

**LAKE MINNETONKA CONSERVATION DISTRICT**  
**Board of Directors Workshop**  
5:30 P.M., Wednesday, April 9, 2014  
Wayzata City Hall

**CALL TO ORDER**

Baasen called the meeting to order at 5:30 p.m.

**ROLL CALL**

**Members Present:** Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Jim Doak, Woodland; David Gross, Deephaven; Ann Hoelscher, Victoria; Anne Hunt, Minnetrista; Jeff Morris, Excelsior; Rob Roy, Greenwood; and Sue Shuff, Minnetonka. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; and Judd Harper, Administrative Technician.

**Members Absent:** Doug Babcock, Tonka Bay; Dennis Klohs, Minnetonka Beach; and Deborah Zorn, Shorewood

Baasen provided an update on progress made by the LMCD Board since the proposed changes to the Lake Minnetonka Conservation District (LMCD) Code were requested in early February. At the last meeting, the Board directed the LMCD Executive Committee to meet and report back with recommendations. That committee met on April 3<sup>rd</sup> and respective documents were included in this meeting's packet (with committee recommendations). He recommended that the Board discuss these recommendations to determine whether they concur with them. Based on this discussion, he believed that the Board could direct LeFevere to prepare the necessary ordinance amendment(s) for a future meeting. He requested that Board members be acknowledged before they speak and to limit their comments to two minutes. Furthermore, he stated that once the Board completes their discussion, he recommended that the discussion be opened to the commercial marinas in attendance. He believed that if all goes well at this meeting, discussion of proposed ordinance amendment(s) could take place at the April 23<sup>rd</sup> Board Meeting (including a public hearing).

LeFevere stated that there were three documents included in the packet for this meeting. The first two documents were the same memo (clean copy and worksheet copy with space for notes) that he prepared. Those documents identified the questions and issues that the Board may want to think about and give direction on. The Executive Committee used the worksheet copy, with space for notes, at their April 3<sup>rd</sup> meeting. The third document is a summary of the committee's recommendations.

Baasen recommended reviewing the third document that summarizes those recommendations, unless there were objections to this process, in which there were none.

**DEFINITION OF COMMERCIAL MARINA**

"Commercial Marina" means a privately owned, revenue-producing business enterprise that rents storage space at one facility for five or more watercraft on the Lake. A facility does not qualify as a commercial marina unless all watercraft storage space is freely available to members of the public without requiring membership in any organization and without providing any priority or preference to members of any organization or owners of any specified real property.

Gross questioned how this proposed definition might affect commercial marinas that also sells a watercraft and would like to store them at the same facility.

### EXTENSION OF DOCKS TO 200 FEET

1. Initial extension would be subject to evaluation by the Board, using the subjective criteria for multiple and commercial dock licenses under LMCD Code, Section 2.03.
2. Extensions allowed at facilities with variance only if new variance is granted.
3. No extension that overlaps another dock use area.
4. No extension that interferes with navigation or access to another dock use area.
5. Allow expansion of facilities that are non-conforming as to density without limiting total square footage of slips.
6. No extension that requires removal of emergent vegetation.

LeFevre stated that for most cases, these proposed changes would require Board approval to construct a dock out to 200 feet from shore. Once approval is established out to 200 feet, the proposed changes would provide greater ability to have changes approved by the Executive Director.

### COMMERCIAL DENSITY AND SPECIAL DENSITY LICENSES

1. Eliminate special density licenses for commercial marinas.
2. Establish new density standard of 1:10' for commercial marinas.
3. Make initial increase in density above current authorized density subject to review by the Board, using the subjective criteria for commercial and multiple docks under Section 2.03.
4. Addition of BSUs allowed at facilities with variance only if a new variance is granted.
5. Shoreline calculation subject to a straight line measurement rule.
6. No increase in density that requires removal of emergent vegetation.

A summary of the Board discussion was as follows:

- Grandfathering of density, including how this has been handled by the Board in the past and whether this would create an advantage for existing facilities compared to new facilities.
- How the hardships or difficulties for a request to amend a variance could change because of the more permissive dock length of 200 feet (not an automatic entitlement).
- Whether grandfathering based on maintaining ownership was an option for the Board to consider. It was noted that zoning decisions on land are typically decided based on the public interests, not based on who owns the property. However, this could be different for the LMCD because it involves the use of public waters and the Board might have greater latitude.
- Should service amenities being provided by the commercial marinas go away in the future, the Board could re-address public amenities at that time. A discussion took place regarding the services and amenities being provided to riparian and non-riparian owners.
- Whether the proposed commercial density standard of one watercraft for each 10 feet of shoreline is consistent with the intent of the Board (including current and proposed new subjective criteria).

### EXECUTIVE DIRECTOR'S AUTHORITY TO APPROVE CHANGES

1. Executive Director would have authority to approve changes in dock licenses of conforming commercial marinas subject to the following limitations:
  - a. no increase in number of watercraft;
  - b. no increase in dock length; and
  - c. facility will not adversely affect nearby properties, navigation, safety, wetlands with emergent vegetation, or the environment.

2. Executive Director would have authority to approve changes in dock licenses of non-conforming commercial marinas subject to the following limitations:
  - a. not a conversion of slides to slips; and
  - b. no substantial change in the amount of the Lake obstructed or occupied by the dock.

Baasen stated that the decision on whether to consider approval of ordinance amendment(s) for the commercial marinas is at the discretion of the Board, not LeFevere or staff.

A summary of the Board discussion was as follows:

- What constitutes a "substantial change."
- Limitations of the Executive Director (i.e., whether to allow an increase in the number of watercraft).
- Approved site plans and whether minor changes should trigger the need for a new survey and to-scale drawing (there was discussion of as-built surveys required in certain circumstances).
- The applicant has the ability to appeal a decision made by the Executive Director to the Board (as well as the Executive Director referring an application to the Board).

Baasen asked for comments from the commercial marina representatives in attendance.

Mr. Gabriel Jabbour, Tonka Bay Marina, stated that there are marinas that sell watercraft and store them at the facility. Thus, the words "all watercraft storage space is freely available to members of the public" might need to change. He expressed concern that the current definition of five or more restricted watercraft, with a density of 1:10', could be an unintended consequence of commercial marinas in residential areas. He suggested 13 watercraft as an alternative number. Additionally, he stated that there is a need to identify how specific uses of the facilities are affected by the proposed definition (i.e., boat clubs and transient slips).

LeFevere stated that the number five was provided by the commercial marinas and is consistent with the current definition of a multiple dock license. With regards to amendment(s) to an ordinance for certain exceptions to the proposed "commercial marina definition," the Board, at some point, will need to draw a line and he welcomed input from the commercial marinas on this.

Hoelscher questioned whether it made sense for the Board to identify which facilities meet the definition of a "commercial marina."

LeFevere suggested that it might be beneficial to meet with Jabbour to identify which current facilities meet the proposed definition.

Mr. James Gilbert, legal counsel for most of the commercial marinas, asked that the grandfather date be moved up from 1970 and 1978 to January 1, 2014. He believed that this would reduce micromanagement and allow for more focus on larger issues.

Jabbour commented on off-lake storage issues and inconsistencies in permits he has had over the years at Tonka Bay Marina. He became aware of this when the LMCD required back licensing for the watercraft being stored at the Howards Point Marina's back parking lot. Thus, some of the current numbers may differ from the 1978 numbers.

McDermott questioned what the disadvantages were by moving the grandfather date forward, as proposed.

LeFevere stated that there are really no disadvantages; however, he questioned whether there was an advantage (unless there are aberrations that he was not aware of).

Shuff asked what would happen to public amenities (based on the recommendations from the Executive Committee).

LeFevere stated that commercial marinas would be exempt from providing public amenities for approved special density licenses.

Mr. Rich Anderson, North Shore Marina, stated that one of the largest amenity provided by the marinas is the availability of head pumps. He noted that head pumps were not identified as a public amenity on the initial list for special density licenses and that the commercial marinas provided this service to the Lake (although they are not required to do so).

Mr. Jerry Rockvam, Rockvam Boat Yards, stated that the biggest amenity is that the facilities are in existence serving the public.

Baasen stated that he believed the Board concurred with that statement.

Mr. David Kirkland, North Shore Marina (Smiths Bay), commented on what he perceived to be a micromanagement issue. In particular, he believed that the marinas should have greater flexibility to do what they need to do within the established dock use area for each site. He expressed concern about the influence the Executive Director may have on changes that are needed for their facilities (factoring in the need for new site plans or surveys).

Green stated that the role of the Executive Director would be to ensure that changes are not being made that do not conform to the rules.

McDermott stated that direction from the Board on the necessary paperwork to document proposed changes would benefit staff.

The Board discussed the next step for this topic. The consensus was: 1) LeFevere to prepare a draft ordinance amendment(s) for the April 23<sup>rd</sup> Board Meeting and 2) to notice a public information meeting for such. LeFevere was to work with Jabbour and Gilbert on certain details of the draft ordinance amendment(s).

## Adjournment

There being no further business, the meeting was adjourned at 6:55 p.m.

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Dan Baasen, Chair

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Andrew McDermott, Secretary