

LAKE MINNETONKA CONSERVATION DISTRICT

Board of Directors Workshop

6:00 P.M., Wednesday, March 12, 2014

Wayzata City Hall

CALL TO ORDER

Baasen called the meeting to order at 6:00 p.m.

ROLL CALL

Members Present: Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Doug Babcock, Tonka Bay; Kent Carlson, Deephaven; Jim Doak, Woodland; Ann Hoelscher, Victoria; Anne Hunt, Minnetrista; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood (pending appointment that evening). Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; and Judd Harper, Administrative Technician.

Members Absent: None

Commercial Marinas: Rich Anderson, North Shore Marina; Dave Briggs, Wayzata Marine; Jim Gilbert, James H. Gilbert Law Group; Gabriel Jabbour, Tonka Bay Marina; Jerry Rockvam, Rockvam Boat Yards; and Don Westman, Lindbo Landing Marina.

Baasen stated that the Board decided at the February 26th Board meeting to undertake a review of the changes proposed to the Lake Minnetonka Conservation District (LMCD) Code by the commercial marinas. He stated this meeting was scheduled to initiate that process. He hoped that this workshop format would allow the Board to ask their questions, as well as allowing the commercial marinas to interject in the discussion when recognized. With the Regular Board meeting scheduled for 7:00 p.m., he encouraged comments to be concise and less than five minutes in length. He asked Nybeck to provide further background on the intent and procedures for this meeting.

Nybeck stated that the procedures for this meeting are at the discretion of the Board. Based on the Board's prior direction, the following information was included in their packet:

1. Expansion of the Lake Minnetonka Commercial Marina sites spreadsheet (including Boat Storage Unit [BSU] expansion and special site characteristics);
2. A locator map of the commercial marina sites outlined on the spreadsheet; and
3. A list of public amenities for currently approved special density licenses. This information has been provided so that the Board better understands what public amenities may go away should an exemption be provided for commercial marinas (as proposed).

Baasen stated that information summarized by Nybeck is available for the public's review. The Board has separated the review of the proposed commercial sites as follows: 1) commercial marinas, 2) yacht clubs, and 3) the remaining categories (i.e., commercial- transient docks). He believed that the Board should focus on the following three changes: 1) to allow docks to construct out to 200 feet from shore, 2) public amenities and the exemption requested for commercial marinas, and 3) to allow the Executive Director greater discretion in the processing of "minor changes." He asked for additional comments from Green.

Green stated that there is also a need to better define "commercial marina," taking into consideration the proposed definition by the commercial marinas. He believed this was needed to provide the Board with a better understanding of which facilities meet this criteria.

Babcock stated that there are two facilities not included on the spreadsheet that have the ability to operate as a commercial marina (Maynard's in Excelsior and The Yacht Club in Spring Park).

Harper provided further background on why staff had not included those sites on the updated spreadsheet.

Baasen stated that the commercial marina owners have previously communicated that they provide a great deal of services to Lake Minnetonka, in which he believed that the Board concurred with. When considering the proposed changes (i.e., allowing facilities to construct out to 200 feet from the shore), the Board needs to consider what impacts might happen if this were to be allowed. He asked for comments from the Board.

Babcock commented of how allowing facilities to expand out to 200 feet from shore, which are currently not, could affect the neighborhood characteristics (in particular, since a number of the facilities are located in residential areas). He stated that he had personal experience with this because he lives in between two commercial marinas that are already constructed out to 200 feet.

McDermott questioned whether it would be beneficial to review commercial marinas on a lakewide basis for the purpose of identifying sites that may be problematic.

Nybeck stated that staff was prepared to review specific sites, at the Board's request, via Google aerial maps.

Baasen asked Jabbour to address the Board.

Jabbour provided historical background of the LMCD Code relating to dock use area (DUA) length restrictions (in particular, when the LMCD decided to reduce the DUA length allowance from 200 feet to 100 feet, which resulted in a number of facilities becoming legal, non-conforming facilities). A number of things have changed since this occurred in 1976, i.e., boat lengths and public safety issues at existing docks. He provided an overview of what could occur at his Tonka Bay Sales site on Excelsior Bay (formerly Schmitt Marina) via a dock plan prepared by a surveyor. The current docks are constructed out to between 57 and 75 feet and the proposal illustrated what could occur if the docks were constructed out to 200 feet. The visual impacts are obvious; however, the density would not double as entitled to per the Code (an increase from 24 to 35 BSUs). The linear footage of the slips would increase from 1,344 feet to 1,564 feet, which is how the costs are passed on to the customers. He believed that this was one example of a dock expansion project to take into consideration.

Anderson provided a similar survey for his facility on Tanager Lake. In particular, whether it would be beneficial to protect the littoral zone by allowing some of the docks to cluster and be constructed out to 200 feet from the shore.

Baasen questioned how the clustering of docks out to 200 feet would take into consideration the number of BSUs at this site.

Anderson stated that he was currently satisfied with his approved BSUs. Additionally, he provided an overview of the adjacent facility of changes that he made on Browns Bay (currently EOF Investments, Site 1). When this

occurred, he recalled that he reduced the number of BSUs by approximately 15. The docks are constructed out to 200 feet from shore and improved public safety, in which the Board reviewed this via a Google aerial map.

Baasen thanked Jabbour and Anderson for their feedback of what could occur should the LMCD make the proposed changes to the Code. He stated that he wanted to make sure that the proposed changes would be of benefit to the commercial marinas.

Anderson stated that he had concern about a comment made at the prior meeting by Babcock that times are not tough for the marinas. Although the marinas may be full, or nearly full, the rate for these slips is not market price. He stated that highest and best use for his properties may not be as a commercial marina and he hoped that the Board would ask what could be done to keep the marinas in business.

Babcock stated that he had two thoughts on the proposal offered by Jabbour. First, the footprint of the marina would get larger and it would affect his (and possibly others) use of this area of Excelsior Bay. Second, he believed that this facility provided limited public facilities or services (i.e., no gas dock). With regards to the site that Anderson previously owned, he believed that Anderson made the right decision (reduction in BSUs to make the facility better for his market demands). He also supported, in general, the concept of clustering (although further tweaks to the proposed ordinance are needed).

Green stated that at one time he wrestled with the idea of whether to distinguish between full service marinas and other marinas. Representing the City of Mound, its docking program has 590 approved BSUs (with a waiting list of approximately 148). Thus, he believed that the other marinas provide value to the public because those on the waiting list have another option for access to Lake Minnetonka.

Baasen questioned what would be the impact if the Board were to amend the LMCD Code to allow docks to be constructed out to 200 feet from shore. In particular, the potential increase in BSUs (potential vs. reality). He asked Harper to provide further background on this.

Harper used the 5th Streets Ventures site as an example. It currently is approved for 13 BSUs on 1,421 feet of 929.4 foot shoreline. If this facility were to increase BSUs up to the one watercraft for each 10 feet of shoreline (1:10') standard, the possible BSU density expansion is 129. However, this is most likely not realistic because the DUA is adjacent to Seton Channel and most of it is within emergent vegetation.

Nybeck stated that the potential BSU density expansion on the spreadsheet is 436. However, he recognized the realistic BSU expansion is much less than this.

Babcock stated that to be fair to the marinas, they are not currently requesting an increase in BSUs today. However, the potential increase of 436 BSUs exists (with the current Code limitation of the 100 foot DUA allowance).

LeFevere stated that there are two ways for the Board to handle the density question. First, the Board could grandfather the current density and do away with special density licenses (everybody is frozen in time). Second, the Code could be amended for commercial marinas, with some exceptions, which has not been proposed by the marinas. He commented that it's odd to grandfather all facilities for BSUs because facilities with special density licenses earned the additional BSUs (by providing public amenities). However, the current proposal is for an exemption from having to provide the amenities. By grandfathering all facilities at a 1:10' density standard, it would treat all facilities the same and would be more simplistic. However, the Board may be able to take into

consideration special site characteristics with regards to increasing BSU density up to the 1:10' standard (i.e., 5th Street Ventures, Al and Alma's, and North Shore Marina- Browns Bay). In summary, the proposed changes would allow for some expansion of BSUs; however, the proposed increase would be a much lesser number (perhaps 50). He reminded the Board that an increase in BSUs would require at least a new multiple dock license application, in which the Board could consider subjective criteria and would allow Board consideration on a case-by-case basis.

Rockvam stated that a proposal has been submitted in writing relative to changes to the LMCD Code, consistent with the discussion from last fall. He believed that there is a hang-up on the proposal to allow commercial marinas to expand out to 200 feet from shore and he expressed concern about the amount of time it is taking to process the overall proposal.

Babcock stated that he believed the marinas are providing a high degree of services on the lake. One concern that could occur if some of these facilities were to be discontinued is the elimination of pump out stations. Lake Minnetonka needs pump out stations and the commercial marinas are the most equipped to provide this service.

Baasen concurred with Rockvam that the commercial marinas have provided what was requested last fall (proposed changes to the LMCD Code in writing). The responsibility of the Board at this time is to analyze the potential fallout should the proposed changes be adopted. He believed that the Board needed a moderate amount of time to process the proposed changes, including a process for the public's input.

Rockvam stated that he had hoped that the LMCD would be further along in the process to where the Board could communicate what changes they could live with and/or have concerns about. He expressed concern about the Board discussing a variety of hypothetical situations.

Baasen reiterated that the Board needs some time to process the proposed changes, in which a response will be provided back to the commercial marinas.

Klohs stated that he would be supportive of allowing commercial facilities to construct out to 200 feet from shore (provided it makes sense).

Carlson disclosed that he was a commercial marina owner (Excelsior Bay Harbor), as well as serving on the LMCD Board for the City of Deephaven. He reviewed the permitting process when he pursued his current marina in 2000, which took approximately 18 months. His marina is currently conforming to the LMCD Code. He stated that he was concerned about Anderson having to reduce the number of slips to improve public safety at his facility. He also questioned whether allowing all facilities to go out to 200 feet from shore was the right solution. For example, he questioned whether a facility should be allowed to expand when there might be limited parking on land (there is a need for the LMCD to work with the communities and neighborhood on these types of issues).

Hoelscher stated that she was not troubled with allowing marinas to construct out to 200 feet from shore (in particular since most facilities are at or near this length). For the remaining facilities, this seems okay with some possible exceptions (i.e., emergent vegetation). She questioned whether these facilities would need to apply for a new multiple dock license.

LeFevre stated that all facilities require a new multiple dock license annually (with or without changes). With the proposed changes in the LMCD Code, it might make sense to re-establish the envelope if the changes are proposed outside of 100 feet or if there are an increase in BSUs proposed. At that time, with the new envelope

approved by the Board, the LMCD could allow greater discretion for the Executive Director. For new applications that require Board approval, there is the opportunity to review the subjective criteria.

Hoelscher stated that she assumed that the public would have the opportunity to voice their concerns about change applications through a public hearing. With regards to public amenities, she believed that the Board needs to decide what is necessary for Lake Minnetonka (in particular if some of these amenities are discontinued in the future).

Jabbour stated that he was grateful for the consideration of the proposed changes. He commented that he, Anderson, and Briggs had participated for four years on the Ordinance Review Committee to update the public amenities list. At that time, a request was made to update the public amenities because the legislature was considering eliminating the agency (partly because the public amenity list is a joke). He provided an overview of the public amenities already provided to the Lake Minnetonka up and above this list. He questioned whether the LMCD has a 100 foot length restriction because some facilities are currently outside of this and considered conforming (Shorewood Yacht Club- Site 2 and formerly Sailor's World).

Briggs stated that pump out facilities are being provided because their customers demand them. If the marinas do not pay attention to their customer needs, they are out of business.

Baasen stated that he was willing to schedule a Board workshop in two weeks at an earlier start time. He believed that the Board would like to make progress on the proposed changes, similar to the marina owner's expectations. However, he questioned whether it was fair to assume that the Board would have provided feedback on this already because he believed that the process takes time.

Hunt stated that the City of Minnetrista does not have a commercial marina and would not be affected by the proposed changes to the LMCD Code. However, she suggested that cities that may be affected should be updated by their representative on the Board.

Baasen concurred with Hunt; however, he questioned whether the Board was prepared at this time to update the various city councils.

Nybeck proposed direction for the Board to discuss at the next workshop. He suggested that: 1) staff further review the changes proposed by Gilbert and commercial marinas and 2) staff will work with LeFevere on further possible changes to the LMCD Code as part of this review. By allowing staff and LeFevere to provide this additional review, he believed that it will provide further opportunity for the Board to communicate what changes they would like and those that they had concerns about.

Baasen concurred with this recommended direction, in addition to Board members communicating with their respective city councils as recommended by Hunt.

Hoelscher recommended that LeFevere review the proposed definition for a commercial marina, as well as providing possible changes to it.

Shuff stated that she would like LeFevere to parse out the proposed changes and provide alternatives for Board consideration.

LeFevere offered an alternative approach for the Board to consider at the next workshop. If he were to prepare draft ordinance amendments, they might not be easy to read and discuss because of the potential impacts to other areas of the LMCD Code. He suggested a text or check sheet for the Board to provide feedback on, which would be of benefit in preparing draft ordinance amendments.

Babcock stated that he supported changes to the LMCD Code for the commercial marinas. One of his goals for this project is to have fewer grandfathered facilities. He supported better definition for commercial marinas, which would provide better scope for the various multiple dock licenses. However, he believed that there is a need to consider the 40 year history of the ordinances to avoid unintended consequences.

Zorn stated that she was the newly appointed member to the LMCD Board for the City of Shorewood. She recommended simplifying the public amenity list, to make it easier for the public to understand and to document the various services offered on a lakewide basis (possibly through a map).

Baasen stated the next workshop for this topic would be scheduled for March 26th (5:30 p.m. at Wayzata City Hall). Staff was directed to provide further materials as discussed at this meeting. Additionally, he hoped to engage the Executive Committee on this topic. He thanked the public for attending this workshop.

Adjournment

There being no further business, the meeting was adjourned at 7:15 p.m.

Dan Baasen, Chair

Andrew McDermott, Secretary