

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, July 9, 2014
Wayzata City Hall

1. CALL TO ORDER

Baasen called the meeting to order at 7:01 p.m.

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Jeff Clapp, Tonka Bay; David Gross, Deephaven; Ann Hoelscher, Victoria; Anne Hunt, Minnetrista; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; and Sue Shuff, Minnetonka. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Rob Roy, Greenwood and Deborah Zorn, Shorewood

3. APPROVAL OF AGENDA

Baasen recommended adding agenda item 9C to provide an update on the LMCD's Eurasian Watermilfoil (EWM) Harvesting Program.

MOTION: Green moved, McDermott seconded to approve the agenda as amended, adding agenda item 9C for an update on the LMCD's EWM Harvesting Program.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

Baasen made four Chair announcements. First, he acknowledged the beautiful weather and that it was not raining. Second, the adopted 2015 LMCD Budget had been submitted to the member cities. Third, he acknowledged the incident on July 4th where a boater was arrested by the Hennepin County Sheriff's Office Water Patrol. This illustrates law enforcement coverage on Lake Minnetonka and he thanked the Water Patrol for their efforts. Fourth, Sheriff Stanek attended the recent LMCD Executive Committee to discuss the presence of law enforcement on Lake Minnetonka and some of the issues that they are facing. Further information on this will be provided later in the meeting.

5. APPROVAL OF MINUTES – 6/25/14 LMCD Regular Board Meeting

MOTION: McDermott moved, Green seconded to approve the minutes of the 6/25/14 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (10), Abstained (2, Hoelscher and Hunt); motion carried.

6. APPROVAL OF CONSENT AGENDA

Nybeck directed the Board to an amended Audit of vouchers within their handout folders, in which he outlined

two added checks (#1995 and #1996 in the amounts of \$367 and \$6, respectively).

MOTION: Gross moved, McDermott seconded to approve the amended Audit of vouchers (7/1/14 – 7/15/14).

VOTE: Motion carried unanimously.

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

There were no public comments.

8. PUBLIC HEARINGS

A. Richard & Michele Meyer, site setback variance application at 3705 Northome Road on St. Louis Bay

Baasen asked Harper to provide background on this agenda item.

Harper made the following comments:

- A side setback variance application for docking and boat storage on 210 feet of shoreline in the mouth of a lagoon on the north side of St. Louis Bay was submitted by Richard and Michele Meyer. The proposal is to reconfigure the current lagoon dock within the easterly extended side site line, with side setback variances, for a canopied slip and a boat lift. Additionally, the proposal is to extend the sitting dock on the main part of St. Louis Bay by six feet (possibly to store one or two boats).
- The normal dock use area (DUA) for a site with 210 feet of shoreline should support a canopy and boat lift. The applicant has requested the ability to use normal boat density restrictions, which would be one watercraft for each 50' of shoreline. At times, the Board has restricted the number and ownership of watercraft allowed at a site as part of an approved variance.
- He reviewed the proposed changes via a series of Hennepin County aerial maps. He cautioned the Board that the site lines and the dimensions on these photos appear to be a little bit different than the survey. In particular, the polygons used by Hennepin County for these aerial maps are not typically geo-referenced. Two purposes for these maps include documentation: 1) that the current dock by the applicant does not conform with LMCD Code and 2) of the abutting neighbors in the immediate area (in particular the lagoon).
- He provided further review of the current dock installation and proposed changes via a survey submitted by the applicants. Although the proposed changes would be contained within the easterly extended side site line extension, the nearest location of the boat lift would be within three feet, the nearest location of the dock structure would be within eight feet, and the canopy would be within 11 feet. All three of these dimensions do not conform to LMCD Code.
- Variances may be granted when the application of the LMCD Code causes a practical hardship or difficulty. Decision standards for the Board to consider include:
 1. Is the proposed use reasonable?
 2. Would it be unreasonable to require conformance to the ordinance?
 3. Is their difficulty due to circumstances unique to the property?
 4. Is the problem one created by the applicant?
 5. Will the variance, if granted, alter the essential character of the locality?

- Staff believed that the applicants have documented adequate hardships to grant the side setback variance. If the Board is comfortable with the number of watercraft proposed, the Board should direct LeFevere to prepare Findings of Fact and Order for approval of the variance application with the following conditions:
 1. Reconfiguration and reconstruction of the dock within 30 days.
 2. Dock installation must be in strict conformance with the proposed site plan.
 3. The submittal of an as-built survey within 60 days of Board approval.
 4. The storage of no more than four restricted watercraft at this site, which cannot encroach closer than the proposed lift and canopied slip from the easterly extended side site line extension.
 5. Watercraft stored at the southwest dock must meet the required side setback and cannot impair access to the lagoon.
- He entertained questions and comments from the Board.

Gross asked how far the sitting dock would be from the easterly extended side site line extension.

Harper stated that the proposed six foot extension would maintain a five foot setback, while the current sitting dock would maintain an eight foot side setback.

Baasen questioned whether 3675 Northome Road had deeded access to the Lake.

Harper stated that site is a platted lot with lakeshore frontage.

Baasen stated that it appears the current dock installation at the applicants' property is currently cutting off access to the Lake.

Harper cautioned the Board from entirely relying on the Hennepin County maps because they are not geo-referenced. In particular, the shoreline at 3675 Northome Road is somewhat limited (30 feet).

Baasen questioned whether there would be adequate water depths for the applicant to consider moving the boat lift to the west side of the proposed canopy dock and conform to setback requirements.

Harper stated that he believed the applicants would be concerned with water depths measurements for that (although water depth readings have not been taken to date).

Klohs questioned whether 3675 Northome Road currently had a dock and home constructed at this site.

Harper stated that site was a vacant lot without a dock.

Gross questioned whether the green depicted on the maps was emergent vegetation.

Harper stated that the green were a couple of willow trees.

Klohs asked if the proposed changes would have a positive impact on 3665 Northome Road (two properties to the east from the applicants' property).

Harper stated that the proposed changes should improve docking and boat storage at 3665 Northome Road. He acknowledged that, at one time, the property owner at 3675 Northome Road also owned the property that is currently owned by the Meyer's (3705 Northome Road).

Gross asked which properties were owned by the Heithoff and Diamond residences.

Harper stated that Dr. Heithoff owned 3675 Northome Road and that Alan and Carolyn Diamond owned 3665 Northome Road.

Baasen invited the applicant to address the Board.

Ms. Michelle Meyer thanked Harper for his assistance on this project. She believed that there are two parts to this application. First, the reconfiguration of the boat dock within the lagoon. This is the most important part of the application based on the future build of the neighbors dock at 3675 Northome Road. Second, the sitting dock extension at the mouth of the lagoon (although this is not an absolute requirement). She confirmed that if four watercraft were to be stored at this site, they would all be owned by them (not a marina). Should the Board have concerns about approving both parts of the application, her strong preference was to approve the proposal within the lagoon. She stated that she was respectful of the neighborhood comments and that they would not construct the addition to the sitting dock if it creates navigation problems. When they purchased the property, the current dock was shared with 3675 Northome Road. Now that the consent for the current placement has been removed, she understood that there is a need to fix this. She believed that the proposal was reasonable and encouraged Board approval of it. She entertained questions and comments from the Board.

Baasen questioned how long the sitting dock was.

Harper stated that it appears to be 50 feet long.

Gross questioned what the advantage was to extend the sitting dock by six feet.

Michelle Meyer stated that the dock extension was proposed for possible future uses (i.e., if a child was a member of the sailing school or if they wanted to store a personal watercraft or two). She reiterated that they could live without this proposed change. She addressed an email (dated 7/7/14 within the packet) submitted by Mr. Diamond relating to the six foot extension causing problems. If this were to create navigation issues, they would not construct it.

Gross asked for feedback on moving the lift to the west side of the proposed canopy.

Michelle Meyer stated that they would need to ensure that the water depth was adequate to consider that change. She commented that one of their watercraft is a fishing boat (with a shallower draft).

Klohs questioned whether the site owned by the applicants was a recent lot split?

Michelle Meyer stated that they have owned the property for approximately two and a half years, in which

she believed there was a lot split sometime before that.

Hoelscher asked if the dock in the lagoon could be swung a little bit to the west (per comments received by the Board).

Michelle Meyer stated that she believed there could be a water depth issue. She believed that the proposed plan was the most efficient and simplest alternative to resolve the current dock issues in the least amount of time.

Board member Meyer questioned whether one communal dock had been considered with the Heithoff residence.

Michelle Meyer stated that a communal dock was an option. She stated that they were not aware of the LMCD regulations when they purchased the property. Thus, they were not aware that the dock had problems until after such (not sold in good faith).

Klohs questioned whether a communal dock for all three properties would be of benefit.

Michelle Meyer stated that she believed a communal dock would be a drawback vs. having a dock specifically for their property.

Baasen asked if there were further questions for the applicant or staff.

Shuff asked Harper if he had feedback on the written documentation from Heithoff (dated 7/8/14, within the packet). In particular, since they object to the proposed variance application.

Harper commented on minimum side setback requirements for the Heithoff property. This could either be a grandfathered five foot setback or a 10 foot setback (depending on the year that the site was platted). The dock stored at this site could not impair access to neighboring docks. With the proposed variance application not requesting an adjusted DUA, he questioned whether the proposed dock would impair access to the Heithoff property (although he recognized that the DUA at the Heithoff site had slightly converging lot lines).

McDermott requested clarification on the Heithoff's defined DUA.

Harper reviewed the side setbacks, as offered above, as well as their dock length (extending out the width of their shoreline of 30', with the option to extend to four feet of water depth or 60', whichever is less). He understood the water depth to be fairly deep in that area. Additionally, he stated the neighbor could apply for a variance to extend his dock out to five feet.

McDermott stated that potentially the applicants' dock could be in line with Heithoff's dock.

Harper provided an overview of the proposed site plan; specifically the portion that is proposed (shaded in) and the current portion that is proposed to be removed (reiterating setbacks offered).

Baasen opened the public hearing at 7:34 p.m.

Dr. Ken Heithoff, 646 Ferndale Road in Wayzata, made the following comments:

- There is not a water depth issue within the lagoon (documenting his impression that a historical dredge took place as it significantly drops off beyond the placement of the rip rap, as well as his experience with the use of a sailboat docked at his property).
- He owned both his and the applicants' property for 26 years. He confirmed the properties were not split and that the current dock system was placed to support both properties during his ownership.
- The applicants had requested the dock system be included in the sale of the property, in which he granted without charge as he did not have a use for such. It was not until he researched the construction of his own dock that he realized the existence of the converging lot lines (expressing appreciation for Harper's assistance in the matter over the past two years).
- The applicants' current dock completely blocks his ability to construct his own dock structure and that the proposed plan would provide a positive relief to his needs (acknowledging his belief that the aerial photograph offered a more accurate picture of the dock placement than the applicants' drawing).
- He has tried to communicate with the applicants over the past two years with little response. Once connected, he stated that Ms. Meyer was upset in having to change the dock structure due to the expense involved. After which, he communicated his interest in constructing a communal dock system with the applicants and neighboring property owner Alan Diamond (in which the applicants stated they would consider but did not communicate further).
- The lagoon is murky and not swimmable and offered the following objections to the proposed application:
 - Each adjacent property owner should be subject to a straight dock structure with one watercraft (as per Diamond's current dock structure).
 - He believed the proposed four watercraft (two boats in the mouth of the lagoon and two boats on the southerly sitting dock) will remove the pastoral aesthetics of the area to something akin to a marina.
 - He asked the Board to consider the converging lot lines and how he would have to maneuver around the proposed dock based on the reviewed setbacks offered (acknowledging he believed that a functional and safe dock under those circumstances is not achievable).
 - He believed that ice is not an issue (based on the narrowness of the lagoon) as the current dock structure was installed in 1986 without historical concerns.
 - He believed that the application was an attempt to make as few modifications as cheaply as possible at his expense.
 - In talking with the original dock installer, he was informed the structure could not be modified without taking it completely apart and that the lift would be more usable if it was placed closer to the shore or placed on the other side (alleviating a lot of the setback concerns). Both of those options could be easily measured for water depth usage.
 - Although the southerly dock was documented as not being as important to the applicant, he believed narrowing that entrance would be ill advised as he has documented underwater hazards that require maneuvering the watercraft around just as one passes through to the mouth of the lagoon.
 - Putting two boats on the south dock and six in the lagoon is far from desirable.

- He entertained questions and comments from the Board.

Klohs asked Heithoff what his conversations have been with Mr. Diamond.

Heithoff stated that he communicated with both Mr. Diamond and the applicants, at which time he posed the question of how they could address this matter as it was clear to him that there was no way the applicants could continue with the current docks structure. He recommended the neighboring property owners consent to having three canopied dock structures. Additionally, he asked the Board to consider the neighboring property owner's view of the Lake as his homes sits on a hill. He reiterated that he was open to a communal dock structure and other options do remain on the table; however, communication has not been offered by the applicants relative to this.

Mr. Alan Diamond, 3665 Northome Road, stated that he did not have a dog in the hunt as it pertained to the use of the dock structures within the lagoon. However, he did expressed concern about the proposed six foot extension of the southerly dock structure as that would require him to make a hairpin turn at the entrance to the mouth of the lagoon (documenting the shallow/rocky Lake bottom directly across from the point of that dock structure).

Klohs asked Diamond what side of the dock his watercraft was moored on.

Diamond confirmed he moors his boat on the east side of the dock to alleviate impeding on Heithoff's setback (per his request) in which that was not a concern for him.

The Board had a brief discussion in considering other dock configurations (with input from staff and Heithoff on rotation and water depths) as well as confirmation that no other variables existed. Additionally, Heithoff confirmed the lots were platted between 1906 and 1910.

Michele Meyer reiterated that they could live without extending the southerly dock structure six feet. She confirmed: 1) that the current dock structure (within the lagoon) could be rotated and moved further to the south; however, it is currently placed so the view of such is completely hidden from site by the willow trees and 2) that it would always be better to start from ground one and reconstruct all the abutting properties dock structures. In regards to the latter, that is not what they purchased nor was set up at the time of purchase. She acknowledged that they had not lived on the Lake prior to this purchase (moving in last year) and was upset to hear about the concerns of the dock structure after they had closed on the home. Although she owned the home for two years, she did not meet with the neighbors and staff until just last year as they were in the process of building their home the first year.

There being no further comments, Baasen closed the public hearing at 7:51 p.m. He entertained Board discussion.

Shuff asked Harper to review what has been previously discussed with the three property owners.

Harper confirmed that he has provided an overview of all three DUA's and their options for both individual and communal dock structures; after which, that conversation never came to fruition.

Gross recommended the Board ask the applicant to return with a reconfigured site plan that moves the boatlift to the other side of the dock as it appears there should be no reason why it should not be there. Additionally, he confirmed that extension of the southerly dock structure would provide for maneuvering difficulties (speaking from personal watercraft operating experience).

Morris stated he would like to see a better survey of the proposal with the whole lagoon and the property lines affected (documenting a full picture is not provided and assumptions are being offered).

Klohs concurred as there is a need to fully realize how adjacent properties can function.

LeFevere stated that the more direction the Board could offer the applicants the more they are likely to get what they are looking for (i.e., survey the entire lagoon with a layout of dock possibilities). He acknowledged the sentiment that the Board seemed uncomfortable with the information offered. He confirmed there is time within the 60-Day Rule for additional information to be obtained. In regards to this agenda item, the Board could simply say there is not enough information and deny the application; however, that was not recommended. Additionally, he believed additional proposals will still require a variance. Therefore, it is in the applicants' interest to provide more information.

Baasen asked staff to clarify the Board's needs (based on the conversation within) with the applicant and recommended the agenda be re-considered in a couple weeks.

LeFevere recommended that the Board continue the public hearing so that everyone is on notice.

Nybeck recommended this matter be re-scheduled for the Board's August 13th meeting.

9. OTHER BUSINESS

A. Staff update on current Lake Minnetonka water levels

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

Nybeck stated that today's reading was 930.63' (compared to a reading of 931.05' at the June 25th Board meeting). He acknowledged the steady reduction in water levels (estimated at five inches since June 25th). He directed the Board to various emails offered from the public within their handout folders (acknowledging they have reduced in numbers). He confirmed that he did not want to predict when the targeted water level would be reached to initiate the termination procedures of the Emergency High Water Declaration. To this end, he provided an overview of those procedures for both the Emergency and Regular High Water Declarations (three consecutive readings below 930.30' and 930.00', respectively). He entertained questions and comments from the Board.

Baasen confirmed that the Emergency High Water ordinance also provides for its removal by the Board at anytime (subject to proper notification of a scheduled meeting to consider such).

LeFevere confirmed that meeting could be via a special or regular meeting and that a public hearing was not required.

B. Minnesota Wakesurf Championship, review of 2014 special event planned for July 18th and 19th

Baasen asked the event coordinator to address the Board.

Mr. Andy Weigmann, 3106 Tuxedo Boulevard in Mound, stated that he was the event coordinator for the Minnesota Wakesurf Championship. He offered the following comments:

- The LMCD issued a special event permit for this event in December of 2013 (prior to the receipt of Lake Minnetonka's high water level readings).
- He provided an overview of various shoreline pictures that were taken on July 2nd when the Lake level was at 930.85'. Based on those pictures and research, he respectfully requested the Board consider an exemption to the minimum wake restrictions for this particular event (subject to a change in the course layout so that the watercraft would not operate less than 2,000' from shore).
- He acknowledged receipt of a letter from Spirit of the Lake documenting their enthusiasm for the wake surfing event, as well as documenting the various businesses that have supported such.
- He believed that the photographs displayed (acknowledging the water level was two inches less than what was offered at 930.85') provided positive feedback to concerns and questions offered at a recent LMCD Executive Committee meeting; in particular, is Cooks Bay under water and is there a serious threat to that respective shoreline. With that said, he was comfortable placing his name to the statement that a watercraft out 2,000' from shore would not provide damage to the shoreline or structures within Cooks Bay.
- He acknowledged the public concerns that were anticipated for receiving an exemption to the Emergency High Water Declaration adding his reasoning for such via the receipt of a special event permit.
- He further documented that: 1) Chapman Place Condominiums were "all clear" at the 930.85' water level, 2) most of Cooks Bay residents reside on a hill, and 3) receipt of written support from two residents of Cooks Bay.
- He reiterated his willingness to amend the course layout to 2,000' from shore. Additionally, he expressed concern that the event is scheduled to begin next Friday, July 18th and that he would need to confirm or refund the participants' entries very soon (offering a compromise to run one boat for a limited number of hours at a Board set water level reading).
- He entertained questions and comments from the Board.

Morris stated he was impressed with the course layouts and the work offered within Weigman's presentation (including comments from people around Cooks Bay).

Weigman stated that this event means a lot to the Lake Minnetonka boaters. He reiterated his appreciation for an exemption within a specifically controlled setting. He further stated that he traveled Cooks Bay's shoreline twice and did not feel one watercraft that operated 2,000' from shore would create significant concerns.

Green stated that Mound City Council discussed this event last evening, at which time he asked for their opinion on this matter (acknowledging it is a City of Mound/Spirit of the Lake event). He stressed his interest in the Emergency High Water Declaration going away just as much as Weigman would like it to (offering his participation in a second special event operating at minimum wake). He expressed concern that the statement, "I can't make a wake, you can't make a wake" is a hard thing to sell. One comment

offered at the city council meeting was that there was potential and/or the perception to damage the shore from a produced wake. Lastly, he stated that the majority of the city council was comfortable with the event moving forward if the water level reached 930.30' by the day of.

Weigman stated that it would be very difficult (based on an event of this size) to tell hundreds of participants and 20 to 30 businesses whether or not the event could proceed the day prior. To this end, he was in attendance to find a reasonable compromise that would work for all involved. Furthermore, he stated that he was in attendance at the Mound City Council meeting. He stated there were two city council members that were very much against receipt of an exemption (acknowledging, "a rule is a rule") with the three others having a more open mind for a reasonable compromise.

Green confirmed that the reasonable compromise was the exemption to the three day reading below 930.30' should that level be reached by next Tuesday.

Baasen asked if the city council formally acted on their discussion, in which Green confirmed no motion was offered (just discussion).

Baasen stated that the LMCD's relationship with the Hennepin County Sheriff's Water Patrol (Water Patrol) is one of partnership; referencing the professional manner in which they handled the recent police chase on Lake Minnetonka. He asked Lt. Saunders, who was in attendance, to speak to any issues they may face should the Board consider this request.

Saunders was unsure how many phone calls that action would generate. However, he confirmed that that they will be questioned why the Sheriff's office was allowing this to happen. At which time, he stated that he would inform them that it was an LMCD ordinance in which it was their wish to see the event go forward.

Baasen asked if a decision to grant an exemption would make it more difficult to enforce the Lake.

Saunders stated he could not foresee the future but would not be surprised if the special event exemption was the first comment made by a boater that was pulled over for non-compliance of operating above minimum wake.

Hoelscher asked Weigman if this is a for-profit event.

Weigman confirmed he was a for-profit limited liability company (LLC). Additionally, he stated that he was not making any money on this event (acknowledging that any funds taken in are put back into the event). Additionally, he confirmed the following: 1) this event is meant for Lake Minnetonka boaters, wake surfers, and businesses (all within a 20 mile radius and over 90% local) and 2) he currently has an estimated 55 registered participants (of all skill levels and ages).

Clapp asked if the event could not be held, would it be postponed and rescheduled to another date.

Weigman stated that what makes this event unique is that it is scheduled to be held in coordination with the Spirit of the Lake event. He was unsure if it would be rescheduled; reiterating his belief that the

amended course before them to consider was reasonable.

Shuff stated that not only is there potential for Lakeshore damage, she expressed concern about floating debris and asked what the event had planned to confirm the safety of the course.

Weigman stated Red Bull is donating 20 buoys to delineate the perimeter of the course layout, in which they will review the course for safety purposes throughout the competition. He stated that Mr. John Beise was in attendance to address the Board.

Mr. John Beise, Board Chair of the Spirit of the Lake Festival, stated that Weigman covered his request very well and that he would very much love to see this event proceed on time. In a prior question as to whether the City of Mound provided a formal motion, he stated that they did not based on the matter not being a regularly scheduled agenda item (added the afternoon of) and that they could legally just offer their opinions. Furthermore, he stated that while this event is not a non-profit, they fall under the umbrella of the Spirit of the Lake Festival, which is a 501c4 (non-profit). Based on the challenge of rescheduling the festival as a whole, he confirmed that the remaining events will continue as planned (whether the Minnesota Wakesurf Championships is cancelled or postponed).

The Board had a lengthy discussion in considering Weigman's request, which is highlighted as follows:

- The event may continue as planned should the water levels recede.
- The Board could waive the three day requirement (termination after three consecutive readings below 930.30') documented within the emergency ordinance.
- LeFevere confirmed the following: 1) the Emergency High Water Declaration was written as a transitory ordinance; providing the Board's ability to amend, terminate, or add conditions of such during a regularly scheduled or special meeting (subject to proper announcement of such meeting), and 2) the Board does not need an additional ordinance (or an amendment of any kind) to approve the request before them (or add any conditions to such) as the Code already allows for the Board to approve special events that involve, among other things, the ability to exceed the speed limits.
- Hoelscher questioned how the Board felt based on the current water level of 930.63' and the water level set within the Emergency High Water ordinance of 930.30' (i.e., is property damage still occurring, etc.). She stated that she would like to hear from the audience on how they foresee the current level of flooding/damage concerns.

Baasen invited those in attendance to offer their input.

Mr. Daniel Lemke, 3812 Park Lane in Spring Park, stated he and Board member Hughes spoke over the telephone. He confirmed he is third generation Lake resident and provided an overview of various water level readings from the day the Emergency High Water Declaration was made to current. He was in attendance to express his frustration in not being able to use the public waterway and respected all homeowners and their need to consider damage to their property or shoreline. He asked the Board to consider creating problem solvers by reviewing the individual bays' needs (working with the Water Patrol and posting specific signage) to allow more specific use of certain areas of the Lake. He believed there are areas of the Lake where watercraft operators can be thousands of feet from shore. He was excited to see the Minnesota Wakesurfing Championship event that has been discussed since last winter. To this

end, he expressed interest in the Board assisting all to help them use the Lake more during high water levels.

Mr. Keith Johnson, 4368 West Arm Road in Spring Park, addressed Green as a Mound City Council member and prior comments that the city residents were expressing concern that the special event would cause "shoreline erosion." He posed the question of what would happen when Mother Nature blows a strong north wind (confirming two out of seven days a week he has two foot white caps crashing his shoreline). He stated that he handled this concern by raising his dock and installing rip rap. He believed it is hard to argue concerns for the special event based on his efforts to prevent erosion concerns.

Hoelscher asked Johnson if he would have a concern with the Board leaving the current Emergency High Water in effect as written but allowed the special event to continue.

Johnson believed the previously enacted High Water Declaration (minimum wake within 600 feet from shore and at various surface areas of the Lake) was respectable. However, a declaration for the entire Lake was unacceptable. He personally broke the law the morning the Emergency High Water Declaration (for the entire Lake) was in place, in which he believed the wake did not disturb the moored watercraft over 600 feet from shore.

Hoelscher asked if the continuation of the event during an Emergency High Water Declaration would bother him since he could not have the same rights.

Johnson confirmed it would not bother him one bit. Additionally, he stated that his parents live at 5421 Tonkawa Road in Mound and that the Board has engaged him and his family numerous times; documenting you "have more enemies than friends on this body of water."

Green clarified he is an LMCD representative for the City of Mound and not a city council member. He further stated the Board did not declare the Emergency High Water due to shoreline erosion alone. At the time that Declaration was made, many of the permanent structures were under water (including electrical boxes, etc.) and that this was not just about one bay.

Johnson understood Green's comment. He stated he grew up on the river (documenting his shoreline would change 10' within a season). He believed that everyone that lives on a body of water has to accept the fact that they live on a flood plain and that nobody has control of what Mother Nature does. Additionally, the LMCD utilizes the Water Patrol as your law enforcement/muscle, in which Saunders confirmed this evening that they are not intertwined but work in a partnership (but yet the LMCD uses them as their muscle/law enforcement).

Baasen stated that, from this point forward, those in the audience cannot address the podium until one is recognized to do so. He asked Hoelscher if she received an answer to her question and whether she would like to propose a motion.

Hoelscher confirmed she did receive her answer and did not have a proposed motion to offer.

Baasen entertained further Board discussion or action.

Klohs stated that he believed Green did a good job summarizing the Board's position in declaring the Emergency High Water. He suggested he be given an opportunity to finalize those comments.

Green stated that not only were the permanent docks under water but also the gas docks, which included their electrical wiring. Additionally, concern was expressed for individuals on a dock to be pulled off from a wake, as well as the floating of other older docks that were coming apart. He too would like Mother Nature to give up but the LMCD would be remiss to ignore the safety concerns.

McDermott documented the estimated six homes that had sand bags placed around their structure (confirming more than just concerns for shoreline erosion).

Morris stated that if everyone was responsible for their wake and took responsibility for their actions, the Board would not have to put these ordinances in place.

Hunt asked if the Board could remove the three consecutive day requirement below 930.30' for the Emergency High Water Declaration to be terminated. Additionally, could the Board direct the Executive Director to allow the event should the water level drop to 930.30' by Friday, July 18th.

LeFevere confirmed that the Board could approve this event (which would be in violation of the speed limit rules) on the condition that the Lake level measured at a specific footage by a specific day. He stated the Executive Director should not have any discretion except to validate the level based on the reading offered by the Minnehaha Creek Watershed District.

MOTION: Hunt moved to allow this special event to proceed, subject to a water level reading of 930.30' by Friday, July 18, 2014. There was no second to the motion.

Hoelscher questioned what the odds were in the water level receding that quickly.

McDermott believed the odds were good (mathematically speaking).

Nybeck believed it would be a push. He asked the Board to consider Weigman's need to have a couple days to plan ahead for logistical purposes.

Hunt stated that she was open to amending her motion to 930.50'.

Shuff would support the amended water level reading of 930.50'; acknowledging the Board did not set the Emergency High Water Declaration until after such level (presuming people were speeding prior to the Declaration). She stated this was a one-time event, in which it appeared it would not cause a large amount of damage.

Hoelscher stated the Lake's water level was at 930.65' when the Emergency High Water Declaration was enacted. She believed that, as of this date, residents have had an opportunity to make accommodations for their needs. She recognized that people were originally taken by surprise and that the high water has directly affected her, as well. Therefore, she was willing to accept the motion at 930.50' or even a little

higher.

Clapp questioned if the motion was to terminate the Emergency High Water Declaration at 930.30' and not require the three readings below 930.30' for three consecutive days or to allow for the event to proceed.

Hunt confirmed her intent as only for the event to proceed. She stated that after the Emergency High Water Declaration is terminated, the previously enacted High Water Declaration will be in effect (providing for minimum wake 600' from shore). This event is scheduled to be out past that required footage (up to 1,000' out). Additionally, she used to live on Cooks Bay and believed that no damage would result by the event at that distance.

MOTION: Hunt moved, Shuff seconded to allow the Minnesota Wakesurf Championship to proceed via their special event permit, subject to Lake Minnetonka's water level reaching 930.50'.

LeFevere stated that if a date to that water level is not offered, Weigman can make a decision by any date whether to proceed or not.

Morris did not understand why the Board would put the applicant through a grey area of approval. He believed the subject water level reading should be set at 930.63' or below the date of the event (acknowledging Weigman's request to have time to plan out the logistics and communicate with the participants).

MOTION TO AMEND: Morris moved, Hoelscher seconded to amend the original motion; changing the required water level reading to 930.64' by the date of the event.

VOTE ON MOTION TO AMEND: Ayes (6; Clapp, Hoelscher, Hunt, Meyer, Morris, and Shuff), Nays (6); motion failed.

Hunt clarified that the motion on the floor (to allow the previously approved special event to proceed if the water level receded to 930.5' on the day of the event) was only for the event boat.

VOTE ON ORIGINAL MOTION: Ayes (7), Nays (5; Baasen, Green, Gross, Hughes, and Klohs); motion carried.

Baasen invited those in the audience that had additional comments relative to the Emergency High Water Declaration to address the Board.

Mr. Brandon Tolliver, 1098 Loma Linda Avenue in Orono, understood that the Emergency High Water Declaration was not put in place solely on soil erosion concerns. However, he believed that a lot of the concerns come down to property management. When he purchased his home, he also purchased the tools needed to work on his dock and installed rip rap. He believed some riparian owners are neglecting their property by not wanting to invest in such (confirming his property was not flooded). He

stated a benchmark had been set in preparations for a property's flood plan (historical high waters). Lastly, he stated he was cited by the Water Patrol for being in violation of the minimum wake restrictions. The cost of the ticket was not that big of a deal (compared to what he saved in gas for his wake boat). He believed he was speaking for the little people when he stated he performs his own maintenance and does not hire dock installers.

Mr. Gabriel Jabbour, 985 Tonkawa Road in Orono stated he was in attendance to offset Tolliver's comments. He believed that those comments were shameful based on the total flooding of homes just across the bay from his residence (documenting Baldur Park Road was totally under water, in which a couple of marinas assisted in those efforts). With that said, he acknowledged the comments offered of those that want to operate their watercraft above minimum wake. He stated that this is not a Lake Minnetonka issue but a State of Minnesota (State) issue that has evoked such ordinances. He owns four marinas, in which not one gallon of gas is being sold or boat serviced. He stated the consequences he is facing are extremely severe to those that addressed the Board this evening. He cautioned them that the people that were not in attendance this date, will be at one time (making the wake boats extremely restricted). He documented the following for all to consider:

- o His tenant (Marine Max) sells wakeboard boats, in which their sales went to nearly zero during this boating season (recognizing the concern to continue that operation).
- o 100 percent of his docks are permanently constructed, in which over 10,000 amps of electricity are disconnected and laying under water.
- o He confirmed the Water Patrol could not patrol at full speed due to the consequences of individuals falling into the water from the respective wake (i.e., Narrows channel), as well as their inability to reach their boats during a recent severe storm.

He stated that nobody wants the restrictions lifted more than he does; however, public safety comes first. He recognized that all have the privilege to use the Lake subject to the LMCD's set rules (including speed limits and observer while towing, with the latter being more restrictive than State law). In closing, he confirmed that Woodpecker Road is under water, a 60' craft (which he launched this date) would create a 10' wake (acknowledging that size watercraft has equal rights to a 20' watercraft), that there are senior citizens that are not able to install their rip rap, and that he is willing to have his business profits cut in half to assist in the needs associated with flooding. He urged the Board to walk in the fine middle as there are not enough resources to raise 100% of the Lake Minnetonka docks (referencing that if everybody wanted breakfast in bed, pretty soon there would be no food available).

C. 2014 EWM Harvesting Update

Baasen asked Harper for an update on this agenda item.

Harper stated that training of the seasonal employees (both in the office to secure Lake Service Provider certification and on-site in the field) was provided prior to the initiation of the program on July 7th. He confirmed the program was utilizing a rotating harvesting schedule (Lower Lake North Option); starting with Old Channel and Lafayette Bay and working their way to Browns and Wayzata Bays the week following. He entertained questions and comments from the Board, in which he confirmed the following: 1) staff time was adjusted (due to the late start) to five days a week vs. the four originally scheduled and 2) he reiterated that staff training included Lake Service Provider certification for all drivers.

Nybeck stated that staff had received Board direction last fall to dispose of unused Eurasian Watermilfoil (EWM) capital equipment that had not been used for a number of years. In follow-up to that task, he directed the Board to a memo in their handout folder, dated 7/9/14, in which he provided the following overview of the unused equipment and the disposal options offered:

- Unused Equipment
 - A 1989 and 1990 floating conveyor (each 25' long); purchasing price was \$18,000 each for the use of off-loading purposes during the initial stages of the program (lower water years). Estimated weight for each conveyor ranged from 5,000 to 7,000 lbs. He confirmed the equipment (offered via photograph) was used as a conduit to the shore conveyor that was typically placed at street ends. This equipment, which has not been used since the late 1990's, has been stripped of all valuable parts and is not operational.
 - A 1989 shore conveyor - confirming two were purchased at that time for approximately \$16,700 each; however, only one was used for off-loading purposes. The second conveyor has not been used since the 1990's and is not operational. He requested additional time for staff to locate the specification of this equipment prior to considering its disposal options.
- Floating Conveyor Disposal Options
 - The current harvesters were purchased via a broker (Aquarius Systems). In receiving their input as to whether the floating conveyors had any value, he was informed that they did not believe there was a market for such specialized equipment that was 25 years of age (acknowledging the useful life of the equipment is 10 to 12 years).
 - Aquarius recommended the LMCD consider scrapping the equipment. LMCD staff estimated the salvage value to range from \$500 to \$700 (after the LMCD invested in the breaking down of the equipment and loading of such into a salvaged supplied container). Staff believed this effort would use up the profit offered above.
 - Based on the equipment not having a market value and little salvage value, staff believed disposing of the equipment to an interested local service provider without compensation was the best option (acknowledging that should this interest not materialize, staff would research other interested parties for the disposal of such).
- He entertained questions and comments from the Board.

The Board had a brief discussion on this matter, in which some of the comments highlighted included: 1) the belief that there may still be a salvaging profit to be made, 2) a review of the historical contacts made, and 3) confirmation (from an experienced member that regularly salvages large equipment) to take the offer of no compensation.

MOTION: Clapp moved, Green seconded to direct staff to dispose of the two floating conveyors to an interested party without compensation.

Meyer recommended the motion makers consider disposal for no value or free (leaving the option open to receive some funds).

Nybeck confirmed that the interested service provider had communicated that he would not pay for the salvaged equipment.

Clapp reassured Meyer that it would cost the LMCD more money to prepare for its disposal than what could be offered for the salvaged price (providing an overview in the preparation of his recently salvaged equipment prior to its sale).

VOTE: Motion carried unanimously.

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked the committee chairs if they had a report to offer.

Morris stated there is a West Metro Aquatic Invasive Species (AIS) meeting July 11th at the Minnehaha Creek Watershed District.

Baasen stated that the Save the Lake Committee recently met with Sheriff Stanek, Major Hugget, and Lt. Saunders, at which time he addressed the need for the bandwidth at the Water Patrol office to be updated so that they could return the Watercraft Safety Education Program to their facility. To this end, Hugget agreed to coordinate that need (working with the County Board and information technology staff). He recognized the benefits offered at the Westonka Community Center but noted the Water Patrol offered further benefits. He reported that the Sheriff's office had placed two additional staff members at the Water Patrol (costing an additional \$90,000 per year). For this reason, he asked the LMCD to consider assisting, at some level, in the cost of the additional staff. That matter will initially be considered at the next committee meeting on July 14th (acknowledging Hennepin County, member cities, and the LMCD, through the Save the Lake Fund, historically funded for additional officers). He believed the recent meeting was beneficial to both parties.

Hunt expressed concern about the lack of watercraft operation enforcement on Halsted Bay (hearing the same for Jennings Bay) and questioned if it would be possible to place a city peace officer on the water for consistent enforcement.

Hughes stated that the Sheriff recently communicated that some officers commissioned to the jail are certified to operate the Water Patrol boats; however, the removal of those personnel to assist the Water Patrol on a part-time basis requires their replacement at the jail on an overtime basis.

LeFevere stated Hunt would need to confirm if the Lake is within the corporate boundaries of the city. He recommended she address their city attorney in response to that question (acknowledging that the individual cities previously prosecuted matters of the Lake prior to the establishment of the LMCD's prosecuting attorney).

Baasen further recommended she speak with the Sheriff's office. He stated that there are currently 28 Hennepin County special deputies. He addressed a misconception that those deputies cannot issue citations. He confirmed that they can, in fact, issue an enforceable citation. What they cannot do is carry a weapon and investigate. He expressed the importance in having the special deputies on the Lake and the need to make that position as attractive as possible so that they sustain their existence. Furthermore, he referenced an incident that happened on June 14th, in which a number of sail boats capsized in 60 mile an hour winds. Since that date, a complaint had arisen that they could not receive assistance from the Water Patrol based on a prior engagement they were involved in. He offered the following information that was documented within

the Sheriff's report: 1) that there were four special deputies on site, as well as three or four emergency fire boats (Wayzata, Orono, Excelsior, and Long Lake) and 2) it is his understanding that the concern raised in this matter is the fact that the Water Patrol did not know how many people were in the water from each of the capsized boats. To this end, he suggested an LMCD/Sheriff's Office workshop be scheduled to discuss how the two agencies can be better partners. In regards to the previously scheduled special session for 5:30 p.m. this evening (to provided an overview of the Open Meeting Law), it will be rescheduled to accommodate a larger attendance at the end of the summer.

Green added that the Sheriff recognizes the need to re-evaluate the use of the special deputies that are not always on the water but directed to land-based events (i.e., parades). Additionally, in regards to the special deputies and the writing of citations, it was confirmed that they do not have the authority to investigate BWI arrests.

Gross stated that he participated in the rescue of individuals during the June 14th incident, in which he had direct communication with the Minnetonka Yacht Club event boat and had the personal knowledge of every boat capsized in the water and their respective rider. Minnetonka Yacht Club did not leave the water until every boat and human being was accounted for. He expressed concern that the rescue boats that were present were not talking; recommending coordination with the event holder, Sheriff's office, and fire boats on one radio frequency.

Baasen stated that he will work with Gross, off line, to discuss his recommendation and process to establish such.

11. EXECUTIVE DIRECTOR REPORT

Nybeck entertained questions and comments.

Hoelscher questioned whether a press release would be submitted on the Board's decision to allow the Minnesota Wakesurf Championship to proceed subject to certain conditions. A brief discussion was held on that matter, in which concern was expressed that it would offer more confusion than assistance to the public. To this end, it was confirmed a press release would be submitted once the Emergency High Water Declaration was terminated.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:27 p.m.

Dan Baasen Chair

Andrew McDermott, Secretary