

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, August 13, 2014
Wayzata City Hall

1. CALL TO ORDER

Baasen called the meeting to order at 7:00 p.m.

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Ann Hoelscher, Victoria; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; and Judd Harper, Administrative Technician.

Members absent: Jeff Clapp, Tonka Bay; David Gross, Deephaven, and Anne Hunt, Minnetrista

3. APPROVAL OF AGENDA

MOTION: McDermott moved, Green seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

Baasen announced that a clerical error had been made in the submittal of the public hearing notice to the address labeled recipients provided for the processing of the Browns Bay Marina (Site 2) applications. Therefore, the draft Findings of Fact and Order to be prepared for consideration at this meeting have been put on hold and a second public hearing is scheduled for the August 27th Regular Board Meeting.

5. APPROVAL OF MINUTES- 7/9/14 LMCD Regular Board Meeting
7/23/14 LMCD Regular Board Meeting

Green proposed the following changes to the 7/9/14 LMCD Regular Board Meeting minutes: 1) in the second paragraph on page 15, the word "residents" should be changed to "residence" and the words "Boulder Bridge Park" should be changed to "Baldur Park Road" and 2) in the second paragraph on page 18, it should be clarified that special deputies do not have the authority to investigate BWI arrests.

MOTION: McDermott moved, Shuff seconded to approve the minutes of the 7/9/14 LMCD Regular Board Meeting as amended, making the changes noted above.

VOTE: Motion carried unanimously.

Shuff stated that the date in the heading on page 1 should be changed to "July 23, 2014".

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

VOTE: Ayes (10), Abstained (1, Hoelscher); motion carried.

6. APPROVAL OF CONSENT AGENDA

Green moved, Zorn seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved include: **6A**, Audit of vouchers (8/1/14 – 8/15/14) and **6B**, June financial summary and balance sheet.

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

There were no public comments.

8. PUBLIC HEARINGS

A. City of Wayzata, new multiple dock license, special density license, and side setback variance applications to increase the number of Boat Storage Units from 116 to 149 by adding transient slips near the Depot and Broadway Docks

Baasen asked Nybeck to provide background on this agenda item.

Nybeck directed the Board to his staff memo, dated 8/7/14, at which time he made the following comments:

- The City of Wayzata (Wayzata) has submitted new multiple dock license, special density license, and variance applications for the 2015 boating season. The proposal is an initial step in implementing the Wayzata Lake Effect project by adding 33 transient slips near the Depot and Broadway Docks.
- An overview of the current approval:
 - 116 Boat Storage Units (BSU).
 - 3,460 feet of non-continuous shoreline with a BSU density of one watercraft for each 30 feet. A special density license has been approved for Wayzata.
 - Further breakdown of the 116 BSUs includes: 1) 100 overnight storage BSUs in the Lagoon Area, 2) six transient BSUs at the Depot Dock, and 3) 10 transient BSUs at the Broadway Dock.
 - Approval of a BSU for a Wayzata Fire Boat in the Lagoon Area; however, the BSU does not count towards their density (per LMCD Code).
- An overview of the proposed changes:
 - Relocation of the Wayzata Fire Boat to currently approved BSU #1 at the Depot Dock.
 - The addition of 15 transient BSUs to the east of the Depot Dock (dimensions of 12' x 24').
 - The addition of 18 transient BSUs at the Broadway Dock, with dimension of 12' x 24'. Two dock plans have been proposed. A preferred plan to the east and a back-up plan to the west.
- An overview of the relevant LMCD Code sections:
 - Number of Restricted Watercraft Allowed- 1) the 1:50 General Rule, 2) the combination of

- non-continuous shoreline, and 3) additional density allowances for special density licenses (a density of up to one watercraft for each 10 feet of shoreline).
- Authorized Dock Use Area (DUA) Requirements- docking and boat storage must comply with maximum length restrictions (typically 100 feet from shore) and minimum side setback requirements.
- He provided a detailed overview of staff comments:
 - Support for the relocation of the Wayzata Fire Boat and future applications would need to reflect the reduction of one BSU if this were to be approved.
 - Wayzata has adequate shoreline to amend their special density license (the BSU density would change to one watercraft for each 23 feet of shoreline). Per LMCD Code, the minimum public amenity points would be 40. An amended proposed public list and an assessment from staff were included in the handout folders, with recommendations. Staff evaluated the amended list and recommended 59 points.
 - Support for the addition of the 15 transient BSUs at the Depot Dock.
 - There are issues with the preferred site plan at the Broadway Dock. In particular, the proposed dock would be in the DUA for the abutting property to the east which is owned by Burlington North Railroad (BNR). In order for Wayzata to use this DUA, they would need to secure exclusive dockage rights for this shoreline, with all docks and watercraft documented on the proposed site plan.
 - Support for the back-up site plan at the Broadway Dock.
 - A variance application is not necessary and the Board should refund the \$500 application fee.
- Draft Findings of Fact and Order need to be prepared to reflect updated public amenities for the special density license. Staff recommends Board approval of: 1) relocation of the Wayzata Fire Boat, 2) the 15 transient BSUs east of the Depot Dock, and 3) the amended proposed public amenities (as recommended by staff). However, Wayzata needs to provide feedback on which proposed site plan they want the Board to consider at the Broadway Dock.
- He entertained questions and comments from the Board.

Green asked for clarification of the shoreline not owned by Wayzata.

Nybeck stated that the shoreline slightly to the east of the current Broadway Dock is owned by BNR. Otherwise, the shoreline in question for these docks is owned by Wayzata.

Morris asked if the proposed docks would be floating or permanent.

Nybeck stated that the proposed docks would be floating. Should these docks be approved, Wayzata has discussed moving them to the Lagoon Area (or within approved combined de-icing area for the Depot Dock and the abutting commercial marina to the west) to address LMCD staff's prior concerns about additional de-icing on this part of Wayzata Bay.

Baasen asked the applicant to provide additional background.

Ms. Heidi Nelson, Wayzata City Manager, stated that the proposed site plans for the Broadway Dock (preferred and back-up) were submitted to BNR in the spring. Conversations have been on-going with Bryan Sweeney

(Regional Vice President for Governmental Affairs). The most recent conversation, which she believed was summarized in an 8/13/14 letter from BNR that was offered in the packet, states that they were okay with Wayzata using the shoreline to the east of the Broadway Dock. However, they expressed safety concerns for the public crossing the railroad tracks, which Wayzata shares. She requested that the Board consider the preferred site plan at the Broadway Dock, adding that Wayzata can work with LMCD staff to determine whether the letter from BNR addresses the concern relating to exclusive dockage rights. She believed that further work will be taken into consideration when a broader lakefront plan is considered (in particular at the Broadway railroad crossing). She entertained questions and comments from the Board.

McDermott asked if Wayzata planned on installing the transient docks next spring.

Nelson believed that would be the goal (primarily because of timing). The intent of the transient docks is to determine how the additional slips felt and impacted the downtown area. She believed that this could be measured while Wayzata consider a long-term lakefront plan, which she believed was three to five years out and would involve many layers of approval.

Klohs asked Nelson to confirm that this may be the only proposal the LMCD reviews in the next two to three years.

Nelson stated that was quite possible while a broader plan is being put together. However, a swimming dock for the municipal beach to the west could come forward.

Shuff asked for possible options to address pedestrians crossing the railroad tracks.

Mr. Mike Kelly, Wayzata City Engineer, stated that the Broadway crossing specifically pertains to pedestrian use only. The goal of BNR and Wayzata is to prohibit a pedestrian from being able to walk directly across the railroad track, which has been addressed in the past through layouts on land and signage.

Morris acknowledged that public amenities have gone away for "Qualified Commercial Marinas" and that Wayzata has proposed adequate public amenity points (per LMCD Code). However, when a long-term plan is being considered for the lakefront, he encouraged Wayzata to consider a public head pump.

Kelly stated that this had not been considered to date; however, it could be.

Morris encouraged Wayzata to consider this because he believed it would be beneficial to Wayzata and Lake Minnetonka.

McDermott asked who owned the single dock that originates from the BNR shoreline.

Kelly stated that he understood the dock in question was used by a BNR executive.

Nybeck stated that a second dock has been installed from this property in 2015. He asked LeFevere for his feedback on whether these docks could be approved as part of the proposed applications.

LeFevere stated there was no reason why the Board could not approved the back-up plan (Broadway Dock) at

this time. However, there currently is not a provision in the LMCD Code that allows for mutual consent for the preferred plan (Broadway Dock). For the preferred plan to conform to the LMCD Code, BNR would have to give Wayzata exclusive dockage rights to their shoreline. Additionally, the BNR docks and watercraft would need to be documented on Wayzata's multiple dock license and approved site plan. This should be negotiated between the two parties, which appears to be unresolved.

Kelly stated that Wayzata is in the process of finalizing those details with BNR.

LeFevere did not believe the Board had adequate details to consider approving the preferred plan. One option for the Board to consider is to continue the public hearing to a future meeting, which would allow Wayzata to work those details out with BNR.

Baasen summarized LeFevere's comments; acknowledging his belief that this would clean the area up.

McDermott questioned what type of lease, in particular length of time, Wayzata would need to work out with BNR (possibly five years).

LeFevere stated that multiple dock licenses are renewed annually so it could be as short as one year. However, he believed that Wayzata would want to negotiate longer terms.

Klohs asked for clarification on the south side of the railroad tracks.

Kelly stated that the house in question is the "Foreman's House." In the long-term plan, some level of dockage is being contemplated.

Baasen open the public hearing at 7:33 p.m. There being no comments, he closed the public hearing at 7:34 p.m.

MOTION: McDermott moved, Roy seconded to: 1) continue consideration of the Wayzata applications to a future Board meeting to allow them time to resolve the issues with BNR and 2) direct staff to re-publish the continued public hearing once this meeting date has been established.

VOTE: Motion carried unanimously.

B. Richard and Michele Meyer, side 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 has been submitted for a property on the north side of St. Louis Bay. The site has 210 feet of shoreline at the mouth and within a lagoon area.
- A public hearing was conducted at the July 9th Board meeting, which was continued to allow the applicants time to provide additional information. In particular, water depth readings, documentation of the abutting properties' authorized dock use area (DUA), to investigate additional configurations to

- lessen the variance request, and to submit a clean proposed site plan prepared by a surveyor.
- At the July 9th public hearing, the applicants proposed a three foot setback from the easterly extended side site line for the boatlift, an eight foot setback for the dock, and a 12 foot setback for the canopy. A second dock located at the southwest part of the site was proposed near the mouth of the lagoon.
 - He reviewed the water depth readings for the area taken by the dock installer. These water depth readings identified that the dock could be relocated within the lagoon area.
 - He reviewed a map of the applicants' site, which was provided by them, that documents the limited DUA once conforming side setbacks are met. Additionally, he reviewed a map of a conforming DUA for the abutting property to the east, which would have either a five or 10 foot side setback requirement (depending on when the site was platted). It appears that the maximum DUA length for this site would be 30 feet from the shore.
 - The applicants have submitted an amended proposed site plan (in consultation with staff and their dock installer). The applicants propose a 10 foot setback from the easterly extended side site line for the boat lift, a 15 foot setback for the dock, and an 18.3 foot setback for the canopy. The only setback that would need a side setback variance is for the canopy, which is a 20 foot side setback. The southwest dock has been amended to meet conforming side setbacks and to address testimony received on the possibility of impeding access to the lagoon area.
 - Staff recommends that the Board direct LeFevere to prepare draft Findings of Fact and Order for approval of the variance application, subject to the six conditions outlined within his 8/8/14 staff memo.
 - He entertained questions and comments from the Board.

Baasen asked for clarification on staff's recommendation that the dock be reconfigured and reconstructed within 30 days of approval. In particular since Findings of Fact and Order need to be approved by the Board and the majority of the 2014 boating season has concluded.

Harper stated that dock in question is seasonal; however, it is installed 12 months a year. Thus, once it is fixed it should be good for the long-term. He reminded the Board that testimony was previously received from the abutting property owner to the east on the structure not being in compliance with the LMCD Code.

Klohs asked if the applicant was okay with this recommended condition.

McDermott stated that he would be okay with bringing the dock into compliance within 60 days after Board approval.

Ms. Michele Meyer, 3705 Northome Road, stated that she and her husband had worked with their dock installer (Dock and Lift) and staff to amend the proposed site plan that works for them, as well as the property owners in the immediate area. She believed the amended proposed site plan addresses the Board's comments and concerns raised by the neighborhood at the July public hearing. She addressed the proposed canopy and why a minimal side setback variance (1.7 feet) continues to be proposed. The proposed site plan has been recommended by Dock and Lift, in which she provided an overview of other site plans considered. She stated that she and her husband were comfortable with the 30 day requirement; however, she could not speak for Dock and Lift's schedule.

Baasen open the public hearing at 7:48 p.m.

Mr. Alan Diamond, 3665 Northome Road, stated that he testified at the July public hearing about concerns to navigability with the proposed six foot extension to the southwest dock. The amended proposed site plan for this dock has addressed his concerns.

There being no further comments, Baasen closed the public hearing at 7:49 p.m. He entertained Board discussion.

Morris complimented the applicants' efforts to amend their proposed site plan and to document it on a survey. A number of Board members concurred with Morris.

MOTION: Morris moved, Roy seconded to direct LeFevere to prepare draft Findings of Fact and Order to approve the Richard and Michele Meyer variance application, subject to the six conditions recommended by staff.

McDermott proposed a friendly amendment to staff's first condition; offering the dock reconfigured and constructed within 90 days of approval vs. 30 days.

VOTE: Motion carried unanimously.

Nybeck informed the applicant that the draft Findings would be reviewed by the Board on August 27th.

9. OTHER BUSINESS

A. Public Safety Committee, recommendations relating to LMCD Code Section 3.021 for "High Water"

Baasen asked Hughes to provide background on this agenda item

Hughes stated that the committee met on June 12th and July 24th to formulate possible changes to the current ordinance. Brainstorming of possible changes occurred at the June 12th meeting (confirming such at the July 24th meeting). Once the Lake reaches a certain level, the committee recommended implementing minimum wake restrictions for the entire Lake (effective immediately). Additionally, once the Lake receded to a certain level, the committee recommended that it be terminated (effective immediately). He believed that there may be need to further define the word "immediately." He encouraged Board discussion on the committee's recommendations, as well as the recommendation to eliminate the current 600 foot minimum wake restriction based on its unenforceable nature.

The Board had a lengthy discussion on this topic. A summary of the discussion was as follows:

- The purpose in declaring a "High Water Declaration" (environmental vs. public safety).
- Readings taken by the Minnehaha Creek Watershed District and whether consecutive day readings should be considered (including whether readings should be taken seven days a week when a "High Water Declaration" is implemented).
- A discussion on the committee recommendation to eliminate the 5 m.p.h. reference in the current ordinance.
- The definition of "minimum wake."
- The trigger points recommended by the committee (930.25 feet to implement a "High Water Declaration" and 930.00 feet to terminate such). It was noted that both of these numbers were in

the current ordinance.

- The current ordinance and how it has evolved over the years since it was first adopted in the 1990's (in particular the trigger points and whether they have changed based on scientific evidence).
- A discussion of the Baldur Park Road flooding and where this neighborhood stood with regards to the 930.00 and 930.25 foot trigger points. There was discussion of an alternative approach to use the same level to trigger a "High Water Declaration" on and off (noting that this was a policy question for the Board to discuss).
- A general consensus that eliminating the 600 foot minimum wake restriction from shore made sense.
- A discussion of the Grays Bay dam elevation at the time it was established (as well as the 929.4 foot ordinary high water mark for the Lake).
- The inability for the Minnesota Department of Natural Resources conservation officers to enforce the LMCD ordinances (including how this could be addressed for 2015).
- Current LMCD ordinances and that violation of such are misdemeanors.
- A discussion of the following questions raised by the committee:
 1. Does the Board believe that changes should be considered to the LMCD's "High Water" code section? If so, how does the Board feel about the changes recommended by the committee?
 2. The consideration and adoption of changes to the LMCD Code does not require a public hearing or public meeting. However, the committee recommends that that a public hearing or public meeting be scheduled to consider changes to the LMCD Code for "High Water." What feedback does the Board have on this recommendation?
 3. The committee recommends that the public have the ability to provide testimony on other topics that the public has expressed interest in should a hearing or meeting be scheduled. For example, some feedback has been received with regards to establishing certain day(s) and time(s) where minimum wake restrictions (for the entire Lake or specific bays) could be in effect. How does the Board feel about this?
- A discussion of state law for "minimum wake" and a review of the various locations where "minimum wake" and other similar terminology is currently referenced in the LMCD Code.
- The consensus of the Board was for LeFevere to prepare a draft ordinance amendment(s), consistent with the committee recommendations, for review at the next Board meeting. Further discussion of the committee recommendations will take place at this meeting.

B. Staff update on 2014 EWM Harvesting Program

Baasen asked Harper for an update on this agenda item.

Harper stated that harvesting is currently taking place in the Crystal/Maxwell Bay area. Targeted harvesting has been done on North Arm Bay, in coordination with the Lake Minnetonka Association's 2014 coordinated, large scale herbicide treatment. The used capital equipment, which the Board authorized to dispose of at no compensation, was removed from the lot as of this day. This site where the equipment is stored is scheduled to be graded by Hennepin County next week. Harvesting is planned through August 22nd (primarily on bays near Lower Lake North).

Baasen complimented Harper for these efforts (noting that Harper has had his hands full).

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen stated that the Ordinance Review Committee (ORC) met prior to this Board meeting. The ORC is getting active again and the committee has recommended that Board member Klohs be appointed as chair of the ORC for the balance of the year (based on former chair Doug Babcock's resignation).

MOTION: Shuff moved, Zorn seconded to appoint Board member Klohs as the chair of the ORC for the remainder of 2014.

VOTE: Motion carried unanimously.

Klohs stated that the ORC would be meeting regularly prior to the second Board meeting of each month at 5:30 p.m. (fourth Wednesday).

Baasen asked other committee chairs if they had anything to report.

Hughes asked Nybeck for an update on the Quiet Water Area (QWA) petition in Spring Park.

Nybeck stated that staff is currently conducting fieldwork for the QWA petition near Seton Channel to Deering Island. Staff hopes to have the fieldwork conducted by Labor Day and the Public Safety Committee will take up the request at that time.

Morris stated that the AIS Task Force met on August 8th. One of the topics discussed was the tablets purchased prior to the LMCD's 2014 watercraft inspection program and how this has improved the availability of information. With the 2014 "High Water Declaration," some watercraft have left Lake Minnetonka and there have been some instances where threats of AIS (i.e., zebra mussels) have become a concern for other nearby lakes. He suggested that this be taken into consideration as a possible unintended consequence should changes be made to the "High Water" ordinance.

Baasen stated that the Save the Lake Committee met on August 12th. A summary of projects currently being worked on included the following:

1. A plan for the 2015 boating season will be worked on this fall for additional Water Patrol presence on Lake Minnetonka. Major Jeff Storms has recently taken on Major Huggett's former position and he hoped to work closely with him on this.
2. Save the Lake is considering an effort to coordinate volunteers for a clean-up project after Labor Day due to a littering problem at Cruiser's Cove (possibly September 20th). He believed that further clarification should be provided to the public that littering is a "crime."
3. Save the Lake has tentatively scheduled the annual banquet dinner for March 19, 2015 at the Lafayette Club. He reviewed changes that are currently being discussed by the committee and stated that they would be seeking to spend some Save the Lake funding (i.e., up to \$10,000) to initiate changes being considered by the committee (i.e., a videographer). Hughes stated that he could be of possible assistance on the videographer.

4. The fall Lake Minnetonka Boater Safety Education Training Course has been scheduled for Saturday, November 1st (at the Water Patrol office in Spring Park).
5. Proposals for Save the Lake funding will be sent out sometime this fall.

Green provided a brief update on Lessard Sams grant funds (up to \$4 million) for AIS management and prevention projects. Proposals for projects that are "outside of the box" are due by September 15th.

11. EXECUTIVE DIRECTOR REPORT

Nybeck pointed out that staff had prepared and forwarded a letter of support to the Cities of Excelsior and Greenwood for the Lake Improvement District on St. Albans Bay.

McDermott asked for an update on the preparation of the capital improvement plan, in which Nybeck stated that further work needs to be done on this.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:45 p.m.

Dan Baasen Chair

Andrew McDermott, Secretary