

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, February 23, 2011  
Wayzata City Hall

**1. CALL TO ORDER**

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

**2. ROLL CALL**

**Members present:** Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; Peter Hartwich, Excelsior; Anne Hunt, Minnetrista; Chris Jewett, Minnetonka; Steve Johnson, Mound; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Bill Olson, Victoria; Tom Scanlon, Spring Park; Debbie Siakel, Shorewood; and Herb Suerth, Woodland. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** None

**3. APPROVAL OF AGENDA**

Babcock proposed the following two changes to the agenda: 1) consider agenda item 10A just prior to the public hearing (agenda item 9A), and 2) adding agenda item 10E to consider a draft amendment to LMCD Resolution 124 (Authorizing Issuance of Special Events Permits by the Hennepin County Sheriff's Water Patrol).

**MOTION:** Baasen moved, McDermott seconded to approve the agenda as amended, incorporating Babcock's comments noted above.

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS**, Chair Babcock

There were no Chair announcements.

**5. APPROVAL OF MINUTES – 2/09/11 LMCD Regular Board Meeting**

Baasen directed the Board to the motion he made on page 11 for agenda items 9A and 9B (pertaining to Wayzata Yacht Club and Wayzata Community Sailing Center). The first paragraph below the motion (outlining the basis for why he moved to deny the proposed applications) should be incorporated into the motion itself as the motion was made to that affect; with an emphasis that the applicants need to come into compliance with their approved 2009 multiple dock license prior to the 2011 boating season.

Babcock stated that the word "also" needs to be inserted between the words "Patrol" and "issues" in the second to the last paragraph on page two.

**MOTION:** McDermott moved, Olson seconded to approved the minutes from the 2/9/11 LMCD Regular Board Meeting as amended, incorporating the changes noted above.

**VOTE:** Motion carried unanimously.

## 6. APPROVAL OF CONSENT AGENDA

Baasen moved, Page seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A**, Audit of vouchers (2/16/11 – 2/28/11); **6B**, January financial summary and balance sheet; and **6C**, 1/14/11 AIS Task Force Meeting Minutes.

## 7. ITEMS REMOVED FROM THE CONSENT AGENDA

There were no items 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.

## 10. OTHER BUSINESS

### A. Staff update on 2010 Lake Minnetonka Watercraft Inspection Program.

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

Nybeck provided the following background information:

- The program was similar to other years (inspecting incoming watercraft and trailers, from Memorial Day weekend through Labor Day, during peak hours on Fridays, Saturdays, Sundays, and holidays).
- 2010 provided for increased (and continued) partnerships with other agencies (including the Minnehaha Creek Watershed District (MCWD), the MN DNR, the Lake Minnetonka Power Squadron, and the Three Rivers Park District (TRPD)).
- He reviewed the public accesses associated with the 2010 program: 1) Carsons, Grays, Maxwell, North Arm, Spring Park, and Maxwell Bays with the MN DNR; 2) the use of Volt Workforce Solutions (VOLT) on a pilot program to provide staffing at public access on Halstead and Cooks Bays; and 3) the TRPD continued assisting the LMCD on an in-kind basis at the Lake Minnetonka Regional Park for gate attendance inspections. The public accesses on Echo and Phelps Bays were not included in this program due to the limited number of parking spaces and no on-street parking.
- A goal of 4,096 contracted inspection hours was set between the MN DNR and VOLT, as well as in-kind inspections from the TRPD. To obtain that goal, the LMCD contracted 2,898 hours with the MN DNR and 1,198 hours with VOLT. Total inspection hours provided included 2,532 hours (87%) with the MN DNR and 1,033 hours (86%) with VOLT. The end result provided for a consistent use of about 90%, which was discussed by the AIS Task Force on how the LMCD might reach 100% of the inspection goal. Additionally, there were: 1) 864 inspection hours provided (via in-kind service)

by the TRPD at the Lake Minnetonka Regional Park gate, and 2) the LMCD worked with Minnetonka Power Squadron volunteers, which provided 56.5 inspection hours.

- He reviewed the following funding sources utilized for the 2010 program: 1) the LMCD provided approximately \$29,500, 2) the MCWD provided \$7,500, and 3) the MN DNR provided \$6,720 in grant funds. The in-kind service provided by the TRPD is estimated at just below \$7,000.
- Heidi Wolf from the MN DNR is in attendance to provide an overview of the MN DNR watercraft inspectors.

Ms. Heidi Wolf reviewed the following information pertaining to the 2010 Watercraft Inspection Program:

- A review of the following expectations documented for the contracted year: 1) a MN DNR prevention grant for 560 hours of inspection time with an equal amount of inspection time to be matched by the LMCD, 2) the LMCD also chose to cooperatively hire with the MN DNR for an additional 1,778 hours, and 3) the LMCD requested that inspections be performed on four high use accesses and two secondary accesses.
- Results of the inspections were highlighted via a detailed chart of inspection hours per public access. A summary of the inspection hours completed were as follows: 1) 2,813 inspection hours were completed for all Lake Minnetonka accesses, 2) 13,884 inspections were completed, and 3) 2,532 inspection hours were completed at the six peak accesses and times contracted for by the LMCD.
- Other statistical information included the following: 1) 586 watercraft inspected came from zebra mussel infested waters (compared to 432 in 2009), 2) no zebra mussels were found on inspected watercraft, 3) 308 (2.7%) watercraft entering Lake Minnetonka had attached vegetation before inspection (compared to 40 in 2009), and 4) 786 watercraft exiting Lake Minnetonka had attached vegetation before inspection (compared to 198 in 2009).
- The MN DNR provides each watercraft operator with a decal that documents the watercraft had been inspected and that the operator was educated on the matter; providing for a shorter inspection process for those with decals present. With that said, she provided a historical chart from 2004 to 2010 that outlined the statistical information of the decal program, in which 2010 provided the following results: 1) 2,448 (18%) of watercraft did not have a decal and had never been inspected, 2) 4,205 (30%) had a previous year sticker but had not been inspected in 2010, and 3) 7,231 (52%) had been inspected in 2010.
- Statistics of boater knowledge were reported as follows: 1) 98.5% of watercraft users were familiar with invasive species, 2) 98.3% were familiar with Eurasian watermilfoil, 3) 96.6% of watercraft users were familiar with zebra mussels, and 4) 94.5% of watercraft users were familiar with the laws regarding the transport of invasive species.
- She recommended that the LMCD transfer the contracted inspection hours for the Carsons and Wayzata public accesses to the Grays and Maxwell Bays public accesses (increasing those hours from the 2010 season).
- She entertained questions and comments from the Board.

The Board made comments and asked questions, which are summarized as follows:

- A recommendation that watercraft operators be asked when they were last in a documented infested body of water. Wolf stated that the question could be asked; however, the public is not legally required to dry their watercraft for five to seven days prior to entering another body of water.

- Confirmation that the MN DNR continue to require specific classifications for individuals applying to be an intern (natural resources student). However, they are exploring other options, including legislative changes (providing for a more streamline process but higher costs). Additionally, the LMCD could assist in this matter by calling their legislature when a proposed bill is introduced or privately hire or contract for inspectors, with the MN DNR providing free training.
- Due to the infestation of zebra mussels in Lake Minnetonka, the MN DNR will adjust future inspections by increasing the hours to 4,000 to 5,000 with two inspectors at the Grays Bay public access, as well as inspections to be completed for both incoming and outgoing watercraft.
- Interns cannot enforce the law; however, they can call a Conservation Officer when warranted.
- A question was raised as to the increase in the number of watercraft and trailers arriving to Lake Minnetonka with attached vegetation. Wolf stated that she was unsure why there was an increase; however, she suggested that the presence of milfoil could have been higher in 2010.
- Siakel expressed an interest in providing for a far more aggressive prevention plan for AIS.
- Expressed gratitude by Babcock to the TRPD and the Power Squadron for their efforts in 2010.

## 9. PUBLIC HEARING

- **Mark Olshansky**, side setback and adjusted DUA variance application for a permanent dock at 16901 Grays Bay Blvd. (continued from the 1/26/11 Regular LMCD Board Meeting).

Babcock asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 2/17/11, in which he highlighted the following information:

- A request has been made for a permanent (non-multiple) dock license, as well as a side setback and adjusted dock use area (DUA) variance from LMCD Code at the residential site. The applicant has proposed a permanent dock that extends the whole length of the shoreline (81') and extends over the lot line on the west side of the site into the City of Minnetonka's right of way.
- The applicant has proposed a 16' x 30' Boat Storage Unit (BSU) under a canopy on the west side of the site and a 25' side tie BSU in the middle of the dock.
- He provided a detailed report of communication efforts and actions taken with the applicant since August 31, 2009. Additionally, he stated their request is being made after the construction had been completed.
- He evaluated the applications based on four LMCD Code Sections. These included: 1) Code Section 2.06 - outlines the need to secure appropriate permits prior to construction, 2) Code Section 2.01, subd. 1- outlines authorized DUA requirements, 3) Code Section 1.07 – outlines the variance process from LMCD Code, and 4) Code Section 2.02 – outlines the number of restricted watercraft that may be stored at a site.
- Because the proposed dock includes an encroachment within a City of Minnetonka right of way, the City opposed the proposed adjusted DUA variance because the area is necessary for bridge maintenance and repairs. However, the City is not concerned if the dock and canopy were located up to the common extended side site line.
- The proposed permanent (non-multiple) dock license cannot be processed at the staff level until the Board acts on the proposed variance application. He believed that the applicant provided adequate hardships for the Board to grant the side setback variance; however, did not believe the adjustment of a DUA was warranted based on the City's comments.

- He recommended that the Board direct LeFevere to prepare Findings of Fact and Order to approve the variance request in part and deny in part based on such comments, subject to seven conditions outlined in the staff memo.
- He entertained questions and comments from the Board.

The Board made comments and asked questions, which are summarized as follows:

- A question was raised as to side setback requirements. Harper stated that the proposed site plan requires a 25' side setback from the easterly side site line, although there is not a specific traversing mode to enter or exit the BSU. A second question was raised why staff was not recommending that side setbacks be maintained on both ends of the site, acknowledging the encroachment over the westerly side site line. Harper believed that there was less of the need for a side setback because the side opening slip would open towards the east.
- A question was raised as to the previous dock construction at this site. Harper stated that a dock was previously constructed at this site. However, the reconstructed dock was widened and extended on the east side. Additionally, he believed that an encroachment on the west side previously existed.
- A number of Board members questioned why a permit was not secured from the LMCD prior to the installation of the current dock, in which there was discussion as to what disincentives are established to address these types of situations. Nybeck stated that the applicant was required to pay an after-the-fact application fee due to the construction of the dock prior to securing a permit. There was also discussion on whether this matter should have been turned over to the prosecuting attorney while the applicants were in the process of submitting applications to the LMCD.
- A number of Board members expressed concern that not securing a permit prior to the dock constructions was a flagrant violation; noting the Board believed there was prior communication with the applicant and that dock was not replaced under existing structure standards (providing for new construction).

Babcock asked the applicant to address the Board.

Mr. Richard Kopyy, representing the applicant, stated that he owned the abutting property to the east. In 2009, he initiated the process by obtaining what he thought were the proper permits. He informed the Board that it was not his intention to circumvent the process based on the following: 1) permitting requirements, 2) encroachment, and 3) registration of watercraft:

- Permitting Requirements: He summarized communication held to date with the local governing agencies (including meetings that were held on site with the LMCD staff). At that time, they were just replacing the existing structure and adding a canopy (confirming that the dock ends at the exact west location of the prior dock structure). He understood the existing dock to be an approved, permanent dock based on fact that they dredged 125' of concrete (four feet deep) with steel support. He stated that concerns first arose in June of 2010 when they were driving the post for the replaced permanent dock.
- Encroachment: He stated that he has met with the City of Minnetonka several times. Once he discovered an encroachment concern (18" off on the shoreline and an estimated five or six feet on land), he contacted the City asking for their feedback. He confirmed that there are four quadrants to the City's right of way, in which he believed the other three property owners are also encroaching. The City has previously informed him that they will not condone what was

constructed; however, they will not proceed with enforcement action unless a formal complaint was filed (providing for their written comments to the LMCD when requested).

- Registration of Watercraft: He stated that this matter was lightly addressed throughout the communication with LMCD staff. The dock was built in the 1950s and the property was platted prior to that date. He believed that the subject property has had two boats associated with the property "forever" and he requested the Board allow the applicant to pull his boat and dock structure back to the extended property line and not tie the watercraft registration to the variance. He stated only family members utilize the dock and that there would be no commercial use of the slips.
- He entertained questions and comments from the Board.

A summary of Board comments and questions asked, including feedback from Kopyy, is summarized as follows:

- Confirmation from Kopyy that he misread the application fee schedule (providing for staff's return of the original application and payment made on 8/31/09).
- Confirmation from Kopyy that when staff mailed the applicant the appropriate applications (in follow-up to the above comment), he continued to not file for the applications as he understood they did not need a permit to replace the existing dock structure.
- Acknowledgement that a certified survey was provided in April of 2010, with construction starting in May/June of 2010. A question was raised as to the encroachment being made after a survey was presented showing the City right of way. Kopyy confirmed he did not have that corner quadrant of the survey available to him at that time and recognized a better job of checking matters was warranted.
- Acknowledgement by Babcock that staff has provided sufficient evidence of proper communication. Therefore, he believed that the Board had some leeway in considering the appropriate actions.
- Confirmation by Kopyy that he obtained the proper permits from the MCWD for the dredging and installation of the riprap. Baasen stated that he had difficulty understanding why the applicant would not consider the dock installation to be new construction.
- Confirmation of the following changes made to the dock structure: 1) 8' wide at center point vs. the previous 5' width, 2) the extension of the dock structure to the east, 3) the presence of sheet piling that previously did not exist, and 4) the documentation of communication as it relates to the last revisions made to the structure.
- Acknowledgement that the applicant is responsible for making sure that the dock is in compliance with the Code. Therefore, the Board needs to be firm and take a stand that it is not acceptable to install non-compliant structures.

Babcock opened the public hearing at 8:08 p.m. There being no comments, the public hearing was closed at 8:09 p.m.

The Board briefly discussed the proposed applications, with a summary of the comments as follows:

1) confirmation that some portions of the dock structure was new construction while other areas could be considered a replacement structure, 2) sufficient communication by staff, 3) a review of the Board's options, 4) the concurrence with staff's recommendations, 5) acknowledgement that application fees are twice the amount due to the after the fact application, 6) confirmation that the applicant has reasonable navigational space without a variance, and 7) discussion as to whether a canopy was warranted.

**MOTION:** Hartwich moved, Scanlon seconded to direct the applicant to further work with staff, taking into consideration the comments made by the Board.

Bassen directed staff to: 1) request the applicant to come into compliance with the established setbacks, taking that into consideration in the placement of the canopy, and 2) requiring the applicant to amend their application within 30 days, providing for consideration at the March 23<sup>rd</sup> Board Meeting.

Hunt questioned addressing the registration of the watercraft as a condition of a variance.

Babcock stated he did not have a concern with allowing two restricted watercraft at the site without reference to ownership, subject to the docks meeting setbacks. He believed that this would be consistent with historical action by the Board.

**VOTE:** Ayes (13), Nays, (1, Klohs); motion carried

## 10. OTHER BUSINESS

**B. Woodland Cove, LLC**, consideration of draft Findings of Fact and Order for approval of 2011 new multiple dock license and dock length variance applications.

Babcock recommended that the Board consider the draft Findings of Fact and Order in two different parts. First, the Board should provide further review and comments on the draft Findings (with the exception of the 20 Boat Storage Units (BSUs) that remain a topic of discussion). Second, the Board should hear from the applicant as to their proposed plans for the 20 flexible BSUs, after which, the Board will consider such.

Nybeck questioned if the Board would like to entertain comments from the public due to the fact that discussion of the 20 flexible BSUs came up after the public hearing was closed on January 26<sup>th</sup>.

Babcock stated that he would like to initiate review of the draft Findings as detailed above. At that time, the Board could consider additional input from the public if so desired. He asked for background on the draft Findings from LeFevere.

LeFevere made the following comments pertaining to the draft Findings:

- At the public hearing, the applicant agreed to move the north shore BSUs into the channel area; however, that process was not defined. Since then, the applicant had made some minor adjustments to the proposed dock plan. Therefore, the eighth paragraph on page two has been changed to read, "An outlot at the north end of the channel would hold 16 (formerly 15) BSUs in a cluster dock with 10 slips specified for five riparian lots and six slips reserved for non-riparian lots." Additionally, within the same paragraph, last sentence, the sentence was changed as follows: "An Outlot on the south end of the channel would be used to store 41 (formerly 42) BSUs in slips for non-riparian property owners."
- In the 10<sup>th</sup> condition on page five, the third and fourth sentences have been changed to read, "The length for the DUA at lot 7 shall be determined by drawing a line from the point along the west setback line that lies 212.5 feet (formerly 217.0 feet) from the shoreline to a point along the east

setback line that lies 204.3 feet from the shoreline." "The length for the DUA at lot 8 shall be determined by drawing a line from the point along the west setback line that lies 194.3 feet from the shoreline to a point along the east setback line that lies 280.3 (formerly 253.7) feet from the shoreline." He believed that the applicant had drawings to present to the Board that will represent the changes made herein.

Babcock asked the Board if they had any recommended revisions to the draft Findings. Seeing none, he stated that he had a few recommended changes, which were outlined as follows:

- Inserting the word "individual" to the fourth sentence of paragraph seven on page two between the words "have" and "dock". LeFevere expressed concern about the use of that word "individual" as the license does not provide for individual use of the dock. Hartwich recommended an alternative to changing the words "dock use area specified" to "specified dock use area", in which both Babcock and LeFevere agreed to.
- Inserting the words, "notably yellow lotus beds" to the end of the last sentence on page two.
- Deleting the word "good" from the first sentence on page three,
- Inserting the words "or a greater number of families that have access to a watercraft" between the words "watercraft" and "the" in the last sentence of the fifth paragraph on page three.
- He stated that in regards to the first sentence, sixth paragraph on page three, he asked staff to document the number of residential parcels on Halstead Bay that store three or four watercraft vs. the watercraft stored per bay because he believed it was a more accurate statistic. Therefore, in follow-up to staff's findings, he entertained changing that first sentence to consider parcel usage based on 135 parcels, 32 of which store three or more watercraft; providing for 24% usage. LeFevere expressed concern in making that change as it would be changing the record outside of testimony considered in the previously held public hearing. Therefore, he advised the need to re-open the public hearing to accommodate the use of those statistics. He further explained that the Board is operating in a quasi judicial capacity, in which the Board has the ability to exercise judgement or make statements about the credibility or weight of evidence. However, the Board does not have the ability to provide a statistic or a fact without it being apart of documents presented, or testimony heard, during the public hearing. To this end, Babcock's above noted recommendation regarding parcel statistics was not considered by the Board.
- The adding of a sentence to the 10<sup>th</sup> condition on page five that reads, "Lifts, slides, cranes, davits, or other similar devices are prohibited along the shoreline except where associated with an approved BSU."
- The adding of a sentence to the 16<sup>th</sup> condition on page six that reads "Buoys should not be used, nor convey, any use or access restrictions to the general public."

Babcock asked LeFevere to provide an update on discussions held to date for the consideration of the 20 BSUs that were originally considered as flexible use.

LeFevere stated that the Findings have been prepared so that the Board has the ability to fill in the blanks provided after the matter has been discussed and acted upon. The current draft Findings allows for 20 watercraft that are not restricted in use (other than those that are members of Woodland Cove). In the packet, the developer has suggested restrictions to be placed on these 20 watercraft. However, the applicant respectfully requested that the Board not restrict the number of people that may use the watercraft. These 20 BSUs are approximately 1/6 of the total number of BSUs and the Board has the

ability to provide for such a request. However, he did not believe there was a historical precedent for such. He recommended that the Board consider the following questions: 1) whether the Board would like to consider, if any, some number of watercraft to be used as unrestricted, 2) if so, how many watercraft would the Board consider for such use, and 3) what restrictions, if any, does the Board want to impose on the unrestricted use. The applicant has proposed some changes to the draft Findings. The current draft Findings defines which BSUs go with which area of the development. However, the applicant is currently asking for the ability to designate how the slips will be allocated as the lots are purchased, as well as the ability to switch from the designation from one lot to another on an on-going basis (which could result in a high level of code enforcement difficulties). He believed that the questions noted above are the larger issues for the Board to respond to, which should provide for direction on finalizing the draft Findings. He entertained questions and comments from the Board.

The Board briefly made the following comments: 1) the recommendation that the applicant provide an annual slip allocation report to the LMCD for Code enforcement purposes, 2) a question as to whether the BSUs are really dedicated, and 3) confirmation that the BSUs will be under the control of the applicant and that they are designated as they are constructed.

Mr. Matt Van Slooten, President of Woodland Cove, LLC, stated that it is their intention to phase in the allocation of the BSUs over time (providing for a BSU allocation report to the LMCD). He confirmed that they do not in vision changes once the allocations are completed.

Hunt stated that, for the record, the unrestricted use of the 20 BSUs was completely unacceptable. She indicated that she had received numerous calls opposed to the request.

Suerth questioned if a decision needed to be made at this time. He recommended studying what other licensed sites are doing on the lake.

Klohs requested a summary of the current status.

Babcock stated that draft Findings are before the Board. He believed that the Board, at this meeting, has confirmed that they are comfortable with the language in the draft Findings (with a number of proposed changes) excluding the request for 20 flexible BSUs for unrestricted use. He and Baasen previously met with the applicant to consider discussions held by the Board up to that point, in which the draft Findings are an outcome of that meeting based on the applicant's revisions. However, individual accountability or future use of the 20 BSUs has not been resolved. The developer has confirmed that the allocation of the slips would not be provided to the general market, management practices, and location of BSUs. He believed that the Board's decision is whether the proposed restrictions by the applicant on the 20 BSUs is enough or does the Board want to see more commitment from the applicant. If a decision cannot be made on this matter at this meeting, he recommended a selected committee review the situation with the applicant for future advancement.

The Board continued their discussion on this matter making the following comments:

- Siakel believed that approving the flexible use of the BSUs is providing the applicant the ability to run a commercial operation and that the BSUs needed to have restricted use.
- Baasen questioned the impact of the flexible BSUs would have on the lake.

- Olson believed that there are other issues that have not been resolved relating to a boat club type use (administering their use, fueling of the boats, maintenance of the boats, etc.). If those questions are answered, he would be more favorable to approving their request.
- Confirmation that the applicant would have to abide by the most restricted plan (LMCD vs. the City of Minnetrista)
- The consideration of tying the use of the BSUs to individual properties for a given time frame.
- Confirmation that consideration of the flexible BSUs is breaking new ground for a private multiple dock license operation.

LeFevere stated that if the Board is comfortable with a specific number within the development to utilize the BSUs, then the Board has the ability to approve the draft Findings noting such. A lot of data is not present to confirm how much impact will be provided for the use of the BSUs. He provided the following options for the Board's consideration: 1) whether 20 BSUs without restrictions is fine, 2) can the Board live with the 20 BSUs or a smaller number, 3) do the BSUs need to be tied to specific properties, and 4) what restrictions would the Board like to impose (i.e., type of boat, etc.).

Van Slooten confirmed that there is a timing issue involved as they need to prepare the preliminary plat for this calendar year with the City of Minnetrista (noting that they are behind schedule as is). With that said, a decision will need to be made as to whether they proceed with the multiple dock license option or riparian rights option based on the Board decision. Other multiple dock licenses, such as Trillium Bay HOA, do not have their docks tied to a specific lot. He confirmed that the use of the BSUs would be restricted to residents of Woodland Cove, which is a non-profit organization, and would not be rented out. Over time, he stated that they may designate more slips to individual lots because there are 480 acres of land. He acknowledged that the property is large; however, they cannot be more specific of the use of the BSUs until a specific plan is created.

Johnson believed the BSUs could be assigned to a platted lot; providing for the applicant to reassess the situation in the future and apply for their needs at that time. He was not comfortable approving flexible use of the BSUs at this time because there are a lot of public concerns.

Van Slooten stated the BSUs could be available for an unlimited amount of homes; however, it still provides for 20 boats. He concurred that the boats may be on the lake more, but it still remains at 20 boats.

Babcock confirmed that the appearance that the flexible BSUs would be for more of a public use is what the Board is struggling to consider.

Hartwich stated that due to the multidimensional aspect of the entire project, he cannot help to think more discussion is warranted on not only the use of the BSUs, but also the 117 BSUs being considered. He believed that further discussion could address the LMCD's mission to preserve and protect the lake.

Olson stated that due to the fact that the LMCD does not have ordinances in place for boat club operations (acknowledging that restrictions are provided for marina use), he could not support the flexible use of the BSUs at this time.

**MOTION:** Hunt moved, Babcock seconded to direct LeFevere to finalize the draft Findings of Fact and Order, subject to: 1) tying the 20 flexible BSUs to a single lot, and 2) incorporating the proposed changes noted above by LeFevere and Babcock.

LeFevere stated that the Board needs to confirm whether the allocation of the 20 BSUs can be shifted from time to time.

The consensus of the Board was: 1) that watercraft stored at these 20 BSUs be registered to an individual at an identified unit or lot within Woodland Cove, and 2) the allocation of these 20 BSUs can change annually as part of the multiple dock license renewal process.

**VOTE:** Ayes (8), Nays (6; Baasen, Hartwich, Klohs, McDermott, Page, Siakel); motion carried.

The meeting was recessed at 9:37 p.m. and reconvened at 9:45 p.m.

**C. WYC and WCSC (Sites 2-4),** consideration of draft Findings of Fact and Order denying 2010 new multiple dock, special density, and dock width variance applications.

Babcock directed the Board to the respective draft Findings of Fact and Order and solicited the Board's comments, in which the following was offered:

- Confirmation that the presence of the three asterisks between paragraphs five and eight on the second page documented the presence of paragraphs within the Code; however, not written into the Order.
- The words "for the general public, which is considered a mandatory requirement under current LMCD ordinance, Sec. 2.05, subd. 4b." be added at the end of the last sentence in the eighth paragraph.
- A condition be placed within the Findings that the applicants be required to come into compliance with the currently approved 2009 license prior to the 2011 season. LeFevere stated that the draft Findings addressed the applications and the hearing testimonies. Although this condition might be appropriate, it should be done via a separate motion.

Babcock asked the applicant to address the Board.

Mr. Jonathan McDonagh, WYC Commodore, stated that he was in attendance representing both applicants in Bert Foster's absence. He acknowledged the Board's stated concerns throughout this process and addressed the parking issues. He believed that parking is only a concern on Thursday nights and Sundays to accommodate the regattas. Those issues are currently being addressed; documenting studies that were submitted to LMCD staff. He stated that the non-compliant structures that house watercraft at the WCSC are not associated with the parking concerns as those watercraft are not used during regattas. He stated that the Environmental Assessment Worksheet (EAW) documented that parking congestion is not a concern, although the applicants are aware of the concerns and are working towards alleviating those matters with the City of Wayzata. He apologized that the follow through was dropped and their intent is to accomplish all that is needed.

Scanlon asked if he had communication with the City of Wayzata (other than phone conversations) within the last month,

McDonagh stated that he had called City Council Member Tom Tanner requesting a meeting (as well as submitted multiple follow-up emails with no response). He welcomed another City staff member to communicate with. At this time, he stated that the WYC and the WCSC would like to withdraw their applications. 2010 renewal (without change) applications will need to be submitted and he stated that he would work with staff for future application needs. The primary concerns of the WYC and the WCSC are for the safety of the children and handicap accessibility.

Babcock solicited LeFevere's input on the consideration of the Findings once the applications have been withdrawn.

LeFevere stated that he can only think of one time the Board approved the Findings after the applications were withdrawn (providing for record purposes only).

Nybeck stated that he believed LeFevere's assessment was correct. However, he believed the Board should continue to consider the draft Findings before them due to the significant nature of this application process. He acknowledged the Findings would not be signed; however, labeled that the application was withdrawn, in which Babcock concurred. Additionally, he confirmed that staff will prepare 2010 and 2011 renewal (without change) multiple dock license applications in the near future, recommending that a meeting be held (with both applicant's site managers) to set expectations prior to the 2011 boating season.

**MOTION:** Scanlon moved, Bassen seconded to approved the draft Findings of Fact and Order as amended, subject to the changes noted above under bullet point two.

Wayzata Mayor Ken Wilcox expressed a strong interest in the Board's efforts to proceed with approving the draft Findings due to the applicant's lack of compliance and parking concerns. Otherwise, he believed that this would send a negative message.

**VOTE:** Ayes (13), Naves, (1, Page); motion carried.

**MOTION:** Baasen moved, Scanlon seconded to require the applicants to adjust their current non-compliant dock structures to conform to the currently approved 2009 multiple dock license prior to the 2011 boating season.

McDermott recommended new applications be submitted within sixty days.

Babcock proposed a friendly amendment that the applicants immediately complete their 2010 renewal without change multiple dock license, with appropriate fees, and submit their desired applications for the 2011 boating season within 30 days. Baasen and Scanlon agreed to this.

McDonagh stated that the dock installers have been apprised that they will install the docks consistent with the approved site plan for the 2011 boating season.

Baasen personally suggested that the applicants increase their efforts to present their master plan to the City of Wayzata prior to submitting a new application to the LMCD for consideration, as the City's process is lengthy.

**VOTE:** Motion carried unanimously.

**D. MCWD**, update from Board member Olson on potential 2011 lake levels.

Babcock asked Olson for background on this agenda item.

Olson stated that the Minnehaha Creek Watershed District (MCWD) is running a software model that takes into account the watershed's profiles, as well as the snow depth. He stated that the amount of water that is currently in Lake Minnetonka would bring the water depth to 929.4' (noting the MCWD's normal methodology starts at the water depth of 928.6'). With that said, the MCWD is adapting the water depths to 929.4'. The first pass of the draining profile documents the depth at 930.8', which will be a 100 year high if matters are not corrected. Because March is the wettest month of the year, he expected matters to be compounded. At 930.8' the water will exceed the dam itself; causing a lake effect. He stated that a restriction is provided at Highway 494, in which the concentration has to flow under the freeway. He stated that last year, which was a normal fall season, provided for 150 cubic feet per second (cfs) flow through the dam and over the falls to the Mississippi River. The current levels will require a flow of 1,550 cfs. This flow will provide for a horseshoe effect over the waterfalls and that all of the walking paths will be flooded. He confirmed that the profile is based on a typical ten day thaw and will be updated on a regular basis. He will keep the Board apprised of any changes.

Babcock commented on LMCD Code relating to a "High Water Declaration". It provides for the Executive Director to 1) have the ability to declare a high water declaration once lake levels reaches at or above 930.0' for a period of five consecutive days, 2) that a high water declaration will be made when the lake levels has been at or above 930.0' for a period of eight consecutive days, or 3) the lake level has reached or exceeded 930.25'. When a "High Water Declaration" is declared, minimum wake speeds are established for specific bays, as well as 600' of the shoreline for all water surface areas.

A brief discussion took place in how a "High Water Declaration" is communicated to the public, including how this could be improved.

**E.** Consideration of Amended Resolution #124, authorizing issuance of special events permits by the Hennepin County Sheriff's Water Patrol

Babcock asked for background on this agenda item.

**MOTION:** Jewett moved, Johnson seconded to approve amended Resolution #124, taking into consideration recommended changes by Hennepin County.

**VOTE:** Ayes (13), Nays (1, Page); motion carried.

**11. Update from standing LMCD Committees:**

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

Babcock asked for an update from the Chair, or designated representative, of each committee.

AIS Task Force

Suerth stated that a Task Force meeting was held on February 18th, in which the 2011 herbicide treatment process was discussed. He stated that Dick Osgood from the Lake Minnetonka Association has assured the Task Force that quotes would be obtained and the herbicide (appropriate for the bay's need) would be ordered and in place for use. He expressed an interest in establishing a water temperature base line (a point intercept process) prior to the start of the treatments. He stated that a more detailed update on the 2010 Watercraft Inspection Program was provided by Heidi Wolf at this meeting.

Nybeck recognized that the lack of a point intercept process has been criticized by some Task Force members. However, funding is currently not available for such a process and discussions on the matter continue to be held.

Page commented on the MN DNR's Watercraft Inspection Report by stating that discussions were held to meet specific goals that were not met, as well as ideas to raise the man power to increase the inspections. He stated the meeting was well attended (with State Senator Benson in attendance).

Nybeck stated that he and Olson will be meeting in the near future with Eric Evenson from the MCWD for the purpose of confirming their interest as to whether they would like to be involved in the 2011 Watercraft Inspection Program. He anticipated staff coming back to the Board with those recommendations for 2011 at an upcoming Board meeting.

Babcock believed that the funds provided for the Watercraft Inspection Program need to focus on the incoming inspections only.

Mr. Gabriel Jabbour recommended that the LMCD should consider privately hiring watercraft inspectors to accommodate for a higher level of performance. Additionally, he recommended that the LMCD should consider hiring a lobbyist to accommodate the need for partnerships with the legislature.

Olson stated that Babcock's comments regarding the need to fund incoming inspections are consistent with the MCWD's desires as well.

Save the Lake Committee

Olson stated that staff is continuing to work on the web site construction; noting that aerial photographs of the lake will be considered for a fundraising technique. A committee meeting has been scheduled for March 22nd.

Ordinance Review Committee

There was no Committee update.

Public Safety Committee

Johnson stated that staff is currently coordinating a committee meeting for the near future.

**12. EXECUTIVE DIRECTOR REPORT**

There was no Executive Director Report.

**13. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:40 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary