

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, July 23, 2014
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Jay Green, Mound; Andrew McDermott, Orono; Gary Hughes, Spring Park; Jeff Clapp, Tonka Bay; David Gross, Deephaven; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Ann Hoelscher, Victoria and Anne Hunt, Minnetrista

3. APPROVAL OF AGENDA

Baasen asked the Board to consider agenda item 9B, "Staff update on current Lake Minnetonka water levels," directly after the approval of minutes, agenda item 5.

Nybeck asked that any motion to amend the agenda include the removal of agenda item 5, "7/9/14 Regular Board Meeting Minutes" as they are not complete (providing for two sets of minutes to be considered at their August 13th meeting).

MOTION: McDermott moved, Green seconded to approve the agenda as amended, making the changes noted above.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

There were no Chair announcements.

9. OTHER BUSINESS

B. Staff update on current Lake Minnetonka water levels

Baasen asked Nybeck for an update on this agenda item.

Nybeck stated that today's water level reading of 930.25' will be considered the first of three consecutive readings below 930.30' required to terminate the Emergency High Water Declaration (EHW) for the entire Lake. He prefaced that the termination of EHW Declaration will immediately place the previously enacted High Water (HW) Declaration (600' from shore and various surface water areas) in effect. He directed the Board to a number of public comments provided within their handout folders; many of which would like the Board to waive the three day termination requirement of the EHW Declaration. He acknowledged the consideration of that request would be a policy decision of the Board that would offer the termination 24

hours in advance (Thursday vs. Friday) of any unchanged procedures.

Baasen asked LeFevere to advise the Board on whether the three day termination procedure could be amended.

LeFevere confirmed the Board can repeal the ordinance; reiterating Nybeck's comment that the HW Declaration would immediately go into effect.

Nybeck provided an overview of the HW Declaration minimum wake map (600' from shore of the entire Lake and various surface water areas). Furthermore, he confirmed the termination of this Declaration documented the Executive Director may do so after three consecutive readings below 930.00'.

Green questioned if the appeal could be considered without notice to the public.

LeFevere stated that the Board can set their agenda (unless it is a special meeting) as long as the Open Meeting Law is met. He stated this is a little different than what the member cities are subject to in repealing/amending their ordinances. To that end, the LMCD is simply free to make the legislative action currently being discussed.

Morris questioned how the repeal would go into effect.

Nybeck stated that if the Board did not repeal the EHW ordinance and the water levels continued to recede, this Friday would be the third consecutive reading below 930.30'. Staff would be prepared to submit a press release by mid-day, follow-up with media/possible interviews, as well as change signage and drop box material. One advantage for repealing the EHW ordinance is that it would provide staff additional time to complete those tasks and get the word out for the upcoming weekend.

Baasen stated the special Board meeting to enact the EHW Declaration was called under extreme conditions (930.65'). We are currently at the level to re-instate the HW Declaration (930.25') and he solicited the Board's interest in leaving the ordinance as is or consider repealing of such.

Green questioned the repealing of the EHW ordinance Friday morning and whether this would provide staff adequate time to complete the termination logistics. He believed that getting the word out mid-day was difficult.

LeFevere confirmed the Board could terminate the EHW Declaration at any time in the future; providing staff a predetermined amount of time to prepare for such.

Zorn concurred with Green (including the need to provide a day for staff to properly prepare for such). With that said, she recognized an ordinance is set for a specific reason and expressed concern about repealing the ordinance too quickly (setting precedence).

Klohs expressed an interest in receiving testimony from those in the audience.

Gross believed the press release should be carefully worded and thought out (documenting the fact that

lifting the Declaration does not give permission to make big wakes and that the watercraft operators are still responsible/accountable for such).

Clapp stressed that the termination of the EHW Declaration will be known by all Lake users, with or without the press release, as they will be communicating amongst themselves.

Baasen referenced the public's comments (pros and cons) to the EHW Declaration. It is important to stress respect for the shoreline and safety for all. He invited those that wanted to speak on this issue to address the Board.

Mr. Scott Tripp stated that he was the race director for the Open Water National Championship Swim Race that will take place this Saturday, in which 70 participants are registered between the ages of 22 and 66. It is a terrific five mile race that has operated for 28 years (with the escort of canoe and kayak spotter boats). This year's route will be from Wayzata to Excelsior, in which he expressed concern for the participants safety should the EHW ordinance be terminated prior to Saturday. He asked that all consider documenting this event via media, press releases, marina operations, launches, etc. He further documented there is nothing he would like more than the wake restrictions to be lifted, as well as the increase in business usage around the Lake; however, he must put the safety of the participants first. Lastly, he stated participants will be arriving from all around the world; recognizing the spotlight Minnesota will be receiving.

Hughes asked what time the event will start.

Tripp stated they have moved the start time (for safety purposes) up to 6:00 a.m. (providing for the last swimmers to finish around 12:30 p.m.). He acknowledged the fastest swimmer will complete in about 3.5 hours. Furthermore, he stated he moved the original start time up an hour and changed the starting location to Wayzata as there is additional protection from that point to Spirit Island.

Baasen asked if there has been an incident in the past that brings him to the Board this evening.

Tripp confirmed that there has not been a past incident and had this season offered normal water levels, he would not be in attendance. However, the expected influx in boats and that safety for the participants is his number one concern.

Baasen reminded Tripp that the EHW ordinance that is in place (whether repealed or left to terminate as written) will most likely be off by Saturday. He thanked Tripp for his comments.

Mr. Aaron Bean, owner of Beans Greenwood Marina, stated that his customers and lakeshore residents are ready to get things going. Regardless of Tripps concerns above, he believed that the termination of the EHW Declaration will move forward and preparations should be initiated.

Mr. Tom Palm, owner of Tonka Papparazzi, stated that he ran a contest on when the Board would terminate the EHW Declaration (tracking this month's water levels, cloud cover, and precipitation). He documented (within the month of July) water levels not increasing .36 inches of water on any day (acknowledging the water level is .6 inches below the threshold) and after today, he predicted it will be

over an inch. He assessed what it would take to lower the water level to 930.00 feet (three consecutive readings below that mark to terminate the HW Declaration that would immediately go into effect once the EHW Declaration was terminated).

Meyer stated he was hesitant to repeal the EHW Declaration ordinance, which would go against the criteria of such (acknowledging the Board provided the exception for Minnesota Wakesurf Championship special event and he was unsure he wanted to go down that road again).

Baasen questioned the Board's interest in whether the EHW ordinance should be repealed 24 hours prior to offering the current termination process. He further stated this is a matter that will affect the entire Lake (acknowledging Gross' comment above).

Roy stated that the 600 foot requirement for the HW Declaration is unenforceable. He recommended the Board consider waiving the three day termination policy for that Declaration, as well. In regards to the EHW Declaration, he would follow Green's lead to repeal the ordinance effective midnight Thursday.

Baasen confirmed that the Public Safety Committee is currently reviewing the HW Declaration ordinance.

MOTION: Roy moved, Zorn seconded to adopt LMCD Ordinance 220 as amended, repealing the EHW Declaration (LMCD Ordinance 219) effective 12:01 a.m., Friday, July 25, 2014.

VOTE: Ayes (11); Nayses, (1, Gross); motion carried

6. APPROVAL OF CONSENT AGENDA

McDermott moved, Green seconded to approve the consent agenda as submitted. Item so approved included Audit of vouchers (7/16/14 – 7/31/14).

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

Mr. Tom Frahm, 3105 Northshore Drive in Orono, stated that he was the president of the Lake Minnetonka Association (LMA). He clarified recent communication submitted to the LMCD relative to their disagreement in approving an exception for a special event during the inaction of an EHW Declaration. He stated they did not have a concern with the EHW ordinance itself but the Board's action in cutting a portion of that ordinance out and providing special privileges to a party that no one else received. He stated he was okay with the repealing of Ordinance #220 (above) but would have preferred the Board let it terminate as written. He reiterated that those he represents did not feel it was fair to allow that privilege to one and not all (acknowledging there are residents who bear the financial burden of protecting their lake shore and commercial operations that are hurting). To this end, he wanted to clarify that they were not against lifting the EHW Declaration.

Morris stated that he understood why Frahm, and those he represented, may have disagreed with the Board's action in approving an exception for the special event. Right or wrong, he believed that the way the communication was submitted to get their point across was misguided and not helpful in maintaining relations around the Lake (believing a dialog with the Board via attending the meeting would have been more

effective).

Frahm stated that he could not answer as to why he was not at the last meeting. However, he did say that he knew there was an agenda item schedule to discuss the respective special event but he had "no clue" the Board was going to provide a permit for it to proceed. The LMA is trying to protect the Lakeshore owners as they are the ones taking on the expense in protecting the shoreline. He believed the Board's action opened the flood gates without much time to personally contact the Board and express their feelings. He was sorry Morris felt that way but concluded that they did what they believed was right in prohibiting additional problems (acknowledging watercraft operators would start going fast; "those people can do it, we can do it").

Morris reiterated that he was not arguing (right or wrong) the LMA's feelings towards the action taken, but that he expressed concern about how they communicated their belief. Furthermore, he stated that he appreciated that the LMA had concerns to bring forward.

Frahm asked how the LMA was supposed to effectively communicate their concerns in five days.

Morris pointed out that they were able to summon up attorneys in less than five days to get a change made (offering to start with a telephone call to him directly next time).

Baasen, thanked both for their comments.

Mr. Gabriel Jabbour, 985 Tonkawa Road in Orono, stated that he was part of the LMA's recent action and felt he had nothing to apologize for. He has spent the last 45 years living in the United States participating in thousands of local community matters (at the local, merchant, and Federal level), including the purchase and custodianship of Big Island. He confirmed that the action pursued by the LMA was to obtain legal counsel Peter Johnson to sue the LMCD, in which he secured his own funds for such action. He initiated that action based on the fact that he immensely cares about the community and Lake Minnetonka. He viewed the Board as having passion for Lake Minnetonka with some that do not participate. He believed Morris' comments hit the bullseye, in that the LMCD has a serious, serious governance problem. He further stated that, as the custodian of Big Island, he sent an email to the LMCD, in which not one staff or Board member responded (confirming he eventually spoke on the telephone with Morris). The LMCD has existed because of the kindness/goodness of a hand full of people and once those individuals are gone, the LMCD is going to have a difficult time. In regards to a June 14th special event incident whereby sailboats capsized in high winds, he stated he and Rich Anderson brought the boats back to shore (not the Water Patrol) because former LMCD Board Member Chris Jewett called him to do so. He, Jerry Rockvam, and representatives from the LMCD Board worked very hard to get two increment officers assigned to Lake Minnetonka. Two years ago those two staff members were diminished, in which staff did not inform the Board of such. Therefore, he brought that to the LMCD Executive Committee himself, in which those two officers will be reinstated. He stated that he will no longer bring the Board up to speed. He believed the LMCD had two options; rejuvenate or liquidate. He believed that the LMCD is in a liquidation mode based on the Board not being informed of matters which prevent them from doing their job. He has started a website named, "Lake Guardian," in which the Board can find out what is happening on Lake Minnetonka in real time. He believed that if the LMCD received his prior email, than it is painfully obvious that you did not have enough information to make an educational decision. Additionally, he stated that if the LMCD continues to get challenged in court and loses, it diminishes the authority of the LMCD. He confirmed that is what happened at the Water Patrol (they got challenged and the

volunteers decreased). The Water Patrol previously had: 1) 55 volunteer special deputies and now have 24 and 2) 11 gun holders and now have 6 (two of which the marina operators paid for a couple years in a row). He asked the Board if they knew that and if not, why.

Baasen stated the LMCD always appreciates citizen comments and we do the best we can to respond to emails once received (recognizing we can all do a better job). There is a Board that represents 14 communities (recognizing the member cities have a Board of five), in which they do an admirable job in representing. He stated the Board is working to improve the Lake, including working directly with the Sheriff's office to provide adequate coverage on the Lake. The LMCD appreciates the support the LMCD personally receives from all stakeholders and, if not recognized, we asked that you come forward.

Mr. Jerry Rockvam, owner of Rockvam Boat Yards in Spring Park thanked the Board for the action they took above. He expressed puzzlement in the Board's action to allow a special event to proceed should the water level reach 930.50' as compared to their action above in repealing the EHW ordinance in a couple days. He believed the Board has left themselves wide open for arbitrary consequences.

Mr. John Neuens, CEO for FuelBote, LLC, made the following comments:

- He was representing a perspective owner that would like to operate a fuel vessel on Lake Minnetonka. He directed the Board to a handout offered within their folders. He stated this business has been operating for seven years in Wisconsin, Florida, North Carolina, as well as other areas.
- On a side note, he had stated that the lake he lives on in Wisconsin previously went through the difficult trials of an EHW Declaration (acknowledging the comments noted above).
- He stated that the Minnesota Fire Marshall (MFM) reviewed the National Fire Protection Agency Codes (NFPA) and International Code Council (ICC); concluding that operation of such is not prohibited. Additionally, he stated that the State of Wisconsin has defined a permitting process for this use, in which the permit requires the business to go through a clarification process with the ICC (which has been initiated).
- He read LMCD Code Section 3.01, Subd. 18, "Commercial Sales on the Lake," and respectfully requested the Board consider a variance or perhaps a ruling that would acknowledge the proposed business is not considered a "concession" (believing the proposed business is more akin to a shoreline commercial service, i.e., installation of piers, rip rap, etc.).
- Their business model provided for the following:
 - Travel pier to pier (no emergency service); operating at no more than seven knots.
 - Their vessel is stainless steel (with a Department of Transportation approved tank) that is designed to meet all code requirements, including the Code of Federal Regulations (CFR) of the United States Coast Guard (USCG).
 - The operation is a very safe weekday/daylight operation.
 - Current customers love the business, in which they save funds in not traversing to a marina for their needs.
 - The operator is a trained, insured expert in which the vessel is equipped to handle all emergency spills (including capsized watercraft).
 - Use of service is scheduled and paid for via a customer's personal on-line account with electronic payment only (no funds exchanged on site).
 - The vessel drops its studs into the Lake bottom, at which time it is considered a fuel barge for service to any watercraft that is moored on a lift. He stated that the USCG permits this type

of business all over the world, including the ability to fuel underwater.

- To this end, he reiterated his request to receiving a ruling from the Board to operate such a business (possibly on a trial run basis) and that he would be forwarding documentation from the MFM's office for the Board's review, as well.
- He entertained questions and comments from the Board, in which he confirmed: 1) Lake Minnetonka would be the first Minnesota body of water to approve the proposed business and 2) the MFM consulted with representatives of the Minnesota Department of Natural Resources (MN DNR).

Nybeck stated that Neuens telephoned the office a few months back, at which time he communicated that it was staff's interpretation that the proposed business would be prohibited by the LMCD Code (as outlined above). After reviewing this communication with Baasen, a decision was made to allow Neuens to provide a brief overview of the business via Public Comments, after which the Board could consider a scheduled agenda item and/or additional information for further consideration.

Neuens reiterated the proposed business is very much outside of a concession type business that could bring safety and congestion concerns to the Lake.

Baasen recommended Neuens work with Nybeck in obtaining additional information for the Board's review. He acknowledged the current LMCD Code prohibits such and the hurdles involved in amending.

8. PUBLIC HEARINGS

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

Baasen asked Nybeck to provide background on this agenda item.

Nybeck directed the Board to his staff memo, dated 7/17/14, at which time he made the following comments:

- Mr. Luke Kujawa, representing EOF Investment LLC (EOF), has submitted a new multiple dock license and variance applications (utilizing LMCD Ordinance 217 for Qualified Commercial Marinas [QCM]) for the reconfiguration of 40 boat storage units (BSUs). The variance application has been submitted for side setback requirements. This facility is designated as a legal, non-conforming site (for both density and dock use area [DUA]) with 240' of shoreline (1:6'density).
- He met with EOF representatives last October after they closed on the property. During recent Board discussions, concern was expressed that staff had not provided the Board specific letters that were mailed to the applicant. He stated that those documents were not provided prior as he confirmed this is the venue to bring those forward. He directed the Board to letters within their packet (10/22/13 and 10/24/13) that summarized their discussion, which is outlined as follows:
 - Management of de-icing at the separate facility on Browns Bay (resolved);
 - Interest from EOF Investments pertaining to permitting process for fuel dispenser on Browns Bay for the boat club boats (resolved); and
 - The south dock on Tanager Lake that was not consistent with approved 1985 variance order (pending).
- A detailed overview of the applicant's proposed changes included:

- Maintaining the approved 40 BSUs; however, reconfiguring them within the DUA for the two commercially zoned parcels that are dedicated for this multiple dock facility. No BSUs are proposed within the DUA for the two abutting sites to the north that are zoned residential and dedicated for this multiple dock facility.
- North Dock- 1) dock length of 199.9 feet and 2) 28 BSUs with dimensions that are 11 feet wide by 28 feet long.
- South Dock- 1) dock length of 97.6 feet, 2) eliminating the south opening BSUs, and 3) 12 BSUs that are 5 feet wide by 14 feet long.
- Maneuvering space for the inside opening BSUs between the two docks has been increased to 42 feet.
- He provided a detailed overview in the relevant LMCD Code Sections pertaining to the applications.
 1. Qualified Commercial Marinas (QCM):
 - A "QCM" is a privately owned, revenue producing business that rents storage for 13 or more watercraft on Lake Minnetonka. A facility does not qualify as a "QCM" unless all rented BSUs on the Lake are freely available to the public without requiring membership in any organization and without providing any priority or preferences to members of any organization.
 - Additional BSUs may be used for purposes other than rental to the general public, subject to the following limitations: 1) no more than 20% of all BSUs may be used for any combination of the following uses (watercraft held for sale by the marina owner, watercraft being repaired by the marina owner, rental watercraft, emergency storage of a disabled watercraft for up to three business days, or BSUs made available under a priority or preference to owners of specified real property under real estate interests created prior to 1995) and 2) no more than the number of BSUs rented to the general public may be used for any combination of the following uses (transient use, storage of commercial or government lake maintenance watercraft, or storage of governmental watercraft for emergency response or law enforcement uses)
 - The maximum density allowed for a "QCM" is one watercraft for each 10 feet of continuous shoreline.
 2. DUA Requirements:
 - Length- Maximum of 200 feet
 - Setbacks- Conforming side setbacks from the extended side site lines must be maintained. However, a process allows for a QCM to request a variance from the LMCD Code.
 - Zoning- The LMCD Code has a provision that does not allow commercial docks to extend across the extended zone line between sites zoned differently by a municipality. However, the Code does not prohibit the water space adjacent to residentially zoned properties from being used for side setback requirements.
 3. Variance from Code:

The LMCD Code allows landowners to apply for a variance from Code to remedy hardships and difficulties. In the past, the Board has considered the following: 1) is the proposed use reasonable, 2) would it be unreasonable to require conformance to the ordinance, 3) is the difficulty of conforming to the ordinance due to circumstances unique to the property, 4) is the problem created by the applicant, and 5) will the variance, if granted, alter the essential character of the locality.
- He provided a detailed overview of staff comments:
 - The proposal would meet the definition for a "QCM". In particular, all 40 BSUs would be freely available to the public without requiring membership in any organization and without providing

- any priority or preferences to members of any organization. The applicant has communicated to staff that: 1) boats associated with Your Boat Club are stored entirely at the facility on Browns Bay, and 2) that BSUs 29-40 will be freely available to the public for the storage of personal watercraft (not associated with Your Boat Club and River Valley Power and Sport).
- The proposal would not be contained within the DUA for this site. In particular, conforming side setbacks would not be maintained from the southerly extended side site line. To address this, the applicant has submitted an application for variance from the LMCD Code.
 - In 1985, hardships and difficulties were established when dock length and zero foot side setbacks variances were approved by the LMCD for Windward Marine. Estimated dock lengths for the north and south docks were 152 feet and 115 feet, respectively. Side setbacks were zero feet from the southerly extended side site line and zero feet from the extended northerly side site line for the northern property zoned commercial. However, two additional properties had shoreline dedicated to this multiple dock license that are not zoned commercial. Dock structures constructed and maintained at this facility were to be consistent with the approved site plan. Staff believed that the south dock has not been constructed and maintained consistent with the approved site plan for several years, which includes multiple owners of this property (North Shore Marina East and Browns Bay LLC). Staff believes that this was primarily because of inadequate maneuvering space for the inward opening slips for the north and south docks contributed to this.
 - When considering this application, staff believed the Board should take into consideration that approximately 50 percent of the DUA for this facility cannot be used for docking and boat storage because the two north properties are zoned residential. However, the shoreline for these two residential properties has been dedicated to the Browns Bay Marina (Site 2). The zoning restriction for use of the DUA creates a particular hardship or practical difficulty; however, the Board should decide whether the changes proposed are reasonable.
 - The Board needs to consider whether the proposal for a zero foot setback from the southerly extended side site line extension is reasonable. Factors for the Board to consider include: 1) the approved 1985 variance identified hardship and difficulty at this site for a zero foot side setback that was 115 in length from the shore, 2) the south opening BSUs currently approved have been eliminated, which should assist maneuvering space for the abutting property owner to the south, and 3) the proposed maneuvering space (42 feet) for the inside opening slips maintains the minimum standard that staff understands (150% of the length of the longest slip).
 - In exercising its authority to grant (with or without modifications) or deny, the Board may consider a number of subjective criteria, in which he provided an overview of.
 - The proposed applications were submitted to the City of Orono (city) and Minnesota Department of Natural Resources (MN DNR) on July 1st, with comments due on July 15th. In the enclosed memo, dated 7/15/14, city Senior Planner Mike Gaffron has recommended approval of the proposed layout and extension (further explanation is outlined in the memo). No comments have been received from the MN DNR.
 - Comments (within the packet) were received from North Shore Marina, the abutting neighbor to the south, on 7/17/14.
- Staff believed that the proposal is reasonable and recommended they direct LeFevere to prepare draft Findings of Fact and Order to approve the new multiple dock license and variance applications, subject to the following conditions:
 - No watercraft storage is allowed along the south side of the main walkway for the south dock;
 - The four parcels, in which the 929.4' shoreline has been dedicated to this multiple dock facility,

- shall remain in common ownership;
 - Dock installation and watercraft storage must be consistent with the approved site plan;
 - The approved dock plan, in particular the south dock, shall be removed and brought into compliance within 30 days after Board approval;
 - The submittal of an as-built survey, within 30 days, after the entire dock is brought into compliance with the approved site plan; and
 - Securing the necessary permits and approvals from the city, MN DNR, and other governmental jurisdictions.
- He entertained questions and comments from the Board.

Baasen questioned if the increase in some of the slips from 24 feet to 28 feet would increase the current navigational concerns. Additionally, he asked whether the number of BSUs would remain the same.

Nybeck stated that he believed the navigational concerns from the approved variance for the inside opening slips have been addressed with increased navigational space. He confirmed that the number of BSUs remained unchanged; however, the south dock would be for the storage of personal watercraft (PWC).

Green questioned if the applicant would be renting the PWCs.

Nybeck stated that he posed that question upon receipt of the application. He offered the options available to qualify for a QCM, in which he confirmed they can have 20% of the 40 (eight) that would not be rented to the public. He stated that the south dock has space for the storage of 12 PWCs.

Green stated that if the 12 BSUs where the PWCs could be stored are not freely available and rented to the public, that would provide for 30% of their business and the applicant would lose their QCM status, in which Nybeck concurred. Additionally, he stated the previously submitted site plan offered a 24 foot extension of the north dock structure, which would have provided for a setback that, he believed, was needed.

Nybeck stated that the proposed zero foot setback to the south was a point of discussion the Board may want to have.

Gross questioned the applicant's reasoning for a hardship (requesting clarification that the ordinance is a reason for the hardship and submittal of the variance application).

LeFevere stated that every application for variance is a case where problems come into play while complying with the ordinance. The question for the Board is whether the imposition of the LMCD Code caused a practical difficulty or hardship due to circumstances that are unique to the property (i.e., converging lot lines and, in this case, the inability to cross a zoned line). He confirmed that the ruling has been in place for over 30 years and did not recall another case where there has been a piece of property that constricted the right of a marina facility. To this end, he advised the Board that the applicant's reasoning for a hardship was consistent with the LMCD Code (documenting the applicant's DUA was substantially reduced based on what the LMCD Code allows for).

Zorn stated that she was having a hard time understanding the documented hardship (based on the fact that they purchased the property knowing that the two lots to the north were zoned residential).

LeFevere stated that whether the site has a documented hardship is up the Board. He cautioned the Board that it is not appropriate to document the applicant had knowledge of the ordinances at the time the property was purchased. He further stated that a hardship goes with the property and that whether the previous owner applied for a variance or not, it does not mean that the hardship does not exist.

Hughes questioned why the applicant is applying for a variance as one already existed for this site.

LeFevere stated the applicant was required to do so based on the Board's recently adopted ordinance outlining the qualifications of a QCM. Furthermore, he stated that the applicant was applying for a shorter dock along the southerly extended side site line than what was previously approved by the initial variance.

Baasen requested confirmation as to: 1) how this matter (the placement of the south dock structure) arose, 2) whether the applicant was proposing to increase the dock structure size to accommodate larger watercraft, and 3) whether the placement of the PWCs on the south dock could be relocated to provide for a setback measurement.

Nybeck confirmed that: 1) this matter was brought to the LMCD's attention prior to the 2013 boating season, at which time the dock was observed during the annual multiple dock license inspection, 2) some BSUs will remain unchanged while others are increased in size, and 3) although staff believed the proposed change was reasonable, it is ultimately the Board's decision to consider such.

Baasen invited the applicant to address the Board.

Mr. Rick Virnig, legal counsel for EOF Investments, LLC (EOF) doing business as Browns Bay Marina (named principals present included Michael Jellish, Luke Kujawa, and John Wooden). He made the following comments:

- He spoke in favor of the variance request and pointed out that the applicant accepts and acknowledges the authority of the Board.
- He outlined three issues, in which he recognized that the applicant did not concur with one of them. These included: 1) the applicant believed that the south dock structure was conforming and has been for the 34 years that this configuration has existed (as compared to the Board's interpretation that it is a non-conforming dock structure), 2) it is the height of irony that the Board has consistently renewed the multiple dock license during the structure's existence with four different owners, in which no complaints or documentation of non-compliance existed during those 34 years, and 3) EOF received the winning bid to purchase that property out of receivership with the understanding that the prior business was a legal and lawful operation. The competing bidder, Richard Anderson, was a prior owner who sold the property to a Mr. MG Kaminski, after which the property went into receivership.
- He spoke with LeFevere this date and submitted that a person could stand on the southern extension line of the property and reasonably interpret that the southern dock structure provided for conforming use by both EOF and North Shore Marina.
- With regards to Zorn's comments above, he confirmed that EOF purchased the two residential properties to the north prior to purchasing the marina. Since that time of purchase, EOF was informed of the southerly dock structure's non-compliant status, in which they proceeded to explore the ability to re-zone either one or both residential properties.

- The city planning commission and zoning staff recommended that at least one of these two properties could be re-zoned commercial. Should that happen, EOF has offered (in the spirit of good business and the direction of the Board) to move their docks further north for the operation of their business that they thought they purchased.
- The city council tabled the motion to re-zone (in spite of their staff's recommendation). In the event that request is not approved, the applicant needs and wants the variance that is before the Board.
- The currently approved variance (providing for a zero foot side setback) has been in existence since 1985. Since this approval, there has never been a documented complaint or communication that the southerly dock was deemed non-compliant until EOF purchased the property of out receivership. Furthermore, EOF has diligently been working to resolve this matter (via the request for variance and/or rezoning) since they brought the property. He stated that if the variance is granted, the setback does not change and the dock size is reduced. If the re-zoning is granted, the applicant is willing to relocate the docks to the north.
- In summary, he outlined the following three options for the applicant: 1) defend their legal integrity in keeping the current configuration that has been in existence for 34 years, 2) receive city approval to rezone the residential properties to the north and shift the dock structures, or 3) receive a variance from the Board (as presented at this meeting). He stated that the third option made the most economical and efficient sense (recognizing that the applicant does not concur that the site is non-compliant).
- He introduced Mr. Michael Jellish who was in attendance to address the Board.

Klohs asked when the rezoning request would be rescheduled for considered by the city . He acknowledged that if approved for such, the variance would not be needed.

Mr. Michael Jellish, an owner of EOF, stated the city tabled their re-zoning request until they receive an update on what transpired at this meeting. Furthermore, he stated that the applications before the Board were offered per the Board's request (for the purpose of seeing a plan) should the re-zoning request not be approved.

Klohs believed the proposed configuration was good and he thanked him for the submittal of the applications. He recommended the Board wait to approve the variance based on the possibility of a re-zoning approval (city staff recommendation) and the expenditures involved.

Virnig requested a moment to confer with his clients.

LeFevere informed the Board that they have the ability to continue the meeting during that conference.

Nybeck stated that he spoke to city staff member Mike Gaffron yesterday. Additionally he attended the city's planning commission public hearing on this topic. At this time, the city council has only received an update from staff on the public hearing and the feedback/comments that the planning commission had. He confirmed that there was not a recommendation by the planning commission to the city council; however, an update was provided to get council feedback on how the planning commission should proceed. Gaffron has recommended that the proposal would require a comprehensive plan amendment and a recommendation has been made for Browns Bay Marina to withdraw the re-zoning request (providing for credit of application fees if a future rezoning application moves forward). To this end, he confirmed the city's decision will take some time.

Virnig reiterated the three potential options (above) pointing out that the re-zoning request could take months.

In summary, the most efficient route would be to proceed with the Board's consideration of the variance application.

Klohs questioned if the applicant was willing to comply with the 30-day reconfiguration condition as outlined in staff's recommendation for the approval of the variance.

Virnig stated the 30-day condition was an impossibility to meet (based on the 30 plus year history of the marina business under multiple lease holders and their established 2014 dock and mooring leases with the current customers). He believed the matter could be resolved by next spring to avoid further legal concerns and requested the Board not impose such a condition.

Jellish stated all owners were in attendance to address the issues they had inherited the day the site was purchased. He offered the following comments:

- The site and respective business has been in operation with the same dock configuration since 1985 (over 35 years). He confirmed that Mr. Kaminski placed the property in receivership after purchasing it from Mr. Anderson in 2007. A purchasing war pursued between EOF and Anderson, in which EOF prevailed in September of 2013. Within 48 hours of buying the marina, that he thought it was fully legal, Mr. Anderson informed them he knew something that we did not and he looked forward to buying the marina after it failed. From that point forward, he believed that a formal complaint was filed and EOF was notified by the LMCD of the concerns.
- He believed it was reasonable to assume EOF would receive a license as the other owners have for the unchanged structures over the past 34 years. To not license that marina is discriminatory, contrary to past practices, and unfair. In asking why they were not going to be given a license, he was informed, that no one at the LMCD was aware that this marina was not conforming because no one ever complained. He believed that no one complained because it works perfectly well the way it is.
- He reiterated Anderson's previous ownership of the property, after which he never filed a complaint (2008-2012). He confirmed Anderson knows them well and he asked himself why they were really here to deal with this matter (acknowledging he was shocked in his filing of the complaint as the license rights come with the property).
- Based on the matters presented herein, EOF sought legal counsel. He has been informed that lot lines are defined by the State of Minnesota (state) and that they do not necessarily extend the side site lines out into the water (supported by a recent case). To this end, he did not believe it was clear that the southerly dock structure was out of compliance. The southerly dock structure is permanent/floating (providing for it being stationary for over 30 years), in which he believed the Law of Adverse Possession may apply.
- No one complained until Anderson, in which he has owned, operated, and sold the property under this configuration. EOF has been in business for 100 years, in which his experience has taught him to always work with government and due process vs. file a lawsuit. Coming into compliance is not an easy task as one cannot move the structures to the residentially zoned property to the north (providing for the marina to become unusable and unsafe).
- The purchase provided for a lease that was to remain in place. Removal of the slips on the southerly dock structure would result in a loss of revenue and marina (acknowledging they want to be compliant).
- Upon ownership, they immediately took care of the de-icing and fuel tank issues. In the meantime they have worked through the current process with the LMCD and city staff (acknowledging they have followed every single timetable/deadline). They believe the best long term solution is to move the re-

zoning request forward, which will take some time. Furthermore, he provided an overview of the applications before the Board that were offered at the LMCD's request.

- He provided an overview of the challenges offered by Anderson since day one. He has come to believe that no matter what they proposed, Anderson would continue to tirelessly work against EOF. Furthermore, he expressed concern for the Board allowing Anderson to speak (with Board response) at a recent meeting, in which he was not notified the discussion would take place (believing he was discriminated against).
- He would like to avoid a legal battle and believed what they have submitted was consistent with the Board's request, as well as the LMCD code of ordinances. He stated the re-zoning process is still active; therefore, he reiterated his request that the Board waive the 30-day compliance condition as EOF will be subject to \$150,000 in construction fees.
- He asked the Board why EOF is different from others, confirmed his interest in working with the Board, and thanked them for their time.

Baasen opened public hearing at 8:52 p.m.

Mr. Gabriel Jabbour, 985 Tonkawa Road in Orono, offered a historical background. One such piece was the initial site plan of the site's multiple dock license that was produced from a public packet dating back to 1981. He expressed disappointment in the presentation of Virnig's facts (acknowledging it was not fair to modify historical facts.) He confirmed the docks in question are floating (offering the construction details of such), that the floating docks for the same facility on Browns Bay were removed for some years and moved to this location to prevent ice damage and that, at one point, the license was relying on shoreline that was not owned by the license holder. He believed the LMCD could not prohibit from having docks on residential sites; therefore, he did not believe the issue of re-zoning will make or break this matter. He informed the Board that the marina owners will adhere to the QCM ordinance and will meet all noted setbacks. He left the site plan offered within his presentation and asked all to know that a dock that may shift over time does not provide constitutional rights for such.

Mr. Rich Anderson, owner of North Shore Marina cited a section of the National Fire Protection Act (NFPA), in which it stated, "all fueling stations shall be accessible by boat without passing through the main birthing area.." and questioned if the LMCD adhered to such an act when the fueling station was approved. He addressed EOF blaming him for their troubles. He offered that a survey was recently completed at the time North Shore Marina (Browns Bay) was approved. That survey documented a dock structure with a five foot non-compliant setback, which was rectified. He referenced discussion of a complaint, in which he stated filing such is the only way one can legally obtain compliance. However, he did not believe he was the main source that initiated this concern (citing staff's documentation of communication to him before that date). He questioned EOF being classified as a QCM based on having two sites to the business operation with communal amenities (i.e., gazebo, restroom, etc.). With that said, he could live with the proposed if it was not for being defined as a QCM and extending their dock structure out 200 feet. He believed EOF could reconstruct their dock within 30 days as they have had all of 2013 to plan for. To this end, he did not think that this application provides for the spirit and intent of a QCM (to stay out of a channel and emergent vegetation and to stay within your setbacks).

Klohs asked for clarification of the site's subdivision.

Anderson confirmed the two residential lots to the north were re-platted but remained as residentially zoned.

There being no further comments, Baasen closed the public hearing at 9:09 p.m.

McDermott requested LeFevere address Anderson's concern as to whether the applicant met the requirements of a QCM.

LeFevere stated that it was his understanding the applicant owned two properties with individual multiple dock licenses. He confirmed that this was not the only facility whereby one entity owns multiple licensed sites (acknowledging that staff was viewing this application as a separate facility). He further confirmed that there may be common amenities.

Green reiterated his request to clarify the use of the PWCs on the south dock.

Mr. Luke Kujawa, an owner of EOF, stated it was his understanding that they can have 20% of the business to offer use as they see fit (acknowledging there are BSUs open to the public). Furthermore, it is their understanding they have the ability to have up to eight PWC that do not have to be rented; however, they do not have plans for such.

Nybeck stated the site was split to two separate licenses via an envelope application that was submitted in 2006/2007 under Anderson's ownership (based on non-continuous shoreline).

Baasen reminded the Board that, at this particular time, they should consider the application before them (without getting involved in individual comments). With that said, the Board offered the following:

- Clarification on what the DUA setback and length restrictions would be should the variance not be granted.
- The belief that the applicant be given time to resolve the pending matters and the request to receive an update from city staff.
- The applicant has made great strides in abiding by what was asked of them. If the Board wanted a different outcome, one should have been offered.
- The need to consider obtaining compliance, in which a temporary approval was recommended and owed to the applicant by the LMCD (with acknowledgment for Anderson's needs to operate his business).
- Consideration of staff's recommendation of the 30-day condition to come into compliance.
- The interest in offering a different configuration that provides for setback relief (with descriptions of).
- That a setback is a setback and questioned if the south dock needed to be removed to provide for such.
- A question of whether there simply is not room for what is being requested. One discussion was to approve a portion of the site plan and allow for expansion should the re-zoning application be approved.

Kujawa stated the variance has been in place since the 1980's and he acknowledged they were utilizing a newly adopted ordinance to extend out to 200 feet (documenting Anderson's comment that the proposed plan is one he could live with).

Virnig reiterated that imposing the 30-day condition would provide for a financial and physical impossibility (acknowledging there has been a zero foot setback in place for 30 years). He provided an overview of what the applicant was currently offering: 1) moving the structure out to the property line as the Board said existed,

2) shortening the south dock, and 3) eliminating the south facing slips. He agreed that if they had a crystal ball it would be of help. He recommended approval of the applications as proposed without the recommendation to come into compliance within 30 days. He confirmed the docks would move further north once the re-zoning application(s) was approved.

Baasen offered one more configuration option and asked LeFevere if it was advisable to offer an extension.

LeFevere stated the Board does not know if another configuration would be considered or pursued. The option to bring the facility into compliance with the approved variance has also always been there, as well as applying for a renewal without change application. The Board has been struggling with what to do with the illegal dock as it stands. If the application is approved and compliance remains a problem, the Board should question: 1) whether to grant the variance and if it is appropriate to do so and 2) how would the Board handle the enforcement in the meantime. He confirmed that staff offered the 30-day condition as a placeholder in case the illegal dock continues to exist.

Kujawa responded to various configurations offered by the Board.

Gross questioned whether the variance would be removed if the applicant's re-zoning request was approved.

LeFevere stated that the only hardship is the zone line. If that matter is removed, the variance would go away (making it a condition of the variance that the shoreline remain under unified ownership and the zone lines remain as currently present).

Kujawa confirmed that if and when that request is approved, there would be plenty of room to operate without a variance.

LeFevere stated that if the Board approves the variance, it would be based upon the fact that there was a justifiable hardship. In preparing Findings of Fact and Order (for approval vs. denial), the Board would need to decide how long they were going to allow the illegal dock to exist before the applicant had to bring it into compliance. He stated that question does not have to be decided tonight but answered upon consideration of such for their 2014 license. If the variance application is denied, he did not believe a renewal without change application has been submitted for 2014 (based on their documentation that coming into compliance with such was impossibility). To this end, if the Board believed that a hardship existed and the variance was a reasonable solution to such, the Board could approve the applications before them. At that time, the Board has documented that they acted in a way that the applicant would not challenge such action. However, a question remains as to the enforcement of the non-conforming dock (which can be treated as a separate question). This option also offers the applicant additional time to think about various options to bring that dock into compliance before the Board considers such (confirming the Board has documented, many times in the past, the lack of initiating an enforcement action on the first day non-compliance is discovered).

Baasen questioned if approving the applications would take away the applicant's incentive to continue with their re-zoning request.

LeFevere could not speak for the applicant; however, in proceeding it would provide more positive options in reconfiguring the dock usage of their marina.

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

VOTE: Ayes (7), Nays, (5; Green, Gross, Hughes, McDermott, and Zorn); motion carried.

LeFevere reminded the applicant that the motion was only for the preparation of draft Findings of Fact and Order (acknowledging the remaining issue of bringing the south dock into compliance). He recommended the applicant think about the options, which might assist the Board in responding to that question (providing for enforcement should no action be offered/taken).

Baasen further asked the applicant to consider what can be done yet this boating season and to contact the city for an update as to where they stand on their re-zoning request.

Klohs recommended the city provide a letter or comprehensive guideline on the process offered and what would be reasonable considerations.

Kujawa stated that at the last city meeting, an attorney was present opposing the master plan option. To this end, they are working with the city to better understand that master plan change process.

9. OTHER BUSINESS

A. **Minnesota Wakesurf Championship**, consideration of request to reschedule special event to August 22nd and 23rd (with a rain date of August 24th).

Baasen invited Andy Weigman to address the Board (thanking him for the decision to cancel the previously scheduled and approved July 18th and 19th special event).

Mr. Andy Weigman, 3106 Tuxedo Boulevard in Mound stated that he continues to stand by what he believed, was an effective plan (2,000 feet from shore) that was put in place so that the previously scheduled event could continue. However, he further recognized that the goal of this event was to benefit Lake Minnetonka. Although he did not feel damage would have occurred to the shoreline, he recognized the damage that would have ensued with the stakeholders. He was very surprised by the loud and aggressive feedback he received should he had continued with the approved event (especially from the businesses of Lake Minnetonka). To this end, he was requested that the Board consider keeping the event alive by amending the permit for Friday and Saturday, August 22nd and 23rd. He was open to working with Nybeck in approving the course layout (recognizing the originally approved plan of 600 feet from shore).

LeFevere recommended the Board document the approved course layout if they consider approval of the amended permit.

Nybeck stated that Green was actively involved in the consideration of the course layout (taking into consideration the receding water levels and finding the balance of traffic into Emerald Bay).

Green suggested the course remain further out than 600 feet (in which Weigman was open to that

suggestion). He recommended approval subject to the City of Mound and Hennepin County Sheriff's Office Water Patrol (Water Patrol) review.

Nybeck recommended approval of amendment (utilizing the second course and subject to review as described by Green above).

Morris requested confirmation that the insurance was adequate. Additionally, as noted earlier in the meeting, he encouraged the public to attend the LMCD meetings to bring their concerns and comments forward.

Weigman confirmed the insurance would be adequate.

Frahm addressed the Board and reiterated the LMA did not have a concern with the event. Their concern was the consequences of the visual assumption that the Sheriff could not control. He believed 600 feet from shore and receding water levels would be sufficient for public perception.

MOTION: McDermott moved, Hughes seconded to amend the Minnesota Wakesurf Championship special event permit subject to: 1) changing the event dates to August 22nd and 23rd (with a rain date of August 24th), 2) water level readings shall be at or below 930.30', and 3) the course layout extending a minimum of 600 feet from shore and subject to the Water Patrol and City of Mound's review.

VOTE: Ayes, 11, Abstained (1, Zorn); motion carried

C. Staff update on 2014 EWM Harvesting Program

Baasen asked Harper for an update on this agenda item.

Harper made the following comments: 1) Spring Park and Phelps Bays are currently being harvested, 2) he has been working with the LMA relative to their herbicide treated areas, 3) a meeting will be scheduled next week regarding the Board approved grading of the Hennepin County lot in Spring Park, 4) that he has been working with Gopher 1 and 28 other utilities around the Lake for location purposes, and 5) they are moving forward with the salvaging of equipment located on the Hennepin County lot.

Nybeck confirmed he is currently working with a lake service provider to remove the two floating conveyers at no cost (discussed at the July 9th meeting). This lake service provider has also expressed interest in the second shore conveyor and he requested approval from the Board to salvage it (with no compensation).

Green asked if the equipment has been cannibalized, in which Harper confirmed yes.

MOTION: Green moved, McDermott seconded to dispose of the floating conveyers at no charge.

VOTE: Motion carried unanimously.

D. Update on establishing a Lake Improvement District (LID) on St. Albans Bay

Baasen asked Roy for an overview of this agenda item.

Roy stated that last fall he announced the residents of St. Albans Bay were initiating a privately funded Lake Improvement District (LID). This process provides for defined boundaries that include lakeshore owners, associations, and marinas, in which they have successfully finished the petitioning of such and have presented it to the cities of record. The LID offers a Joint Powers Agreement (JPA) between the Cities of Excelsior and Greenwood, as well as developing a plan for the MN DNR. Agencies involved in this task included the respective cities, Hennepin County (commissioner approved), and the MN DNR. Some of the matters address by the LID include 1) water quality 2) water levels, and 3) invasive species. Citizens have petitioned to develop a funding system for the herbicide treatment of the bay that will be done on a tax statement, in which the tax will be decided by riparian, marina, and association owners [seven directors] who will make a recommendation to the cities as to what that tax level will be. Residents can petition to remove an initiative. He confirmed the creation of the LID does not affect the LMCD's budget. He respectfully requested a motion of support in favor of the LID, in which he will request the same from the Minnehaha Creek Watershed District.

Baasen confirmed the LID will provide a levy authority through the cities and county to help finance the measure that you feel is necessary to protect the bay.

Gross questioned if the LID could be expanded.

Roy confirmed that a separate LID would need to be initiated for each bay and could not be offered for the Lake as a whole. He further stated this process has provided for a communal gathering of the community (offering many meetings, mailings, door-to-door conversations, etc.).

MOTION: Gross moved, Zorn seconded to approve a letter of support for the LID initiative on St. Albans Bay.

MOTION: Motion carried unanimously.

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Hughes stated the Public Safety Committee was meeting at 3:00 p.m. on July 24th at the Water Patrol office.

Baasen stated the Executive Committee met on July 2nd and will again meet in August. Additionally, the Save the Lake Committee met on July 14th, at which time they discussed the following: 1) Water Patrol staffing levels (representatives present), 2) potential changes to the annual banquet, and 3) the upcoming (September/October) Watercraft Operators Safety Education session.

Morris stated that the West Metro AIS Coordinating Committee met on July 11th and that the AIS Task Force will meet on August 8th.

Nybeck stated that the Ordinance Review Committee may be scheduled for August 13th (5:30 p.m. prior to the Board meeting at Wayzata City Hall).

11. EXECUTIVE DIRECTOR REPORT

Nybeck acknowledged the number of telephone calls the office has received relative to the Declarations in place.

Baasen stated the Executive Committee has requested staff initiate a communications report that will be discussed at their respective meetings, in which a brief discussion was held on ideas to include.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:23 p.m.

Dan Baasen Chair

Andrew McDermott, Secretary