

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, January 12, 2011  
Wayzata City Hall

**1. CALL TO ORDER**

Whalen called the meeting to order at 7:03 p.m.

**2. ROLL CALL**

**Members present:** Lisa Whalen, Minnetrista; Kelsey Page, Greenwood; Andrew McDermott, Orono; Tom Scanlon, Spring Park; Dan Baasen, Wayzata; Doug Babcock, Tonka Bay; Chris Jewett, Minnetonka; Peter Hartwich, Excelsior; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; and Bill Olson, Victoria. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant. The City of Shorewood did not have representation at this meeting.

**Members absent:** Herb Suerth, Woodland.

**3. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Whalen**

Whalen made the following two Chair announcements: First, the January 26<sup>th</sup> Board meeting will provide for the nomination of a new slate of 2011 Board Officers. Second, she reminded all that the 44<sup>th</sup> Annual "Save the Lake" Recognition Banquet Dinner will be held on Wednesday, February 2<sup>nd</sup> at the Lafayette Club.

**5. APPROVAL OF MINUTES – 12/08/10 LMCD Regular Board Meeting**

**MOTION:** Baasen moved, Page seconded to approve the minutes from the 12/08/10 LMCD Regular Board Meeting as submitted.

**VOTE:** Motion carried unanimously.

**6. APPROVAL OF CONSENT AGENDA**

Page moved, Baasen seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (12/16/10 – 12/31/10) and (1/1/11 – 1/15/11); **6B**, November financial summary and balance sheet; **6C**, 2011 LMCD Meeting Calendar; **6D**, **Save the Lake Committee**, Board approval of 2011 Save the Lake Funding Proposals, as outlined in 12/27/10 memo; **6E**, **City of Excelsior**, draft Findings of Fact and Order approving new multiple and special density license applications for the 2011 boating season; **6F**, 10/8/10 AIS Task Force Meeting Minutes; **6G**, **Wayzata Yacht**

**Club and Wayzata Community Sailing Center**, approval of draft Record of Decision and LMCD Resolution 122 ordering a negative declaration on the need for an EIS for the Mandatory EAW document; and **6H**, Approval of Updated LMCD Investment Policy.

Babcock stated that approval of agenda item 6A, which included the Audit of Vouchers for 1/1/11 – 1/15/11, provided for staff's request for the Board's input as to which check register format was preferred. He preferred the "Check Register Detail" report, which was provided in their packet.

Scanlon stated that he personally preferred the more streamlined report, entitled "Check Register", which was provided in their packet, as well. He stated the Treasurer reviews the checks and respective detailed invoices prior to the Board's consideration. If any questions arise, the Treasurer and staff are available prior to Board meetings.

The Board briefly discussed this matter; in which staff was directed to incorporate the check numbers into the "Check Register Detail" report and adjust the information to a more streamlined format for the Board's consideration at their next meeting.

## 7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items were removed from the consent agenda.

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

There were no public comments.

## 9. PUBLIC HEARING

- **Woodland Cove, LLC**, new multiple dock license and variance applications for 129 Boat Storage Units on 8,816' of continuous shoreline. Three dock length variances have been proposed extending from 100' to 164', 183', and 200', respectively.

Whalen provided the following procedural overview in consideration of this agenda item: 1) staff to provide a presentation, 2) the developer to provide a presentation, 3) the Board will be given an opportunity to ask technical questions at that time, 4) the public hearing will be opened, in which all present will be given the opportunity to speak, and 5) the Board will have the opportunity to discuss the matter in full. She asked Nybeck to provide background on this agenda item.

Nybeck directed the Board to his memo, dated 1/7/2011, in which he highlighted the following information:

- A brief background on the applications before the Board (as outlined above).
- A detailed overview of the proposed development; separating the area into four key sections (North Shore, Peninsula, Channel, and South Shore).
- He referenced the following three items, which the applicant would expound on within their presentation: 1) slip widths may vary by one foot either direction, 2) dock groupings may vary in location by five to 20 feet, and 3) dock access locations may vary up to 25'.

- Historical actions taken to date (Board Workshop/Planning Sessions in July and November, including a boat tour; public hearing notification efforts, and a review of a formerly approved multiple dock license from 1995 to 2003).
- The applicant's docking and boat storage options (residential lots vs. multiple dock license), in which the applicant had chosen the multiple dock license option. He directed the Board to a narrative of the proposed project by the applicant, in which the applicant reviewed in detail.
- The following LMCD Code Sections relative to the proposed applications were highlighted: 1) Section 2.03, subd. 1 (multiple dock license requirements), 2) Section 2.02, subd. 1 (restricted watercraft density requirements), 3) Section 2.02, subd. 7 (straight-line measurement ordinance), 4) Section 2.01 (defining of the authorized dock use area - DUA), 5) Section 1.07 (variance requirements), 6) Section 2.03, subd. 3 (subjective criteria), 7) Section 2.03, subd. 17 (outlot requirements for multiple dock licenses)
- He provided general comments, which included questions for the Board; a notation on the marginal shoreline that exists; the impacts to environmentally sensitive areas (i.e., lotus flowers); and water quality (including quoting comments made by Barr Engineering on the impact of water quality). He provided detailed comments for each key section of the proposed project (noted above).
- He reviewed comments received to date from the City of Minnetrista.
- He provided detailed recommendations for each key section of the proposed project.

Mr. Matt Van Slooten, President of Woodland Cove, LLC, introduced himself and the development group in attendance. He thanked the Board and staff for their time in considering the applications to date; noting comments received have been beneficial in planning the development. He provided a brief background on the proposed project prior to a detailed presentation by Mr. Peter Pflaum. His background information included ownership of the property; the goal to preserve open space, parks, and environmentally sensitive areas; notification that the City of Minnetrista has provided conceptual approval for future review of the final plan (including LMCD's approval of dock plan); a review of the surrounding amenities, and their desire to provide lake access to some of the off lake properties (providing for higher quality homes in a desirable neighborhood). Additionally, he acknowledged the presence of lotus flowers were a concern and that if they would have proceeded with the use of residential lots only, the residents would have the ability to cut a channel through the lotus flowers (recognizing that is not the best option).

Mr. Peter Pflaum, representing Woodland Cove, LLC, provided a detailed presentation of the proposed project (including the use of respective aerial photographs and color coded site plans). His presentation included an overview of the following: 1) meetings and conceptual changes that have taken place to date, 2) the "Concept Plan", 3) proposed public amenities, 4) shoreline calculations, 5) agency approval processes, 6) a comparison to a neighboring multiple dock site (Trillium Bay), 7) Barr Engineering's environmental assessment report, 8) a comparison of watercraft and dock placement as it pertains to the multiple dock license option vs. the residential lot option, 9) various docking options within the key sections of the project (noted above), 10) the channel area and navigation of such (including water depth measurements, boat sizes, and their beam analysis), 11) variance needs and the respective easements, and 12) the various reports that are in existence to support the proposed project's dock and boat storage needs.

Whalen asked the Board if they had any questions for staff or the applicant.

The Board asked a number of questions or made comments respective to the above presentations. The following questions and comments were provided:

- Confirmation from staff that the historically approved multiple dock license was approved for two dock length variances.
- Babcock expressed concern that it may not be in the City of Minnetrista's best interest to postpone their comments on the proposed project. Whalen stated that the city had been in contact with both the developer and the LMCD staff. She stated that the city could always be more restrictive in what would be the approved number of docks and boat storage (providing for the developer to comply with the more restricted rule). Additionally, she stated that the city was concerned about the density and protection of the environment, shoreline, and native vegetation. Therefore, the city has expressed an interest in the LMCD's review and comments prior to the city's consideration of the proposed project (noting the LMCD's extensive experience in this area).
- Babcock stated that he appreciated the city's confidence in the LMCD and proceeded to review the 1:50' General Rule for watercraft density and the transferring rights (or lack thereof) of shoreline.
- Hartwich asked if the historical approval of the site's multiple dock license allowed for the process of Negotiations. Nybeck stated that at that time, the city was more restricted (providing for approval based on their density regulations).
- Klohs asked what input the Metropolitan (Met) Council had provided on the proposed project. Whalen stated that the city was required by the Met Council not to deviate from an agreed minimum of 1,071 units on a total of 490 acres. With that said, the city would like to see less density along the lakeshore area (lessening impact on water quality and lake issues) and a higher density by Highway 7 (where the lots are smaller and have multiple housing units).
- Scanlon asked staff how many slips would be provided in the straight line measurement of 2,934', in which Nybeck confirmed 59.

The meeting was recessed at 8:40 p.m. and reconvened at 8:49 p.m., at which time Whalen opened the public hearing.

Mr. David Gross, former LMCD Board member, stated that he would like the Board to consider the shallow water that existed within the island area. In doing so, he recommended the proposed plan provide for an ingress and egress channel to the marina area; providing for the larger boats being kept outside of the channel area for the purpose of minimizing damage to the lake bottom.

Mr. James Blakeway, 3466 Kings Point Road, stated that he has lived in the area for the last 15 years. He thanked the developer for the opportunity to comment throughout this process. He concurred with the multiple dock license process vs. the use of riparian rights. However, he expressed an interest in keeping the number of proposed BSUs in mind, as much of the property maintains marginal shoreline that has been previously dredged. Additionally, he struggled to find justification for the placement of BSUs for use by non-riparian lots as those that purchased lots on the lake have paid a premium for such. He does not support the proposed 129 BSUs and believed the number is excessive.

Mr. Rob Gardner, 3410 Kings Point Road, stated that he spends every available boating day on Halstead Bay. He believed that increasing the density of watercraft storage on Halstead Bay by 50% makes him hurt due to the bay being a corner inlet to the lake and that the proposed development will not provide for better water quality. He believed that the comparison of this proposed project to development on Seton Lake is

ludicrous. He greatly respected the developer's work and understands the financial aspects of the development; however, he did not want to diminish the value of the bay and expressed concern for obtaining a handle on the bay's water quality.

Mr. Fred Green, 3427 Kings Point Road, stated that he was very concerned about the dock and boat density being placed in sensitive areas, as well as the 200' proposed variance in the northern area.

Ms. Kay Stahlke, 4025 County Road 44, stated that she has lived on the bay for 22 years and knew that, at some time, the area would be developed. She expressed concern in the developer's statement that only 25% of the watercraft are utilized on a weekend (as Halsted Bay is a good waterskiing bay and that she had counted over 30 boats on one weekend's use). She was opposed of the density due to safety as one concern. She believed that the density is too high and that she is more for the placement of docks and boats via riparian use. She believed what is currently proposed is too many BSUs.

Ms. Vera Thorpe, 3300 Williams Lane, stated that she concurred with Blakeway's comments noted above.

Mr. Hank Heystek, 6501 Bayridge Road, stated that his main concern is water quality and concurred with Blakeway's comments. Additionally, he suggested a condition of the approval to require the phasing in of the dock installation, possibly after the site is constructed or sold, to provide the opportunity to determine the water quality affects, as well as the perceived need for an annual dredge.

Mr. Bernie Benz, 3035 Bluffs Lane, asked the governing agencies to utilize common sense when considering the proposed development. He was opposed to the proposed density as he has lived in the area for 32 years (utilizing the channel area). He expressed concern with more watercraft (particularly large) turning up the lake bottom of the channel by going back and forth with propulsion to navigate the low water depths. The turning up of the lake bottom currently happens, which provides for all the debris to wash up on his shoreline. He questioned when the prior dredges were completed, in which Whalen provided that background.

Mr. Tom Notch, 1250 Morningview Drive, stated that a multiple dock license for the proposed development made sense. However, he asked that the Board lower the proposed density of 129 BSUs as the boats are more readily utilized in a multiple dock situation vs. riparian use. Additionally, he asked the Board to consider boat sizes and the use of canopies (acknowledging the increase in boat size use over the last 25 years).

Whalen stated that the LMCD had received a number of written comments regarding the proposed application. Those comments were provided within the Board packet, in which she read the following names for the record: Trillium Bay HOA, Mark and Mary Enger, Sarah Sjoquist, Pamela Wright, G. Stahl, Sonja Hutchinson, Kathy Smith Gillum, Dale Sherburne, Tim Eicke, Richard Parris, Jr., and the City of Minnetrista. Seeing no further public comments, she kept the public hearing open; however, proceeded to Board discussion at this time.

Whalen recommended the Board proceed with their discussion via the key sections of the proposed project; noting that density and water quality might be two areas of concern best discussed after review of the individual sections. She prefaced that the MCWD maintains jurisdiction over the lake's water quality; however, noted that discussions held at this meeting could have an impact on such. She stated John Barten from the Three Rivers Park District was in attendance to answer any questions the Board may have. With

that said, she stated that each Board member would be provided an opportunity to comment as key sections are discussed. The following outlines their discussion, comments provided by staff, the development team, and Barten:

Eight BSUs at South Dock

Whalen confirmed that the city has been working, on a collaborative basis, with the applicant. The city has provided certain priorities that they would like to see proposed, one of which was environmental protection. She acknowledged that the subject dock was reduced in size; however, expressed concern for eight additional boats in the sensitive area.

Hartwich stated that one cannot compare a proposed project to other projects located in similar areas around Lake Minnetonka for the purpose of justifying an argument.

Olson did not have a comment.

Kask stated that he generally supported the dock on the south side. However, had a concern with its slip sizes (15x 36'). He believed that larger boats do create environmental impact on water quality; however, he would have to defer to other authorities as to how environmentally sensitivity the subject area is.

Johnson expressed concern about how close the dock is to the abutting property. He acknowledged that one cannot see the dock as it is protected towards the back area and believed its location is the best possible choice. Additionally, he confirmed that the boat size will not be any larger than the 36' slip size.

Babcock stated that based on a slide that documented an approved dock from 1995 with the current lotus flowers, this dock would be in the middle of the lotus flowers currently in place. He believed that this would have been a mistake because the lotus flower bed was not as prominent in 1995 as it is today. He asked Barten as to whether the proposed placement of the dock, or future expansion of, would inhibit the expansion of the lotus flower bed and, if so, should be factored into the Board's decision.

Barten stated that data unequivocally documents that the movement of boats through or adjacent to the plant beds does disrupt plant community by eliminating or redistributing its existence. Therefore, he concluded that presumably had dock structures and boat movement existed in the area, the existence of the plant bed would have been affected by such. Additionally, he documented the benefits that plants, in and of themselves, provide to the ecology of lake, i.e., habitat (food source and living space) for fish and invertebrates, as well as stabilizing the lake's sediments (reducing wave and ice action).

Babcock inquired as to which agency regulates how wide a path can be made within the lotus flowers for docking and boat storage, which he believed was a single 15' boat path.

Nybeck stated that staff will need to research the specifics to Babcock's question. However, he stated that further questioning also needs to confirm whether the channeled path is allowed to start at the shore or at the point of boat access within the DUA.

Klohs stated that the developer had proven to be sensitive to the environmental concerns noted. He preferred the multiple dock plan compared to the riparian rights plan (noting that use as having a more dramatic impact to the subject area).

Jewett stated he was okay with the proposed docking plan at this area and did not have concerns with how close the proposed neighboring lot lines were placed. However, he did express concern about future damage to the lotus flower bed.

McDermott stated that he was fine with the proposed plan in the subject area; noting improvements the applicant had made from prior discussions. He commented that he did not believe he had heard from the abutting property owners.

Page stated that he was not in favor of the proposed development being approved through a multiple dock license. He believed the license would be a "red herring" and that there would be far fewer boats in the area if they utilized their riparian rights option. He stated not all property owners would have four boats and, if they did, they would have to be registered to those living at the site. Additionally, he believed that a great deal of the shoreline is not conducive to dock and boat storage usage. In regards to environmental impact concerns, he believed that boat storage through a multiple dock license provides for more concentrated docks and higher usage of watercraft; noting his concurrence with Mr. Notch's comments above. To this end, after all meetings held to date on the proposed project, he is not convinced the currently proposed plan is superior to others discussed. However, in regards to the application currently being considered by the Board, he did not have a concern with the proposed docks in the subject area (noting the applicant's efforts to reduce the number of boats in this area from 16 to 8).

Scanlon acknowledged that the area provided for outlots; therefore, the slips seemed large.

Baasen stated that he supported the adjustments made to the dock structure in this area; noting positive improvements that were made to the outlots.

Whalen stated that too many slips are proposed to be placed in the channel, which would provide for an impact in that area. However, since the channel area is going to be impacted, she believed that the remaining shoreline needed to be protected. In doing so, she recommended taking the southern eight slips and placing them in the channel area (preserving more environment). She documented other issues, which included the following: 1) the neighboring property owner may not have commented at this point, however, she recognized that the current owners may not be the future owners, 2) that eight boats traversing in and out of the area will have a significant impact (concurring with Page that more boat traffic will be provided under a multiple dock license vs. the use of riparian rights), 3) she believed smaller boats would have less impact, and 4) that the currently proposed dock, will affect the native vegetation that currently exists.

Van Slooten stated that the south dock would serve eight large lots that have a steep hill in front of them. He believed that it worked well for those lots to have their boat storage approved under a multiple dock license. Additionally, in regards to comments made in comparison to obtaining a multiple dock license vs. use by riparian rights, he stated that the only reason to utilize a multiple dock license was to provide boat storage for those that do not have access to riparian rights. He did not believe that obtaining a multiple dock license was a "red herring" as much of the development had shoreline to support riparian use. To this end, he was before

the Board to confirm which direction to go (multiple dock option or riparian use option) prior to developing the final plat.

Babcock stated that if the Board approved the application as proposed, he believed the Board should consider moving the southern dock out further (beyond the lotus flowers) vs. allowing a channel to be cut with the vegetation expanding behind the dock area. He solicited Van Slooten's opinion about extending the southern dock further out into the lake, in which Van Slooten stated he would not have a concern with extending the dock out further.

#### North Six Lots

Baasen questioned if Van Slooten had thought about placing the boat storage for all ten of those lots in the channel area.

Van Slooten stated the original plan did have the boat storage for all of the lots going into the channel area. However, it was previously suggested that these slips be moved out of the channel. He concurred that the channel was a better area for the subject lot's boat storage use.

Scanlon did not have a comment.

Whalen agreed that all boat storage should be placed in the channel. She outlined the following issues that currently existed: 1) a variance would need to be obtained; however, the Board would be hard pressed to provide for such as there is another area for the boat storage to be located, 2) traversing concerns for Lot 6, 3) the need to provide for an easement to gain access, and 4) the existence of shallow waters.

Page stated that this area provided for poor water quality and heavy weeds. Therefore, the placement of the dock would not make much difference.

McDermott stated he was in favor relocating the docks to the channel area to avoid a variance and the placement of the dock in an area with poor water quality. His interest was to leave the shoreline in its natural state.

Jewett stated his only concern was what the water depth readings in this area provide for.

Klohs reiterated his concern for the use of riparian rights for the proposed development. He acknowledged the applicant was willing to move the docks into the channel; therefore, continue as planned and not force the use of riparian rights vs. a multiple dock license.

Babcock stated that he was okay with a few slips being proposed for this location as it was proposed in 1995. He believed there were changes made to the south of this dock since 1995 and that six to eight slips being moved out to 200' does not support 36' watercraft (possibly 24'). In regards to the use of an easement, he just wanted to make sure they were permanent and did not restrict access to the docking facilities, which would apply evenly to all docking areas.

Johnson liked the idea of moving the docks to the channel area; providing for less impact on the lake (water movement, as well as protection of native vegetation and habitat). He stated that cattails will hide most of the dock structure.

Kask stated that there was a certain appeal to the use of a riparian docking option (as noted by Page). He stated that it would be better to pull the docks into the channel area. He expressed concern for future expansion of the docks; therefore, he was less inclined to approve a multiple dock license for the proposed project.

Olson stated that the Board has heard from 17 individuals (nine at this meeting and three who reside on Kings Point); all of which were opposed to the proposed plan. If riparian docking rights were utilized, there would be thirteen sets of four docks that Kings Point residents would view as they looked south. Under the currently proposed multiple dock license plan, there would be three sets of four and the entire bay area with the lotus flowers would remain pristine. He stated that, in general, he supported keeping the bay pristine and did not have a problem with the six docks.

Hartwich stated that he was taking Whalen's direction of a reduction approach and believed that the subject dock was exposed. Additionally, he endorsed the multiple dock license option for this area. However, he would re-evaluate his decision once the proposed plan was reviewed in its entirety and he was better able to assess what is best for the lake, residents, and the applicant.

Whalen stated that Lots 4, 5, and 6 would have boat slips to the north. However, Lots 7, 8, 9, and 10 would have their slips in the channel area. For this reason, she reiterated her thought that it made more sense to relocate all docks to the channel area and eliminate the environmental impact and access issues.

Babcock acknowledged that typically the Board would support the transfer of density from a shallow area to a deep water access. However, in considering this proposed project, moving the north docks to the channel area would provide the transfer of density from one bad area to another. He did acknowledge that there is precedence at the Pelican Point HOA, which he explained the history of that approval.

Hartwich asked if there was an equation within the Code for the redistribution of two types of density (solidarity and consolidation).

LeFevere stated that the applicant is proposing a single lot allocation. Therefore, about what density could be provided with the use of riparian rights option is strictly for the purpose of comparison. He stated that what is before the Board is a multiple dock license application encompassing all docking structure for the entire shoreline at this site.

Whalen confirmed that the LMCD is not charged with overseeing the lake's water quality. However, the Board's consideration as to what size boat should be placed within the BSUs is under the LMCD's jurisdiction and, in turn, affects the water quality of the lake. She believed that placing smaller boats in the channel area will assist in the outcome of a future Total Maximum Daily Loads (TMDL) project that will require accountability to lessen specific impacts to poor water quality.

Olson stated that the MCWD has a 10 year plan that was completed in 2007, which addresses the TMDL's that were done by the consulting engineer for the upper watershed. He confirmed Whalen's comments that goals are in place for every one of the impaired bodies of water, which includes Halsted Bay.

Peninsula

Babcock did not believe that the BSUs should have the flexibility the applicant is requesting under a multiple dock license. He acknowledged the request would set a new precedent for the LMCD to consider; however, riparian rights are not considered when density is transferred. He acknowledged there may be some benefit to have it managed without a specific dock configuration, but not managed with riparian rights. He believed that fewer boats could be considered in this area.

McDermott stated he was fine with the requested flexible use of BSUs in this area based on the amount of shoreline that is provided. Additionally, he was okay with the proposed density as compared to what they could have under riparian rights (acknowledging there is still a transfer of shoreline density proposed). Additionally, he believed that documentation on the location of the BSUs should be provided, for enforcement purposes, once the project is built and they know where the docking structure will be placed.

Jewett concurred with McDermott's comments.

Johnson believed the density would not be at capacity; therefore, he concurred with the proposed request.

Scanlon stated that the request gives the appearance that they all have riparian rights. Therefore, he recommended the lot owners consider sharing a dock structure; providing for less slips and variances.

Baasen stated he was okay with the size of the lots and the proposed density. He concurred with Babcock's comments that one cannot transfer shoreline and expect the use of riparian rights at the same time. He was in favor of a multiple dock license vs. the use of riparian rights (providing for more regulations).

Babcock stated that if the Board was considering transferring the shoreline for density purposes from deep to deep water, he would be more in favor of the transfer. However, he would not support the transfer from deep to shallow water.

Kask asked what would prevent others from docking a boat in this area, in which Whalen stated that staff had recommended the boats be licensed to individuals of the site (requiring good documentation for such reasoning).

Page supported the proposed flexibility for the docks and variance, as long as the boats were licensed to individuals of the site (per staff recommendation). Additionally, he believed the location of the docks should be locked in. He acknowledged enforcement would be a large undertaking that would take a great deal of staff time and operating budget, which he believed was not worth the effort.

Klohs concurred with Page's enforcement comments and believed the flexible concept could be applied.

Nybeck explained staff's reasoning for the side setback requirements from the imaginary lot line extension, as it was truly dedicated to a multiple dock license. He stated there are only a handful of sites that have

requested similar flexibility, which have proceeded in putting encroachments into a setback area or over a lot line extension. Therefore, staff finds themselves in a position to respond to future property owners who ask why their dock does not meet setback requirements. In regards to the subject application, he acknowledged the lots are large; therefore, there is no reason a 20' setback cannot be maintained (providing for a proactive approach to prevent future complaints being filed).

Jewett did not believe the location of the docks needed to be documented as long as they meet the side setbacks.

Scanlon requested confirmation that all other multiple dock license holders were required to document the location of their dock structures, in which the Board confirmed they did. Therefore, he asked why this site should be treated any different than the other sites.

Jewett believed the amount of shoreline provided allowed for flexibility.

Babcock stated that the 1:50' General Rule is the most restrictive density rule within the Code. He believed that, in this case, it might not be restrictive enough. Therefore, if the developer wanted the peninsula area to be treated as riparian use, then they should do so and let the peninsula's shoreline stand on its own and not transfer the shoreline's density into a problematic site.

Page suggestive the Board consider using the subjective criteria in the evaluation of these applications.

Babcock stated that the Board adopted Code Section 2.02, subd. 7, which is known as the straight line measurement, to protect marginal shoreline.

McDermott asked Van Slooten what the shoreline measurement of the channel area was.

Van Slooten stated that the peninsula provides for 2,410' of shoreline and that the 1:50' General Rule would allow for 48 BSUs. The current proposal provides for 28 BSUs in this area, in which the Board briefly discussed various shoreline calculations.

Harwich asked staff to explain the meaning of the word "countable" shoreline that was referenced in the staff memo, dated 1/7/11, in which LeFevere responded to.

LeFevere provided an example for possible implementation of the straight line measurement ordinance. In considering the 929.4' contour within an area of cattails, it is difficult to survey where the shoreline is. The Board may not want to count the non-usable shoreline of a site to provide for a greater amount of density on the usable shoreline (establishing the carrying capacity of the shoreline). The question for the Board is to verify whether the meandering shoreline is usable.

Hartwich asked if it was at the Board's discretion to come up with the countable shoreline.

Babcock stated that not all areas are equal, expounding on the City of Tonka Bay's application recently considered by the Board. The end result for the Board is not to apply the 1:50' General Rule everywhere on the lake. In this case, he believed the straight line measurement is not applicable to this application.

Channel Area

Page questioned whether the peninsula shoreline is usable is simply not true as there are sheer cliffs down to the lake. He believed the length of the boats should be all 24' (noting the difficulty the captain of the pontoon had, when on the lake tour workshop, in turning the craft around in that area without any docks installed). He did not agree based upon the pictures provided, that four feet of maneuverability will be enough.

LeFevre stated that one of the studies documented to the Board by the Technical Advisory Committee (TAC), was that shallow shoreline areas are environmentally sensitive. These studies have not resulted in adopting any new ordinances; however, it is a factor for the Board to consider.

Whalen suggested the Board finalize this meeting by providing the developer some feedback on suggested density for continued consideration of the applications at the January 26<sup>th</sup> regular meeting. With that said, she solicited the Board's final recommendations and feedback.

Babcock stated that he did like the larger slips, but not at the expense of larger boats. He concurred with Page that the boats in the channel area be limited to 24'. Additionally, he concurred with Page that much of the shoreline is not usable; however, the Board is faced with deciding what areas are usable by considering the subjective criteria. In using such criteria, he believed there are too many boats in the channel area. A balance needs to be found in applying the studies documented by the TAC, as well as not being overly restricted. He believed the applicant has riparian rights, but less than what is proposed. He believed that less density in the wetland area is 100% consistent with what has been applied to other applicants that have utilized similar areas.

McDermott stated that the public has historically documented that they did not want to have any restrictions placed on their shoreline.

Johnson stated that he believed there is room for larger boats in the channel area. He believed that not all boats need to be 24'. He would support the current proposal in specific areas of the channel, including cluster docks with uniform sizes.

Jewett stated he did not have a concern for safety factors in the placement of boats in the channel, but did have a concern for water quality impacted by the size of the boats. He concurred with Johnson that some areas of the channel could provide for larger boats and that uniformity is a good idea.

Kask stated that he would be supported of boat lengths of 28' in the channel area (commenting on how this compares to the manufactured boat lengths). He believed that the southerly lots may warrant larger slip lengths (such as 32').

Olson stated that he understood the argument for uniformity, but was not comfortable with the varying sizes per the shoreline provided for each lot.

Scanlon stated that even though the docks are permanent, human nature will provide for future expansion.

Baasen believed that LMCD staff can enforce a multiple dock option vs. the riparian option. He believed that the developer has been responsive to the Board's suggestions and was not concerned about the number or length of the slips. However, he recommended reducing the number of boats to be stored at the peninsula lots from four to three BSUs.

Hartwich stated the number of boats in the channel area needs to be reduced. He encouraged the Board to use the previously approved 88 BSUs as a basis for negotiation rather than the 129 BSUs proposed by the developer.

McDermott had a difficult time just coming up with a density number. He stated the applicant is proposing density that is below the maximum allowed by Code. He was a little concerned about the size of the boats; however, would be comfortable with 24' to 32' lengths.

Klohs concurred with Bassen's comments. He stated that, other than the subjective criteria, the applicant was proposing density that falls within Code. He did not want to force this development into use of riparian rights option.

Page stated that he did not have a problem providing density feedback. He believed that 20 BSUs should be removed from the 50 BSUs proposed at the south channel dock. He believed that subjective criteria are available and the Board should consider using them. Additionally, all BSUs should be smaller than what has been proposed.

Babcock stated that the Board could use the subjective criteria to consider whether to approve or deny the applications, as long as the reasoning can be documented. He believed that the Board could utilize the 1:50' General Rule to come up with a density number for the number of watercraft to be stored in the channel area.

LeFevere stated that, for the record, if the Board was making a decision that was arbitrary, that would be an illegal decision, which then should not be made. However, the Board makes subjective decisions on a regular basis, which provides for a judgment call on the right level of density.

Whalen believed that the Board's decision on density would not be arbitrary; whether the Board chose to go with the various recommendations that were offered at this meeting. She believed that the shoreline was marginal and expressed concern about the 50 BSUs on the non-riparian lots. She preferred the plan for 88 BSUs that was previously approved for this site. She believed that the Board needed to recognize and consider the public's input, as well as written documentation the Board had received.

Van Slooten thanked the Board for their time and effort this evening. He believed it was obvious there are varying views by the Board and clear direction was not truly provided. He acknowledged the repetitive discussion held this evening on the use of the peninsula shoreline and believed there is room for reconsideration in that area. The development team was ready to take a second look and provide an amended proposal for the January 26<sup>th</sup> Board meeting.

Whalen stated she that she would continue the public hearing to the January 26<sup>th</sup> meeting, at which time the hearing will be closed. With that said, she suggested the Board forgo the remaining agenda items and requested a motion to that affect.

**MOTION:** Jewett moved, Page seconded to table consideration of the remaining agenda items to the January 26<sup>th</sup> Board Meeting.

**VOTE:** Motion carried unanimously.

**10. OTHER BUSINESS**

- **Ordinance Amendment**, first reading of an ordinance relating to signs on Lake Minnetonka; amending LMCD Code Section 2.12, Subd. 6.

Tabled to the January 26<sup>th</sup> Board Meeting.

**11. UP DATE FROM STANDING LMCD COMMITTEES:**

- Aquatic Invasive Species (AIS) Task Force
- Save the Lake Committee
- Environmental Committee
- Ordinance Review Committee
- Public Safety Committee
- Personnel Committee

Tabled to January 26<sup>th</sup> Board Meeting.

**12. EXECUTIVE DIRECTOR REPORT**

Tabled to the January 26<sup>th</sup> Board Meeting.

**13. ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:01p.m.

Douglas Babcock, Chair

Andrew McDermott, Secretary