

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, October 12, 2011
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; David Gross, Deephaven; Anne Hunt, Minnetrista; Chris Jewett, Minnetonka; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Roger Swanson, Spring Park; 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: Debbie Siakel, Shorewood

3. APPROVAL OF AGENDA

Nybeck requested that the draft September 28th Board Meeting minutes be removed from the agenda for approval (agenda item 5). This request has been made by Eric Evenson, Administrator of the Minnehaha Creek Watershed District (MCWD), to allow for further comments to these draft minutes for the MCWD update on possible ideas to manage and prevent the spread of AIS.

MOTION: Jewett moved, McDermott seconded to approve the agenda as amended, removing approval of the September 28th Board Meeting minutes.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

There were no Chair announcements.

5. APPROVAL OF MINUTES – 9/28/11 LMCD Regular Board Meeting

The September 28th minutes were removed from the agenda per agenda item 3 above.

6. APPROVAL OF CONSENT AGENDA

Jewett moved, McDermott seconded to approve the consent agenda as submitted; Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (10/1/11 – 10/15/11).

7. PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda (limited to 5 minutes) 7:04 p.m.

Olson acknowledged and read an email from Sam Bazil, dated 10/9/11, who asked that gifts provided for his

11th birthday be submitted as a donation to the LMCD. On behalf of the Board, he publically thanked Sam for his dedication and proven civic responsibility to the Save the Lake Fund.

8. PUBLIC HEARING

- **Russ & Gina Nettle and Ed Alexander**, dock length, side setback, and adjusted DUA variance application to amend a previously approved variance for a combined dock at 4658 and 4662 Kildare Road (application continued from 9/14/11 and 9/28/11 Regular LMCD Board Meetings).

Babcock asked Nybeck to provide an update on this agenda item.

Nybeck reviewed his staff memo, dated 10/5/11, which summarized a request to amend a joint variance application for dock length, side setbacks, and dock use area (DUA) for 4658 and 4662 Kildare Road. The application and public hearing was scheduled for the September 14th meeting, continued by Chair Babcock to the September 28th meeting, and subsequently continued to this meeting. He provided the following overview:

- A variance was originally granted in 1999 for this combined dock, which has 76' of 929.4' shoreline between the two sites. He reviewed historical action taken on currently approved variances for neighboring properties (Seton Bluff Development and the City of Mound), as compared to the current application before the Board.
- The communication process that took place after non-compliance of the currently approved variance was documented in 2007, in which neither of the current applicants resided at that time.
- He reviewed September 14th Board discussion, in which the Board provided the following feedback for the applicants' consideration in preparing a revised proposed site plan(s): 1) general support for the proposed dock and slip length of 131' to approximately 156' and 20' to 32', respectively, 2) expressed concern for the proposed slip widths of 14' and 16.5'; providing for the Board's interest of 12.5' which more closely represents the neighboring property owner (City of Mound), 3) that the dock structure be installed within the DUA established in 1999; maintaining necessary setbacks, and 4) that the docks meet the same standards that would be allowed for a similar site width.
- In follow-up to the September 14th meeting, staff has met with Mr. Alexander (on behalf of both applicants) and a professional dock installer. Furthermore, he stated that Alexander was in attendance to present three proposed revised site plans for the Board's consideration.

Mr. Ed Alexander, 4662 Kildare Road, provided the following overview:

- A review of the original 1999 variance site plan, in which he outlined how the 76' of combined shoreline was measured at a perpendicular angle vs. the 70.5' shoreline width between the established extended side site lines.
- A review of the as built survey of the existing dock; documenting non-compliance of the structure placement (estimated 12 degrees off to the northwest).
- He reviewed the revised proposed site plan presented at the September 14th meeting. He acknowledged that, based on the Board's prior discussion, he had obtained a better understanding of how a DUA is defined. Therefore, he provided a revised, proposed site plan, "Revised Dock Proposal"; providing for: 1) the same lot line extensions as provided for in the

1999 variance, a 20' setback for the Alexander slip (allowing for a canopy), 3) a 15' setback for the Nettle's slip (no canopy request), and 4) both slips measuring 12.5' x 32'.

Babcock asked if the approved site plan from 1999 documented the 70.5' shoreline width.

Nybeck stated that the approved variance from 1999 deflected the easterly side site line extension so that it parallels the westerly extended side site line extension. The approval allowed for two, 10' x 24' slips, with 20' foot setbacks on each side. Including 3.5' wide dock fingers, one could conclude the width of the variance approved in 1999 was 70.5'. He stated that he had recently discussed the proposed survey in comparison to the approved site plan in 1999, noting that it appears that survey provided in 1999 was flawed. Based on the current survey, it appears that the width of the area between the extended side site lines is approximately 67.5'.

The Board briefly discussed the measurements between the extended side site lines, taking into consideration measurements that would have been provided allowing for the full width of the shoreline. To this end, Nybeck believed the current proposed site plan is more accurate than what was provided in 1999 (acknowledging that the 1999 site plan is more of a drawing with superimposed measurements than a survey). He clarified that the oblique shoreline on the Alexander lot is an estimated 46', while the Nettles shoreline was documented at an estimated 30' (an estimated 76' of combined shoreline at the 929.4' ordinary high water mark).

Babcock questioned if the survey could provide measurements from the western most point to the point where the diagonal shoreline intersects the 929.4' shoreline, in which Nybeck reiterated that it would be an estimated 67' per scaled measurements. Additionally, Babcock stated that the adjusted dock use area variance approved in 1999 was approved based on the City of Mound's mutual consent, in which he spoke in depth on that approval process.

Nybeck clarified that Alexander would like the Board to consider the "Revised Dock Proposal #2" noted above for consideration during the public hearing. However, if the Board was not comfortable with that proposal, Alexander did prepare other proposals for consideration; "Revised Dock Proposal Backup #1" and "Revised Dock Proposal Backup #2." Prior to opening the public hearing, Nybeck offered the following comments to "Revised Dock Proposal #2":

- Revised Dock Proposal #2: Nybeck stated this proposal was preferred by the applicants, in which the following features were included: 1) 67' wide area between extended lot lines (not 70.5' as previously noted), 2) two, 12.5' x 32' slips, 3) a canopy for the west slip (none for the east slip), and 4) conforming setbacks; 20' and 15' respectively. Staff does not recommend approval of this proposal.

Alexander provided the following overview of "Revised Dock Proposal Backup #1":

- Revised Dock Proposal Backup #1: Alexander stated this proposal provided for a 67.5' wide area between extended lot lines, two 12.5' x 32' slips, a canopy for the west slip (none for the east), and a non-conforming setback for the canopied slip (17') and a conforming setback for the non-canopied slip (15'). He expressed concern that any of the presented proposals did not guarantee the structure being installed in conformance to the site plan; providing for the need to hire a

surveyor to confirm its accuracy.

Babcock stated it was the intent of the Board to approve a structure that is manageable in meeting setbacks when installed on an annual basis. He further clarified that hardships run with the configuration of the property and not the boat.

Nybeck directed the Board's attention back to "Revised Dock Backup #1". He reiterated the features offered in this proposal (noted by Alexander above). He believed that the Board could grant a side setback variance to accommodate the canopied 17' setback or require the canopy to be installed inside of the west slip to meet a 20' setback. Staff supports this proposal based on the 76' of oblique shoreline (greater than the 67.5' width between extended lot lines). If the Board were to consider a side setback variance for the westerly slip to accommodate the canopy, he recommended the Board utilize the decision standards when considering a variance application.

Alexander expressed concern about moving the canopy to the inside of the west slip for logistical purposes in getting into the boat from the dock, as well as other proposed configurations that could deny the Nettles accessibility to their boat from the inside walkway.

McDermott asked what the hardship could be for granting a side setback variance for the placement of a canopy on the outside of the west slip.

LeFevere stated that the original variance order established the western lot line of the property to the east. When that was made, it resulted in a distance between the extended lot lines of what staff is currently estimating to be 67.5'. Therefore, to accommodate 70.5', as noted above for "Revised Proposal #2", the extended lot lines (one or both) would have to be adjusted out so that it is not parallel (currently providing for a lack of legal description to show how that would be accomplished). If the Board believed that "Revised Backup #1" or "Revised Backup #2" made more sense, then the Board could adjust setbacks from the extended lot lines for that purpose. In addressing McDermott's question, he stated the Board needs to confirm if a hardship existed. Converging lot lines and shallow water (emergent vegetation), which were created by the DUA and oblique shorelines, have already been established. In every case, one could document the hardship as being established by the applicant. The question before the Board is not whether to allow the canopy (confirming the hardship(s) had been established), but whether the established setback for the canopy is reasonable. Furthermore, he stated that if there was not a hardship, there would have been room to allow for a canopy; providing for establishing a reasonable setback by providing for full credit for the oblique shoreline and taking the perpendicular measurements to the shoreline (estimated 76' of shoreline). If the Board felt the canopy would greatly impact the neighboring property owners, then one could establish the granting of a variance would not be reasonable.

Babcock stated that he believed the counting of oblique shoreline is not sustainable; comparing the neighboring properties' measurements against the current application being considered.

LeFevere stated that one scheme for dividing up the lake's shoreline will not work for all sites (providing for variances). With that said, he acknowledged that the LMCD has chosen to first consider shoreline

measurements via extended lot lots (surveyable measurements), in which secondary measurement adjustments are considered when necessary.

Olson acknowledged that the dock is quite a distance from the property but did not see the site lines being disturbed. He did not have a concern with the placement of one, or two, canopies but expressed concern about the current placement of the structure (a couple feet from the setback). He believed that a hardship existed for the granting of a side setback variance.

Babcock asked Alexander which site plan he would like considered during the public hearing, in which Alexander stated "Revised Proposed #2"; defaulting to "Revised Proposed #1" with allowance of a canopy at the west slip.

Babcock opened the public hearing at 7:50 p.m. There being no comments, he closed the public hearing at 7:51 p.m.

Gross asked Nybeck to clarify how the combined shoreline measurements discussed above (70.5' and 67.5' of shoreline) were derived.

Nybeck stated the 67.5' measurement was derived utilizing a scaled ruler on a proposed foldout survey based on the DUA established in 1999.

A summary of the Board comments were as follows:

- Jewett stated that he was in support of "Revised Backup #1" and concurred with Olson's comments above.
- McDermott requested clarification on the placement of the canopy structure, in which Jewett believed the canopy could be installed in either position (inside or outside the west dock structure). McDermott concurred with Jewett's recommendation.
- Morris concurred with Jewett's recommendation. However, did not see any reason to grant Alexander's preferred choice of "Revised Proposed #2". Jewett further explained that he could not support the giving of more shoreline credit than the current width of the area between the extended side site lines.

MOTION: Johnson moved, Hunt seconded direct LeFevere to prepare Findings of Fact and Order amending the previously approved dock length, side setback, and adjusted dock use area variance by adopting "Revised Backup #1" with the canopy structure installed on the outside of the westerly dock structure.

Nybeck recommended that the motion be subject to the five staff recommendations outlined in his October 5th memo, as well as the approved variance being registered on the title of each property.

Babcock expressed concern about staff's recommendation "To allow for the reconstruction of the dock to take place during the winter, with March 1, 2012 as the date that construction must be completed by." He did not believe that recommendation was supported by LMCD Code.

The Board briefly discussed this matter in which they concluded that the dock needed to be removed as it is in non-compliance with the Code. However, there was not a concern as to when reconstruction should take place. In asking the applicant what a reasonable date would be for the removal of the non-compliant dock, May 15th was established. To this end, Johnson and Hunt amended their motion to include all staff recommendations with the one change noted above.

Olson stated that he did not see a reason to prohibit a canopy for the east slip. He acknowledged the positive aspect of two property owners working together for the use of a combined dock.

Babcock stated the Board is considering granting a variance for more than what a conforming homeowner would be allowed to do. He believed a lot of relief was provided to the applicant by providing for a parallel DUA. Additionally, he believed the applicants had reasonable use of the property without additional variances being granted.

LeFevere stated that he would recommend that the draft Findings document the removal of the non-confirming structure be defined as "beyond the cattails". Babcock recommended the wording, "any non-confirming structure".

VOTE: Ayes (12), Nays (1, Babcock); motion carried.

Nybeck publically thanked Mr. Alexander for his cooperation in resolving this matter; acknowledging this had not been an easy process.

9. OTHER BUSINESS

A. Hennepin County Sheriff's Water Patrol, Report on 2011 Lake Minnetonka boating activities.

Babcock asked for background on this agenda item from Lt. Hartig, welcoming him on behalf of the Board.

Lt. Hartig thanked the Board for this opportunity and made the following comments based on activities of the Water Patrol from January 1st through September; briefly touching base on past winter activity as well:

- An overview of the Water Patrol staff, their tenure, and the 30 special deputy volunteers (several more of which are pending the start of training). He expounded on the importance of the special deputies and the personal hours that they sacrifice.
- There were 63 special event permits issued on Hennepin County waterways, with a majority of the events on Lake Minnetonka (most of which are fishing and sailing regattas). He stated the recent change in the LMCD permitting process had provided for a closer working relationship with the LMCD.
- The importance of their enforcement and safety educational efforts; expounding on the various programs that have taken places and those that are currently being planned.
- Winter activity (January through March) resulted in one snowmobile, ten property damage, and one ATV accident. There were seven Snowmobiling While Intoxicated (SWI) arrests, 26 speeding citations, and 40 citations for fish house violations. He expounded on two speed enforcement programs held in conjunction with the Minnesota Department of Natural Resources.

- He believed the warmer weather impacted the following 2011 Water Patrol enforcement statistics: 1) 75 BWI arrests; 18 of which were arrested (48 in 2010; 104 in 2009), 2) eight careless boating citations (one in 2010; 23 in 2009 and eight in 2008), 3) 40 citations for shorezone and quiet waters violations- acknowledging the 2011 High Water Declaration and their initial efforts to educate the public via press releases and personal conversations with watercraft operators, 4) 31 minor consumption citations, which most occurred in 2011 during the months of July and August (21 in 2010; 33 in 2009; and 50 in 2008), 5) 74 life jacket citations, in which he outlined the categorize of (73 in 2010; 132 in 2009 and 96 in 2008), 6) 22 theft pieces reported in Hennepin County (22 in 2010; 43 in 2009; and 36 in 2008), 7) there was one drowning on Lake Minnetonka, in which he expounded on those efforts (16 drownings and 20 near-drowning throughout Hennepin County), 8) 4,732 hours of patrol were provided on Lake Minnetonka; up 22% from the 3,535 hours provided in 2010 (4,011 in 2009). The next closest patrolled body of water was the Mississippi River with 187 patrol hours (253 in 2010).
- The Water Patrol continues to be a model for other law enforcement agencies; providing for search and rescue assistance and management practices to other counties and states. Lake Minnetonka is considered an extremely safe environment, which is a direct result of the LMCD ordinances currently in place.
- As boating season draws to a close, the Water Patrol will evaluate personnel and activity for 2012 patrol procedure adjustments. Additionally, special enforcement details will continue this fall and winter.
- He entertained questions and comments from the Board.

The Board asked a few questions, in which Hartig provided the following responses: 1) he contributed the increase in BWI arrests to greater staff experience and warmer weather, 2) that the typical ages for minor consumption citations were 17 to 19 years old, 3) that none of the thefts included watercraft, 4) that the Water Patrol was required to adjust their resources to better patrol the 2011 High Water Declaration on Lake Minnetonka, and 5) he did not believe the adopted 2012 budget should affect Lake Minnetonka's enforcement efforts.

On behalf of the Board, Babcock thanked Hartig and members of the Water Patrol; acknowledging appreciation for the great working relationship the LMCD has with their agency.

Nybeck stated the annual LMCD/Hennepin County Water Patrol Joint Cooperative Agreement meeting will be scheduled in the near future.

B. 2011 EWM Harvesting Final Report

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

Harper provided an overview of the following information: 1) a summary of the harvesting season data (the number of working days, lake levels, harvester loads, and truck load), 2) operating highlights, 3) personnel, 4) equipment (including the operation and maintenance of), and 5) the 2011 budget. He entertained questions and comments from the Board.

The Board asked Harper a few questions or made comments, as follows: 1) confirmation that the area to harvest is determined by how far it is to get to navigable water (or to the point where the milfoil is not impeding as the harvester can only reach five feet under the surface water), 2) the request to amend the final Report to document areas intentionally not harvested due to chemical treatments, 3) that the capsized harvester did not cause further concerns to the lake residents due to the current year's low milfoil growth and the five bays that were chemically treated, 4) the future request to change the Report to hours worked vs. days worked for consistency purposes, and 5) confirmation that 2011 provided for the second year staff worked four, ten hour days.

10. Update from standing LMCD Committees:

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

Babcock asked for an update from the Chair, or designated representative, of each committee.

AIS Task Force

Page stated a meeting is scheduled for October 21st, at 8:30 a.m. in the LMCD office. Suerth acknowledged the importance of the agenda topics scheduled for this meeting.

Olson submitted a draft resolution which outlines the LMCD's support to the MCWD in their efforts to help fight aquatic invasive species. Babcock directed staff to place the draft resolution on the agenda at the October 26th meeting for Board consideration.

Ordinance Review Committee

Babcock stated a meeting will be scheduled in the next couple weeks.

Public Safety Committee

Johnson stated a meeting will be held in November or December.

Save the Lake

Olson stated that the Save the Lake Fund continues to receive aerial photograph orders and donations, in which thank you letters have been sent. He acknowledged donations are starting to come in from various foundations, which has placed the Fund balance closer to the targeted goal.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated that second interviews for the vacant part-time Administrative Clerk position are scheduled for October 14th, with a recommendation for hire scheduled for October 26th.

McDermott recommended that staff submit a letter of thanks to the MCWD for their funding in the recent removal of flowering rush on Smiths and Maxwell Bays. The Board concurred with this recommendation.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:46 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary