish the LMCD's petty cash in the LMCD office.

Herman stated that check number 17003 was to Bertleson Office Products to replenish office supplies. The January office supply order is typically larger due to staff's attempt to balance the budget for the previous calendar year.

MOTION: Babcock moved, Gross seconded to approve the audit of vouchers (1/16/08 – 1/31/08) and (2/1/08 – 2/15/08) as submitted.

VOTE: Motion carried unanimously

- Approval of draft Agreement between LMCD and the City of Wayzata regarding the use of the community room for LMCD Board Meetings.

Babcock asked Nybeck to clarify: 1) if there was an increase in the rent for use of the community room, and 2) whether the draft Agreement was a renewal Agreement or new.

Nybeck stated there was a \$50 increase in the rental of the community room from 2007 to 2008. With regards to the draft Agreement, the LMCD had been renting the community room without an Agreement. He stated that he and LeFevere had reviewed the draft Agreement and were not troubled with it.

MOTION: Babcock moved, McDermott seconded to approve the draft Agreement between LMCD and the City of Wayzata regarding the use of the community room for LMCD Board Meetings as submitted.

VOTE: Motion carried unanimously.

9. PUBLIC HEARINGS

A. LMCD Environmental Committee, background and stakeholder feedback on environmental concepts being considered.

Whalen provided background of the LMCD Environmental Committee, which was established by the Board last April. In addition to herself, the committee members included Babcock, Gross, and former Board member Pete Nelson. The two primary goals of this committee were to: 1) preserve wetland areas, and 2) preserve shallow, littoral zones. A series of committee meetings have been conducted and two environmental ordinances are currently being considered by the committee. These include: 1) formalizing boat density allowances at dock length variances, and 2) preservation of shallow, littoral zones. Although state statute does not obligate the LMCD to conduct a public hearing to adopt these ordinance amendments, the Board maintained that public input (verbal and written) was of importance. No Board discussion or action is planned for these draft ordinance amendments and the public input (verbal and written) will be referred back to the committee for consideration. She asked Environmental Committee Chair Gross to provide further background on these draft ordinance amendments.

Gross provided background of five environmental concepts being considered within these two draft ordinance amendments via a powerpoint presentation. These environmental concepts included: 1) temporary low water variances, 2) watercraft storage density adjustments, 3) shoreline outside of the LMCD's jurisdiction, 4) inaccessible shoreline, and 5) shoreline of shallow dock use areas. He provided a further overview of the second, fourth, and fifth environmental concepts through a series of diagrams during the powerpoint presentation.

Babcock stated that if a riparian property owner did not need a variance for LMCD Code, these draft ordinance amendments would not impact them. He believed that the committee was trying to balance the impact of protecting shallow water with the same rules across the Lake for new variances or multiple dock licenses. If a current permit is to be maintained, they will be grandfathered. In recent years, the Board is getting a lot of pressure to store larger boats in shallow back bays that require a significantly greater amount of water depth because of the draft of the watercraft. These ordinance amendments, if adopted, would set new expectations for dock license holders on Lake Minnetonka.

Whalen thanked Gross for background on the two draft ordinance amendments being considered by the committee. She opened the public hearing at 7:21 p.m. and requested that the public limit their comments to three to four minutes. For repetitive comments, she asked that the public acknowledge a previous comment made rather than repeat the comment previously made.

Ms. Debra Altschuler, legal counsel for the Carlson Real Estate Company, submitted a letter in opposition of the two draft ordinance amendments. She stated that Carlson Real Estate Company owns Woodland LLC, which has over 8,000' of shoreline on the west side of Halsted's Bay in Minnetrista.

Babcock stated that if the public was in opposition or had concern with the ordinance amendment(s), it would be beneficial for the LMCD and the Environmental Committee if the public could expound on what could be done differently.

Altschuler stated that she was concerned that a new development, such as what they might propose in the future, could get caught on both ordinances because of shallow water and the need for a dock length variance.

Whalen thanked Altschuler for her written and verbal comments on the draft ordinance amendments. She stated that the purpose of this hearing was to gather input from the public and not to debate the merits of the draft ordinance amendment with the public.

Mr. Scott Schmitt, 6020 Mill Street in Shorewood, stated that he was Chair of the Shorewood Planning Commission. Based on his experience with the adoption of new ordinances, this generally creates grandfathered situations. If these ordinance amendments were to be adopted, he questioned whether conforming multiple dock facilities would be grandfathered in.

Whalen stated that she believed that existing, conforming multiple dock facilities that did not comply with the new ordinances would be considered legal, non-conforming facilities from that point forward.

Mr. Bert Foster, 19150 Park Avenue in Deephaven, submitted written comments to either abandon these ordinance amendments at this meeting or to send the amendments back to the Environmental Committee. He stated that he had received a few telephone calls that have expressed concerns about the ordinance amendments. Comments that he made included: 1) there is a lack of scientific data regarding boating in shallow water (a feel good ordinance), 2) managing water quality and wetlands on Lake Minnetonka belongs at the MCWD, not the LMCD, 3) the ordinances are not needed to protect the water quality and the wetlands, 4) the ordinances are not needed to protect the Lake from overcrowding of boats, and 5) the concept of property rights versus Lake rights.

Whalen clarified for the public that one of the charges of the LMCD per its enabling legislation is to take care of the water quality on Lake Minnetonka.

Mr. Dick Osgood, Lake Minnetonka Association (LMA) Executive Director, stated that he had submitted written comments. There are studies that document the impacts on shallow water areas from boating, in particular the bottom. The LMA generally supports the proposed ordinance amendments, although he believed that further work could be done up front to identify the wetland areas that need to be protected. He asked the Board to consider establishing a moratorium for new multiple dock licenses pending the outcome of this analysis.

Mr. Gabriel Jabbour, 985 Tonkawa Road in Orono, thanked the Board for conducting the public hearing and hoped that the Board would continue stakeholder participation. He stated that he had been involved in some form with the LMCD since 1971. He questioned whether the Board fully understood

the implications when it deems a site legal, non-conforming. In the mid 1970's, the City of Orono and the LMCD decided to reduce the length that a commercial marina could extend from its shore from 300' to 200'. He stated that he supported that decision, which was upheld at the Minnesota State Supreme Court. Shortly thereafter, a decision was made by a committee of the LMCD to reduce the length that a commercial marina could extend into the Lake from 200' to 100'. This has made all of the commercial marinas legal, non-conforming, which has frozen these facilities in time. Since this time, new issues such as handicap accessibility, fire protection, available bathrooms, and pump-out facilities have arisen. He stated that state statute prohibits the expansion of a legal, non-conforming facility and he questioned what constituted an expansion. He agreed with Osgood that there was a need for the Board to better define what wetland areas it would like to protect. He hoped that stakeholder input on these and future ordinance amendments was encouraged by the LMCD because he believed that it would be better thought through.

Whalen stated that there appeared to be some confusion on the draft ordinance amendments. She encouraged Jabbour and others to attend and participate in future committee meetings.

Mr. Leo Bullock, 1160 Heritage Lane in Orono, stated he represented Foxhill HOA. In 1982, Foxhill HOA received its first multiple dock license from the LMCD. He questioned whether these draft ordinance amendments would impact this license. Additionally, he questioned why the LMCD would not consider allowing docks to extend further into the Lake if the Board wanted to protect wetland areas and shallow, littoral zones.

Mr. Rob White, 16744 Grays Bay Boulevard in Minnetonka, stated he was representing the Grays Bay HOA. He supported limiting the number of boats in shallow areas; however, he questioned whether the draft ordinance amendments were the best means to deal with this. He believed that these draft ordinance amendments were in response to the recent Board decision at the Locust Hills Development, which was somewhat contentious at the Board level. The Grays Bay HOA does not support their storage density and he implored the Board to reconsider this decision to place 44 boats on a bay that is 88% littoral zone.

Mr. Bruce Shoger, 28085 Boulder Bridge Drive in Shorewood, stated he represented Boulder Bridge HOA. He questioned whether Subd. 9 would have an impact on the bridge and dredged channel width at the Association.

Harper stated that Boulder Bridge HOA was already a legal, non-conforming site and that the proposed ordinance would not affect them.

Mr. Terry Bryce, 16828 Grays Bay Boulevard, requested a clarification to the word "temporary" in the environmental concept relating to temporary low water variances.

Nybeck stated that LMCD Code allows the Board to declare temporary low water variances when the lake elevation is at or below 928.0'. In the proposed ordinance amendment, the only language proposed to be added included "and may be subject to conditions and limitations imposed by the Board".

Babcock stated that it was not uncommon for the Board to consider whether a temporary low water variance was appropriate for sites that are requiring another variance from LMCD Code. He cited a channel area as one example.

Bryce believed that there was a need to further clarify the term "grandfathering". He expressed concern about grandfathering a site that has not had watercraft stored at the docks historically. He expressed concern about moving docks further into the Lake as previously suggested because that would reduce the surface area that could be used and could create public safety issues. He commented on the new Grays Bay public access and the public safety problems that exist.

Mound Mayor Mark Hanus stated that the city council had recently adopted a resolution relating to the draft ordinance amendments. A copy of this resolution has been provided to the LMCD. Mound controls and regulates over 36,000' of public shoreline in conjunction with the LMCD rules. He commented on grandfathering and the implications that it might have on their docking program.

Whalen stated Jim Fackler and Katie Hoff from the City of Mound had attended the most recent committee meeting. She did not believe that they were uncomfortable with the draft ordinance amendments based on the discussion at that meeting.

Babcock stated he had a desire to work with the City of Mound because they have historically run a very good municipal docking program. The ordinance amendments in some instances might result in a grandfathering situation for Mound and other municipalities, which he believed justified further discussion by the committee.

Hanus asked the Board members to read the Mound resolution in depth and to fully evaluate the impact of the draft ordinance amendments on municipalities, commercial marinas, and other private sector entities.

Mr. Josh Sebasky, 6135 Pine Circle in Minnetrista, encouraged the Board to do a better job of public education. Although the meeting was well intended, he believed that the ordinances were sloppy and there was a need to look at specific areas on the Lake and define upfront the intent of the LMCD. He questioned whether the Board would like to create additional legal, non-conforming facilities with the adoption of these ordinance amendments.

There being no further comments, Whalen closed the public hearing at 8:31 p.m. After approving first reading of the draft ordinance amendments, the Board agreed that public input was appropriate and necessary. She believed that adoption of these draft ordinance amendments was far from a done deal and she believed that the Board would take into consideration public feedback received at this meeting.

The meeting was recessed at 8:32 p.m. and re-convened at 8:36 p.m.

B. City of Mound, new multiple dock license and variance applications to amend a previously approved dock length variance from LMCD Code at the Seton Bluff Development.

Whalen asked Nybeck for background on this agenda item.

Nybeck reviewed the staff memo, dated 2/7/08, which summarized the City of Mound new multiple dock license and variance applications to amend a previously approved dock length variance from LMCD Code at the Seton Bluff Development. The 2008 new multiple dock application was submitted to renew the Mound Commons Docking Program, approved for 590 Boat Storage Units, and the variance application was submitted to amend a dock length variance previously approved by the LMCD in 1999.

In 1999, two separate variances from LMCD Code were approved for this development. Three changes have been proposed by the City of Mound. These include: 1) a 5' x 7' platform on the west-end of the dock, 2) to increase the width of all six slips from 10' to 12.5', and 3) to increase the length of five of the six slips from 24' to 32' by moving the dock closer to the wetland area. He highlighted three LMCD Code Sections to evaluate the applications. These included: 1) Code Section 2.03, subd. 7- outlines the new multiple dock license application process, 2) Code Section 2.01, subd. 1- outlines authorized dock use area requirements, and 3) Code Section 1.07- outlines the variance from LMCD Code process. He believed that the proposals to add a 5' x 7' platform and the increase the slip widths was reasonable. Thus, he believed that the Board could approve the 2008 new multiple dock license application and direct LMCD legal counsel to prepare Findings of Fact and Order to approve the variance application. However, he believed that the Board should discuss whether the proposal to increase five of the six slips from 24' to 32' is reasonable, especially in light of the LMCD Environmental Committee recommendations. To avoid future miscommunication on docking rights for these six houses in the future, he believed that Mound needed to create a system to address this in the future. He entertained questions and comments from the Board.

Babcock questioned whether the Board was only considering a variance application from the City of Mound and whether the hardship(s) had changed?

Nybeck stated that the Mound variance application was the only application being considered at this time. However, there is non-compliance with the approved 1999 Variance Order and he was attempting to bring it in compliance with the approved or to have them submit variance application to amend it. No additional hardships have been proposed by Mound.

Babcock expressed concern about the request to amend the approved 1999 Variance Order, in particular the proposal to expand dock lengths, without a new hardship.

Nybeck stated that there were other variances in the immediate area that had 32' long slips.

Whalen asked for further background and comments from the City of Mound.

Mr. Jim Fackler, Mound Park Superintendent, stated that it was brought to his attention late in the 2007 boating season of non-compliance with the approved 1999 Variance Order. At that time, he stated that he began working with Nybeck and the Seton Bluff Development HOA on ways to resolve this issue for 2008. Because the dock originates from shoreline under the control of the City of Mound, the applications needed to be submitted by Mound. He reviewed the historical approval of the site and recognized that the boats were changing in size over time. The Association agreed that they would like to see the slips go to 32' in length and has expressed an interest in keeping the swim platform by reducing it in size to meet setbacks to the west. He offered a potential compromise of slip lengths for C, D, E, and F of 28'. He suggested that the Board discuss the condition of the watercraft being fully contained within all six slips since one of the watercraft stored at this dock is 33' in length. He entertained questions and comments from the Board.

Babcock asked Fackler to comment on how Mound better manage these types of docking situations so that they are in compliance with approvals from the LMCD in the future?

Fackler stated that staffing for this docking program by Mound was done by part-time staff. He believed that they have been working on better communication efforts to apprise staff of LMCD

requirements. One positive step that he identified was the establishment of a Mound Docking Program map, and shortly after an addendum that lists all multiple dock sites, etc. He believed that this could also be done for sites with approved variances from LMCD Code, including the need for an annual meeting with various Associations.

Page stated the certain review criteria are used to evaluate variance applications when submitted to the LMCD. With the proposed changes to expand the previously approved variance for this site, he questioned how the hardship has expanded to allow for greater variance from LMCD Code.

Fackler stated that the Association had to approach the Mound City Council and Docking Commission with their request, both of which approved their request because they believed that it was reasonable.

Whalen asked what the water depths were in this area and whether Mound could document the criteria needed to expand the site.

Fackler stated that water depth readings were taken in the past month by the surveyor. He estimated that water depths were approximately four feet at the end of the slips and between two and three feet at the front of the slips.

Whalen opened the public hearing at 9:00 p.m.

Mr. Jeff Anderson, President of Seton Bluff Development HOA, stated that he had one of the six slips at this municipal dock. He thanked Nybeck and Fackler for working with them on this situation. Once the Association was made aware of non-compliance with the 1999 Variance Order, communication was initiated to resolve the issues raised by Nybeck. Currently, five boats are technically not in compliance with the 1999 Variance Order because they are not fully contained within the slip. In 2004 when he purchased his home, Anderson stated that he was unaware of the approved 1999 Variance Order. Based on the previous public hearing at this meeting relating to the LMCD Environmental Committee, he questioned whether this was the best time to consider this request. However, he stated that he would welcome extending the dock eight feet further into the Lake rather than bring the dock closer to the wetland area. He reiterated the Association's interest in allowing for six 32' long slips at this dock. However, the Association was open to allow for overhang at the slips to address non-compliance with the approved 1999 Variance Order. He entertained questions and comments from the Board.

Tanner asked if there had been any feedback from other owners that would like to increase the size of their boats.

Anderson stated he was not aware of such interest and welcomed an annual meeting with the City of Mound to stay apprised of their docking requirements. He further suggested the Association by-laws be amended to document the variance requirements and document any non-compliance be reported to the LMCD.

Whalen stated that when a variance is granted, a specific hardship needs to be established. She questioned whether the hardship has changed to expand the variance.

Siakel expressed concern that the District might be forcing individuals to sell their boats if the 1999 Variance Order was not amended.

Anderson stated that he believed the original hardship for this site were emergent vegetation and shallow water.

Nybeck stated that he did not believe that this dock existed prior to 1999 because this housing development was new at that time. He believed that the fundamental question for the Board to decide was whether increasing the slip length at five of the six slips from 24' to 32' was reasonable.

Babcock stated that if these applications were approved by the Board, he wanted to make sure that future expansion of this approval was monitored by Mound to ensure compliance with the approved Variance Order.

Nybeck concurred with this comment and originally recommended that the approved Variance Order be registered against the titles of these six properties. However, this did not appear to be feasible since the property from which the dock originates was under the control and ownership of the City of Mound.

Whalen suggested that it might be appropriate to require Mound to provide an annual report to LMCD documenting that all variances from LMCD Code are in compliance with the approved Variance Orders.

Fackler stated that Mound could submit an annual report to the LMCD as described by Whalen. Over the last 12 years, he believed that significant steps have been made to ensure that docking and boat storage at the municipal docking program was in compliance with LMCD regulations.

Mr. Jerry Wells, 4642 Kildare Road, stated he was a resident of the Association. He acknowledged that they unknowingly made some changes and that they were turning to the Board for their technical assistance and a resolution. He hoped that the Board would not be punitive when deciding on these applications because of these past mistakes.

Mound Mayor Mark Hanus responded to the question of expanded hardship because he deals with that question frequently. He asked what criteria were utilized when the variance was approved in 1999 to establish a 24' dock length rather than a length of 18' or 12'. He believed that hardship could vary and he believed that it was a judgment call for the Board to decide what was reasonable.

Babcock stated that one decision for the Board to address was whether a hardship existed for a property or the watercraft. In this case, he believed that the concern was with the use of the property rather than the property itself.

There being no further comments, Whalen closed the public hearing at 9:23 p.m.

LeFevre stated that he was unclear on the condition that all watercraft needed to be fully contained within the six slips, although the approved dock length was 123' for docking and boat storage. The docks constructed and observed by LMCD staff in 2007 were not in compliance with the approved 1999 Variance Order. He believed that the question for the Board to decide on was whether the request was reasonable with the assumption that the approved 1999 Variance Order did not exist. He did not believe that there was a need for Mound to document that the hardship has changed since 1999 in order for the Board to amend the previously approved variance, but whether or not the Board would have granted the current proposals if it was presented back in 1999.

Johnson stated he would support increasing the width and the length of the slips as proposed by Mound, subject to removing the proposed swim platform.

Kelsey stated that he was opposed to the applications because he believed that Mound did not address the review criteria or fill the application out in its entirety. He did not agree to the idea that the Association was unaware of the variance, as the responsibility falls to the City of Mound for policing the variance, and that the variance was a matter of public record.

Suerth left at 9:45 p.m.

Fackler stated that there were other City of Mound permit holders whose boats do not fit entirely within the slip. For these situations, he stated that overhang was allowed until either that boat was sold or there is a new permit holder for that slip. At that time, these boats need to be fully contained within the slip.

LeFevere stated that he was uncomfortable with such a proposal since the variance would be a personal variance rather than a variance by application of LMCD Code, with an established hardship(s). He did not believe that a variance should not be granted with grandfathered clauses for an individual.

MOTION: Gross moved, Tanner seconded to approve the 2008 new multiple dock license application and to direct LMCD legal counsel to prepare draft Findings of Fact and Order to approve the variance application, subject to removing the swim platform and to amend the site plan by allowing the dock to extend an additional eight feet to keep the dock away from the wetland area.

Babcock proposed an alternative approach to the motion. He recommended that the applications and site should be amended and brought back to the Board prior to directing LMCD legal counsel to prepare draft Findings of Fact and Order. He asked that the motion be withdrawn to allow for this to happen.

LeFevere stated that the approach recommended by Babcock was a judgment call for the Board to decide on. It was not uncommon for the Board to direct LMCD legal counsel to prepare draft Findings while the applicant amends the proposed site plan so that it was consistent with the approved motion.

Gross and Tanner withdrew their motion.

Nybeck stated that he would work with the City of Mound on a revised site plan consistent with Board discussion and bring it back for Board consideration in the near future.

10. OTHER BUSINESS

- A. **Fishing for Life**, consideration of request for "Save the Lake" funding for "Lake Awareness and Fishing for Life 2008" project.

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that Tom Goodrich from Fishing for Life has recently made a request for Save the Lake (STL) funding for 2008. Since the STL Advisory Committee was inactive, he believed that the Board should consider this request.

Goodrich stated that he was Executive Director of a non-profit organization entitled, Fishing for Life. This organization assisted the LMCD and Crystal-Pierz Marine in recent years on the Future of the Lake Day event. The organization provides children an opportunity to fish by holding educational events at various lakes with the distribution of refurbished rods and wheels for the children. He expressed an interest in partnering with the LMCD for an event held on Lake Minnetonka sometime in August. In response to various questions asked by the Board, Goodrich stated the organization was a 501c.3 and maintains an estimated budget of \$85,000, of which most is in-kind goods. In addition to himself, the organization has one additional assistant, both of which are compensated a part-time salary. The organization is faith-based and the funds are given to urban ministries that are impacting kids. He stated that he would coordinate and supply most of the event, but would welcome the LMCD's interest in promoting specific programming. Permits involved would be the responsibility of the organization; along with the insurance and adult supervision of the children. The request of the Board was for \$3,400 of STL Funds.

Nybeck stated that he believed the request would fit within Save the Lake funding criteria. However, a decision for the Board was whether they would like to fund this type of project in 2008.

LeFevere commented on the request made by Goodrich. Because STL funds are managed by the LMCD, these funds are public funds. The LMCD cannot give the money away or make a political contribution with it. The website for Fishing for Life refers to money supporting Christian ministries. That is not a problem of itself, but the LMCD cannot give public money away to religious organizations. What the LMCD can do with public funds is buy services in which a small amount of public funds can be leveraged through faith-based organizations. If the Board decides the proposal is reasonable and appropriate expenditure for what the LMCD would be getting in return, then he recommended the use of a very simple contract for services. He stated it was difficult to assess if \$3,400 was appropriate when the LMCD does not know what was being proposed.

Scanlon stated that he was involved with the Future of the Lake Day for two years. Although he believed that it was successful, he questioned whether it could not be afforded because of limited budgets. Personally, he did not believe that this proposal was the best way to spend STL funds.

The Board discussed the request. Some of the comments raised were as follows: 1) the Board may want to work with the applicant when a more in-depth proposal was provided, 2) this was not the best way to spend STL funds, 3) 2008 priorities established by the Board do not include a project of this nature, 4) milfoil and additional funding are currently being considered and the Board needs to draw the line at some point, and 5) requests such as this will be better served when a STL Advisory Committee is active again.

Whalen thanked Goodrich for his time and acknowledged the wonderful work his organization was accomplishing. However, she recommended that Goodrich contact LMCD staff in a year when the STL Advisory Committee was active again.

B. Staff update on 2008 Lake Vegetation Management Plan (LVMP) Project.

Whalen asked Nybeck for an update on this agenda item.

Nybeck stated that he hoped to accomplish three things at this meeting. First, he and Osgood had recently submitted a MN DNR grant application for this project in 2008. This was included in the packet

for informational purposes. Second, he directed the Board to a draft Agreement in the packet where the LMCD would be responsible for the sealed bid process and the LMA would essentially serve as the project manager for the remainder of the project. Due to numerous timing constraints, in particular the securing of funding from the abutting neighbors in a timely manner, he proposed an alternative approach. He recommended that the LMCD could contract with the LMA to perform this project, with the LMA to sub-contract out with the appropriate herbicide contractor. This would deal better with funding time constraints of the abutting property owners and the LMCD could recommend any conditions to the Agreement that the Board deems necessary. If the Board was agreeable to this recommendation, he stated that he and LeFevere would work with LMA Executive Director Osgood on such an Agreement, for consideration by the Board on February 27th.

Whalen stated that she and Tanner had recently met with Osgood and LMA President Amanda Walsh to discuss resolving the friction between the two agencies. In response to LMA's concerns about the LMCD's contribution to the 2008 LVMP project, Whalen stated that she would bring back the idea of the LMCD contributing up to \$30,000 for this project rather than the \$15,000 already approved by the LMCD Board. She asked for feedback on this.

The Board discussed the request made of the LMA through Whalen. Some of the discussion included: 1) the LMCD previously made it clear that funding for this project from STL in 2008 was \$5,000 per bay or a possible \$15,000 for all three bays, 2) the idea that spending STL funds for this project beyond 2008 could not be sustained, 3) the difficulty of increasing the municipal levy for this project beyond 2008, and 4) the other requests being made for STL funds for other projects, such as Internet Landing Installed Device Sensors or the contract with the MN DNR for watercraft inspectors.

MOTION: Page moved, Gross seconded to direct staff to work with the LMA on the preparation of a draft 2008 LVMP Agreement as described by Nybeck.

VOTE: Ayes (11) Nays (1, Babcock); motion carried.

Whalen recommended that approval of the draft LVMP should be tabled until the February 27th LMCD Board in light of the time frame of this meeting. Both the Board and the LMA agreed to this.

C. Staff recommendations for 2008 LMCD Code Enforcement Project.

Whalen asked Nybeck if Agenda Item 10C could be tabled to the February 27th Board meeting.

Nybeck stated that he was okay with that, provided the Board consider the compensation adjustment for Emily Herman as recommended in the staff memo, dated 2/13/08, that outlines recommendation from the Personnel Committee.

MOTION: Johnson moved, Morris seconded to approve a compensation adjustment for Emily Herman as outlined in the staff memo, dated 2/13/08, from the Personnel Committee.

VOTE: Motion carried unanimously.

11. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First, a copy of a recently approved MN DNR General Permit was

included in the handout folders for informational purposes. It is a little bit controversial to some residents and he hoped to have a representative from the MN DNR in attendance at the February 27th Board meeting to provide background on it. Second, there is a MN DNR Prevention Grant Application included in the handout folders for informational purposes. Since the deadline for this application is prior to the next Board meeting, he stated that he would work with the Chair on the submittal of this application unless the Board objected. There were no objections.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:00 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary