

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, January 26, 2011
Wayzata City Hall

1. CALL TO ORDER

Whalen called the meeting to order at 7:00 p.m.

2. ROLL CALL

Members present: Lisa Whalen, Minnetrista; Kelsey Page, Greenwood; Andrew McDermott, Orono; Dan Baasen, Wayzata; Doug Babcock, Tonka Bay; Chris Jewett, Minnetonka; Peter Hartwich, Excelsior; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Debbie Siakel, Shorewood; and Herb Suerth, Woodland. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Tom Scanlon, Spring Park.

3. APPROVAL OF AGENDA

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

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Whalen

Whalen made the following three announcements: First, the City of Shorewood has appointed Debbie Siakel as an interim representative to the LMCD Board. She welcomed Siakel and asked LeFevere to administer the oath of office. LeFevere administered the oath of office and Siakel was seated as a representative for the City of Shorewood. Second, she reminded all that the 44th Annual "Save the Lake" Recognition Banquet Dinner was scheduled for February 2nd at the Lafayette Club. Third, she stated that a meeting was recently coordinated with the Minnesota Department of Natural Resources (MN DNR) to discuss the watercraft inspection program for the 2011 boating season. Further comments on this meeting will be made under agenda item 11 later at this meeting.

5. APPROVAL OF MINUTES – None

6. APPROVAL OF CONSENT AGENDA

Johnson and Kask requested that agenda item 6E be removed from the consent agenda.

Babcock requested confirmation as to how the current Agreement amount for agenda item 6F (noted below) compares to last year's Agreement amount. Nybeck confirmed the amount for the 2010 Agreement was \$2,501.00.

Page moved, Baasen seconded to approve the consent agenda as amended, removing agenda item 6F. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (1/16/11 – 1/31/11); **6B**,

December financial summary and balance sheet; **6C**, 12/10/10 AIS Task Force Meeting Minutes; **6D**, 2011 MN DNR Prevention Grant Application; **6F**, **City of Wayzata**, approval of 2011 Agreements for use of the cable television/video studio and community room for LMCD Board Meetings; and **6G**, 2010 LMCD Pay Equity Report.

7. ITEMS REMOVED FROM THE CONSENT AGENDA

- **6E, Personnel Committee**, 2011 compensation adjustments for LMCD employees as outlined in 1/19/11 memo.

Whalen asked for feedback from Johnson and Kask on why they had this agenda item removed from the consent agenda.

Johnson stated that the City of Mound has not budgeted salary and hourly adjustments for its employees in 2011 and asked the LMCD to do so accordingly.

Whalen stated that the LMCD froze 2010 salary and hourly adjustments for its employees. With the proposed adjustments in 2011, this did not increase the overall levy to the member cities from 2010.

Kask added similar comments made by Johnson. In the interest of maintaining consistency as a city council member, he expressed concern about setting wage adjustments for LMCD staff in 2011 that are more generous than what has been agreed to by the City of Deephaven for its police department for upcoming years.

Whalen stated that the Personnel Committee discussed the concerns raised by Johnson and Kask when discussing adjustments for 2011. Since salaries and hourly rates were frozen in 2010, the committee believed that the recommendations were justified. She clarified that the proposed adjustments does not use the entire amount included that was budgeted for in the adopted 2011 LMCD Budget.

Babcock requested confirmation as to who serves on the Personnel Committee, in which Whalen confirmed the Board Officers.

MOTION: McDermott moved, Page seconded to approve 2011 compensation adjustments for LMCD employees as outlined in 1/19/11 memo.

VOTE: Ayes (10), Nays (2, Johnson and Kask); motion carried.

Jewett arrived at 7:09 p.m.

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

There were no public comments.

9. PUBLIC HEARINGS

- A. Rockvam Boat Yards, Inc. (Dock Site 1)**, reconfiguration of non-conforming, multiple dock license and variance applications.

Whalen asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 1/20/11, which summarized a request to lengthen an approved gas dock by 36' to the northeast (no changes have been proposed to the location or size of Boat Storage Units (BSUs). He provided background information on Docks Sites 1, 1a, and 2 at Rockvam Boat Yards. An overview of relevant LMCD Code Sections was provided by Harper, which included: 1) Code Section 2.015 - reconfiguration of legal, non-conforming facilities; 2) Code Section 2.01, subd. 1 – defining of authorized DUA; and 3) Code Section 1.07 – outlines the variance process. He recommended that the Board direct LeFevere to prepare Findings of Fact and Order approving the applications for 2011 boating season, subject to: 1) side setback variance between Sites 1, 1a, and 2 shall continue in effect only as long as those sites are under common ownership, 2) the carrying over of previous license conditions, and 3) installation of electrical and fueling facilities on the dock shall be in accordance with applicable building code and subject to state and local inspection procedures. He entertained questions and comments from the Board.

Whalen asked Mr. Jerry Rockvam if he had any further background or comments he would like to provide the Board. Rockvam stated that he did not.

Baasen requested clarification as to whether the extension of the gas dock would result in navigational concerns for BSUs within the gas dock closer to shore.

Rockvam stated that he did not believe the gas dock extension would result in navigation concerns for inside BSUs (he estimated 38' of navigational space between the dock structures). In fact, he believed that the added dock structure would improve public safety because the boats will need to navigate more slowly in this area.

Whalen opened the public hearing at 7:17 p.m. There being no comments, she closed the public hearing at 7:18 p.m.

MOTION: McDermott moved, Olson seconded to direct LeFevere to prepare Findings of Fact and Order for approval of the reconfiguration of non-conforming multiple dock license and variance applications for the 2011 boating season, subject to the three conditions recommended by Harper.

Babcock proposed a friendly amendment to include a dock width variance (up to 9.4') because the proposed dock exceeds what is allowed in current LMCD Code. McDermott and Olson agreed to this.

VOTE: Motion carried unanimously.

B. Mark Olshansky, side setback and adjusted dock use area variance application for a permanent dock at 16901 Grays Bay Blvd.

Whalen stated that staff scheduled a public hearing for the applications submitted for this meeting. Due to the amount of agenda items scheduled for this meeting, staff has recommended that this public hearing be continued to the February 23rd Board Meeting, which the applicant has agreed to. She asked

the public if there was anyone in attendance to comment on the proposed applications, which there was not. Therefore, the public hearing has been continued to the February 23rd Board Meeting.

C. Woodland Cove, LLC, new multiple dock license and variance applications for 129 Boat Storage Units on 8,816' of continuous shoreline.

Whalen stated that the public hearing conducted at the January 12th Board was not closed and was continued to this Board meeting. Based on the discussion at the January 12th Board meeting, the applicant has proposed additional amendments. She asked the applicant to provide a brief update on these amendments.

Mr. Matt Van Slooten, President of Woodland Cove, LLC, commented on the proposed changes since the discussion at the January 12th Board meeting. A summary of his comments were as follows:

- The original plan discussed in July was for 140 Boat Storage Units (BSUs). BSUs have been gradually reduced and improved over time, with 129 BSUs considered on January 12th. The current request has been amended to 121 BSUs, which this presentation will provide details of the proposed changes.
- The North Shore dock has been reduced from six BSUs to four to provide docking for Lots 4 and 5. Since Lot 6 would need to cross Lot 5 to get to the dock, some concern was discussed how this property owner would get to this dock. Thus, the slips for Lot 6 have been re-located to the Channel.
- The number of executive homes at the Peninsula site has been increased from seven to 10. Additionally, each executive home site would be restricted to three restricted watercraft. At the January 12th public hearing, seven executive home sites were proposed with each site allowed to store up to four restricted watercraft. Changes at the Peninsula would result in an increase in total BSUs from 28 to 30. A request was made to allow family members to store watercraft at these 10 executive home sites, with proof required. 20' side setbacks have been proposed within the "Flexible Boat Use Areas". Dock length variances are requested for two of the ten lots.
- In the Channel, the number of BSUs has been reduced by eight (87 to 79). This reduction was made at the south dock where the channel was the narrowest. As recommended by staff, dock lengths have been adjusted so that they are consistent, although they vary from cluster dock to cluster dock.
- He provided an overview of their thought process of shoreline dedication and density transferring for the Channel and South docks. This is further discussed on page 3 of the 1/19/11 Narrative submitted by Woodland Cove.
- He reviewed the amended proposed plan vs. the riparian plan. With the exception of a few lots on the North Shore, he believed that all of the riparian lots would have good access and would work. However, he believed that the multiple dock plan was more beneficial for the environment compared to the riparian plan.
- He appreciated the time devoted to this process in working with the LMCD and the neighbors because a great deal of feedback has been implemented in the proposed plan. The primary decision for the developer is to choose between the multiple dock plan and the riparian plan.
- He briefly commented on the dock plan notes, which they have requested flexibility from the LMCD.
- He entertained questions and comments from the Board.

Whalen suggested that the Board should hold their questions and comments until staff has provided an overview of the amended request. She asked Nybeck to provide an overview on this agenda item.

Nybeck provided an overview of the staff memo, dated 1/21/11. A summary of his comments were as follows:

- He provided an overview of Halstead Bay, including the Woodland Cove site, which documented the various areas of the 8,816' of shoreline (via a 2008 aerial picture).
- At the January 12th Board meeting, a public hearing was opened and continued to this meeting. Individual feedback was received from Board members on the four docking areas, although there was no Board consensus. However, there was adequate feedback for the applicant to consider amending their proposal, which Van Slooten has provided an overview of proposed changes.
- LMCD Code allows the Board to impose conditions on the granting or denying of a multiple dock license, which must be in writing. The Code allows for this to be done through subjective criteria, which he believed that four applied to this multiple dock license application.
- "Whether the proposed facility will comply with the regulations in this ordinance".
 - Three docks do not comply with the regulations of the ordinance so the applicant has applied for variances.
 - He reviewed decision standards for variance requests and reminded the Board that staff has previously recommended denial of the cluster dock at the North Shore.
 - Staff was generally supportive of the two variance requests at the Peninsula. Questions remain as to whether there should be a restriction on the number of boats and whether a site plan specific should be required.
- "Whether the proposed facility will create a volume of traffic on the Lake in the vicinity of the facility which will tend to be unsafe or will cause an undue burden on traffic upon the Lake in the vicinity of the facility".
 - Halstead Bay has 7.3 miles of shoreline, with Woodland Cove having 1.6 miles of shoreline (or 22% for the bay). In 2010, LMCD staff conducted a Shoreline Inventory for Lake Minnetonka. Statistics for Halstead Bay include: 1) 285 watercraft documented (257 at riparian properties and 28 at multiple dock licenses), 2) there were 24 residential sites storing three watercraft, 3) there were six sites storing four watercraft, and 4) a similar trend would be anticipated for Woodland Cove should they proceed with the riparian lot option.
 - At the January 12th public hearing, testimony was received of how added boats to the bay would create public safety issues. Halstead Bay is a dead-end bay, with one channel for ingress and egress that is at an angle with blind spots. Should public safety concerns exist, the Board has the ability to reduce BSUs, possibly on a bay-wide basis, or establish a Quiet Water Area for all or part of the bay.
- "Whether the proposed facility will be compatible with the maintenance of the natural beauty of the Lake".
 - Public testimony was received on January 12th by bay residents that enjoy the current scenic views.
 - The applicant has proposed to store the majority of the boats in the Channel. The Board may want to require that all of the boats are stored in the Channel (excluding the 10 executive home sites on the Peninsula).

- “Whether the proposed facility will affect the quality of the water of the Lake and ecology of the Lake”.
 - Public testimony was received on January 12th by bay residents on this.
 - Staff has previously communicated that the majority of the shoreline is marginal for docking and boat storage. Staff concurs that there is a need to protect the lotus flowers at the North and South Shores. However, there are other environmentally sensitive areas at the North Shore (submerged vegetation), Channel (wetland area), and shallow water (two dock length variances at the Peninsula).
 - He reviewed feedback from John Barten of the Three Rivers Park District on the possible impact of water quality as a result of adding docks and boats to the bay. This included that Halstead is currently on the MPCA impaired waters list, literature supports impacts that boats (prop dredging) has on water column phosphorus concentrations and vegetation levels, and possible future impacts if the water quality is improved on the bay.
 - Staff questions whether the 1:50’ General Rule is adequate to protect the environmentally sensitive areas, which he provided further details and analysis of. He believed that a 1:100’ Standard is reasonable to protect the environmentally sensitive areas.
 - Using the density standards, staff believes that 109 BSUs is the appropriate number for this site.
- Findings of Fact (and Memorandum) should be prepared for this site, whether the applications are approved or denied. Possible conditions for approval include:
 - 109 BSUs (30 at the Peninsula and 79 in the Channel).
 - No boat storage at the North and South Shores.
 - Approval of “Flexible Boat Use Areas” for Lots 1-6, 9, and 10 (subject to all watercraft being owned and registered to residents of each site).
 - Approval of the dock length variances of the “Flexible Boat Use Areas” at Lots 7 and 8, subject to: 1) better details of the approved area, 2) all watercraft being owned and registered to residents of each site, and 3) a hardship of shallow water.
 - Staff does not support approval of the Dock Plan Notes, which he provided greater explanation of.
- He entertained questions and comments from the Board.

Whalen solicited questions from the Board, in which there were none. She continued the public hearing from the January 12th meeting and invited the public to comment.

Mr. Pete Stuckey, 4355 Trillium Lane W., stated that he was in attendance representing the Trillium Bay Homeowners Association (HOA). He thanked the Board for the opportunity to provide comments and thoughts on the proposed applications. Residents of the HOA recognize that they live on a beautiful bay and are protective of the shoreline, wetlands, and native vegetation. The same residents recognize that water quality on the bay ranges from poor to bad. This has been a challenge in the past, and will continue in the future, with the proposal to increase boat storage up to 40% on Halstead Bay. However, the residents of the HOA are respectful to the developer's rights. He believed that the challenge in considering the proposed project is the number of BSUs, the location of BSUs, and the rules that apply to them. The HOA is in support with a majority of the proposed project. This includes: 1) the multiple dock

approach rather than the riparian rights approach, 2) the proposal to place 79 BSUs in the Channel, and 3) the proposal for 30 BSUs at the 10 executive home sites on the Peninsula (including the "Flexible Boat Use Areas"). However, the HOA has two concerns. First, the placement of four BSUs (on the north edge of the property) and the placement of eight BSUs (on the south edge of the property near the lotus flowers). He believed that these two proposed locations do not fit within the overall quality of the rest of the proposal and stood out as not being consistent with the proposed project. He asked that the Board and developer work on a solution whereby these 12 BSUs are incorporated with the 79 slips in the Channel. Second, the HOA does not agree with the request to allow relatives the right to store one or more boats at the riparian properties. The HOA respects the homeowner's rights; however, do not respect the rights of family members. He believed that this would increase density on the bay, which will reduce water quality. He closed by saying that he believed the developer was getting close on a good proposal.

Mr. Al Grabowski stated that he was in attendance representing Anglers for Habitat, which has a mission clean water and fishing in Minnesota. He was familiar with Planned Unit Developments (PUDs) and understood process of give and take for PUDs, including the concerns raised by the residents. When this site was originally considered in 1995, it was approved for 88 BSUs. He believed that this factored in the MN DNR Shoreland Rules, which was a minimum lot width of 100'. These rules were based on scientific research and are explained in a fishery magazine produced by the MN DNR. He appreciated the analysis prepared by staff to protect the environmentally sensitive areas for 109 BSUs, although he supported the 88 BSUs approved for this site in 1995. Although Anglers for Habitat does not have a lot of financial resources, it has manpower and he offered its use for future volunteer projects on Lake Minnetonka.

Whalen stated that the LMCD has discussed potential projects with some members of Anglers for Habitat that Grabowski has referenced and the agency looks forward to working with them.

Mr. Mickey Goetting stated that he was a member and conservation officer for the Minnesota Bass Federation. He commented on the overall size and magnitude of the project, including the need to protect the habitat, ecology, and emergent vegetation in the area (including the wetland areas). Additionally, he expressed concern about the impact on the water quality of the bay. He spoke in detail on the effects of turbidity and the introduction of phosphorous into the water. A question remains as to what impact the development might have on the environment in this area. However, the Minnesota Bass Federation does not want to look to the future as having the need to restore the lost habitat. A recommendation was made to lessen the impact on the ecology and water quality by this project.

Mr. David Gross, former LMCD Board member, made the following comments.

- He served on the LMCD's Environmental Technical Advisory Committee (TAC), which has previously made recommendations on docking and boat storage. The TAC recognized that Halstead Bay has some of the poorest water quality on Lake Minnetonka, although it is improving slightly. He commented that the phosphorous nutrients that contribute to the poor water quality on the bay have not disappeared (these nutrients exist in the bottom sediments).
- The Board, in coordination with the City of Minnetrista, previously looked into keeping bottom sediment undisturbed on Six Mile Creek. If a large number of boats are approved at this site, it might be counter-productive for the work done on Six Mile Creek.

- He acknowledged the riparian rights of the developer at this site, although there is a need to mitigate the damages caused by boat storage and usage. He summarized two recommendations of the TAC to mitigate damage at this site. First, restrict the slips to the Channel since this is not a natural area, it has already been dredged, and it is much easier to address future sediments concerns in this area. Second, restrict access to the Channel through a single-marked channel outside of the shallow littoral zone area on Halstead Bay.
- From a personal standpoint, he commented on the number of non-riparian slips requested by the developer, which he believed was a large number. He believed that the Board should consider its policy on the granting of non-riparian slips, although he recognized that this done around the Lake. Once these slips are approved by the LMCD, they become assets of the developer and can be marketed in a number of ways, which he elaborated on. He recommended that the Board consider the non-riparian slips similar to any other commercial marina or municipal dock on the Lake.

Mr. Richard Siakel, 25680 Birch Bluff Road, addressed the comment made by Nybeck on future public safety. If future boat use becomes a public safety issue for Halstead Bay, one option the Board could consider to address this would be to restricting riparian rights at all sites on the bay, not just the developer's site. He believed that this needed to be understood by all bay residents on Halstead Bay.

There being no further comments, Whalen closed the public hearing at 8:08 p.m. She thanked the public for their testimony, which the Board will take into consideration in its decision-making process. A recommendation has been made by staff (109 BSUs with a number of conditions), as well as an amended proposal by the developer for 121 BSUs. The City of Minnetrista, prior to these applications being submitted, has established a goal to protect the environment in this area to the greatest extent. She believed that the LMCD had a similar goal in its Strategic Plan. She encouraged the Board to mitigate the effect to the lakeshore and Lake itself as a result of this development. She recommended that the Board not approve the 4-slip cluster dock abutting the North Shore (as recommended by staff) and reducing the BSUs accordingly. In the proposal from staff to consider 109 BSUs, she encouraged the Board to consider the number of proposed boat owners, 70. She believed that this established perspective for the Board to consider and she concurred with the comments made by Gross on non-riparian slips. In some ways, the proposal made by the developer is an in the water PUD. She encouraged the Board to protect the shoreline, to protect the water quality, and to mitigate the visual impacts. In return, something needs to be provided to the developer by the LMCD (non-riparian slips).

Babcock complimented the developer in addressing the vast majority of concerns raised by the Board in past meetings, although there is a need to resolve a few pending issues. He stated that he was on the Board in 1995 when a smaller amount of BSUs was approved by the LMCD. The 1:100' standard was used because of other jurisdictions, although he believed that this made sense and was not adopted by the LMCD on a blanket basis. He expressed his interest in considering this project on the basis of looking at the shoreline and not the platted lots (usable shoreline and credit for non-usable shoreline). He believed the usable shoreline should be credited at 1:50' General Rule, extending the 1:100' standard in areas needing environmental protection. He believed that staff's analysis took this into consideration. He expressed concern about the installation of docks at the North and South Shores and believed that it was more appropriate in the Channel. For example, the 1995 approval (if installed) would be smack in the middle of the lotus flowers abutting the South Shore. He recommended using dredging as a means of providing riparian access on a reasonable basis, not as a means of providing riparian access on a

maximum basis. He concluded that he was uncomfortable with the proposal of 121 BSUs and was more comfortable with the recommendation of 109 BSUs (or somewhere in that area).

Whalen encouraged that any approval by the Board should take into consideration of the upcoming preliminary plat with the City of Minnetrista. She believed that water quality could be impacted with changes to the approval by the LMCD.

Babcock stated that he was not troubled with the Board making an approval that was not tied to the City of Minnetrista's approval of the preliminary plat.

Van Slooten supported the recommendation of Whalen that the preliminary plat be tied to the docks and lots currently proposed. The next step for developer is to update the proposed drawings, including docks and boat storage being considered by the Board. He encouraged the Board to not vote on the proposed dock plan if the South Dock were removed. Additionally, he addressed the comments made on water quality, in particular runoff, and how it will be improve with the proposed development.

Hartwich questioned staff how frequent the Channel would need to be dredged?

Nybeck stated that question was probably more appropriate for the Minnehaha Creek Watershed District (MCWD).

Babcock stated that was discussed at length in 1995, with the conclusion of the MCWD that it was a maintenance dredge. He believed that this could continue at this development in the future.

Klohs stated that the developer previously commented on the proposed docks at the South Shore. He asked the developer to comment on the importance of the proposed docks at the North Shore.

Van Slooten stated that the North Shore docks are not as important as the South Shore docks. If needed, he believed that the docks for these two properties could be relocated to the Channel.

Olson asked for the type of construction of the proposed docks.

Van Slooten stated that the docks in the Channel would be permanent docks, with the balance of the docks being seasonal that would be installed and removed annually.

Jewett stated that he supported the proposed dock at the South Shore, which he also supported at the January 12th Board meeting.

Baasen stated that the LMCD has been in contact with the developer since this past July. The number of proposed boats has been reduced over time and he appreciated the efforts of the developer on this. At the January 12th Board Meeting, he expressed no concerns about the North and South Shore docks because the developer reduced the number of boats proposed at the South Shore dock. Based on the discussion at this meeting, he preferred that the North Shore Dock get relocated into the Channel and he encouraged the Board to approve 121 BSUs for this site.

Whalen re-stated that staff has recommended 109 BSUs for this site. She believed that should be the

starting point for the Board's consideration and that justification should be provided by Board members if they would like deviate up from the 109 BSUs. Whatever decision is made by the Board, it needs to be justified in order for LeFevere to prepare Findings of Fact.

LeFevere provided guidance on the legal issues for the Board to consider. The most restrictive density standard in the LMCD Code is one restricted watercraft for each 50' of continuous shoreline. At this site, the developer has proposed a single site with cluster docks. Terms such as carrying capacity, useable shoreline, and a 1:100' standard have been raised. Staff in its memo has laid out the relevant subjective criteria that the Board can consider in the review of the developer's applications. These subjective criteria should be considered if the Board is considering a lower density standard than the 1:50' General Rule because the decision needs to be justified.

Hartwich stated that 88 BSUs were previously approved at this site. The geography and nothing else has changed at this site and he questioned what the legal authority was to allow the Board to consider the 121 BSUs proposed by the developer.

LeFevere stated the 1:100' density standard considered in 1995 was part of the review and approval process by the City of Minnetrista. He cautioned the Board from using this density standard just because it was previously approved. If the Board would like to consider further reduction of BSUs, this decision should take into consideration the subjective criteria. In 1995, the Board fully approved the density requested by the applicant.

Babcock commented on the 88 BSUs approved at this site in 1995. He recalled that the subjective criteria were considered as part of this approval, which resulted in additional restrictions at this site. There was concern at that time the approval would have on the Lake.

Whalen stated that Board should consider that the 1995 approval was for 88 BSUs to provide docking for 81 residential sites. With staff's recommendation of 109, this would provide docking for 70 residential sites. This could result in fewer boats on the water at a given time.

The meeting was recessed at 8:42 p.m. and reconvened at 8:51 p.m. Whalen stated that there seemed to be a consensus that the cluster dock at the North Shore was not appropriate. A question remains as to whether these four slips should be moved into the Channel or reduced from the proposed BSUs of 121.

Page stated that he continued to believe the number of boat to be stored on this site would be less with the riparian plan vs. the multiple dock plan, even with the reduction of proposed BSUs from the January 12th Board meeting. He believed that he was in the minority on the Board and was prepared to make a motion.

Siakel stated that she believed ownership of the watercraft for both riparian and non-riparian slips should be tied to residents of the site. These BSUs should not be allowed for boat owners outside of the development because she believed this would give these slips a commercial marina feel. She questioned whether the non-riparian slips would be tied to the property owners in the development.

Van Slooten stated that the intent is for the non-riparian slips to be restricted to residents within Woodland Cove. A request was made for a similar restriction on the ownership of the watercraft as Trillium Bay HOA (limited to the property owner or a family member).

Whalen questioned whether the non-riparian slips would be assigned to specific lots or whether lots will be purchased with the owner opting to purchase a slip.

Van Slooten stated that was a detail that had not been finalized yet. He envisioned that this would be worked out with the City of Minnetrista.

Babcock stated that the developer cannot sell the rights to a dock. Lake Minnetonka is public waters and is subject to reasonable regulations. He asked LeFevere to further elaborate on this.

LeFevere stated that when a developer sells a lot, the slip cannot be sold with it because Lake Minnetonka is public water. In fact, it would be foolish for the developer to guarantee dockage rights because the LMCD could further restrict dockage rights in the future on a lakewide basis. If the LMCD were to approve 129 BSUs, the developer should sell a 1/129th interest in what has been permitted by the LMCD. For the riparian slips, the discussion by a number of Board members is to limit them to residents of each site. Generally, the LMCD restricts multiple dock licenses to number of BSUs, not who owns them. However, for this development, it probably makes sense because of the boat club concept. He asked the developer to clarify whether the non-riparian BSUs would be tied back to one lot or whether the BSUs would be tied back to multiple properties, such as a boat club. Although a boat club would not increase the total number of approved BSUs, it would increase the usage of each boat stored within these slips.

Van Slooten stated he could not answer LeFevere's question at this time. As previously communicated, the developer is prepared to restrict non-riparian BSUs to residents of the development. There are a number of custom lots adjacent to the Lake where it might make sense to tie BSUs back to the lot. There are also a number of other homes throughout the development and the developer would like to make it the nicest neighborhood.

Babcock stated that he believed it would be easier for the Board to consider non-riparian BSUs if they were back to one lot. This becomes potentially more problematic with 1,071 units in this development that could be tied back to multiple property owners through a boat club concept.

Van Slooten stated that he did not totally understand all of the possible options for the 45 non-riparian BSUs. At this time, he did not want to commit each BSU for one lot. He amended the proposal at this time to 117 by eliminating the four-slip cluster dock at the North Shore and reducing the proposed BSUs by four. He felt strongly about maintaining slip sizes as currently proposed.

Olson stated that he believed LeFevere was referring to condominiums or apartment buildings where one or more boats are shared by multiple property owners. He stated this has been done at other condominium associations on other bodies of water within the watershed district.

Van Slooten stated that he would like to keep his boat usage options open and flexible.

Whalen stated that a concern she had was boats with multiple property owners and the potential impacts that this could have on the Lake.

Babcock stated that boats with fractional ownership have a greater tendency to be active on the Lake. He believed that this needed to be discussed and further defined by the development group. He also believed that activity on the Lake ties into how long someone owns a boat (anecdotal supports that the longer a boat is owned, the less frequently it is used annually).

Van Slooten stated that the development at this time is not considering a 41 BSU boat club. He envisioned a certain number of these BSUs being tied back to specific lots, which he estimated at least 50%. However, he requests flexibility from the Board to allow them to decide how to provide amenities that other developments cannot.

Whalen stated that the boat club concept for the 41 non-riparian BSUs creates a new way of looking at this development. She questioned whether she would be willing to approve even 30 non-riparian BSUs that utilize the boat club concept.

McDermott questioned how the LMCD could control this to a certain degree. For example, any of these property owners could have another party chip in and have multiple owners of a boat.

LeFevere stated that the Board could take into consideration the frequency of the use of boats through a boat club because the developer has raised the issue of the multiple dock plan vs. the individual lot plan. The question for the Board to address is whether the frequency of use of the 41 non-riparian BSUs is a concern.

Baasen questioned whether it possible for the Board to approve the new multiple dock license, with the applicant needing to come back to the Board if they want to consider a boat club situation in the future.

LeFevere stated that if the Board proceeded with the concept as communicated by Baasen, he recommended the Board require that each BSU to be tied back to one lot. The developer could always amend this condition. In fact, the Board might be more inclined to provide this development the flexibility currently requested in the future when the overall development is more apparent on Halstead Bay.

Baasen stated that he understood some of the Board member concerns relating to the boat club concept for the non-riparian BSUs. To keep this process moving forward and to protect the bay, it might make sense to tie these BSUs to one lot and to allow the applicant to amend this condition in the future.

Babcock stated that the MN DNR has previously done studies as to how much surface water is needed for the recreational use of watercraft. Possibly the LMCD should utilize these studies prior to making a decision if a boat club is proposed.

Van Slooten stated that if the Board wanted to look into boats per acre of water, he believed that this would support this proposal. This was previously reviewed by the developer at the January 12th public hearing. He believed that maintain some flexibility of the non-riparian BSUs was key. Approving a condition that tied all of these 41 non-riparian BSUs back to one lot he viewed as a denial of the

proposed applications. He stated that he was willing to say that no more than 20 BSUs would be used for a shared boat club type of arrangement.

Babcock stated that he was uncomfortable having the South Shore docks being within the 100' contour due to the vegetation in the area. He expressed support for a possible length variance at this site, up to 200', although he preferred that these BSUs be relocated to the Channel.

Nybeck questioned whether the proposed dock could be contained within the 100' contour based on the 2008 aerial photo. He believed that the two options for the Board to consider include: 1) relocated the eight BSUs to the Channel, or 2) grant a dock length variance to keep the proposed BSUs away from the lotus flowers.

MOTION: Baasen moved, Jewett seconded to: 1) approve the amended request of 117 BSUs by eliminating the four-slip cluster dock at the North Shore, and 2) allowing for a dock length variance up to 200' for the eight-slip cluster dock at the South Shore.

A number of friendly amendments were discussed by the Board, which are summarized as follows:

- Whalen proposed to tie all 41 non-riparian BSUs back to one lot each. Jewett and Baasen did not agree to this.
- Restricting the storage of watercraft at all riparian properties to residents of the site. Jewett and Baasen agreed to this.
- Whalen recommended the need to tie back this approval back to the preliminary plat approval of the City of Minnetrista. Baasen and Jewett agreed to this.
- Babcock recommended the need for the plat to include adequate easement for all shared docks for egress and ingress. Baasen and Jewett agreed to this.
- Whalen proposed a uniform canopy color, such as the solid green proposed by the developer. Baasen and Jewett agreed to this.
- Whalen proposed that the Channel be marked as a no wake zone (per Gross' comments). Baasen and Jewett agreed to this.
- Babcock proposed a buoy plan, based on the discussion at this meeting, that is consistent with the remaining buoys installed on Lake Minnetonka and permitted by the Sheriff's Water Patrol. Baasen and Jewett agreed to this.
- Babcock stated that there will be a tendency for the riparian property owners that do not have a dock approved in front of their property to store personal watercraft on shore. He recommended prohibiting this, as well as restricted watercraft. Baasen and Jewett agreed to this.
- As-built surveys to be submitted within three months after dock construction. Baasen and Jewett agreed to this.
- Approval of dock length variance for Lot 7, Lot 8, and the South Shore property. This will include "Flexible Boat Use Areas" for Lots 7 and 8. Baasen and Jewett agreed to this.

LeFevere stated that the motion (with friendly amendments) would be to prepare Findings of Fact and Order (with memorandum) for approval of the applications.

Whalen expressed concern about the timing of the request for flexibility of the 20 non-riparian slips that could be tied to an undisclosed amount of lots.

Babcock stated that he concurred with Whalen and would like the developer to come back with more information on this.

Van Slooten stated they have decreased the flexible use of 45 non-riparian BSUs to 20 at this meeting. If the Board cannot provide flexibility for these 20 BSUs, he recommended that the Board vote the whole thing down.

Siakel stated that there is no need for the Board to feel rushed to make a decision on these 41 BSUs.

Baasen expressed concern about the proposal by the developer to take it or leave it.

Klohs stated that he believed there was no reason to carry this over to the next meeting based on the feedback from Van Slooten.

Babcock proposed an additional friendly amendment to not establish any specific restrictions at this time for the 20 non-riparian BSUs, which would allow the applicant and staff to work out the details. Baasen and Jewett agreed to this.

VOTE: Ayes (10), Nays (3; Hartwich, Page, and Whalen); motion carried.

The meeting was recessed at 10:15 p.m. and reconvened 10:22 p.m.

10. OTHER BUSINESS

A. Ordinance Amendment, first reading of an ordinance relating to signs on Lake Minnetonka; amending LMCD Code Section 2.12, Subd. 6.

Whalen asked Harper to provide an update on this agenda item.

Harper stated this ordinance amendment was reviewed by the Ordinance Review Committee based on advertising issues brought to his attention. The current ordinance is pretty general and this ordinance amendment, if adopted, would provide more specifics.

Whalen stated that this ordinance amendment was pretty straight forward and was discussed at a number of committee meetings, which included stakeholders.

MOTION: Babcock moved, Johnson seconded to approve the first reading, to waive second and third readings, and to adopt the ordinance amendment as submitted.

LeFevere stated that the current ordinance prohibits most signs on Lake Minnetonka. The proposed ordinance amendment is more permissive and perhaps the Board wants to consider going further.

The Board discussed a variety of situations that could be prohibited by the proposed ordinance amendment. These included:

- Flags (American, sports, and non-logo);
- Decorative painting (in particular advertising) on ice fishing houses; and
- Sponsorships on fishing and sailboats when stored at a dock.

Babcock stated that although he would prefer to approve first reading at this meeting, he and Johnson withdrew their motion. Staff was directed to check into how the surrounding cities deal with this, taking into consideration the Board discussion, and to bring it back to an upcoming meeting.

- B. Update on: 1) Board member terms that expire in January, and 2) Nominating Committee recommendations for 2011 LMCD Board Officers.

Whalen acknowledged that this was her last meeting and thanked the Board for the opportunity to serve, in which the Board acknowledged Whalen's service and thanked her for her service, as well.

Baasen stated that the nominating committee faced a challenge because a number of the key Board members were not returning in 2011. With that said, the nominating committee is recommending the following slate of Officers for 2011: 1) Babcock- Chair, 2) Baasen- Vice Chair, 3) Page- Treasurer, and 4) McDermott- Secretary.

Whalen asked the Board if there were any other nominations from the floor for Board members that would like to be considered as an Officer in 2011. There were no nominations from the floor.

MOTION: Jewett moved, Kask seconded to approve the slate of 2011 LMCD Board Officers as recommended by the nominating committee.

VOTE: Motion carried unanimously.

- C. **LMCD Resolution 123**, a resolution designating appointments for 2011

Whalen directed the Board to an amended resolution in the handout folder, adding Page to the AIS Task Force and Ordinance Review Committee, as well as Baasen to the AIS Task Force.

MOTION: McDermott moved, Olson seconded to approve LMCD Resolution 123 as amended.

VOTE: Motion carried unanimously.

- D. Staff update on LMCD Special Event Permitting

Whalen asked Nybeck for an update on this agenda item.

Nybeck re-assumed its jurisdiction to permit special events on Lake Minnetonka in 1998 to assist in the prevention of new aquatic invasive species (AIS) into Lake Minnetonka. Recently, the LMCD met with representatives from various fishing tournament coordinators to discuss a variety of topics, including special event permitting on Lake Minnetonka. Based on the discussion at this meeting, he recommended repealing the ordinance for 2011, working very closely with the Sheriff's Water Patrol for recommendations of best management practices. He directed the Board to a draft ordinance amendment provided in their packet for their consideration.

Whalen confirmed that permitting of special events takes staff time that could be used more effectively on other projects.

Babcock stated that he would like to have the existing ordinance for review prior to repealing it. He concurred with streamlining of special event permits through the Sheriff's Water Patrol, although the Board might want to reserve the right to permit those unique special events in the future.

The Board directed staff to work with Babcock, Suerth, and LeFevere in amending the current ordinance for Board consideration in February.

D. Chair presentation of Statewide AIS Task Force PowerPoint.

This agenda item was postponed due to time constraints.

11. Update from standing LMCD Committees:

- Aquatic Invasive Species (AIS) Task Force
- Save the Lake Committee
- Ordinance Review Committee
- Public Safety Committee
- Environmental Committee

Whalen stated that Suerth, Nybeck, and she had recently met with the MN DNR on the Watercraft Inspection Program for the 2011 boating season. With that said, she tabled the remaining committee reports to the next Board meeting due to time constraints.

12. EXECUTIVE DIRECTOR REPORT

There was no Executive Director Report.

13. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:44 p.m.

Douglas Babcock, Chair

Andrew McDermott, Secretary