

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, May 28, 2008  
Wayzata City Hall

**1. CALL TO ORDER**

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

**2. ROLL CALL**

**Members present:** Lisa Whalen, Minnetrista; Tom Tanner, Wayzata; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Chris Jewett, Minnetonka; Steve Johnson, Mound; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Kelsey Page, Greenwood; Richard Siakel, Shorewood; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

**Members absent:** Doug Babcock, Tonka Bay; David Gross, Deephaven.

**3. APPROVAL OF AGENDA**

Nybeck stated that he would like to add an agenda item relating to the placement of water fountains on Lake Minnetonka and relevant LMCD Code. He recommended that this be added as agenda item 9C.

**MOTION:** Tanner moved, Suerth seconded to approve the agenda as amended, adding agenda item 9C as recommended by Nybeck.

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Whalen**

Whalen reminded the Board that the Upper Minnetonka Sailing School was sponsoring an open house on June 6th, from 4:00 to 8:00 p.m., to which the Board was invited to attend.

**5. APPROVAL OF CONSENT AGENDA**

McDermott moved, Siakel seconded to approve the consent agenda as submitted. Items so approved included: **5A**, Audit of vouchers (5/16/08 – 5/31/08); **5B**, April financial summary and balance sheet; **5C, Big Island, Inc., A.F. Rossberg, and Smithtown Bay Association**, staff recommends Board approval of 2008 renewal (without change) multiple dock license applications that have been paid in full, and **5D, City of Mound**, staff recommends Board approval of \$115 partial refund of the \$250 deposit, for recently approved dock length variance at Seton Bluff Development.

**6. ITEMS REMOVED FROM THE CONSENT AGENDA**

There were no items removed from the consent agenda.

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

There were no comments from the public on subjects not on the agenda.

**8. PUBLIC HEARINGS**

**A. City of Minnetonka Beach (Dock Site 10)**, reconfiguration of a non-conforming multiple dock license application utilizing LMCD Code Section 2.015, and a dock length and side setback variance application (Public Hearing continued from 4/9/08 LMCD Board Meeting, Dock Sites 2-9 and 11-25 already approved).

Whalen stated that Klohs had asked to make a statement prior to starting this agenda item.

Klohs stated that Minnetonka Beach had recently conducted a public hearing to gather input on Dock Site 10. During that public hearing, the rights of all parties were reviewed. Dock Site 10 has a long history and the city council voted unanimously to support the proposed site plan. Klohs stated that he was influenced by this vote and that he would support the position of Minnetonka Beach.

Whalen asked Harper to provide background on this agenda item.

Harper reviewed his staff memo, dated 5/23/08, which summarized the applications to reconfigure the non-conforming facility. The applicant has proposed changes to all municipal dock sites, with changes already approved by the Board on April 9<sup>th</sup> at Dock Sites 2-9 and 11-25. The applications were continued to this Board meeting for Dock Site 10. Minnetonka Beach has proposed to reconfigure the dock at this site so that the main walkway parallels the extended side site lines and meets a five foot setback from the northerly extended side site line and a zero foot setback from the southerly extended side site line. He highlighted three LMCD Code Sections to evaluate the applications. These included: 1) Code Section 2.015- reconfiguration of non-conforming multiple dock license requirements, 2) Code Section 2.01- authorized dock use requirements, and 3) Code Section 1.07- outlines the variance from LMCD Code process. When reviewing the variance application, he recommended that the Board consider the following decision standards: 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 one created by the applicant, and 5) Will the variance, if granted, alter the essential character of the locality. He believed that there were five fundamental issues for the Board to address on these applications. First, the applicant has provided the LMCD documentation that four feet of water depth exists at the end of the dock 100' from the 929.4' shoreline. The Board should determine if the natural gas pipeline is an additional hardship worthy of granting an additional 20' to this length variance for the storage of four restricted watercraft. Second, a question remains on what the reasonable dock length is for this site because of the potential impact on the abutting Hite/Smith site to the north. He suggested that the Board may need to get more information from the applicant. Third, the Board must decide whether 30' is the appropriate width of the dock use area for this site. Fourth, the Board must determine whether they are comfortable granting a permanent side setback variance without annual mutual consent from the abutting neighbors to the south. Fifth, the Board should decide whether four restricted watercraft are appropriate for this site, pointing out that the Board has typically restricted watercraft storage at sites that require variances from LMCD Code. He entertained questions and comments from the Board.

Tanner asked Harper how long the abutting properties had lived in their residences.

Harper stated that William Hite and Lisa Smith had lived in their residence since the mid 1990's, Whereas, the Hoefft's had moved to this site in the past couple of years. Prior to the Hoefft's, a Minnetonka Beach city council member lived at the abutting site to the south and consented to non-compliance with LMCD side setback requirements.

Tanner asked for clarification of the water depth of the gas line.

Harper stated that the location of the gas line was highlighted on the proposed site plan and that the applicant could better identify the water depth.

Klohs stated that the pipeline was not buried and rested on the lake bottom.

Whalen asked for further background and comments from the applicant.

Mayor Joann Anderson spoke on behalf of Minnetonka Beach. She believed that the victims of the Dock Site 10 dispute were the residents of Minnetonka Beach, so there needs to be an answer to remedy the situation. One year ago, she pledged to have surveys completed for all dock sites and to establish a dock committee to address the municipal docks by establishing ordinances that are uniform to LMCD Code. These two commitments have been accomplished, as well as establishing monument markers at all dock sites for accurate dock installation. She reviewed Minnetonka Beach's philosophy on its municipal docking program to provide access to all residents, not just those who live on Lake Minnetonka. In the letters received from the owners of property abutting to Dock Site 10, it has been pointed out there are alternative dock sites to relocate watercraft. She stated that was partially correct, although these dock sites are not desirable because of their proximity to County Road 15, which poses public safety concerns, or because they are on other side of County Road 15. She reviewed her letter, dated 5/19/08, which provided some history of Dock Site 10 and the recent public hearing conducted by the Minnetonka Beach city council on May 10<sup>th</sup>. She commented on questions raised in letters the LMCD received of both abutting properties. In particular, she commented on: 1) why the Hoefft's objected to the storage of four restricted watercraft at this site, 2) why the pipeline has all of a sudden become a problem, and 3) the city council's position of Klohs voting on this dock site, acknowledging that he stored his boat at this dock. The shoreline at Dock Site 10 has not changed over the years, only the abutting residents have. Minnetonka Beach believes that the storage of four watercraft at Dock Site 10 is a fair remedy for shoreline and non shoreline residents, and she requested Board approval. She read for the record a statement from Minnetonka Beach Dock Committee Chair Vibhu Sharma that addresses the natural gas line. She entertained questions and comments from the Board.

Suerth suggested that marking of the gas line in the water made sense.

Minnetonka Beach city council member Tom Seuntjens stated that the gas line was exposed in one to three feet of water depth. If the Board would like to have it marked, it could be done through small flags or buoys.

Tanner questioned why Minnetonka Beach had not previously requested a dock length variance greater than 100' if there had there always been a concern about four feet of water depth.

Seuntjens stated that the previous dock was installed differently when there was mutual consent from the

abutting neighbor to the south. This dock installation allowed for deeper water depths than the proposed dock plan. He believed that the primary issue here was to factor in adequate water depths and to keep away from the gas line.

Page questioned whether the proposed use was reasonable when the testimony from the applicant was that the gas line posed a danger to boating and watercraft storage. There are other dock sites to which these boats could be relocated that do not pose such a danger.

Seuntjens stated that he believed the danger of the gas line would not exist if the dock length variance of 120' were granted.

McDermott questioned whether this was the first time the gas line was documented on a survey.

Seuntjens stated that this was the first time because the gas line was not an issue when the dock was installed perpendicular to the shoreline.

Whalen raised the idea of reducing the number of boats to two at this site, which included not needing the additional 20' of dock length and addressing the safety concerns of the gas line. She opened the public hearing at 7:43 p.m.

Ms. Lisa Smith, 2217 Huntington Point East, stated that she and her husband Bill Hite owned the abutting property to the north. The gas line has been there for many years and the City of Minnetonka Beach has been aware of it, describing some of her conversations with city staff. She believed that the gas line created a huge safety risk and was thrilled that the City of Minnetonka Beach was recognizing this. She did not believe that boats and props in the vicinity of the gas line made sense. She and her husband were present at this meeting to ask that the LMCD enforce its Code and have some of the Boat Storage Units relocated to another dock site. She concurred with Mayor Anderson that there was a need to put Dock Site 10 to bed. She commented on the variance granted to their site and the hardship of converging lot lines. She raised concerns about navigational problems that the proposed variance would create on both sites, if approved. A question was raised whether a variance was needed at Dock Site 10 if the appropriate number of watercraft were stored at it. She believed that Board member Klohs had a financial interest in the outcome of this vote and should recuse himself.

Mr. Bill Hoelt, 2303 Huntington Point Road East, stated that he and his wife Anastasia owned the abutting property to the south. They purchased the home in 2007 and he expressed concern about the zero foot side setback from their common extended side site line. He discussed his knowledge of the gas line and non-compliance with the approved 2007 site plan by the applicant, to which he and his wife agreed, when one of the four boat owners installed a slip perpendicular to the main walkway that was not approved. He and his wife have moved their dock to the north within their authorized dock use area and they deal with the same navigational issues with the gas line. If the Board deems that a hardship exists for a length variance at Dock Site 10, with the gas line as a hardship, he and his wife might have to make application for a similar dock length variance. He questioned whether Minnetonka Beach was accurately conveying the sentiment of the public hearing they conducted because there were two non-riparian owners that supported the proposal, with two other riparian owners that did not support the proposal. He did not believe that there was a hardship for further variance from LMCD Code, which could create an undesirable precedent for the agency.

Ms. Anastasia Hoefft, 2303 Huntington Point Road East, stated that she and her husband had four children. Safety navigating in and out of this area was a primary concern that she had.

Siakel questioned why the Hoefft's moved their dock further to the north if they were concerned about safety.

Hoefft stated that the dock location takes into consideration maximizing the views of the Lake from the home that they were constructing. Additionally, he questioned the accuracy of the gas line on the survey.

Mr. Jim Goetz, 2308 Huntington Point Road East, stated that he and his wife Sonya had lived at their property since 1992 and have enjoyed the use of Dock Site 10. When they heard that there would be docks available, it was important to them and factored into the purchasing of this home. Within these 16 years, they have raised two children that enjoyed, played, and fished from this dock. He believed that the dock was a community asset and that there were no problems until recent years. In fact, going to the dock was one of the events that created that community spirit as residents of Minnetonka Beach. In the 16 years, there has never been anything dangerous from the gas line. In 2007, no one knew about the gas line and it was a surprise when they found out about it.

Mr. David Rogers, 2208 Huntington Point Road East, stated that he resided across the street from Dock Site 10. Around 30 years ago, Minnetonka Beach vacated a substantial amount of lakeshore on Smiths Bay for its residents. One of the conditions of this vacation was that the non-riparian residents would enjoy the same access to the Lake that they had previously. Since this vacation, the number of boats at Dock Site 9 has been reduced from eight to six boats, there has been a reduction from six to four boats at Dock Site 10, and Dock 11 was reduced from four to two boats. All of these reductions in boats were because of ticked off abutting riparian owners at these three dock sites. He believed that non-riparian property owners should have the same right of public access that they previously enjoyed. He believed that the strength of Minnetonka Beach was that non-riparian residents were to be provided public access in the immediate area, not on County Road 15 or on Crystal Bay across the railroad trestle. Dock Site 10 is older than all of us and at one time it worked. At one time, the Smith/Hite property was part of this vacation and would need a permit from the City of Minnetonka Beach. He believed that the issue was that two property owners did not want four boats abutting their properties rather than the gas line. When the Board deliberates, he hoped the Board would take into consideration the intent of the City of Minnetonka Beach.

Seuntjens stated that he believed that the impacts of Dock Site 10 were minor compared to other issues facing cities on Lake Minnetonka. He reviewed issues facing municipal docks in Deephaven, Mound, Tonka Bay, and Wayzata. There are density issues at a number of the commercial marinas, as well as docks that extend out 200' from shore. Additionally, there are a number of similar violations at residential sites throughout the Lake. He did not believe that the LMCD had the time to deal with all of the ordinance violations. Thus, the Board should focus on those situations that are submitted for consideration through a variance application, within the context of the whole that usually involves compromise. He reviewed a survey that documented Dock Site 10 with the Hite/Smith and Hoefft dock use areas. Based on this survey, Seuntjens believed that there was considerable room for the installation of Dock Site 10, although one of the BSUs may have problems because of the variance granted to the Hite/Smith site. The gas line became an issue in 2007 when the dock was installed within the dock use area for Dock Site 10. He believed that the LMCD would be assuming more liability, contrary to the written comments received from Hite/Smith's, by not granting the dock length variance request. If the Board believes that there is a

navigational problem between Dock Site 10 and the Hite/Smith dock, a side setback variance on the north side of the Hite/Smith dock use area could also be granted. At the Hite/Smith site, a longer dock use area might need to be granted because of the swim raft that extends approximately 125' from shore. He reviewed this through a series of pictures, as well as other properties to the north that exceed 100' in length. He believed that compromise was needed to resolve Dock Site 10. Minnetonka Beach in the past has reduced the number of watercraft from six to four at Dock Site 10. Abutting property owners need to be aware of what they are moving next to when purchasing a property, pointing out that there are 10 non-riparian property owners that could use Dock Site 10. He asked the Board to compromise and grant the variance as proposed.

There being no further comments, Whalen closed the public hearing at 8:19 p.m. She asked the Board whether they had any further questions.

Tanner asked Mayor Anderson whether Minnetonka Beach had considered burying the gas line or moving it.

Mayor Anderson stated that they had not because it had not become an issue until 2007.

Olson asked how a dock installer would know where to drive the seasonal pipes into the base of the Lake when a great deal of the dock was over the gas line.

Klohs stated the gas line could be seen visually.

Siakel stated that the gas line was installed some 40 years ago and most likely does not meet current Code requirements. Since the gas line was legal when it was originally installed, it is grandfathered until it has to be changed. He did believe that there was a danger of damaging the gas line through a dock installation based on his years of experience.

Whalen stated that BSUs 2 and 3 will have to navigate around BSUs 1 and 3 to access their locations. She questioned whether the dock use area for Dock Site 10 should be larger than proposed because of this.

Harper stated that there are more restrictive side setback requirements for side opening slips, although the Board in the past has not considered these BSUs side opening.

LeFevere stated that it was legal for the property owners that use Dock Site 10 to navigate within the side setback area of the abutting neighbors because it was public waters. It is the Board's discretion to decide on what is a reasonable use because there is a potential for conflict with the abutting neighbors.

Whalen questioned whether 10' in width was enough room for navigational purposes between Dock Site 10 and the Hite/Smith dock use area.

McDermott stated that might depend on the type of watercraft to be navigated through the 10'.

Whalen questioned whether Minnetonka Beach discussed this at the public hearing that they recently conducted.

Klohs stated that he believed that this became a problem when the Board granted a side setback variance to the Hite/Smith site in 2007. Otherwise, he believed that the navigational space would be much larger. He hoped that the Board took this into consideration when granting the Hite/Smith variance because the situation at Dock Site 10 should have been well known.

Whalen asked how many residents were actively using Dock Site 10.

Klohs stated that there were four residents actively using Dock Site 10 and were all in attendance at this meeting.

Scanlon asked if there were size limitations on the watercraft to be stored at Dock Site 10.

Klohs stated that there were square footage limitations within each BSU at Dock Site 10. If a property owner was not comfortable maneuvering through the 10' wide space between the Hite/Smith dock, that property owner would most likely not apply for a permit for that space and would go somewhere else within the municipal docking program.

McDermott stated that it appeared that the dock use area width was 10.5'.

Morris stated that the length of each BSU was 26', with beam restrictions that typically are not wider than eight feet.

Whalen recommended that the Board take out their personal feelings and weigh the applications based on the merits of the ordinances. She asked LeFevere if he wanted to weigh in on this.

LeFevere clarified that the Hite/Smith site was granted a side setback variance on approximately 110' of shoreline, with converging lot lines as the established hardship.

Siakel stated that he had viewed the site today and provided pictorial evidence. Based on this site review, the Hite/Smith dock had five restricted watercraft, which exceeds LMCD Code allowances. Additionally, the swim raft at the Hite/Smith site does not have a temporary structures permit with the Sheriff's Water Patrol, and does not meet requirements of the LMCD (authorized dock use area) and the Sheriff's Water Patrol (reflective material). He questioned: 1) why the Hoeff's moved their dock as close as possible to Dock Site 10, and 2) there's a long history of Dock Site 10 and some responsibility falls to buyer beware when properties are purchased. He did not believe that the gas line was a public safety issue and was more of a red herring. He stated that he would support the proposed variance application.

Page stated that he believed the Board should focus its attention on whether the variance application meets the criteria under LMCD ordinances. After hearing the testimony, he did not believe that the application meets a number of the five criteria. The issue of safety of the gas line has been raised by Minnetonka Beach and is not addressed through a dock length variance of 120'. There is no guarantee that the public, without knowledge, will not park boats closer to shore along the dock and possibly rupture the gas line. He did not believe that a zero foot side setback was reasonable to the abutting neighbors and that a five foot setback should be required, as a minimum. Dock Site 10 is a narrow site and does not work like it used to because the dock configuration has changed. He believed that the problem has been created by the applicant and that the residents may have to go to an alternative dock location, recognizing that it was not as convenient. For these reasons, he did not believe that the Board should

grant the Minnetonka Beach variance application.

Jewett asked Page what he would recommend.

Page did not believe that a dock should be installed at Dock Site 10 based on the testimony provided by the applicant that the gas pipe line was dangerous.

Jewett asked Page whether he could support two boats at Dock Site 10 as a compromise.

Page stated that he thought zero boats was appropriate because there were no guarantees of boats not parking along the main walkway near the gas line.

Jewett asked Siakle if he saw the gas line in the water during his site visit.

Siakle stated that he did not, although he observed two new gas meters.

Morris stated that he concurred with Siakle that the gas line was a red herring. He recommended that the Board listen to the public testimony because Dock Site 10 has historical significance in Minnetonka Beach.

Johnson questioned whether the Board should vote on this application until further information is provided on the gas line.

Jewett stated that he believed the LMCD potentially had liability, no matter the decision. To date, no information has been provided by Centerpoint Energy, or other organization, on the location of gas line and what it looks like. He questioned whether this should be provided by either the applicant or the abutting property owners.

LeFevere stated that he had two comments. First, there was not anything that the Board could do to avoid being sued. Only in very extraordinary circumstances would municipalities be liable for licensing decisions, and he did not believe that this was a case that could lead to liability. However, the Board could take into consideration the safety of the gas line in its decision. Second, he cautioned the Board from granting the variance application based on historical existence that required mutual consent of the abutting neighbor(s). The consent rules were established to avoid these neighborhood disputes when neighbors can agree. However, if past consent is established as a basis for the granting of a variance, it might actually work as a disincentive rather than an incentive. The granting of a variance is a two-step process. First, the Board needs to establish whether a hardship exists. He believed that oblique lot lines, the gas line, and shallow water were possible hardships. Second, the Board needs to determine whether the requested accommodation to the hardship was reasonable under the circumstances. This takes into consideration more of the subjective factors, including the abutting neighbors and the neighborhood itself.

Nybeck stated that there had been a significant amount of testimony on the historical use of Dock Site 10. He asked Harper to provide further clarification on the historical use and licensing by the LMCD of Dock Site 10 to assist the Board in making its decision.

Harper stated that the LMCD adopted the 1:50' General Rule in 1978. Sites that were legally in existence were allowed to continue, provided they met side setback and dock length requirements. Prior to 1984,

the multiple dock license was issued to residents in this area, which was authorized by the City of Minnetonka Beach. He reviewed a dock configuration that was allowed from 1976 to 1983, which included the shoreline of Dock Site 10 and what appears to be the shoreline of the Hite/Smith site. Because of this, the dock plan at that time complied with LMCD authorized dock use area requirements. In 1984, the LMCD worked with Minnetonka Beach to license all of the dock sites. In 1984, dock sites were licensed but did not have specific site plans. This was not updated until 1996 when the site plans were updated for all dock sites within Minnetonka Beach.

Nybeck stated that a similar variance application was submitted in 1996 for Dock Site 10. The Board at that time did not believe that historical use was a proper hardship and that this could better be addressed through mutual consent of the abutting neighbor(s).

Klohs stated that Minnetonka Beach owned property to the north of Dock Site 10 until 1979. When the street was vacated, language in the document stated that it should be retained for the aesthetic enjoyment of this area for the off-lake residents. Questions remain on how it was documented and interpreted by the City of Minnetonka Beach. He believed that Minnetonka Beach's proposal was the best solution to put this issue to rest.

Tanner stated that he believed the gas line was the primary issue and he concurred with Page's assessment of the variance application. He stated that Minnetonka Beach should have checked further into whether the gas line could be buried and/or moved. He expressed concern about abutting neighbors having their side setbacks reduced to accommodate for Dock Site 10.

Scanlon stated that he believed that Minnetonka Beach should have a vote on this application and that Klohs should vote as he sees fit. He believed that Minnetonka Beach has exercised its due diligence and stated that he was in favor of the application.

**MOTION:** Siakel moved, Klohs seconded to direct LeFevere to prepare Findings of Fact and Order to approve the Minnetonka Beach (Dock Site 10) variance application as submitted.

McDermott proposed a friendly amendment to the motion that would require Minnetonka Beach or LMCD staff to contact Gopher One prior to each boating season to delineate the location of the gas line prior to installing dock. Siakel and Klohs agreed to this.

Nybeck stated that the Board might want to consider a condition to be included in the draft Findings that dock installation in non-compliance with the approved site plan would need to be revisited by the Board. He used non-compliance with the approved site plan at Dock Site 10 in 2007 as an example.

Whalen questioned whether a condition of the Findings could include revocation of the variance for non-compliance with the approved site plan.

LeFevere questioned whether that would be appropriate because the revocation of an approved variance would need to follow proper due process procedures.

Nybeck stated that he would bring back non-compliance at Dock Site 10 to the Board if it were to occur in the future.

Harper proposed a friendly amendment that the two BSUs nearest to shore would have a four-foot overhang restriction, with the two BSUs furthest from shore needing to be fully contained with the length of the dock. Siakel and Klohs agree to this.

**VOTE:** Ayes (9), Nays (3; Jewett, Page, and Tanner); motion carried.

The meeting was recessed at 9:00 p.m. and reconvened at 9:08 p.m.

**B. Seahorse Condominium Association**, reconfiguration of a non-conforming multiple dock license application utilizing LMCD Code Section 2.015 (Public Hearing continued from the 5/14/08 LMCD Board Meeting).

Whalen asked Harper to provide background for this agenda item.

Harper reviewed his memo, dated 5/23/08, which summarized an application to re-configure the non-conforming facility. The purpose of this application is to contest the LMCD Board approval of the 2007 renewal (without change) multiple dock license application from last September 12<sup>th</sup>. The applicant is no longer attempting to prove that the width of some of the Boat Storage Units (BSUs) were incorrect in the 1987 Slip Size Report. The applicant is now contending that all of the docks were approved for larger sizes and would like that total square footage to further reconfigure the docks, as well as not having the four foot overhang restriction apply to this application. He reviewed some of the arguments outlined by the applicant in materials that they provided, including counter points raised by LMCD staff. He analyzed the application with LMCD Code Section 2.015, pointing out that the proposed cumulative square footage of 30,640 exceeds the 23,820 approved for this facility. Since the application does not comply with LMCD Code Section 2.015, he did not believe that the Board could approve it. He believed that the Board should provide direction on questions raised by the applicant. These include: 1) added length for all slips to 32', which he did not agree with, 2) added widths based off of aerial photos, which he believed was a possibility, 3) added length for some of the slips based on aerial photos, which he believed was a possibility, 4) to reconfigure the transients docks, which he believed was a possibility, 5) an exception to the four foot overhang if the whole site was reconfigured, which he did not agree with, and 6) an exception to the four foot overhang restriction if there are technical corrections based on aerial photos, which he believed was a possibility. Once the Board has provided the applicant with direction on these questions, LMCD staff will work with them on amending the application so that it complies with Code Section 2.015 for future consideration at the June 11<sup>th</sup> LMCD Board meeting. He entertained questions and comments from the Board.

Whalen asked for further background and comments from the applicant.

Mr. Steve Carlson, 5450 Three Points Blvd., stated that he was a resident of Seahorse Condominiums and spoke on behalf of the applicant. He made the following comments:

- The primary issue to be resolved was square footage calculations based on the 1984 approved site plan. The significance of this issue was that this would be used as a parameter to reconfigure the multiple dock facility under LMCD Code Section 2.015. Little activity has taken place from 1984 to the present at the multiple dock facility. However, there was an abundance of activity from around 1974 to 1984 when docks were changed and added.

- He believed that there were significant differences between the position taken by LMCD staff and the position of the Association after a thorough review of the LMCD files. He requested that the Board support the work done by previous LMCD Boards based on his review of these files.
- He reviewed the Slip Size Report presented to the Board last September when the Board considered their 2007 renewal (without change) multiple dock license application. He believed that the only relevant column was the approved 1984 site plan. Otherwise, he did not believe that the information was accurate, which resulted in a Board decision that was not good. He further elaborated on why he did not believe that the information was accurate.
- Taking into consideration this information, the Association believes that the approved square footage for the approved 1984 site plan was 31,160. He highlighted Exhibit 4 and summarized why it complied with all of the requirements outlined in LMCD Code Section 2.015. In particular, he commented that the number of BSUs would remain the same and the cumulative square footage, 30,640, would be below the approved figure of 31,160.
- Previously, Harper has communicated to the Board that he was having difficulty in determining the length of the slips because the site plan was not to scale. However, there are a number of site plans in the file with a scale of one inch equals 100' that preceded the 1984 approved site plan. He reviewed a site plan that he thought was the site plan prior to the approved 1984 site plan that had this scale documented on it. Based on this scale, he believed that the width of the slips was 12.5' and the lengths were between 31.25' and 37.5'. The one inch equals 100' scale was hand written on these previous site plans and he believed that it was oversight of either the LMCD or the Association.
- Harper has pointed out that some of the BSUs appear to be too wide when compared to the approved site plan. He highlighted why he believed that some of the slips should be wider than 12.5' based on the 1984 site plan at the North Marina, South Marina, and Big 10 docks. He discussed how he calculated that the width of these BSUs should be 16'.

Scanlon stated that the premise of this presentation was to use the 1984 approved site plan, although the size of the Big 10 docks appear to be identical to the remainder of the facility. He asked Carlson to comment on that.

Carlson stated that he did not have an explanation of why the approved 1984 site plan does not document that the approved dock lengths at the Big 10 docks are 40' rather than 32'. He continued his presentation:

- He questioned whether the Board had ever accepted an approved site plan previously that was not to scale. However, he maintained that the site plans submitted for the Association utilized a scale of one inch equals 100'.
- He recommended that the Board rely on these approved site plans when determining the cumulative square footage for all of the BSUs for the multiple dock facility. He expressed reservations about relying on pictorial evidence as recommended by LMCD staff.
- He commented on how he believed the recent approval of the transient BSUs at the Lakewinds Association multiple dock was consistent with the approval at the Association dock. In particular, he did not believe that the Association should not get credit for the 32' long BSUs just because they have not been constructed to that length.
- He stated that there were no transient BSUs at the Association prior to 1981. In 1981, the Board approved 10 visitor BSUs. He commented on his interpretation of the term slip and why the Association should be allowed to have a slip rather than a straight dock.

- He entertained questions and comments from the Board.

Whalen cautioned Carlson about asking the Board to rely on the 1984 site plan when it worked to the Association's advantage and to deviate from the 1984 site plan when it does not work to the Association's advantage.

Carlson stated that the position the Association had taken was based on prior LMCD Board approvals and documentation in the LMCD files.

McDermott questioned whether Carlson had verified with a ruler that the one inch documented on the bottom of the site plans was actually one inch.

Carlson stated that he would need to verify that.

Whalen stated that public hearing was continued to this meeting at the request of the applicant on May 14<sup>th</sup>. She opened the public hearing at 10:01 p.m.

Mr. Chris Johnson, 5520 Ridgewood Cove in Minnetrista, stated that he had ownership of a unit at Seahorse Condominiums. As a member of the marina committee, a lot of time has been spent on looking back at past approved documents. He stated that he had one of the longer docks in question, which was documented by pictorial evidence from 1973. He expressed a concern about possibly having to shorten the length of the dock and he hoped that the Board would take into consideration the needs of the residents.

Carlson confirmed that the scale on the bottom of the various site plans was one inch on a ruler.

Ms. Margie Oxborough, 5420 Three Points Blvd., stated that she was President of the Association. She believed that the record indicates that there were various lengths and widths at this facility and that there was most likely a need for resolution somewhere in the middle.

Tanner stated that there was testimony last fall that some of the docks would be changed out. He questioned whether this was actually going to happen.

Oxborough stated that she hoped that this would happen, based on the Board outcome of this application.

Carlson stated that he understood the Board provided the applicant direction on things that needed to be done by May 15<sup>th</sup>, which have not been done. One of the problems he believed was that the Association had a number of people involved in the process that did not ask the right questions. Once the Association got a hold of some of the documents that were presented this evening, a decision was made to not comply with the Board direction from last fall.

Whalen stated that it appeared a number of the slips were not constructed to 32' in length. She questioned whether additional dock would need to be added if the Board were to deem that the slips were approved for 32' in length.

Harper stated that there was no requirement to construct a dock to the fullest extent.

Nybeck suggested that a new site plan be introduced that neither Harper nor Carlson provided as evidence to the Board of what might have existed. This site plan documents the length of the slips in 1977 were 25' in length, which included the main walkway. He expressed some lack of confidence in the accuracy of this site plan, just as he communicated lack of confidence in the accuracy of the position taken by the Association on the approved 1984 site plan. In particular, he questioned the 20% range of discrepancy provided by Mr. Carlson on the approved lengths of the BSUs. Because of this, he recommended that the Board rely on pictorial evidence.

Whalen stated that just because a site plan exists in a file does not mean that it was approved. There being no further comments, she closed the public hearing at 10:14 p.m. She believed that there were a lot of questions about the file. Based on the information that has been provided, she believed that the Board should decide what it was comfortable with slips lengths and width, which would have an impact on approved cumulative square footage. Additionally, the Board should decide on how to address the 10 transient BSUs.

Siakel questioned Harper why he did not believe that the Association should get credit for 32' long slips.

Harper stated that there has been no documentation to support 32' long slips because there was no scale on the site plans, which contradicts the testimony provided by the applicant. The historical photos show that a number of these BSUs were not 32' in length. If approved for 32' in length, he questioned why they have not been constructed to this length because the boats have getting larger for a number of years. If the Board were to approve what has been proposed, he expressed concern about the precedent it might set for other grandfathered facilities on Lake Minnetonka to expand.

Tanner asked LeFevere how comfortable he was with the Board using aerial photography as a basis for their decision.

LeFevere stated that aerial photos provides a pretty good idea of what existed, although it might be difficult to scale off the sizes. The primary concern for the Board to address was what existed on May 3, 1978 because this is what was approved and further expansion was prohibited. Some of the evidence provided shows what has been built in the last 30 years and possibly the intent of what was applied for originally. Ultimately, the Board needs to decide based on the evidence provided, noting that it appeared that all of the slips on the approved site plans were of the same size.

The Board discussed the questions raised by Whalen. Some of the discussion included:

- Whether the slips were approved for 24' in length or 32' in length and not installed at that length.
- The average boat size when this site plan was approved in 1978, including how boat sizes have increased over the years.
- Whether there was responsibility of the Board to possibly expand this grandfathered facility over the years.
- How to deal with the apparent lack of scale on the drawings when making a decision on this application.
- Whether an as-built survey existed in 1978 of when buildings were originally constructed.
- An informal poll took place on what Board members would support relating to width and length of the BSUs.

- Discussion took place on cumulative square footage calculations for the overnight storage and transient BSUs. The consensus of the Board was that there would be 67 BSUs at 12.5' wide by 32' long for the overnight storage BSUs (26,800 square feet). The consensus of the Board was that there would be 10 transient BSUs at 10' wide by 24' in length (2,400 square feet).
- There was discussion of the four foot overhang rule and whether an exception should be provided to the Association. A number of Board members expressed an interest in possibly having the boats fully contained within the BSUs if the Association were allowed for 67 BSUs at 12.5 by 32'.

The consensus of the Board to allow for 26,800 square feet for the overnight storage BSUs and 2,400 square feet for the transients BSUs. Staff was directed to work with the applicant on a revised site plan that complies with these parameters for further discussion by the Board in June.

Page left at 10:57 p.m.

## 9. OTHER BUSINESS

### A. Staff update on potential LMCD office space options.

Whalen asked Nybeck to provide background on this agenda item.

Nybeck stated that he was working with LeFevere on finalizing a draft office lease at the South Lake Office Building for consideration at the June 12<sup>th</sup> Board meeting.

### B. 2008 LMCD Code Enforcement Project, staff update on the hiring of seasonal employees.

Whalen asked Nybeck to provide background on this agenda item.

Nybeck stated that the project was scheduled to commence on the week of June 9<sup>th</sup>. Interviews have recently been conducted and offers have been made to Megan Jaeger as the part-time Administrative Clerk, at a rate of \$13.00 per hour with no benefits, and to Michael Browne as the part-time Seasonal Employee in the field, at a rate of \$11.00 per hour with no benefits. Both candidates have accepted the offers and he recommended Board approval of the seasonal agreements.

**MOTION:** McDermott moved, Siakle seconded to enter into seasonal employment agreements with: 1) Megan Jaeger as the part-time Administrative Clerk from June 2<sup>nd</sup> through August 14<sup>th</sup>, at an hourly rate of \$13.00 with no employee benefits, and 2) Michael Browne as the part-time Seasonal Employee from June through August, at an hourly rate of \$11.00 with no benefits.

**VOTE:** Motion carried unanimously.

### C. Water Fountains on Lake Minnetonka and Relevant LMCD Code.

Whalen asked Nybeck for background on this agenda item.

Nybeck stated that a request from Locust Hills Development had recently been made relating to water fountains in the wetland (lagoon area). He reviewed potential LMCD Code requirements for multiple

dock licenses, temporary structures, and special events, including how they might apply to this request.

The Board discussed this and the consensus was to table discussion of this to the June 9<sup>th</sup> Board meeting.

**10. EXECUTIVE DIRECTOR REPORT**

There was no Executive Director Report

**11. ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:05 p.m.

Lisa Whalen, Chair

Andrew McDermott, III, Secretary