

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, March 12, 2014
Wayzata City Hall

1. CALL TO ORDER

Baasen called the meeting to order at 7:30 p.m. He apologized for the delay (noting a 6:00 p.m. Board workshop ran behind schedule).

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Doug Babcock, Tonka Bay; Kent Carlson, Deephaven; James 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. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: None

Baasen stated that the City of Shorewood has appointed Deborah Zorn as their representative to the LMCD Board of Directors. He asked LeFevere to provide the Oath of Office, in which he did. He welcomed Zorn and she was seated as a representative of the City of Shorewood. Baasen asked Zorn to provide a brief background of herself.

Zorn stated she moved to the area 10 years ago (moving to Lake Minnetonka two years ago). She has expertise in consulting, operations management, and serving on the Chanhassen Planning Commission, which she believed would afford her the ability to serve the LMCD well. She is married with two small children and fully accepts and understands the homework that goes into serving on this Board.

3. APPROVAL OF AGENDA

Baasen stated that Nybeck has requested the agenda be amended to accommodate the following two matters being relocated and added, respectfully, under Item 9, "Other Business:" 1) item 6B, City of Wayzata, approval of 2014 Agreement for use of the community room and production studio for LMCD Board Meetings and 2) consideration of a minor amendment, requested by Volt Workforce Solutions, to the 2014 Watercraft Inspections Service Agreement.

MOTION: McDermott moved, Green seconded to approve the agenda as amended, making the change noted above.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

There were no chair announcements.

5. APPROVAL OF MINUTES – 2/26/14 LMCD Regular Board Meeting

MOTION: McDermott moved, Shuff seconded to approve the minutes of the 2/26/14 Regular Board Meeting as submitted.

VOTE: Ayes (11), Abstained (3; Carlson, Hunt, and Roy); motion carried.

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Green seconded to approve the consent agenda as amended. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (3/1/14 – 3/15/14) and **6C, MCWD**, approval of 2014 grant request for 2014 Lake Minnetonka Watercraft Inspection Program.

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

There were no public comments.

8. PUBLIC HEARINGS

- **D.R. Horton**, new multiple dock license and variance applications for 10 Boat Storage Units (BSUs) on 679 feet of non-continuous shoreline on Jennings Bay in the City of Minnetrista. The variance application has been submitted for variance from the LMCD Code for non-continuous shoreline, an adjusted dock use area, dock length, and side setbacks.
- **Ridgewood Cove POA**, reconfiguration of non-conforming multiple dock license and variance applications for seven BSUs on 42 feet of continuous shoreline at 5480 Ridgewood Cove on Jennings Bay in the City of Minnetrista. The variance application has been submitted for variance from the LMCD Code for an adjusted dock use area, dock length, and side setbacks.

Baasen stated that in as much as the two sites are adjacent to each other, he solicited the Board's interest in holding a joint public hearing.

Babcock stated that he did not have a concern about coordinating one agenda item for the applications; however, he believed that there would be benefit from having separate public hearings. The Board did not object to Babcock's request.

Baasen asked Nybeck to provide background on these applications.

Nybeck directed the Board to his staff memo, with attachments, dated 3/6/14, as well as follow-up handouts within their handout folders. He stated that applications (as outlined above) have been received from D. R. Horton and Ridgewood Cove POA. His staff memo outlines both applications as they impact each other (acknowledging adjacent sites that are located on the west end of Jennings Bay in the City of Minnetrista). He provided a detailed overview of the individual applications and offered respective comments as follows:

D.R. Horton

D.R. Horton has submitted new multiple dock license (MDL) and variance applications for a proposed housing subdivision (Orchard Cove). The MDL has been submitted for 10 boat storage units (BSU) on 679 feet of non-continuous shoreline. The applicant has proposed a 10 slip cluster dock (12.5' x 24', with a 4' overhang) on the east end of the site (proposing not to install docks on the north end to preserve the shoreline). The variance application is to combine non-continuous shoreline, an adjusted dock use area (DUA), dock length, and side setbacks.

Ridgewood Cove Property Owners Association (POA)

Ridgewood Cove POA has submitted a reconfiguration of legal, non-conforming MDL and variance applications. The site is currently approved for seven BSUs on 49' of continuous shoreline (1:7'). The applicant has proposed to move BSU #1 from near shore to the north side of BSU #7. The variance application is for an adjusted DUA, dock length, and side setback.

Relevant LMCD Code Provisions

He provided a detailed overview of the relevant LMCD Code provisions that pertain to both applications. Areas discussed included: 1) the number of restricted watercraft allowed (providing for an overview of the 1:50' General Rule and density offered for a legal, non-conforming site), 2) DUA requirements, 3) reconfiguration of non-conforming structures (providing an overview of a number of criteria to be met), 4) variance from the LMCD Code (to remedy hardships and difficulties) by utilizing an application process in which the Board has historically utilized a series of decision standards in considering such, and 5) LMCD subjective criteria (in which he named). He reiterated the importance of the Board considering both the decision standards and subjective criteria in considering the respective applications before them.

With that said, he provided the following staff comments for Ridgewood Cove POA:

- The site's density was approved in 1984 (providing for its back licensing to 1977 based on signed affidavits that documented seven watercraft that were in existence in 1977). At that time, eight BSUs were requested; however, seven were approved.
- He recognized concerns within the DUA since 1984 (non-compliance of dock length; 65' vs. 60'), an encroachment over the northerly side site line (providing for documented mutual consent from the Wallace family, represented by D.R. Horton, to the north), and encroachment into the southerly side setback area (in which he questioned whether mutual consent had been utilized). He provided an overview of the respective areas via an approved site plan on the overhead.
- He recognized the approved 1984 permanent dock remains in existence this date. He reiterated the proposed change (to move BSU #1 from shore to the north side of BSU #7).
- Discussion was held with the applicant as to how this request should be processed, in which he recommended the reconfiguration of non-conforming MDL application be submitted to confirm all requirements are met with a public hearing (acknowledging that if the Board concludes this request to be a minor change, he would recommend they consider a \$450 refund in the difference of the application base fees).
- He reminded the Board of an updated site plan in their handout folder. In considering the variance request (adjusting the northerly extended side site line), he provided a detailed overview of the proposed dock length and respective side setbacks for the shore structure and each proposed BSU. The Board, in considering approval of the variance, would need to provide side setback relief.

- Staff supports approval of the variance request based on the following four reasons: 1) the current dock structure has remained in use since 1984, 2) the proposed relocation of BSU #1 improves access to BSU #2, 3) the existence of hardships (shallow water and slightly converging lot lines), and 4) additional hardships that have been proposed by the applicant.
- He provided an overview of the proposed adjusted common extended side site line and the placement of the structures for both applicants.

Babcock requested confirmation that the footprint of the dock structure is not proposed to change; providing for the variance to be filed as documentation of an administrative process (in which Nybeck confirmed that was correct). He believed that process was warranted based on not having that documentation, nor existing Board members to consult, from the 1984 approval. He stated that he had questions regarding the shared common lot line (acknowledging he would address such in the presentation of the other application).

Baasen asked if the applicant provided a reason for eliminating BSU #8.

Nybeck could only question if it was Board direction to prevent the dock structure from going beyond the maximum length of the DUA (confirming the current structure is outside of such). With that said, he provided the following comments relative to D.R. Horton:

- Density could be computed by utilizing either the site's continuous shoreline (503' on the north and 176' on the east side; 10 and four BSUs, respectively) or the non-continuous shoreline (applicant proposed 10 BSUs along the east side; preserving the north shoreline by not placing a dock structure there and minimizing environmental concerns, i.e., dredging).
- The DUA does not conform to LMCD Code without DUA adjustment, length, and setback variances (based on the mutually consented placement of the abutting Ridgewood Cove POA dock and the preservation of the north shoreline). This is further compounded because D.R. Horton is proposing to work around the current Ridgewood Cove POA dock. He provided an overview of such via an aerial photograph.
- He provided a detailed overview of the variance requests (including DUA, dock length, side setbacks and the combination of non-continuous shoreline to allow for one cluster dock for the entire site).

Babcock asked how staff determined the location of the lot lines, in which Nybeck confirmed they were provided by the applicant.

- Staff supports the cluster dock at the east end of the site and the preservation of the northerly shoreline. Questions proposed to the Board included whether they were comfortable with the proposed: 1) 10 BSUs at the cluster dock and 2) the size of the respective BSUs (12.5' x 24' with a 4' overhang allowance).
- He offered a detailed overview of the following for the Board to consider: 1) some level of variance on the east location (even with the reduced BSU density), 2) environmental damage (dredging) in locating the BSUs to the north end of the site, and 3) water depths and emergent vegetation as hardships (in addition to those proposed by the applicant). He stated that James Wisker of the Minnehaha Creek Watershed District (MCWD) was in attendance to address the Board.
- Agency comments (offered within their packets) included: 1) a letter, dated 2/26/14, from the City of Minnetrista Community Development Director David Abel who acknowledged their receipt of a

proposed land use and MDL applications (including a tentative meeting schedule), 2) an email, dated 3/11/14 from MCWD Compliance Officer Brandon Wisner who acknowledged there has not been a historical dredge permit issued for the proposed D.R. Horton property, in which a dredge would require such in accordance to their rules, and 3) a letter from Abel, dated 3/12/14, providing comments on the abutting tax forfeited property and possible conservation easement restrictions. Should the Board consider the proposed cluster dock, a recommended condition from Abel was offered.

- Staff supports the proposed applications and recognizes that these are policy decisions for the Board to consider. He reminded the Board that approval of the variance requests require Findings of Fact and Order to be prepared (with conditions deemed necessary by the Board).
- He entertained questions and comments from the Board.

McDermott requested the Hennepin County (county) aerial map of the two sites be brought up for Nybeck to provide a second overview of the highlighted property lines.

Nybeck highlighted a respective yellow line offered within the map that provided for the lot line extension. He acknowledged that county mapping does not provide surveyed information; however, it provides enough information to further define the DUA (providing for a southerly extended side site line running through the middle of the Ridgewood Cove POA dock).

McDermott requested clarification on the City of Minnetrista (city) owned parcel within the subject area.

Hunt stated that site is tax forfeited property that the county deeded to the city as a conservation easement (to be used as a wetland and wildlife area). She confirmed that if the Board were to approve D.R. Horton's application, the applicant would have to then address and receive approval from the county (per the title) that the proposed dock structure was not impinging on the conservation easement.

Baasen questioned what constituted lakeshore frontage (referencing the navigability of the northerly shoreline).

Hunt believed that shoreline was no more than six inches deep and non-navigable.

Nybeck confirmed (welcoming LeFevere's comments) that, although that parcel had shallow water depths, it does intersect at the 929.4' shoreline. Therefore, it is counted as shoreline for the applicant's density request.

Babcock addressed the podium for use of the overhead projector. Although he did not have an answer for such, he provided the following information for the Board to consider relative to the Eastview Park parcel (in which the proposed docks are attached to). The legal description (provided as part of the proposed survey) comes in three segments. The first segment establishes the four-sided lot (including a deflection angle). He questioned if those boundary lines offered could view the parcel as not being a lakeshore lot (comparing, what seemed to him, as an artificial line drawn on the survey that was made based on the wording of the title description as it compared to the line depicting the 929.4' shoreline).

Hunt questioned that as well; recognizing she is not a surveyor.

LeFevere stated the LMCD is not a Court of Competent Jurisdiction to confirm who owns real estate when there might be conflicting comments of ownership. He advised the Board not to take too simplistic of a view of what a legal description means when talking about lakeshore. When legal descriptions come up, 1) some lots are platted in the bed of the Lake, 2) some go to the edge, and 3) some into or below the ordinary high water (OHW) mark. He recognized that plats like to have surveyed pins. He directed the Board to the southern boundary line of the subject property (acknowledging the county's property line stops before the edge of the water). He stated this does not mean that the respective property has 929.4' shoreline; however, the law assumes the property line extends out for lakeshore purposes. He provided an overview of each of the abutting property boundaries, in which each might have a claim to the shoreline when extending their property lines out. With that said, he had no reason to think that any other property had interest in that shoreline (based on the LMCD not receiving an adverse claim to the subject property rights). Should an adverse claim arise, that party would have the ability to take legal action to reverse those rights. Additionally, the Board has historically received adverse claims to other proposed applications, in which the LMCD has relayed that the LMCD is unable to consider such based on not being a Court of Competent Jurisdiction. Should the Board refuse to issue a license on the basis of potential adverse claims, the LMCD would be put in a position of defending that claim. In this case, the city would be submitting that claim, in which, to date, they have not. He recommended the Board proceed with the assumption that the applicant's property went with the extended lot lines from the old underlying Lot 1, Eastview Park Block 1, Lot 1 Plat rather than Government Lot 4.

Babcock stated that, normally, if a lot is platted out across the 929.4' boundary and the description of the property allowed for those distances, he would concur with LeFevere. However, in this case, the diagonal line is established for not only this property but for the property above (providing for a question to him as to whether he should allow the applicant to count shoreline that is outside of the legal description). He stated the applicant may own the property by some other mechanism but not by title.

LeFevere stated that the diagonal line in question stops at Government lot line 4.

Mr. Mike Suel, representing D.R. Horton Homes as developer for the proposed site, reminded all that the Wallace family owns two parcels (part of Government Lot, as well as Lot 1, Block 1, Eastview Park Estate). He provided a detailed overview of the respective legal descriptions for each lot. He stated that Mr. Paul Thomas of Pioneer Engineering was in attendance to answer any technical questions relating to the respective survey. Furthermore, he directed the Board to an Eastview Park plat map (filed with the county in 1946), which references (within the platted description) the property line following the subject shoreline.

Baasen solicited any further questions from the Board relative to the D. R. Horton applications. Seeing none, he stated that he will stay on that respective subject and opened the public hearing up at 8:20 p.m. He entertained comments from the public relative to the D.R. Horton applications.

Bill Bushnell, 940 Maple Crest Drive, stated he lives across from the proposed dock. He provided the Board with an outline of his proposed comments, which are summarized as follows:

- He did not believe that the proposed applications were solely drawn up based on the use of a boat slip but more of a bonus to the site's housing development (offering the ability to purchase a boat slip

with the home).

- He believed that the housing development (23 small homes clustered in a town home like setting) would continue without the approval of the proposed dock structure. Furthermore, the clustering of such was not conducive to the current aesthetics of the shoreline's development.
- He did not believe that either shoreline was usable for a dock (based on water depths and dredging needs). He provided an overview of the subject area, including the existence of a sunken island in the middle of the inlet bay (as well as marked navigable channels along both sides of the shoreline).
- He spoke with the Minnesota Department of Natural Resources (MN DNR) who stated the sunken island is considered a spawning area and, he believed, they would look negatively towards issuing a dredge permit. He stated that the marked channels along the sideline stop at the Ridgewood Cove POA site (providing for D.R. Horton to require a dredge for the placement of their dock structure).
- He documented a wetland behind the proposed dock location that is considered a conservation area for wildlife (including three federally protected Blue Heron). He further believed that any dredge would fill in quickly based on the loose lake bed offered in the area and whether the MCWD would consider such a permit.
- He believed the proposed slip would extend into the channel area to the west (offering historical information on the original home owner's partnership with Ridgewood Cove POA to create the existing dock). He questioned the use of that shoreline for the original eight slips and now wanting to increase that use for 10 slips. He believed that Mr. Wallace, Sr., was a member of the original POA.
- He believed the stated 504' of shoreline runs into the tax forfeited land (confirming he is not the professional to document such) and that an original platted map documented the 176' of shoreline to be 130'.
- In summary, he questioned the shoreline footage that was presented, as well as concerns for increased prop action, the disturbance of spawning/wetland areas, a possible dredge that will fill the channel in faster than usual, and water quality.

Baasen asked Wisker if he were to comment on the MCWD's position of a possible dredge.

Mr. James Wisker, Director of Planning and Conservation Projects for the MCWD, stated that the MCWD has not taken a position on this potential dredge since an application has not been submitted. He was not in attendance to provide testimony but to listen to the public dialog pertaining to such. He confirmed the MCWD has regulations in place that govern dredging below the OHW within their jurisdiction (including Lake Minnetonka). Within those regulations is a policy in striving to strike the appropriate balance between riparian lakeshore owners and the public (with a core charge in protecting water quality). He stated that in 1993, the LMCD, MN DNR, and MCWD entered into a Joint Dredging Policy Statement, in which the LMCD and the MN DNR are to review proposed applications for consideration of navigation needs (dock structures, watercraft size, etc.) on Lake Minnetonka prior to the MCWD. Upon receipt of an application by the MCWD, they evaluate many of the criteria Nybeck had already made mention of (minimal impact solutions with recognition of all other solutions). The MCWD's dredging criteria does allow for dredging to implement reasonable legal rights to navigation (taking into consideration things that are sensitive, size of draft, speed, motorized statistics of watercraft within and around the area in question, etc.). Lastly, he would believe a request such as this would be made by their policy makers and not staff (with regards to a public hearing).

Baasen thanked Whisker for his input.

Mr. Robert Zinn, 960 Maple Crest Drive, stated that he was on the planning commission when Jennings Cove was established within the city. He provided a detailed overview of original plat maps of the area (pointing out the property markers that exist and confirming that the mortgage companies know where they are). He confirmed: 1) the channels along the shoreline are very narrow, 2) the area is designated quit water area, 3) he concurred with comments made this evening on the presence of wildlife (further adding to the three generations of beavers that had previously existed), and 4) that the area has been dredged three times to date (for navigational purposes).

Ms. Jane Norling, 5450 Ridgewood Cove, stated that when she moved to the area in 1988, the channel was not navigational (acknowledging their inability to bring a boat in there). She led the application to re-dredge a channel that was completed in the 1970's (at which time the MN DNR gave them a hard time). She stated that channel is already filling in (with one resident trading in his cruiser for a pontoon). It is common for Ridgewood Cove residents to pull their docks out early due to the water depths. Another dredge was completed in 1988, at which time she was forced to move her dock to a different location of the property. She urged all to be careful as dredging will initiate the movement of the lake bottom and it will start to fill in. She was unsure if the side channels would be navigable in the future for large boats. She understood the applicant was only looking to dredge the dock area and not into the open bay. She commented on a boardwalk that has been proposed to get the residents to the proposed docks.

Mr. Mark Holm, 920 Maple Crest Drive, stated that he has more experience presenting telecommunication plans (for the company in which he works for) to the public agencies vs. presenting as a neighboring property owner. He did not believe the proposed application was unreasonable; however, he expressed concern for the number of BSUs. He requested the Board table approval of the applications (specifically the variance application) until one is able to obtain more information as to the impacts of the proposed dock structure (acknowledging the required facts in presenting his telecommunication applications, as well).

Mr. Tom Notch, 1250 Morningview Drive, provided what he represented as an official county survey. He did not believe there was a documented 176 feet of shoreline where the applicant is proposing their docks. He provided an overview of his thoughts, which included dredge matter that was piled up in the area that is being counted as shoreline. He further questioned the ownership of 503 feet of north shoreline based on the inability to navigate a watercraft in that shallow area. He believed this area was similar to Painters Creek, in which watercraft were not allowed in that area for the same reason. He provided an overview of the current size of the Ridgewood Cove POA docks compared to the proposed size of the D.R. Horton docks, in which he believed the size of the BSUs could be reduced. Upon expressing that idea to Suel, he suggested that Suel speak with the proposed dock installer as provisions have been made for use of a canopy or boat house (in which he did not concur with). He would personally like to see the watercraft density be reduced and, again, questioned how that density could be calculated on shoreline with 6" of water depth. He wondered if it would not be better to have the watercraft placed on the north side of the property (possibly moored in a single file format) so that the surrounding neighbors do not have to look at them. He read for the record an e-mail from Judd Griffith, 5330 Eastview Avenue, dated 3/13/14.

There being no further comments, Baasen closed the public hearing at 8:58 p.m.

Hughes stated that he was hesitant to move forward in absence of a title to the lot providing for the surveyed shoreline. He had personally been involved in obtaining such a document through a Quiet Title Process (QTP) and he asked if there was a timeframe in which the Board is required to act on the variance application.

LeFevere confirmed the LMCD is subject to complying with the state's 60-day Rule, in which the Board can unilaterally extend the application process (in writing within the first 60 days) for an additional sixty days.

Hughes confirmed the QTP could not be accomplished in that period of time, in which he had a similar situation that took four years to receive such a title.

LeFevere stated that if there was a title problem, it would be because the city had an adverse claim. He is not aware of the city making such a claim, that a representative from the city was not in attendance, or that the city had reviewed the question of shoreline ownership. He believed that there is sufficient evidence that the applicant has title of the property (the old plat of Eastview); recognizing only a judge can make the final decision.

Hunt stated the city does not have a claim as the question of property ownership was just pointed out to them within the last 48 hours. She stated that the city planner was unable to attend this meeting; however, he is doing some research on this question. She expressed concern about the county process relative to the conservation easement (acknowledging they could halt any portion of the proposed development that was proven to have a negative impact on such). Additionally, she stated she would like documentation to this affect placed on any Findings of Fact and Order (confirming that the county could rescind the property from the city).

LeFevere confirmed that would be the applicant's risk in moving forward.

Babcock believed the question of titled/untitled or owned/un-owned was not going to be confirmed at this meeting. However, he believed the one thing that existed (regardless of how the prior question is worked out) is that overlapping DUAs exist between the D.R. Horton represented, city, and Ridgewood Cove POA properties. He does not believe this application goes far enough to resolve those conflicts. He further believed that this Board needs to concentrate on the overlapping DUAs.

Hunt reiterated that although the city holds the deed to their property, it is the county that has ultimate control of how the land can be utilized.

Babcock asked Hunt if the city had a legal description for that parcel, in which she has requested such from the city.

Nybeck and LeFevere did not believe overlapping DUAs existed. LeFevere stated that where the 929.4' shoreline crosses on the common lot line - is not at the northwest/southeast diagonal but at the dividing line between Government Lot 4, east/west line.

Babcock stated that the survey, in which he presented, documented the 929.4' shoreline going back into the city's property area.

Baasen referred to a site map that documented the northeast end of the docks extend past the property line. It also showed the southwest corner of the dock on top of the other dock. He asked what the distance was between the two docks, in which a five foot distance was confirmed.

Nybeck stated that the five foot distance between the two docks is one of the reasons the applicant is proposing a variance, as well as working with Ridgewood Cove POA. If the applicant had the ability to use their own DUA (as identified), they would not be able to store 10 BSUs within (but something close to, as well as meeting side setback requirements). With regards to the comment of overlapping DUAs, the point that intersects the 929.4' shoreline goes out from west to east (providing for parallel lot line extensions). He could not speak to the DUA of the tax forfeited property, but could very well confirm it was not overlapping DUAs. He confirmed, for Baasen, that if they reduce the end BSUs, the applicant would still need a variance for length and adjusted DUA. He stated staff is comfortable with the 10 BSUs and dimensions offered. He questioned if the Board was, as well. If not, he acknowledged this is a policy decision of the Board and if approval is not going to be provided at this meeting, he would recommend the Board provide the applicant with direction to consider.

Baasen asked the Board if they were comfortable with the proposed 10 BSUs.

McDermott requested confirmation that the applicant had the shoreline to justify the proposal.

Nybeck confirmed the documentation provided by the applicant (in conjunction with an approved variance) affords sufficient shoreline for the storage of 10 BSUs.

McDermott stated that, with an approved variance, they would be entitled to 10 BSU, in which Nybeck confirmed.

Suel requested to address the Board, in which Baasen invited him to do so. He acknowledged a great deal of thought and planning was offered to best fit the proposed development within the surrounding neighborhoods (working closely with Ridgewood Cove POA and acknowledging one cannot please all). With that said, he also believed the Wallace family has the same riparian rights as all others (to make their property usable to the Lake). This right includes the ability to dredge to accommodate their dock and mooring needs as the other properties have done so since the early 1950s. He assured all that they have considered wildlife and that they could extend their dock on the northerly shoreline; however, he believed that placement would have greater impact on the shoreline and vegetation. To this end, he fully understands the concerns documented at this meeting; however, he also recognizes the proposed dock and watercraft density is allowed based on the LMCD Code. He has reviewed the MCWD's dredging policy and believed they, too, have the right to dredge based on that policy. He stated the Wallace family is in attendance and he believed they should have the right to respond to a couple statements made this evening. He reiterated that they are obtaining a variance, but that variance was considered to make as minimal impact as possible. Lastly, he would welcome the opportunity to work with LeFevere in confirming ownership rights to the property.

Klohs asked if the city was asking the applicant to address the LMCD prior to considering application(s) with them, in which Hunt confirmed yes (acknowledging that is their normal procedure). He did not believe the

LMCD should challenge the survey application and should accept the information based on what was presented. The only other option would be to flip the table and ask the city to prove whether or not they have property rights to the respective shoreline.

Baasen recommended the applicant review the dimensions of the proposed dock structure; considering a compromise to the size of such.

Hoelscher asked Suel if he would be comfortable reducing the length of the dock structure that looks to be going into the channel area, as well as reducing the BSU widths.

Suel stated that he did not believe the dock structure extended into the channel area. If they find that it does, they would reduce the dock structure to accommodate such (confirming they had no intentions of constructing the dock structure within the channel). He stated the proposed BSU width was offered for the purpose of protecting the boats. If they find the dock structure extends into the channel, they will consider reducing the BSU width(s).

Babcock took exception to the word "entitled," as noted by McDermott above (prefacing that every site on the lake does not support the maximum density allowed by the shoreline offered). The Board has historically limited density in consideration of MDL applications with variances located in wetland areas (offering that as the tripping point in not allowing the maximum proposed density).

Baasen invited Mr. Wallace to address the Board.

Mr. John Wallace, 5451 Woodland Road in Minnetonka, stated that he was in attendance with his sister, Martha Wallace-Swain. He stated they grew up on the land being proposed for development and the trapezoid area (highlighted on an aerial photograph) was considered the farm. Surrounding development did not start until the late 1950's early 1960's, at which time Ridgewood Cove POA came into the area. The family also owns the narrow strip to the east and west. He stands by the fact that riparian lakeshore owners have rights to their individually platted lots. He remembered his father telling him to remember this lot goes all the way down to the water (referencing a 2007 Schoell and Madsen survey that he had to document such). With regards to Ridgewood Cove POA, the existence of their dock did give his father the right to be a member of such (in which he had a clear recollection of attending those meetings with him). Furthermore, he remembered one of the members telling his dad that he thought the dock crossed in front of their property by a few feet (in which the documentation offered this date shows more than a few feet). This was done many years ago without regulatory oversight. He confirmed they have been long time neighbors and that they had no intention of taking away their dock and he was pleased that D.R. Horton was trying to make matters work for the two sites. He offered historical photographs that depicted the site in 1957 without The Landings and again in 1964 with The Landings. He stated both the channel and Ridgewood Cove POA had been dredged, acknowledging they have supported such. He remembered, during one of the dredging processes, that his father said they were taking away their lakeshore (in which he showed a picture of the original creek). With that said, he reiterated his belief that they maintain riparian rights along the creek area. He and his sister are in a position that they need to move along from their long held land; however, they did not have any interest in disrupting the aesthetics of the area. However, after you witness development in all directions of your land; one does not want to pay a price in holding on to the land for a long time. In closing, he wanted to confirm his

father had never sold a piece of the land to Ridgewood Cove POA (as mentioned earlier in the meeting). He offered his assistance to talk with all that are interested; acknowledging they have a proposal that works for Ridgewood Cove POA and protects their riparian rights. He thanked the Board for this opportunity.

Babcock asked if he was involved in the 1984 variance process through the city.

Wallace stated that dock went in several years before 1984, in which it was post permitted. It was not clear how much the dock impinged on their land; however, when it was necessary to dredge, the family supported such ideas.

MOTION: Baasen moved, Green seconded to table consideration of the D.R. Horton applications to provide time in clarifying the variables offered within.

ROLL

CALL VOTE: Ayes (9), Nays (5; Babcock, Hunt, Klohs, McDermott, and Morris); motion carried.

Nybeck solicited the Board's direction or questioned if staff should interpret their needs prior to the next meeting.

Babcock challenged further discussion after a motion to table had been approved.

Nybeck stated that the Board has historically provided this type of direction to staff, before and after a motion to table was approved, acknowledging it is discretion of the Board.

Baasen directed staff to clarify the size of the dock structure, any impairment(s) to navigation, and information as it relates to infringement on the adjacent dock. In consideration of the Ridgewood Cove POA applications, he asked the applicant to address the Board.

Mr. David Opheim, 5530 Ridgewood Cove, stated that he is one of the two officers for the Ridgewood Cove POA. He provided the following documentation and/or respective comments: 1) a copy of the 1976 letter from the MCWD approving the dredging request and dock installation, 2) a picture of their currently installed dock structure, 3) expressed appreciation to LMCD staff for their assistance (including providing time to administer the documentation, as well as their input in the safety aspects to the proposed reconfiguration of the dock), and 4) expressed appreciation to the Wallace family and all the neighbors that have supported them. He believed that the Wallace property deserves consideration.

Baasen requested Nybeck provide a brief overview of the applicant's proposal.

Nybeck confirmed that the applicant proposes to move BSU #1 from near shore to the north side of BSU #7 (providing for an adjusted DUA, dock length, and side setback variance).

Ms. Martha Wallace-Swain, 19835 Sweetwater Curve in Excelsior, stated that she grew up on the adjacent property (represented via the prior application). She was not prepared to speak this evening relative to the property lines in question. However, the site plan depicting the yellow property line lends her to believe there is a possibility their property could lose the lakeshore. In light of the prior applications being tabled for

consideration, she did not believe the Board could proceed in considering the Ridgewood Cove POA property applications either (taking into consideration the proposed dock impinging on her land).

Babcock questioned if the public hearing was opened.

Baasen officially opened the public hearing at 9:33 p.m.

Mr. Mike Suel, representing D.R. Horton, believed that the Ridgewood Cove POA dock should remain. However, he echoed Ms. Wallace-Swain's comments about the need to table their applications while the D.R. Horton applications have been tabled.

Babcock stated the city has had a variance in place since 1984 for this dock location (recognizing, at that time, the level of impact). Furthermore, the LMCD subsequently approved a site plan for this location. He asked Suel what his position would be in maintaining that variance; would you ask the city to rescind the variance if it granted you easier access to the Lake or would you support Ridgewood Cove's POA continuance of their dock structure (with the LMCD's approval of their proposed applications).

Suel stated their position remained that the outcome of both applicants be favorable for all involved (expressing their efforts in working to allow the Ridgewood Cove POA's dock to stay). He stated that if the Board did not believe the Wallace family owns the shoreline in question, he did not believe the Board could consider the Ridgewood Cove POA applications before them. To this end, he is not aware of any legal documents that grant Ridgewood Cove POA legal rights to utilize that shoreline. This arrangement has remained on a consent basis since day one and they prefer it remains that way (without legal interference).

Hunt stated that she believed the Board should recognize the Wallace family sold that property to Ridgewood Cove POA.

Suel stated it is important to make clear that the Wallace family had never sold property to Ridgewood Cove POA. That relationship was made in 1984 on a consent basis only, in which Wallace-Swain confirmed no legal plans were ever drawn up.

Hunt stated the city did not get into the dock permitting business until 1984, in which the variance was drawn up to recognize that consent (based on not finding any legal, historical document to that affect).

Klohs asked LeFevere where it stood if a dock was installed in the wrong position from day one, without anyone's knowledge, and a variance was granted based on a series of undocumented facts.

Hunt stated that at that time, the Eastview and Wallace properties were members of the POA.

Babcock acknowledged all were a part of the variance proceedings, in which he urged Hunt to read.

LeFevere stated, in talking with staff, notwithstanding the city variance, the LMCD has not granted a variance for this property. What the LMCD did was to back license the density, which requires them to be subject to the DUA rules. He understood the arrangement to remain in existence on a consent basis only, which is

different than a variance. Therefore, if the consent is removed, the dock is simply illegal. It seemed, to him, that it would be unfair to proceed in the consideration of the Ridgewood Cove POA applications when it impacts the adjacent site. Additionally, he believed the proposed location of the D.R. Horton dock was considered in the best interest of all (vs. being moved to the north shoreline). He stated the Board could act on the proposed applications independently; however, the rights being considered for the D.R. Horton property should have a bearing on the granting of the variances for Ridgewood Cove POA.

Klohs believed the only mistake the Wallace's made was to allow the development around them. He believed the two proposals need to be considered together.

Opheim stated that Ridgewood Cove POA has nine homes that share seven slips, in which the Wallace family was historically apart of that rotation. This arrangement provided them with the opportunity of having a slip for access to the lake.

Bushnell questioned if the proposed dock for the Wallace site could be placed within, what he considered, the artificial wetland area (the dredged dumping ground which produced cattails).

There being no further comments, Baasen closed the public hearing at 9:43 p.m.

Babcock concurred with the consideration to table this application, as well. He believed one option moving forward would be to restore the full DUA to the park property, which might cause the city to do the same. He further explained that the Board could remove the Ridgewood Cove POA dock due to the fact that it interferes with the flexible use options of the D.R. Horton dock (causing an extensive amount of variances for such). He stated the LMCD does not have a variance in place for this applicant (only a MDL). Therefore, one of the paths used would be to fix the overlapping dock problem (with Hunt recognizing the possibility of combining both docks together). Babcock was not advocating for such but bringing forward another option.

Baasen suggested the Ridgewood Cove POA and D.R. Horton representatives work together to consider other solutions (taking into consideration the barriers offered). He stated an amendment to the applications would provide for easier approval of such.

Klohs stated that is exactly what the applicants have done up to this point. He believed their proposals were extremely well thought out (providing for minimal environmental impact). If the Board is asking them to consider another direction, the Board needs to provide specific guidance.

Babcock respectfully disagreed based on a variance providing reasonable access to the water vs. maximum access.

Klohs concurred with Babcock's statement on the issuance of a variance (reiterating his belief that the applicant has provided the best option with an existing dock).

MOTION: Babcock moved, McDermott seconded to table consideration of the application to provide time in clarifying the variables offered within.

VOTE: Motion carried unanimously.

Baasen stated that staff will provide clarity to both applicants within the next couple days.

9. OTHER BUSINESS

Baasen asked Nybeck to provide an overview of item 6B, which was moved to "Other Business".

- **City of Wayzata**, approval of 2014 Agreements for use of the community room and production studio for LMCD Board Meetings

Nybeck stated that the Agreements for consideration are approved annually for the use of the community room and production studio. The Agreement for the community room remains unchanged. However, he directed the Board to the License Agreement that highlighted three paragraphs with minor amendments offered by Hughes (in which he provided an overview of). He confirmed the revisions were run by the City of Wayzata, Lake Minnetonka Communications Commission, and LeFevere (all of which were comfortable with such). He recommended approval of the Agreements.

MOTION: Babcock moved, McDermott seconded to approve the 2014 Agreements for use of the community room and production studio for LMCD Board Meetings as amended.

VOTE: Motion carried unanimously.

- **Volt Workforce Solutions (Volt)**, approval of amended Service Agreement for 2014 Watercraft Inspection Program

Baasen asked Nybeck for an update on this agenda item.

Nybeck stated that at their February 26th meeting, the Board originally approved the Service Agreement between the LMCD and Volt to provide watercraft inspectors for the 2014 boating season. Volt has requested an amendment to that Agreement (specifically the fifth paragraph on page one). He directed the Board to the Agreement within their handout folder that highlighted the respective change (in which he provided an overview of). He confirmed that LeFevere has reviewed the change and was comfortable with such.

MOTION: Roy moved, Babcock seconded to approve the amended 2014 Service Agreement Between the LMCD and Volt as presented.

VOTE: Motion carried unanimously.

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked for an update from the Chair, or designated representative, of each committee (Save the Lake, AIS Task Force, Finance, Personnel, Public Safety, and Ordinance Review).

Morris stated the AIS Task Force will be meeting on March 14th, at which time they will review a MN DNR Lake Vegetation Management Plan (LVMP) for four bays, as well as minutes from the most recent West Metro AIS Committee meeting that was held.

Green stated that he and Jabbour (both of which serve on the State AIS Committee) invited all to attend a gathering at the Lafayette Club on March 18th at 6:00 p.m. for a round table discussion on local AIS prevention and management, as well as public/private partnerships for such.

Hughes stated that the Finance Committee will be meeting in the near future to consider certificate of deposits (CD) for some recently matured CDs. Additionally, he believed the Public Safety Committee will be meeting once they hear from Lt. Saunders on his assessment of the winter debris left on the Lake.

Baasen stated that the Finance Committee matters could be added to the topics to be discussed at the upcoming Executive Committee meeting. Furthermore, he reminded the Board of the workshop meeting scheduled for March 26th at 5:30 p.m. He stated that the Save the Lake Committee met yesterday, at which time they discussed the Boater Safety Education Program. He stated three sessions are currently planned for 2014 (with the first on Saturday, April 26th). Once logistics to that session are confirmed, the information will be publically announced.

Shuff questioned if the committee had discussed a proposed fee for the session, in which Baasen stated there is discussion of a complimentary session for those that pre-register.

11. EXECUTIVE DIRECTOR REPORT

Nybeck entertained questions and comments from the Board, in which the following was offered:

- Green (in follow-up to future plans in displaying the LMCD Board meetings) stated that he recently downloaded a DVD of a LMCD Board meeting on a GoDaddy site. He offered to meet with Nybeck in the near future to review the results of that download.
- Babcock, in follow-up to discussion held tonight at the Board workshop, suggested staff document the maximum length of each marina to assist the Board in analyzing the footprint of their proposal.

Baasen stated it was the Executive Committee's intention to give staff better direction (following up with a review of that direction via a scheduled meeting).

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:00 p.m.

Dan Baasen, Chair

Andrew McDermott, Secretary