

LAKE MINNETONKA CONSERVATION DISTRICT

Board of Directors Workshop

7:00 P.M., Wednesday, February 12, 2014

Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members Present: Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Doug Babcock, Tonka Bay; Kent Carlson, Deephaven; Jim Doak, Woodland; Anne Hunt, Minnetrista; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; and Sue Shuff, Minnetonka. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; and Judd Harper, Administrative Technician.

Members Absent: Dan Baasen, Wayzata; Ann Hoelscher, Victoria; Rob Roy, Greenwood; Mark Sylvester, Shorewood.

Commercial Marinas: Rich Anderson, North Shore Marina; Aaron Bean, Beans Greenwood Marina; Jerry and Terri Biedler, Caribbean Marina; Ed Lethert, Caribbean Marina; Dave Briggs, Wayzata Marine; Mary Beth Buffington, Tonka Bay Marina; Bert and Carmella Foster, Wayzata Yacht Club; Beth Frampton, Wayzata Yacht Club; Doug Fredin, Howards Point Marina; Jim Gilbert, James H. Gilbert Law Group; Robert Holz, Excelsior Bay Harbor; Gabriel Jabbour, Tonka Bay Marina; David Kirkland, North Shore Marina- Smiths Bay; and Roxanne Rockvam, Rockvam Boat Yards.

3. APPROVAL OF AGENDA

Green proposed two changes to the agenda. First, Jim Doak has been recently appointed by the City of Woodland to the LMCD Board and he needs to be sworn in. Second, he recommended adding the Audit of vouchers for period of 2/1/14 - 2/15/14.

MOTION: McDermott moved, Hughes seconded to approve the agenda as amended.

VOTE: Motion carried unanimously

Green asked LeFevere to administer the Oath of Office to Doak, in which he did. He was welcomed back and seated as a representative to the City of Woodland.

MOTION: McDermott moved, Shuff seconded to approve the Audit of vouchers (2/1/14 - 2/15/14) as submitted.

VOTE: Motion carried unanimously.

4. OTHER BUSINESS

A. Possible Changes to LMCD Code, presentation from Lake Minnetonka commercial marinas (follow-up from September 25, 2014 Board Workshop)

Green stated that Chair Baasen was unable to attend this meeting due to a conflict. Therefore, he had talked to him earlier in the day relating to this meeting. Baasen has communicated that the purpose of this agenda item was to allow the commercial marinas an opportunity to present their proposals to the LMCD. Baasen encouraged the Board to be good listeners and to ask questions, if needed, for clarification on their proposals. Green asked for a representative to speak on behalf of the commercial marinas.

Mr. Jim Gilbert stated that he was in attendance representing practically all of the commercial marinas and yacht clubs on Lake Minnetonka. He thanked the Board for their public service to Lake Minnetonka and circulated a packet of information to the LMCD, in which he requested that it be made part of the record for this meeting. A summary of his comments were as follows:

- Most of the commercial marina and yacht club facilities have operated for years. He believed their staff are professional and trained, in which they provide a valuable service to the Lake Minnetonka residents.
- The purpose of this agenda item is to request some changes to the LMCD Code for commercial marinas and yacht clubs. A number of his clients are in attendance at this meeting and he encouraged discussion with them on questions after he completes his presentation.
- This proposal has taken over a year to prepare for consideration by the LMCD Board. The document circulated was the result of a number of meetings with his clients (noting that he had over 40 pages of notes of possible recommended changes). The document has been prepared and distilled for items and issues that the commercial marinas and yacht clubs collectively deemed to very important for their businesses.
- The changes for consideration include the special density license (SDL) ordinance, reconfiguration of non-conforming uses, new license standards, grandfather provisions, and the authorized dock use area (DUA).
- There have been a number of changes since the original LMCD Code was adopted in the late 1960's. First, four marinas have gone out of business (Gayle's, Grays Bay, Stubbs Bay, and a portion of Cochrane's). Second, the boat industry has changed over the years. In particular, the standard width for a boat has changed from 8 feet to 8.5 - 9 feet. This impacts the size, dimensions, and the need for reconfiguration without changing the number of boat storage units (BSUs) at any given marina.
- The proposed amendments to the LMCD Code take into consideration current conditions and the unique roles that commercial marinas provide on Lake Minnetonka (an intrinsic value). In addition to the slip customers, the residents and the cruise boats on Lake Minnetonka benefit from the existence of commercial marinas, as well as the first responders.
- He recognized that this was the first time that the LMCD has had a chance to review the packet of information circulated. The preparation of this information has been a work in progress and further fine tuning was taking place by his clients as early as yesterday. Additionally, he wanted to make sure that all discussion is open and comply with the Open Meeting Law. He hoped to move this process forward as soon as possible.
- The consensus of his clients is that: 1) there is a need to recognize market demands and navigation needs, 2) there is a need for greater flexibility on minor amendments that do not result in exorbitant expenses and delays, and 3) there is a need to bring grandfathering situations current and up to date (January 1, 2014).
- He stated that he has lived on Lake Minnetonka for over 25 years and he has benefited, as well as most Lake Minnetonka property owners, on the existence of commercial marinas (i.e., fueling and customer service)

- The proposed changes to the LMCD Code are seeking a more realistic and practical approach for commercial marinas. Additionally, he believed that the proposed changes are in harmony with the safety, health, and environmental concerns that the LMCD has always been concerned about.
- He reviewed the following proposed amendments to the LMCD Code:
 1. Code Section 2.01 (DUA)- An exemption from length restrictions for commercial marinas and yacht clubs on the 100 foot allowance (in existence). This is proposed to change to up to 200 feet (with a number of other requirements to take into consideration). He communicated that the majority of the commercial marinas are already constructed beyond 100 feet.
 2. Code Section 2.015 (Reconfiguration of Non-Conforming Structures)- The proposed change is to provide the Executive Director greater discretion on approving minor changes at the staff level. This change would provide for greater flexibility to his clients, as well as reduced costs to his clients and the LMCD.
 3. Code Section 2.03 (Multiple Docks, Mooring Areas, Commercial Docks, and Launching Ramps)- The proposed change would classify commercial marinas and yacht clubs separately.
 4. Code Section 2.05 (SDL)- There is a need take into consideration the inherent amenities already provided by the commercial marinas and yacht clubs. The proposed change would provide an exemption from providing additional public amenities and these facilities would not be subject to providing the public amenity requirements spelled out in the LMCD Code. He questioned whether the public amenities spelled out in the Code add value to the community.
- He entertained questions and comments from the Board.

Green stated that he appreciated the effort by the commercial marinas in preparing the packet of information for the LMCD. He asked for feedback or questions from the Board.

Morris asked for clarification on what would be defined as a "minor change" by the Executive Director.

Gilbert stated that some of the issues and disputes that have arisen over the years are a result of a dock being off six to 12 inches from its approved location. In other cases, additional poles have been installed for safety purposes that are not detailed on an approved site plan. His clients believe that more common sense within an envelope would improve the situation.

Morris stated that everyone has a different definition on what a "minor change" is and he did not want to create ambiguity in the LMCD Code. Additionally, he did not want to create additional problems for the commercial marinas in the future.

McDermott stated that the proposal for a "minor change" may cause more issues for the Executive Director. In particular, the Executive Director could conclude that a proposed change is "minor" and the Board could interpret it differently.

Gilbert stated that there are constraints included in the proposed ordinance amendment for the Executive Director to take into consideration for "minor changes."

LeFevre stated that if the LMCD were to consider changes to the LMCD Code for "minor changes," the

Board would need to define what is minor. Nybeck has previously forwarded "minor change" applications to the Board for proposals that meet and do not meet the criteria that is outlined in the LMCD Code. He believed that it would be more beneficial for the Board to discuss the big picture rather than the language proposed. In the proposed amendment for grandfathered situations, it appears that existing facilities would be allowed to expand. He questioned whether there would be an objection for the same consideration for new facilities.

Jabbour confirmed that he would not be opposed to that.

LeFevere stated, at previous meetings on this topic, a number of Board members have communicated an understanding on the value of commercial marinas. There are some accommodations for commercial marinas in the current LMCD Code that other sites cannot take advantage of; however, he recognized that additional accommodations could be made. He stated that there are different types of commercial marinas and he asked for clarification of whether these accommodations should apply to all marinas.

Jabbour stated that he believed the accommodations should apply to all commercial marinas because they all provide amenities to the public. For example, the owner of Lindbo Landing operates a marina and lives on the site. At this facility, Lindbo Landing provides a major amenity to Big Island, which is a land site for the majority of the residents. He believed that all of the commercial marinas provide unique amenities to the public.

LeFevere asked for clarification of whether a facility that rents slips should be considered a commercial marina for all purposes.

Jabbour responded yes.

LeFevere stated that one of the justifications to allow commercial marinas to construct out to 200 feet from shore is the protection of the littoral zone. This would seem to be a protection if the dock structure were abandoned and moved out. He asked for clarification on this.

Jabbour stated that protection of the littoral zone might be true in some instances by allowing docks to extend out to 200 feet (citing examples of marinas on Lake Minnetonka).

Anderson explained how allowing cluster docks to extend out to 200 feet at the North Shore Marina site on Tanager Lake would be of benefit to the littoral zone.

Jabbour stated that the proposed changes to the LMCD Code would provide greater flexibility for public safety and welfare (i.e., replacing one to two foot wide fingers). The 100 foot contour line for dock lengths may be appropriate at some sites (and not other sites). He believed that he was entitled to double the density at his Excelsior Bay site, per the LMCD Code, and he should be allowed to construct docks out to 200 feet.

Anderson stated that allowing docks to be constructed beyond 100 feet may address prop dredging at some sites.

McDermott questioned why commercial marinas and yacht club have been combined for the proposed changes. He believed that the business model for these two types of facilities is different.

Jabbour stated that they would like to focus on minimizing changes and these two types of facilities are currently categorized together.

Foster stated that he has been chairman of the Wayzata Yacht Club (WYC) dock committee for a number of years. He supports the changes proposed by Gilbert and requested one additional change. WYC and the abutting Wayzata Community Sailing Center site have a restriction that allows for a maximum of one unrestricted watercraft (smaller sailboats) stored on land for each 15 feet of continuous shoreline. He believed that this should be deleted.

Klohs stated that it appears the primary proposed change is to allow docks to be constructed to 200 feet, yet taking into consideration side setback requirements and navigation. He believed that allowing a dock to be constructed out to 200 feet would make sense in some circumstances (based on the uniqueness of the site).

Jabbour provided a historical overview of the LMCD Code relating to DUA length restrictions and storage of watercraft at residential sites. Furthermore, he commented on the potential watercraft storage at municipalities (i.e., the City of Mound). He believed that the commercial marinas are a major partner of the LMCD and he requested the Board to think five, 10, and 50 years into the future.

LeFevere asked for clarification on whether the proposed amendments would allow for additional density.

Gilbert stated that the commercial marinas are not requesting additional density beyond what they are currently entitled to.

Babcock stated that there are a number of situations where changes are made without the proper approval (providing for staff's observation and involvement). This results in changes being approved after the fact and he believed that this needed to change.

The Board continued to discuss this agenda item at great length. A summary of this discussion was as follows:

- Klohs and Hunt believed the proposed changes were reasonable.
- Green stated that he believed the Board should accept the proposals, schedule a future Board meeting, and discuss the issues and possible unintended consequences.
- Hunt stated that there is a need to better define commercial marinas.
- Babcock stated that he would like to have discussion on the consequences when a change is made without the proper approval from the Executive Director. He expressed support for the current marina operators and how they have operated ethically; however, this has not always been true.
- Carlson stated that he believed market demands and the ability to secure an annual license from the LMCD should take care of some concerns about changes being made that are not approved.
- Klohs stated that approved site plans have improved dramatically because the site and dock construction are documented on a survey.
- LeFevere stated that should the Board move forward with the proposal, he believed that there is a need to better define commercial marinas. There are multiple locations in the LMCD Code that reference commercial docks and commercial marinas.

- Morris questioned whether slips would get longer if the proposed changes were adopted. Feedback from Jabbour and Briggs believed that this would be driven by the market.
- Babcock stated that the figures he was aware of are quite different from those proposed this evening by the commercial marinas (providing for neither figures being right or wrong). He did not believe that they would be reconciled at this meeting. The primary change proposed at this time would possibly be a larger envelope where docks could be reconfigured. He believed that this was the point raised by Morris and there is a need for the Board to have a chance to further review and discuss the proposed changes at separate meeting.
- The consensus of the Board was to schedule a Workshop for Wednesday, February 26th (7:00 p.m. at Wayzata City Hall). A Regular LMCD Board meeting will be scheduled for the same evening starting at 6:00 p.m. and should be concluded by 7:00 p.m. There was discussion by the Board that some direction on how many facilities are constructed out to 200 feet as well other detailed information (i.e., the number of slips and whether the facilities are maxed out on numbers) would be of benefit.

The meeting was recessed at 8:33 p.m. and reconvened at 8:43 p.m.

B. Discussion of 2014 Watercraft Inspection Options

Green asked Nybeck for background on this agenda item.

Nybeck stated that watercraft options for the 2014 season were discussed at the January 17th AIS Task Force Meeting. A similar spreadsheet for three options was discussed at this meeting (although it was fine-tuned some). There was a discussion on problems associated with how data was collected in 2013, with a recommendation that tablets be purchased for 2014. With regards to the type of program, the Task Force believed that this was a policy decision for the LMCD Board. He provided a detailed review of three options, including associated costs, for the Board to consider. These included: Option 1- a similar program to 2013 contracting with Volt Workforce Solutions (with an additional 96 hours for a roaming inspector and a seasonal LMCD employee for supervision); Option 2- the same program as Option 1, with the inspectors being seasonal employees of the LMCD; and Option 3- allowing for a partner or another stakeholder to assume project management (with the LMCD having the ability to provide grant funds). He entertained questions and comments from the Board.

The Board discussed this agenda item at length, with a summary of the discussion as follows:

- How the use of tablets would lead inspectors through the process for MN DNR survey information. There was a discussion on the specification requirements for tablets to support the Minnesota Department of Natural Resources (MN DNR) application.
- What invasive species are not currently in Lake Minnetonka that watercraft inspectors could focus on (quagga mussels, hydrilla, and spiny water fleas).
- The majority of the watercraft being inspected (estimated at 70 percent) is watercraft that primarily uses only Lake Minnetonka.
- Potential unemployment liability to the LMCD for Option 2 and how this could be quantified. It was estimated that 10 to 12 seasonal employees would need to be hired for the hours proposed in this option.
- How the watercraft inspections coordinated have changed over the years, with a number of other organizations getting more active in recent years (i.e., Minnehaha Creek Watershed District). There was a discussion of economies of scale and whether the LMCD should continue to be the

project manager for Lake Minnetonka watercraft inspections. A number of Board members believed that the LMCD should not continue beyond 2014 as the local lead organization for inspections.

- Whether the LMCD could contract with the MN DNR for additional watercraft inspections.
- Whether the MN DNR would be willing to supervise non MN DNR watercraft inspectors (i.e., Volt employees).
- The concept of a regional watercraft inspection program (including a regional watercraft inspection program currently proposed by the Coalition of Minnehaha Creek Waters).
- The consensus of the Board was to discuss this further on February 26th. Action items included:
 1. Staff was to check with the MN DNR on the possibility of the LMCD contracting with them in 2014 for additional inspection hours (or possibly the future);
 2. Staff was to check with the MN DNR on the idea of them supervising Volt watercraft inspectors in 2014; and
 3. Staff was to prepare a draft Agreement to contract with Volt in 2014 for Option 2.

Prior to adjournment, there was further discussion of how to structure the February 26th Board Meeting. The consensus of the Board was to schedule it as a regular meeting, starting at 7:00 p.m., with the first agenda item being continued discussion of the proposed changes to the LMCD Code by the Lake Minnetonka commercial marinas.

5. Adjournment

There being no further business, the meeting was adjourned at 9:21 p.m.

Jay Green, Vice Chair

Andrew McDermott, Secretary