

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, August 27, 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; Jeff Clapp, Tonka Bay; David Gross, Deephaven; 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:** Ann Hoelscher, Victoria and Fred Meyer, Woodland

**3. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Baasen**

Baasen stated that the Executive Committee is in the process of finalizing a Lake Minnetonka Cleanup Day (mid to late September), which they believe will serve the community well.

**5. APPROVAL OF MINUTES- 8/13/14 LMCD Regular Board Meeting**

**MOTION:** McDermott moved, Shuff seconded to approve the minutes as submitted.

**VOTE:** Motion carried unanimously.

**6. APPROVAL OF CONSENT AGENDA**

McDermott moved, Green seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved include: **6A**, Audit of vouchers (8/16/14 – 8/31/14); **6B**, July financial summary and balance sheet, and **6C, Richard & Michele Meyer**, draft Findings of Fact and Order approving a side setback variance at 3705 Northome Road on St. Louis Bay.

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

There were no public comments.

## 8. PUBLIC HEARING

- **Browns Bay Marina (Site 2)**, new multiple dock license and side setback variance applications at 1444 Shoreline Drive on Tanager Lake to reconfigure 40 Boat Storage Units utilizing LMCD Ordinance 217 for Qualified Commercial Marinas

Baasen asked Nybeck to provide background on this agenda item.

Nybeck directed the Board to his staff memo, dated 7/17/14, which was a compilation of staff's overview. He made the following comments:

- Mr. Luke Kujawa, representing EOF Investment LLC (EOF), has submitted a new multiple dock license and variance applications (utilizing LMCD Ordinance 217 for Qualified Commercial Marinas [QCM]) for the reconfiguration of 40 boat storage units (BSUs). The variance application has been submitted for side setback requirements. This facility is designated as a legal, non-conforming site (for both density and dock use area [DUA]) with 240' of shoreline (1:6' density).
- Staff met with EOF representatives last October after they closed on the property. During recent Board discussions, concern was expressed that staff had not provided the Board specific letters that were mailed to the applicant. He stated that those documents were not provided prior as he confirmed this is the venue to bring those forward. He directed the Board to letters within their packet (10/22/13 and 10/24/13) that summarized their discussion, which is outlined as follows:
  - Management of de-icing at the separate facility on Browns Bay (resolved);
  - Interest from EOF pertaining to permitting process for fuel dispenser on Browns Bay for the boat club boats (resolved); and
  - The south dock on Tanager Lake that was not consistent with approved 1985 variance order (pending).
- A detailed overview of EOF's proposed changes included:
  - Maintaining the approved 40 BSUs; however, reconfiguring them within the DUA for the two commercially zoned parcels that are dedicated for this multiple dock facility. No BSUs are proposed within the DUA for the two abutting sites to the north that are zoned residential (sites' shoreline dedicated for the multiple dock facility).
  - North Dock- 1) dock length of 199.9 feet and 2) 28 BSUs with dimensions that are 11 feet wide by 28 feet long.
  - South Dock- 1) dock length of 97.6 feet, 2) eliminating the south opening BSUs, and 3) 12 BSUs that are 5 feet wide by 14 feet long.
  - Maneuvering space for the inside opening BSUs between the two docks has been increased to 42 feet.
- He provided a detailed overview in the relevant LMCD Code Sections pertaining to the applications.
  1. Qualified Commercial Marinas (QCM):
    - A "QCM" is a privately owned, revenue producing business that rents storage for 13 or more watercraft on Lake Minnetonka. A facility does not qualify as a "QCM" unless all rented BSUs on the Lake are freely available to the public without requiring membership in any organization and without providing any priority or preferences to members of any organization.
    - Additional BSUs may be used for purposes other than rental to the general public, subject to the following limitations: 1) no more than 20% of all BSUs may be used for any combination of the following uses (watercraft held for sale by the marina owner, watercraft being repaired by the marina owner, rental watercraft, emergency storage of a disabled watercraft for up to three

business days, or BSUs made available under a priority or preference to owners of specified real property under real estate interests created prior to 1995) and 2) no more than the number of BSUs rented to the general public may be used for any combination of the following uses: transient use, storage of commercial or government lake maintenance watercraft, or storage of governmental watercraft for emergency response or law enforcement uses.

- The maximum density allowed for a "QCM" is one watercraft for each 10 feet of continuous shoreline.

2. DUA Requirements:

- Length- Maximum of 200 feet
- Setbacks- Conforming side setbacks from the extended side site lines must be maintained. However, a process allows for a QCM to request a variance from the LMCD Code.
- Zoning- The LMCD Code has a provision that does not allow commercial docks to extend across the extended zone line between sites zoned differently by a municipality. However, the Code does not prohibit the water space adjacent to residentially zoned properties from being used for side setback requirements.

3. Variance from Code:

The LMCD Code allows landowners to apply for a variance from Code to remedy hardships and difficulties. In the past, the Board has considered the following: 1) is the proposed use reasonable, 2) would it be unreasonable to require conformance to the ordinance, 3) is the difficulty of conforming to the ordinance due to circumstances unique to the property, 4) is the problem created by the applicant, and 5) will the variance, if granted, alter the essential character of the locality.

- He provided a detailed overview of staff comments:
  - The proposal would meet the definition for a "QCM." In particular, all 40 BSUs would be freely available to the public without requiring membership in any organization and without providing any priority or preferences to members of any organization. The applicant has communicated to staff that: 1) boats associated with Your Boat Club are stored entirely at the facility on Browns Bay, and 2) that BSUs 29-40 will be freely available to the public for the storage of personal watercraft (PWC); not associated with Your Boat Club and River Valley Power and Sport.
  - The proposal would not be contained within the DUA for this site. In particular, conforming side setbacks would not be maintained from the southerly extended side site line. To address this, the applicant has submitted an application for variance from the LMCD Code.
  - In 1985, hardships and difficulties were established when dock length and zero foot side setbacks variances were approved by the LMCD for Windward Marine. Estimated dock lengths for the north and south docks were 152 feet and 115 feet, respectively. Side setbacks were zero feet from the southerly extended side site line and zero feet from the extended northerly side site line for the northern property zoned commercial. However, two additional properties had shoreline dedicated to this multiple dock license that is not zoned commercial. Dock structures constructed and maintained at this facility were to be consistent with the approved site plan. Staff believed that the south dock has not been constructed and maintained consistent with the approved site plan for several years, which includes multiple owners of this property (North Shore Marina East and Browns Bay LLC). Staff believed that this was primarily because of inadequate maneuvering space between the north and south docks for the inward opening slips.
  - When considering this application, staff believed the Board should take into consideration that approximately 50 percent of the DUA for this facility cannot be used for docking and boat storage

- because the two north properties are zoned residential. However, the shoreline for these two residential properties has been dedicated to the Browns Bay Marina (Site 2). The zoning restriction for use of the DUA creates a particular hardship or practical difficulty; however, the Board should decide whether the changes proposed are reasonable.
- The Board needs to consider whether the proposal for a zero foot setback from the southerly extended side site line extension is reasonable. Factors for the Board to consider include: 1) the approved 1985 variance identified hardship and difficulty at this site for a zero foot side setback that was 115 feet in length from the shore, 2) the south opening BSUs currently approved have been eliminated, which should assist maneuvering space for the abutting property owner to the south, and 3) the proposed maneuvering space (42 feet) for the inside opening slips maintains the minimum standard that staff understands (150% of the length of the longest slip).
  - In exercising its authority to grant (with or without modifications) or deny, the Board may consider a number of subjective criteria.
  - The proposed applications were submitted to the City of Orono (city) and Minnesota Department of Natural Resources (MN DNR) on July 1<sup>st</sup>, with comments due on July 15<sup>th</sup>. Within a memo offered in the packet, dated 7/15/14, city Senior Planner Mike Gaffron recommended approval of the proposed layout and extension (further explanation is outlined in the memo, as well). A second memo, dated 8/26/14, was provided by Gaffron that outlined the re-zoning timeline for the applicants. No comments have been received from the MN DNR.
  - A letter, dated 7/17/14, and a proposed site plan for a future application (within the packet) were provided by North Shore Marina (abutting neighbor to the south).
- Staff believed that the proposal is reasonable and recommended they direct LeFevere to prepare draft Findings of Fact and Order to approve the new multiple dock license and variance applications, subject to the following conditions:
    - No watercraft storage allowed along the south side of the main walkway for the south dock;
    - The four parcels, in which the 929.4 foot shoreline has been dedicated to this multiple dock facility, shall remain in common ownership;
    - Dock installation and watercraft storage must be consistent with the approved site plan;
    - The approved dock plan, in particular the south dock, shall be removed and brought into compliance within 30 days after Board approval;
    - The submittal of an as-built survey, within 30 days, after the entire dock is brought into compliance with the approved site plan; and
    - Securing the necessary permits and approvals from the city, MN DNR, and other governmental jurisdictions.
  - He entertained questions and comments from the Board.

Baasen stated that the overview offered above was provided for a second time based on the discovery that full and proper disclosure of the previously scheduled public hearing was not officially submitted (providing for the rescheduling of this hearing to this date).

McDermott requested staff's confirmation that Browns Bay Marina (Site 1) has no relevance in the consideration of the application before the Board.

Nybeck stated, per LMCD Code, staff analyzed the application on an individual site basis (including the qualification of a commercial marina) as there is not contiguous shoreline to consider both sites as one.

Green stated that on the approved site plan, dated 11/18/81, it looks like all the dock lengths are different and asked if there was any uniformity in reality so that he could get a feel for what the average size of the slips in general are.

Nybeck stated there was some to scale; however, the proposed site plan provided for further consistency (acknowledging a slip size report has not been completed for this site). He further stated that the problem offered with side opening slips is that they have to accommodate the width for two side by side docks plus the maneuvering space.

Zorn requested clarification of Nybeck memo (page 3, first bullet point under Section V., "LMCD Staff Comments;" specifically the reference of "... all 40 BSUs would be freely..." in the second sentence vs. the second reference in the third sentence, "...that BSUs 29-40 will be freely..."

Nybeck stated that the applicant (who provided those numbers) could better speak to that question. However, he stated that the QCM ordinance would require 32 of the 40 BSUs be freely available to the public; providing for the remaining eight that could be used with the boat club for rental purposes or for River Valley Power and Sport's use.

Baasen invited the applicant to address the Board.

Mr. Luke Kujawa, representative of EOF and Your Boat Club, made the following comments via a PowerPoint presentation:

- A timeline of the initial approval of the site's variance and multiple dock licenses (1984 or close to such date), which documented the time that the zero foot side setback was approved all the way through 2012. He stated that he does have a copy of the 2013 approved license.
- The owners of EOF are not asking for anything different than what was originally approved (acknowledging their efforts to come into compliance and making the site substantially better).
- The variance application before the Board is offered based on the requirement of the newly adopted QCM ordinance. He viewed this process as a technicality in an effort to conform to the LMCD's rules and regulations.
- He referenced a 1990 photograph hanging in the LMCD's office that places the current docks in the exact location they are this date. He further referenced prior public comments that documented (at the Board's July 23<sup>rd</sup> meeting) the docks were not in the same location of the originally approved site plan based on their movement to prevent ice damage. To this end, he believed the current docks have existed in the same position since 1990.
- The city has a 2006 photograph of the site (during Anderson's ownership) that was signed by Gaffron. This photo placed the docks in the same position they are currently at, as well. He further documented that after 2006, Anderson sold the property and purchased the site directly to the south (acknowledging their purchase of the property placed the dock directly across the property line as depicted in the prior photographs).
- He provided a visual graphic of the southern dock structure being placed within the extended lot lines (documenting the lack of maneuverability to operate specific BSUs within both the northern BSUs of the southern dock, as well as the southern BSUs of the abutting dock to the north).
- In the spring of 2013 (prior to the boating season), the LMCD was made aware of a survey completed

by Anderson that documented the potential dock placement issue. Subsequent to that notification, a 2013 license was issued for this site.

- In September of 2013, multiple emails and telephone calls were made with the LMCD office to discuss the pending closing (providing for an opportunity to bring forward the non-compliant issues). On September 26<sup>th</sup>, EOF closed on the property. On October 9<sup>th</sup> (one and one-half weeks later), EOF was made aware of the non-compliant dock structure (providing for the LMCD, Anderson, and other neighboring property owners having this knowledge over a year prior).
- Moving forward to the spring of 2014, the LMCD informed EOF they needed to prepare for a Plan B. He stressed that he does not want a marina with eight PWC slips, which is not the most efficient revenue producing option. He believed that the new QCM ordinance was put in place based on the fact that the marinas need to accommodate for the larger boats (24 to 26 foot boats with extended platforms), which places the proposed 28 foot BSU in a vital position to maximize revenue. To accommodate for this need (28 foot long slips) and to come into compliance, they extended their dock structure to 200 feet (per LMCD Code) and shrunk eight of the BSUs to accommodate PWC storage on the other side; especially if they are not able to go out to 200 feet on the south dock structure.
- He provided an overview of the currently proposed site plan (acknowledging they eliminated the entire south facing BSUs and providing for the consistency of 28 foot long slips for the north structure). He stated this plan does not increase the number of BSUs. To this end, he stated that this site plan provided for what the site would have looked like had it been in compliance with the currently approved variance dating back to the early 1980's.
- EOF immediately addressed concerns with de-icing and the placement of the fuel tank, in which he provided an overview of. He assured the Board that they are trying, in good faith, to come into compliance with a matter that has existed for 30 years. He acknowledged the challenging year for all; high water, minimum wake restrictions, flooding (including their parking lot), etc.
- He acknowledged concerns documented by the public (i.e., parking, pedestrian crossing, etc.) and assured the Board that they are working on those matters, which included working with the city. Therefore, he asked all to focus on the matter at hand, which are the applications before the Board and the proposed structure within the Lake (based on the rules that are in place).
- He believed that the proposed site plan has no affect on the proposed site plan Anderson submitted for the abutting marina within the packet. He prefaced that the elimination of the south dock structure is what is providing Anderson the ability to consider his proposed plan (acknowledging that if the south dock structure was just adjusted within the zero foot side setback, his proposed plan would not be doable). He confirmed that they are not proposing to add any new BSUs (simply reconfiguring them so that they are more in demand for today's market).
- LMCD and city staff members have spent far too much time on this matter (acknowledging those are the individuals that know the rules best and are recommending approval). He believed that aspect was getting overlooked. He acknowledged Anderson's prior comment (at the Board's July 23<sup>rd</sup> meeting) that this is a plan he could live with. He addressed his other neighbor's (Johnson) concern of removing the current residential buffer that is in place. He stated they continue to have interest in re-zoning the two residential properties; however, he believed they may only receive approval for one of them. This would still allow them to utilize the BSUs to their capacity.
- They were asked to provide the Board with a Plan B, which is what is currently being presented (working within the confines of what they are dealing with). He reiterated his disagreement that they are not over the property lines and confirmed the matter is not as cut and dry as extending the site property lines into the water. He invited the Board to physically view the site and questioned what

would happen if they are denied their request. He stated the lakeshore where the property line crosses is more parallel than perpendicular (prefacing common sense). They have a very busy marina and following through with requests from the city has not been convenient, as well as other actions required by various approvals.

- To this end, they are trying to run a good business and improve a piece of property for everyone on the Lake (offering their residential sites are run down and cannot be addressed until this matter has been resolved).
- He entertained questions from the Board.

There being no questions, Baasen opened the public hearing at 7:36 p.m.

Mr. Richard Anderson, owner of North Shore Marina, did not believe EOF could be considered a QCM (via staff's assessment that EOF owns two different marinas on two different bays). He believed that assessment was not consistent with the intension of the newly adopted QCM ordinance (extending the dock structure out to 200 feet). Although his former ownership in the site provided for this division, he believed the non-contiguous shoreline was not reason enough to consider the sites on an individual basis (acknowledging the property lines extend across the road and that the restroom and parking are utilized on both sides of the street). He reviewed prior discussions in creating this ordinance, in which the marinas stated they would stay within the side setbacks and allow 80% of the slips to be used for the public. He further stated that EOF has been licensed by the city for 20 boat club boats that are not utilized for the public (recognizing that if both sites were considered one, the percentage of use for a combined 98 BSUs would not qualify them as a QCM). If he were to sell part of his shoreline to the State of Minnesota (state), he would never consider his marina as two sites. He understood the need to apply for a side setback variance; however, EOF should also be applying for a 200 foot dock length variance as 80% of their BSUs are not available to the public. In closing, he referenced that a QCM definition would apply to himself, Tonka Bay Marina, Rockvam Boat Yards, and the marina in Wayzata (marinas that offer an amenity within itself).

Mr. Matt Johnson, 1432 Shoreline Drive in Orono, spoke on behalf of himself and his wife Suzanne (the abutting neighbor to the north). He expressed concern about the proposed extension of the north dock to 200 feet as it would be installed within their line of sight (acknowledging he had pictures to present but technology would not allow for them to be downloaded from his telephone at this meeting), as well as the increase in boat traffic that the proposed application would cause. He confirmed the purchase of this home was for the purpose of re-doing it, which had to come to a halt based on EOF's current activities. He prefaced that Kujawa had asked that the Board focus on the Lake issues at hand in considering the application(s); however, he believed there were bigger issues to consider, which required looking at the site as a whole. One such issue is parking (acknowledging there is not a scaled parking plan offered with the city that demonstrates adequate parking in correlation to the currently installed BSUs). He believed it was very unlikely that EOF's re-zoning request would be approved and that the site's activity has increased (referencing an accident at the site last Sunday that he was unable to speak to). Furthermore, he did not believe the site was being used as two different marinas (i.e., parking). He reiterated the need for the LMCD to see the big picture (interference of his line of sight which he purchased without, the rental of PWC, the use of the bay for their boat club watercraft training which affected how the site and respective bay would be used). He concurred with comments emailed to the LMCD from Mark and Laurie Headrick, dated 8/27/14, in which he provided an overview of. In closing, he stated that EOF's previously submitted re-zoning application outlined a plan for 62 parking spaces on the Tanager Bay side. He believed that offers stepping stones to more activity. He believed that the LMCD was in a position to control the

site to the betterment of all that utilize Tanager Bay and/or Shoreline Drive and requested, as a lifelong city resident that owns multiple properties, that the Board deny the application(s) before them.

Mr. David Feldshon, 1420 Shoreline Drive in Orono, stated he lived directly north of the Johnson's. He believed that the proposed extension of the dock to 200 feet would be a major infringement on the boat traffic on that bay. He purchased his property in 2002 with the understanding that the two properties south of Johnson were residentially zoned. To this end, he believed the bay was residential in nature and he would like it to stay that way (as it was when it was purchased).

Mr. Alfred Harrison, 1410 Shoreline Drive in Orono, stated that he and his wife have owned the majority of the property to the north of Mr. Feldshon for the past 25 years. He reminded the Board that the LMCD is a conservation district and was unsure if they understood how small Tanager Lake (depicting it as a pond) is and the amount of traffic it receives. He expressed concern about the use of more boat traffic; specifically PWC (referencing erosion, PWC utilizing each other's wake, noise, and safety). Notwithstanding the consideration of the proposed dock structure, he believed the Board should be thinking about the utility of the bay and whether one that size should have further boats of larger size and PWC (referencing that no matter what controls are placed on the PWC, it will provide for younger people swinging the craft around to utilize each other's wake). He thanked the Board for their consideration.

Morris asked Harrison if he had a problem with younger people.

Harrison further explained (acknowledging he has three children of his own) that in watching the younger people operate their craft throughout the bay, he believed there was a difference in how they act with their PWC. He did not believe that this type of use can be accommodated for on Tanager Lake.

Morris, for the record, would not categorize PWC watercraft users that are troublesome as younger people.

Harrison refined his statement to say PWC users create a lot of wake and enjoy doing it.

Ms. Barbara Burwell, 1100 Millston Road in Orono, stated that she lived on the southwest side of the bay. She expressed concern for the current erosion problem (acknowledging they are good stewards of the Lake that are currently installing permitted subterranean walls) and the use of additional boat traffic that has clearly increased this year. She believed that there is a noticeable difference in the shoreline terrain, noise, and the use of PWC and recreational tubing from when they purchased their property 35 years ago. The PWC and other tubing type recreational use are being utilized by individuals younger than she (acknowledging she has nothing against the youth as she has three boys with a number of friends over at their home on a regular basis). As a homeowner, she stated that she traverses County Road 15 on a daily basis and believed that area is an accident waiting to happen. She reiterated her concerns noted above, as well as the number of fisherman that trespass on their shoreline. She requested the application(s) be vetoed. Lastly, she stated that a number of people were in attendance at this meeting to express their concerns and were totally unaware of this matter until up to 48 hours ago (recognizing the required 300 foot notification radius that did not cover the entire bay).

Mr. Dick Swanson, 547 Harrington Road in Wayzata, stated that he resided straight east of the subject area in Browns Bay. He communicated that he had a big concern for the use of PWC (acknowledging there is no greater curse and they are a horror show no matter what age operates them). He believed the extension of the

dock structure to 200 feet was totally inappropriate for the size of Tanager Lake, in which he asked the Board to think about such action setting a precedent that would open the door to extending docks to 300, 400, or 500 feet.

Ms. Joan Migliori, 1655 Fox Street in Orono, stated that she resided northeast of Tanager Lake and that she concurred with all the statements made this evening; specifically, Swanson's comment of setting a precedent. She believed that a Minnesota Department of Natural Resources (MN DNR) impact statement would be warranted based on the expressed concerns for noise, erosion, and safety (from a zoning standpoint, as well as an extension to what is already present). She wanted to underscore the importance of seeing the whole picture and not just on a single site-defined basis.

Mr. Peter Burwell, 1515 Green Trees Road in Orono, expressed concern (as a user of Tanager Lake growing up) relative to the extension of the dock structure to 200 feet. He believed this would encroach on recreational watercraft users (i.e., tubers/skiers and those that are teaching their children the same in that area). He believed there is a better solution than one that is offered.

Mr. Gabriel Jabbour, 985 Tonkawa Road in Orono stated that he is worried about his personal interest being diminished by this horrible application. He made the following comments:

- We [the marinas] worked very hard to work with the LMCD for the purpose of telling you we are good citizens of the Lake, do everything we can to make your life easier, make it less necessary to pin the Board against the neighbors and all others, as well as trying to make the marina's conforming for marina dock structure updates.
- He believed this first application the Board considered [after the adoption of the QCM ordinance] made it look like the marinas are not doing things right. He stated this matter has personally affected him and the consideration of his future applications.
- He believed the comments relative to the 200 foot extension should better be concentrated on the proposed variance application. He stated that EOF has presented this site's dock structure as being out of compliance for an approved multiple dock license for 40 some years (providing them possible permanent rights to continue with such) and that the rules have changed, in which he believed they had not.
- The Board was kind enough to offer flexibility to extend a dock structure to 200 feet under certain provisions. He believed that this site does not offer those provisions. He believed EOF could restructure the docks the way they were previously offered without getting a variance. He believed consideration of this application was going back to the times when the LMCD was against the marinas (offering that 90% of the ordinances dealt with matters on an individual basis, which placed a burden on the marinas).
- He depicted this site as a five pound bag trying to shove 20 pounds of merchandise in it. He saw this site as an infant, in which he hoped it would grow up and multiply in profits. There is a provision in the LMCD Code to consider parking, in which one keeps hearing the city was going to do this and that. He believed the city is required to have a comprehensive plan amendment and that within the 45 years he has dealt with them; they have rarely chosen to proceed to the Metropolitan Council where they would be required to obtain further documentation. He stated the city council would have to receive affirmative action on the comprehensive plan from four of the five city council members. With that said, the city has an election coming up, in which he commented, "who knows who will be sitting there." He stated that from day one, the applicant has been transporting gas illegally; providing for a hazard to the

health and welfare of the community.

- He re-affirmed his prior comment that the docks on Browns Bay (up to about five years ago) were floated and put between the area where the two subject docks are currently located (offering the pulling of poles allowed the present dock to be floated; therefore, most likely not put back in the original position) or the LMCD totally missed this matter through the annual inspections. He believed the docks were perfectly installed and little by little they drifted away.
- He did not think EOF's comment of possible adverse possession pertained to public water. He believed this conversation is ridiculous and that EOF should run a good business and conduct themselves within the constraints of the property.
- He believed that if the city council moves forward in considering the re-zoning request (amended comprehensive plan), they should be unseeded as it took 35 years for the marinas to get where they are now.
- The LMCD needs to figure out the parking plan for this site (acknowledging this was repeatedly done for the Wayzata Yacht Club). He stated it is important for sites one and two to be considered as one (providing an overview of the city's variance for parking and the use of the restroom offered; referencing when it is convenient it is one site and when not, two).
- He informed the Board that when he shows up for an application on this site, the LMCD does not want to remember this application (referencing he wants to wash his hands of it).
- He reminded the Board that at the last meeting in which many of the marinas spoke in opposition of this application, it was documented that this matter was not what they visualized the process would be with the adoption of the QCM ordinance.
- He closed by stating that he was not against the applicant, he was in attendance for himself.

Mr. Michael Burwell, 1100 Millston Road in Orono, stated that he was worried about the proposed expansion of the dock structure to 200 feet as it would diminish the ability to utilize the whole surface of Tanager Lake to conduct water sports (in which he grew up on and learned how to operate a watercraft for such). He offered that Tanager Lake provided an outlet to these sports that other areas of the main Lake do not (based on activity, wind, and respective waves) In closing, he stated that if this application was approved, he would not be able to utilize Tanager Lake in the same manner he does now.

Kujawa requested the ability to respond to a few of the above comments, in which Baasen deferred to LeFevere to confirm the process for such.

LeFevere recommended the public hearing be kept open during Kujawa's comments to accommodate any new information that may arise.

Kujawa stated that he appreciated all the referenced concerns. He referenced Anderson's comment about not considering this site on an individual basis, in which he asked Nybeck how many licenses have been paid for in the past seven years on this specific site.

Nybeck stated that the site went from one to two when the Browns Bay marina facility was reconfigured a number of years ago (2005). Prior to this, both sites were licensed under one site.

Kujawa confirmed there is a bathroom available on each site (acknowledging the River Power and Sport restroom on Tanager Bay is open during office hours). He wanted all to know that the site's dock structure is

currently out to 167 feet, in which the proposed application is offering an additional 33 feet to that structure (referencing they are not proposing to double their length to 200 feet and that they would be well within the currently placed "No Wake" buoy). Additionally, he stated that the proposal offered by Anderson (within the packet) also provided for a substantially larger dock structure that would be extending out to 200 feet. He stated that if this proposal is submitted and approved, EOF would not have the largest structure on the bay. He believed that wakeboard/surfing boats, which are heavily utilized in Tanager Lake, create more of a wake than PWC. He further documented that 50% of their storage on Browns Bay are pontoons. He did not believe parking was an argument based on Anderson's marina having zero parking on the Tanager Lake side (providing for all those customers to have to cross County Road 15). In closing, he reiterated that the extension of the dock is only being proposed for an estimated 33 additional feet and they are not requesting to doubling the current structure's length.

Mr. Jim Brass, 1495 Green Trees Road in Orono, believed that most in attendance would prefer leaving the site status quo than adding a bunch of PWC. He asked the Board to consider how many boats will be placed within the marinas on Tanager Bay vs. how much room could be utilized for recreational boating within (believing that, at some point, the Board may have to consider Tanager Lake for marina storage only). He believed that this area is becoming a hazard, including pedestrian/vehicle traffic, and was concerned about the possible change in zoning (offering the possibility of additional watercraft storage). He thanked the Board for their time.

There being no further comments, Baasen closed the public hearing at 8:18 p.m. He asked LeFevere to outline the main considerations for the Board.

LeFevere stated the Board has two applications before them (one was a new multiple dock license and the other was a variance for side setback). Taking into consideration the LMCD code of ordinances, the Board had the ability to consider subjective criteria for the multiple dock license. A variance application can proceed to be further considered for approval "where practical difficulties or particular hardships occur..." Once the Board concludes that those existed, the Board would then determine whether the proposed variance "...does not adversely affect the purposes of this ordinance, the public health, safety, and welfare, and reasonable access to or use of the Lake by the public or riparian owners." With that said, the Board would need to individually look at each of those aspects against the application before them. As the multiple dock license does not stand on its own, he recommended the Board consider the variance application first. If the Board concluded that the variance (or possible modification of such) could be considered, the subjective criteria for the multiple dock license could then be applied. Furthermore, if the Board were to deny the variance, they would be required to deny the multiple dock license as it would not comply with the code. If the Board granted the variance, it would be as presented or with some modifications the Board deemed appropriate (i.e., less than the full variance requested).

McDermott, requested LeFevere clarify whether the site is one or two based on the shared parking.

LeFevere stated that, under the code, they are clearly two sites (defined as a legally subdivided lot, piece, or parcel of land). They have also been treated as two separate multiple dock licenses for a number of years. The question for the Board is whether they believed it is only one QCM. He did not see anything in the code that would suggest the Board look at other properties or sites owned by the applicant to determine whether they are collectively a QCM or not. Therefore, this site on this bay for this license is a QCM, he did not know of any portion of the code that would conclude they are not a QCM. He further stated they are not required by the

code to provide any parking, which is also not a provision (should parking not be offered) to disqualify them from being a QCM.

Gross asked if the Board could not look at their corporate papers to see if they are incorporated as two distinct entities.

LeFevere stated there are probably other marinas that own more than one marina (confirming no other section of the code provides that the Board determine their rights based on ownership). This is further confirmed by having non-contiguous shoreline; the fact that it is owned by the same entity does not make it a single marina for any purpose under the code that has ever been applied. In fact, they are not allowed within the code (except for municipal entities) to have themselves treated that way even if they wanted to (providing for the inability to transfer their shoreline/density). To this end, the LMCD looks at each individual site (lot, piece, or parcel of land) to determine the rights associated with that site; not who owns it.

Gross believed there was some confusion between the words marina, site, and license.

LeFevere stated that there may be confusion. However, in this case, these are separate sites on separate bays that have and had separate licenses for some period of time. Therefore, if they are going to be treated the same for a particular purpose, there would be the need to find a section of the code to support such (evaluating an application based on other sites owned by the same corporation/individual).

Klohs asked why Anderson's proposed site plan was provided in the packet (referencing that it implies that the Board is considering two separate sites going out to 200 feet).

Nybeck stated that when this matter was previously addressed (one month ago), Anderson communicated that they may make application to extend their dock structure 200 feet (utilizing the QCM ordinance). At that time, staff advised them that a separate application and public hearing would be required. In follow-up to their expressed interest to provide public testimony of such, Anderson's public testimony to the Board was his offering of the site plan within the packet.

Klohs believed that the Board could not consider one without the other. The fact that it was provided as an exhibit lends to both needing to be talked about as one (in the context of talking about the proposal at hand). As the Board considers the application before them, they have to be cognizant that an identical application (200 foot extension) with a significantly larger proposal may come forward that presents the same concerns offered under the public hearing this evening.

McDermott and Green confirmed that the document offered is just that (as an application outlining such, to date, has not been submitted to the LMCD for processing).

Klohs believed the document would not have been presented if he was not serious about its submittal.

Anderson stated that his proposed site plan that may be offered in a future application provides for a 20 foot setback to extend his dock structure 200 feet. Prior Board discussion (in consideration of the QCM ordinance) offered that, at times, it was advantageous to go out to 200 feet to protect the littoral zone. As a QCM, he considered this a legal proposal (one marina on two individual bays) and the proposed site plan was submitted

based on the Board dragging their feet and not getting this matter done (recognizing this matter has been going on since last October and Klohs personally wanting to wait for the city's decision on EOF's re-zoning requests).

Klohs stated that he did not fully follow those comments. He reiterated that, based on the public testimony relative to safety, he believed the Board should take Anderson's proposal into consideration, as well.

Nybeck clarified that the site plan was not placed in the packet at the request of staff; offering it was at the request of Anderson himself as part of public testimony. He confirmed an application to that affect has not been submitted.

Klohs asked if there was anything that prevented Anderson from submitting his application after the adoption of the QCM ordinance. Most of the above public testimony pertained to safety and that it was important to be cognizant of this marina and their future plans, as well.

Hughes stated that he would like a better understanding of how wide Tanager Lake is, which would provide him more concrete documentation in assessing the safety concerns. Additionally, he asked if EOF's docks on Browns Bay meet the standards of a QCM (acknowledging he has not been in Tanager Lake for twenty years).

Nybeck stated that in analyzing the sites separately with the information offered by EOF, they are meeting the standards of a QCM (providing for not having more than eight BSU that are not for rental of PWC and that the other 32 BSUs were freely available to the public). He further clarified that the proposed dock structure to extend out to 200 feet is approved for 152 feet in length (offering a dock extension of 48 feet). This dock structure, if approved, would be placed entirely within the currently established quiet water area (QWA) on Tanager Lake.

Morris requested further clarification on the dock length (based on his recent comment of 152 feet vs. EOF's documentation of 167 feet).

Nybeck stated the currently approved variance provides for a dock length of 152 feet. If the dock is extending past that measurement, it is in non-compliant with the current variance order.

Green clarified (based on the public's comment of increased boat traffic) that the applicant is not proposing to increase the number of BSU as the proposal remains at 40. He further stated that even if the shoreline could count against this site's license, they would continue to only be allowed the 40 BSUs currently offered on Tanager Lake. He struggled with the variance request on the south dock as he believed it was a self imposed hardship based on the size of the docks.

Nybeck confirmed there is a lot of activity placed in a small area due to the inability to utilize the shoreline to the north for docking and boat storage (based on the two properties being zone residential).

Baasen clarified that the extension of the north dock would allow EOF the ability to relocate the use of the non-usable BSUs on the south dock.

Gross stated that it bothered him that the Board is considering a zero side setback variance at a commercial marina and asked if that was something the Board had previously approved and would want to approve in the

future. Additionally, he asked if the zoning of land use could constitute a hardship.

Nybeck confirmed that the Board has granted zero foot setback variances for common lot lines (offering this site, as well as Shorewood Yacht Club and Rockvam Boat Yards).

Gross further clarified the granting of a zero side setback for commercial marinas abutting sites that are not owned by them. Additionally, he asked if the Board had ever granted a variance based on EOF's use of land zoning as a hardship.

Nybeck named The Caribbean and the marina formerly named Sailors World as two examples. He stated the approved variance orders did not specifically spell out land zoning as a hardship; however, he believed it was implied. He asked LeFevere to further respond to the question.

LeFevere stated that he did not recall the Board considering land zoning as a specific hardship (prefacing he does not recall a site where that would apply). This property may be unique in this regard (that the entire length of the shoreline for both the residentially zoned and commercial properties is dedicated to this facility offering contiguous shoreline of a single site). He was not aware of a single piece of property that has multiple land zoning distinctions.

Zorn asked if any regulation of the code refers to the size of a lake/bay (referencing any control of recreational usage for such) or is that a city jurisdiction.

LeFevere stated there is nothing in the code that defines regulations based on the size of a bay. However, there are subjective standards in the variance and multiple dock license applications whereby the site's location could have an effect on the Board's action. He could not speak to how this site compared to others that are extending their dock structure out to 200 feet.

Zorn stated that it seemed like this application is piece-mealing the old variance that has been in place for many years with some of the benefits of the newly adopted QCM ordinance (referencing the compromising of the new ordinance by granting the variance to a self-imposed hardship).

LeFevere stated there was some discussion about this question during consideration of the QCM ordinance. The rationale behind that discussion was that there are commercial marina facilities that are currently not out to 200 feet, or at 1:10 foot density, that have variances with an established hardship. He stated that hardship situation may be different now that the QCM can go out to 200 feet. Therefore, a site that currently has a variance in place and would like to extend beyond that documented length has to apply for a new variance

McDermott asked if Section 14, subd. 7, "New License Required," of the QCM ordinance applies to just the multiple dock license or does it include the variance. He specifically referenced section "d), the change will not adversely affect nearby properties, navigation, safety, wetlands with emergent vegetation, or the environment.."

LeFevere confirmed that Section 2.03 of the LMCD Code (in which the subdivision references) pertains to only the multiple dock license (offering a situation in which the Executive Director can act on without a public hearing and without requiring the payment of a fee). Furthermore, he stated that if section "d)" is true and all the other criteria are met (which it is not in this case), then the Executive Director could grant the license without Board

action.

McDermott questioned would not the Board then have to consider that section once an application was brought before them.

LeFevere stated to the extent that it is reflected in the other subjective criteria, in which he believed it was (prefacing not because of the referenced paragraph).

Baasen summarized the matter by stating the Board is considering an application that crossed the apparent lot line (infringing on someone else's space). To this end, EOF is trying to move out of that space and continue with the operation of their business. He believed the Board needed to consider the ramifications for both denial and approval.

Hughes referenced EOF's statement that the proposal before the Board was not their first choice (in which EOF would prefer to re-zone the properties and move the docks to the north). If the Board approves the applications, EOF would have to comply within 30 days. He believed that offered a conflict. Additionally, he believed that the Board's requested Plan B (before them) would only come into affect if the city did not grant the re-zoning of the properties. He expressed concern for EOF to expend a significant amount of funds for something that may change should the re-zoning request be approved.

LeFevere stated that the 30 day staff recommendation is subject to the Board's discretion. He believed the questions offered are separate and that the Board should be considering the merits of the variance and multiple dock applications, as well as the fact that the currently installed dock structure to the south is illegal. He offered options to rectify the illegal dock that the Board would need to consider whether or not the applications are approved or denied.

Baasen stated the Board does not have the luxury of waiting until the re-zoning application is considered (providing for Board action based on the current conditions offered).

Roy stated that he had empathy for the applicant (referencing mistakes he has made as a business owner). He believed the discussions held in the creation of the QCM ordinance was a thorough and positive process and he stood for all marinas meeting the 20 foot setback to extend their dock structure out to 200 feet.

Baasen pointed out that the ordinance offered the ability to be granted a variance to the 20 foot setback based on a documented hardship.

McDermott concurred that the discussion lended towards a variance being a last resort of need, in which he did not believe this application applied to such.

Harper stated that (based on his knowledge of the marinas around the Lake) there are very few marina sites that do not have a variance(s) or fully meet conforming side setbacks.

Shuff stated she had empathy with the homeowners (based on their testimony and somewhat of her familiarity of the area). She better understood that the dock is and will remain within the QWA and will not be doubling in length as originally thought. She further recognized EOF's work in addressing the Board's concerns.

Therefore, she thinks it is only equitable that the Board treats EOF in the same manner as other QCMs (acknowledging the only rebuttal offered was from the adjoining neighbor). To this end, she supports the applicant.

**MOTION:** Shuff, moved, Morris seconded to direct LeFevere to prepare draft Findings of Fact and Order approving the 2014 Browns Bay (Site 2) multiple dock license and variance applications, subject to staff recommendations.

**ROLL CALL**

**VOTE:** Ayes (5; Baasen, Hunt, Klohs, Morris, Shuff), Nays, (7); motion failed.

LeFevere stated that it is helpful (for the record) if a Board member were to make a motion to deny, which would provide a better feel for the Board's direction.

Hunt requested clarification on EOF's options for the Board to consider (including the dock configuration as it currently stands).

LeFevere stated that if a motion to deny fails, the Board will have to consider rectifying the illegal dock (providing staff direction). He further stated that EOF could apply for something else, apply for a renewal without change (bringing the illegal dock into compliance), or they could remove the dock that is in non-compliance. Enforcement of that illegal dock could depend on whether EOF applied for that something else.

**MOTION:** McDermott moved, Gross seconded to direct LeFevere to prepare draft Findings of Fact and Order denying the 2014 Browns Bay (Site 2) multiple dock and variance applications.

**ROLL CALL**

**VOTE:** Ayes (6; Green, Gross, Hughes, McDermott, Roy, and Zorn), Nays, (6); motion failed.

Hunt asked if the Board could table the applications until the city considers the re-zoning request.

Nybeck stated that he spoke with Mr. Gaffron yesterday. He confirmed that: 1) the re-zoning application(s) was withdrawn, 2) EOF would have to submit a comprehensive plan amendment that has not occurred to date (offering the lack of assurance that it will be submitted), and 3) that the matter could stretch out several months (possibly the next boating season).

Hunt believed there was benefit in knowing if the site would be rezoned or not vs. EOF guessing what is coming down the road.

Nybeck offered the option (in which staff was not suggesting) to amend the LMCD code that currently does not allow dock structures to cross the residentially zoned properties lines. He recognized that this could be in conflict with the city's ordinances.

LeFevere could not confirm the city ordinances would apply as the LMCD's rule is specifically within the water. He further explained that they may have a rule that would not allow a commercial dock to originate from the shoreline of a residential site. This does not say they may not be able to bend a dock structure across a

differently zone boundary line but originating such from the commercial site.

Baasen asked if it would be proper to request the applicant confirm his intentions and re-apply for a specific configuration by a certain date.

LeFevere stated that, at this point, no action has been taken. The 60 day rule runs out on October 23<sup>rd</sup> (reviewing other Board meeting dates to consider the options). If a pending application is not acted on by the time the 60 day rule (or the extended 120 day rule) runs out, the application is deemed approved. At that point, Board members that were in favor of denial should document their reasons for such as that would be the Board's only evidence and rationale basis for the Board to turn down the application(s) should that action be legally challenged.

Klohs concurred with Hunt (confirming from day one the Board was solving an unknown problem with a moving target). He further believed that Gaffron's letter within the packet implied that the city may be giving consideration to the re-zoning request for, at least, one of the two lots. He believed the Board should move to not allow EOF to operate the marina with the illegal dock next year unless they come into compliance with the existing variance (allowing the re-zoning process with the city to take place).

Baasen asked LeFevere if that action would resolve the concerns in meeting the 60-day rule.

LeFevere stated that EOF would need to consent to extending the 60-day rule by signing an indefinite extension form. If the consent is not provided, the Board could proceed with approval of Findings to deny (providing for such action at least one meeting prior to the end of the 60-day rule).

**MOTION:** Hunt moved, Zorn seconded to require Browns Bay Marina (Site 2) to bring their illegal dock into compliance with the currently approved site plan by May 15, 2015; after which, enforcement action would be initiated.

Clapp stated that he would like to see the illegal dock removed after the current boating season.

LeFevere stated that direction would require EOF to apply for a renewal (without change) multiple dock license, which could be granted by the Executive Director (recognizing the applicant has the ability to install all dock structures within compliance of the approved site plan or they could build a portion of such plan). He prefaced that EOF could bring in a new site plan that may be more reasonable for the Board to consider (recognizing that the Board has historically worked with other applicants on such matters). He did not believe EOF would need a new application to consider such (offering the procedure in considering such plan).

#### **ROLL CALL**

**VOTE:** Motion carried unanimously.

Hunt requested staff confirm the city's regulations pertaining to crossing of zoning lines (offering an LMCD amendment to such would allow for further consideration by EOF).

LeFevere reiterated his review of that action noted above. If the LMCD removed that provision of the code, the entire basis of the hardship would go away (offering the lack of need for a variance).

McDermott stated that he and Nybeck will speak to the city on that matter.

Morris requested clarification (for those in the audience that expressed concern for the proposed 200 foot extension of the north dock structure) that EOF could still extend their dock structure out 199.9 feet should they decide not to maintain the south dock structure. He believed the Board would approve such an application as the main concern for the Board, at this time, is the variance before them.

LeFevere stated that QCMs have the ability to extend their dock structure to 200 feet based on a new multiple dock license and meeting the subjective criteria.

## 9. OTHER BUSINESS

- Review of draft ordinance amendment relating to LMCD Code Section 3.021, "High Water" (per recommendations of the Public Safety Committee)

Baasen asked Hughes for an update on this agenda item.

Hughes prefaced that the draft ordinance is an outcome of two Public Safety Committee meetings, in which the members of the committee reviewed this boating season's Emergency High Water Declaration and matters pertaining to such. He asked LeFevere to provide an overview of the draft ordinance amendment.

LeFevere stated that the basic change, recommended by the committee, was to simplify the ordinance (declaring High Water at 930.25 feet and removing it at 930.0 feet). He reviewed two additional changes. First, cleaning up multiple references of minimum/slow wake within the code by utilizing the state's definition and term of "slow no wake" (offering more consistency with what lake users see statewide). He stated that if the Board were to approve this amended ordinance, he would come back with other amendments throughout the code where those terms are utilized (amending all to "slow no wake"). Second, specific exceptions were included within Subd. 6, one of which was taken from the Emergency High Water ordinance that allowed emergency personnel to operate above "slow no wake" while engaged in their duties or responding to an emergency.

Hughes added that this ordinance would affect the entire Lake and that the currently approved 600 foot regulation would be removed.

Baasen questioned the difference in water elevation of a third of a foot (compared to the Emergency High Water Declaration). He believed this amendment strengthened the ordinance not only pertaining to enforcement but as a stricter rule in general.

Nybeck stated the committee utilized a spreadsheet that documented the frequency of reaching 930.25 feet and above (offering the Lake reached the elevation three or four times in the last 13 years). He concurred that the declaration may stay on a little bit longer but he did not believe it would get implemented on a frequent basis.

McDermott recommended that data be presented at any future public hearing.

Green questioned if the Board should consider obtaining some hydrology/engineering data to better understand the effects in areas that may not be platted as low as others.

McDermott further explained that he would like to know how many properties would be adversely affected at 930.25 feet.

Baasen believed that compliance of a whole Lake restriction at 930.25 feet would require a specific situation (as that has not been considered, at that level, for over 50 years).

Shuff sympathized with Baasen's comment. She believed that three out of the past 13 years reaching was a significant percentage. Based on the public testimony over the course of the last Emergency High Water, the Board needs to be deliberate in their decision and have some documentation to support such. Additionally, she reiterated (from prior meetings) that it was illogical for her to have different trigger points for declaring High Water on and off.

Nybeck spoke on behalf of the committee. He stated that if the Board would like to consider the same trigger point, staff has prepared an ordinance to that affect (providing for three days to go on and seven days to go off). However, from past experience, he stated it would take about seven days to go from 930.25 feet to 930.00 feet. In regards to obtaining scientific evidence, he was not aware of any ordinance within the state that was based on such.

Baasen concurred with Shuff's point and believed that the Board will need to justify the trigger points during any future public hearing to consider such.

Gross stated that he believed it would not be an arbitrary situation (acknowledging the ordinary high water of the Lake was established at 929.4 feet). He further stated that 930.0 feet is considered flood stage (flowing over the dam). Since that date, cities/counties have built ordinances and set flood plains based on that measurement. If a different trigger point is utilized (i.e., 930.10 feet), then all the documentation of bridge clearances, flood plains, and ordinances would be wrong. The trigger point of 930.25 feet was offered based on historical use (the alternate being the use of time). Lastly, he believed the use of the definition "slow no wake" totally changed the ordinance. This ordinance was created to protect the shoreline from wakes. He believed utilizing the five miles per hour provides for a speed limit, which in turn takes away the sail races, watercraft for hire operations, etc. (acknowledging this reference no longer protects the shoreline but acts to reduce the speed).

Hughes asked if the Board was in agreement to the removal of the 600 foot rule offered within the original ordinance.

Shuff stated that the representative for the Minnesota Wakesurf Championship (Andy Weigman) seemed comfortable with the 600 foot restriction as it pertained to erosion (recognizing the Lake is characterized as a sporting Lake). She believed she read a term, in some LMCD document, that mentioned the words "least restrictive" and wanted the Lake users to feel it is a welcoming place and not just for non-motorized watercraft.

Morris referenced Gross' comment about shutting down the sail races, he pointed out that the draft ordinance refers to the operation of a "motor boat".

LeFevere stated that Morris' comment was correct (that state law uses the term "motor boat" within their definition). He assumed that was because a sailboat operating at hull speed will not be making wakes.

Gross acknowledged that he did not see the words "motor boat." His comment continued to apply to watercraft for hire (charter boats).

LeFevere confirmed that "slow no wake" means the minimum speed necessary to maintain steerage way (but in no event, one cannot exceed five miles per hour). He recognized that the original ordinance may have had a different intent, but the speed rules for the Lake (in all intensive purposes) is a straight five miles per hour and has been for years.

Klohs concurred with obtaining documentation (history, determination of what shoreline is below and above a certain level, etc.). He recommended staff be directed to put together a scoping document to see what it would cost for the solicitation of bids.

Gross stated he was taught to never re-invent the wheel, in which this documentation had been done at the time the dam was built.

Baasen recognized that: 1) the current 600 foot rule is unenforceable and 2) testimony from Lake users wanted the Board to consider programs such as "No Wake Mondays," etc.

LeFevere was not sure if scientific documentation existed. He stated the Minnesota District Court set the 929.4 foot ordinary high water mark because that was the point where the water flow changed the nature of the vegetation. He believed the question at hand is what happened at different water levels and that the city/county ordinances and set flood plain levels are not necessarily related to the shorelines of Lake Minnetonka. The real question is what happens at different water levels (acknowledging it may be possible to determine that from the outcome of this summer). The set level was not arbitrary as it is a level that the Board thinks the damage is too great to allow unrestricted boating.

Mr. Tom Frahm, president of the Lake Minnetonka Association, stated that he does not know where the trigger points came from but he recognized this Lake is a lot different from when the dam was installed (acknowledging the 40 foot cruisers and wake boats that make a three to four foot wake). He believed the 930.0 foot seemed awfully high to him. He understood that the 600 foot rule was hard to enforce, but it provided him the ability to call in for enforcement. He recommended not removing the current 600 foot rule.

McDermott questioned how long it took for a 4 foot wake to dissipate.

Gross stated that he followed a considerable wake made during the Emergency High Water from Big Island to Cottagewood shoreline that bounced off of such. Additionally, Gabriel Jabbour previously mentioned a scientific document created in Australia, which documented that shore damage depended on depth, altitude, etc. (significant cost in obtaining). He recommended the Board narrow the scope of

needed documentation.

The Board directed staff to research obtaining the supporting documentation.

#### **10. UPDATE FROM STANDING LMCD COMMITTEES**

Baasen asked if the committee chairs had anything to report.

Klohs stated the Ordinance Review Committee will be meeting just prior to the second Board meeting of each month, with Nybeck confirming September 24<sup>th</sup> (5:30 p.m. at Wayzata City Hall).

Baasen stated the Save the Lake Committee has not met but continues to work on the Big Island cleanup project. Additionally, he stated the Executive Committee will be meeting on September 16<sup>th</sup> in follow-up to their prior meeting with the yacht club representatives. On an unrelated matter, he believed that when the Board was ready to consider the amended High Water ordinance, a public hearing should be scheduled.

#### **11. EXECUTIVE DIRECTOR REPORT**

Nybeck reported that the LMCD Harvesting Program concluded last week with the removal of the harvesters yesterday (recognizing assistance from Jabbour), the Proactive Code Enforcement Program is ongoing, the LMCD Watercraft Inspection Program will conclude next Monday (Labor Day), and he has attempted to observe activity relative to the QWA petition on Seton Channel (covering a portion of Harrison and North Arm Bays). However, the weather has caused challenges relative to three of the four QWA observation days.

#### **12. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:04 p.m.

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Dan Baasen Chair

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Andrew McDermott, Secretary