

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, October 8, 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; David Gross, Deephaven; Ann Hoelscher, Victoria; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Sue Shuff, Minnetonka; Gregg Thomas, Tonka Bay; and Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** Anne Hunt, Minnetrista; Fred Meyer, Woodland; and Rob Roy, Greenwood

**3. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS, Chair Baasen**

Baasen stated that this meeting will most likely continue to Board workshop under agenda item 12, "Open Meeting Law Training" (providing for the meeting to remain open to the public but will not be televised).

**5. APPROVAL OF MINUTES- 9/24/14 LMCD Regular Board Meeting**

Green requested the following three clarifying amendments:

1. Gabriel Jabbour's comment (page 5, fifth bullet point) that he asked the LMCD to show value to the Lake by participating in the recent cleanup project relative to the Red Bull event vs. just "cleanup project."
2. His comment (page 6, eighth paragraph) that the receptacles would have to be manned as people would throw away anything for free (i.e., bath tubs).
3. His comment (page 7, third paragraph) that the United States Geological Society's (USGS) testing equipment would be picked up within 30 days vs. the results being available.

Baasen asked Green if he knew when the USGS test results would be available.

Green believed preliminary results would be offered at some point (possibly six to nine months).

**MOTION:** McDermott moved, Thomas seconded to approve the minutes as amended, making the changes noted by Green above.

**VOTE:** Ayes (10), Abstained (1, Gross); motion carried.

## 6. APPROVAL OF CONSENT AGENDA

Gross moved, Zorn seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved include: **6A**, Audit of vouchers (10/1/14 – 10/15/14); and **6B, Save the Lake**, announcement of Funds available for 2015.

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

Mr. Tim Keane, legal counsel from Kutak Rock, LLP, requested a point of clarification. He stated that he was present on behalf of several Tanager Lake residents that have an interest in agenda item 9A, "Browns Bay Marina (Site 2)." He asked if the Board intended on taking public comments (recognizing that it is not a scheduled public hearing).

Baasen stated the Board would probably allow public comment (based on the Board's position at that time).

Keane requested the opportunity to be heard at that time.

## 8. PUBLIC HEARING

There were no public hearings scheduled.

## 9. OTHER BUSINESS

### A. Browns Bay Marina (Site 2), 2014 new multiple dock license and side setback variance applications at 1444 Shoreline Drive on Tanager Lake

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

Nybeck directed the Board to his staff memo, dated October 3<sup>rd</sup>. He made the following comments via a PowerPoint presentation:

- He provided an overview of the originally submitted new multiple dock license and variance applications submitted on June 23<sup>rd</sup> (including details of currently approved license). He clarified that the current proposal does not involve a "Qualified Commercial Marina" analysis.
- He provided the following overview of action taken at subsequent Board meetings:
  - July 23, 2014 - Public hearing conducted (LMCD legal counsel Charlie LeFevere to prepare draft Findings of Fact and Order for approval of the applications that would be considered at the August 13<sup>th</sup> meeting).
  - August 13, 2014 – Draft findings not prepared based on clerical error concerning the mailing of the July 23<sup>rd</sup> public hearing notice (resulting in a new public hearing scheduled for August 27<sup>th</sup>).
  - August 27, 2014 – Public hearing conducted, in which a great deal of testimony was received.

Individual motions were made to prepare draft Findings of Fact and Order for approval and denial, both of which failed. No further direction provided by the LMCD Board.

- September 24, 2014 – Staff provided update on an amended proposed site plan that was submitted on September 17<sup>th</sup>, which triggered the need for a mandatory Environmental Assessment Worksheet (EAW). A draft EAW was to be prepared for the Board's review and authorization at this meeting to proceed based on the Environmental Quality Board (EQB) rules.
- LMCD staff and LeFevere met with EOF Investments, LLC (EOF) representatives (owners of Browns Bay Marina, Site 2) on September 29<sup>th</sup>, at their request. Topics discussed: 1) mandatory EAW requirements (per EQB rules), 2) staff feedback on the amended proposed site plan (submitted on September 17<sup>th</sup>), and 3) staff feedback on other possible amended proposed site plans. At that time, the applicants acknowledged they were having problems leasing slips for the 2015 boating season based on not having an approved site plan. Questions concerning the mandatory EAW requirement are currently being resolved with EQB (recognizing that a mandatory EAW would take 60 to 90 days).
- As of this date, no license had been issued for 2014 and a second amended proposed site plan was submitted to the LMCD on October 2<sup>nd</sup>. That site plan offered the following changes from the currently approved site plan (which he outlined on an aerial photograph):
  - North dock (no changes to BSUs 1-22);
  - South dock (BSUs 23-40): a) adjust the location of the walkway along the southerly extended side site line (approved zero foot side setback variance), b) south opening slips (removed and relocated between the two docks), and c) no changes to north opening slips;
  - No changes to dock lengths (152 feet for north dock and 115 feet for south dock); and
  - No changes proposed to the approved square footage calculations.
- He provided a detailed overview of relevant LMCD Code sections:
  - Reconfiguration of non-conforming structures (including the conditions that need to be met).
  - Variance from the LMCD Code process (including recommended decision standards).
  - Municipal zoning standards and the LMCD Code that does not allow dock structures to extend across an extended zone line for sites zoned differently by a municipality. He made the following comments relative to such:
    1. This applies to the north opening BSUs for the north dock.
    2. An extension is approved over the zoning line for the 28 foot finger between BSUs 7 and 9.
    3. Staff believed there are irregularities with the approved site plan (not to scale).
    4. The finger by BSU 1 is 28 feet and the fingers by BSUs 3 and 5 are 26 feet (does not extend across the zoning line and the request is to clean this up through an amended variance).
    5. He documented these comments via the approved 1985 site plan, the amended proposed site plan, and a series of two pictures documenting the area in question.
- He offered the following staff comments for the Board's consideration:
  - The proposal meets the requirements to reconfigure the legal, non-conforming facility.
  - The proposed use was reasonable (acknowledging it provided less impact on the abutting property to the south).
  - It meets the variance decision standards outlined within his staff memo.
  - He solicited the Board's consideration as to whether the August 27<sup>th</sup> public hearing was adequate for the consideration of the October 2<sup>nd</sup> amended proposed site plan. He stated

- that staff believed (LeFevere concurred) that the August 27<sup>th</sup> public hearing was adequate based on the scope of the proposed site plan being reduced from the proposed site plan previously being proposed.
- No mandatory EAW was required (dock structure and maneuvering space for the approved 1985 site plan is 21,540 square feet compared to 19,449 square feet for the amended proposed site plan). He stated that a mandatory EAW is required when dock structure and maneuvering space exceeded 20,000 square feet.
  - Staff recommended approval of the amended proposed site plan, subject to the following conditions:
    - A four foot overhang restriction (length overall) for all 40 BSUs.
    - No boat storage is allowed along the south side of the main walkway for the south dock.
    - Docking and boat storage must be consistent with the approved site plan.
  - Approval of the new multiple dock license and variance applications require the preparation of draft Findings of Fact and Order. LeFevere, at staff's direction, had prepared such draft documents for the Board's consideration at this meeting should they deem it necessary (based on staff's belief that the proposed application is straight forward and would have been approved at the staff level had there not been a variance request).
  - That the decision on whether to take public comments at this meeting is a policy decision for the Board. Should the Board decide to take comments, he recommended that some time limit be set for receipt of only new comments not offered at the previous public hearing.
  - He entertained questions and comments from the Board.

Baasen stated that he supported further Board review of the applications for transparency purposes. Prior to gathering further testimony from the public, he asked the Board if they had questions for staff.

Gross questioned whether the proposed BSUs along shore would be for small boat slips or for proposed sale or rental. In particular, whether there would be restrictions.

Nybeck stated that there would be no restriction for these types of use to reconfigure the non-conforming structure (envelope application). However, there could be restrictions if this proposal was to reconfigure as a "Qualified Commercial Marina," which the applicant is not currently proposing.

Green asked if the north dock would be reconstructed or would stay as currently constructed.

Nybeck stated that he believed the proposal is to keep the dock as it is currently constructed.

Green asked if the proposal was for 2014 or 2015.

Nybeck stated that the proposal would be for 2014. Renewal applications for 2015 will be sent out shortly and the applicants would need to decide whether to renew its multiple dock license without change or to submit a new application (with change).

Thomas asked for further clarification of the three fingers that extend across the zoning extension line for the north dock.

Nybeck stated that the third finger from shore was approved by the Board back in 1985. The first and second fingers from the shore could be interpreted that they would extend across the zone extension line (based on site plan irregularities and to-scale issues). He believed that the current proposal was to take care of this through the amended variance process.

Zorn stated that the BSU density for this proposal was one watercraft for each six feet of shoreline. She questioned whether there was an average BSU density for reconfiguration of non-conforming applications.

Nybeck stated that the applicants are allowed to reconfigure the non-conforming facility, subject to the BSU density not increasing. Any reconfigurations that do not conform to the LMCD Code would need to be done within the perimeter of the approved dock structure, which the LMCD defines as the "envelope." For this facility, the envelope would include a zero foot variance from the southerly extended side site line.

Baasen questioned whether the current proposal would require the applicants to submit new application(s).

Nybeck stated that the applicants have amended their applications that were submitted in June to consider the proposal as a reconfiguration of a non-conforming structure.

Baasen asked the applicant to address the Board.

Mr. Michael Jellish, an owner of EOF, requested to address the Board after public comments.

Baasen invited the public to address the Board, requesting that comments be short and to the point (three minutes if possible). He stated that in lieu of the pull back to the proposed applications, he complimented the applicants for their attempts in bringing the dock into compliance with the LMCD Code.

Keane reintroduced himself as legal counsel for multiple clients (i.e., Matt Johnson, David Feldshon, Irwin Jacobs, and Rich Anderson). Given the well earned reputation for the LMCD for their stringent regulations and even more rigorous application of these regulations over the life of this agency, he was confounded by the friendly interpretations. He believed that the irregularities were too numerous to chronicle. With regards to the EAW calculations, he questioned whether it included only square footage inside of the envelope.

Nybeck stated that the same methodology was used for the EAW calculation of the approved and amended proposed site plan. Dock structure square footage is calculated by determining the square footage around the perimeter of the entire dock (including square footage for the BSUs within this area). For maneuvering space, the square footage calculations were determined by the length and width of the BSUs (deducting out the structure's square footage). This methodology was previously confirmed with Dale Homuth from the Minnesota Department of Natural Resources.

Keane questioned whether the EAW calculations would include square footage for the first three fingers on the north dock that extend across the zoning extended site line.

Nybeck stated that the calculations included maneuvering space across the zoning extended site line.

Keane asked for clarification on the rationale for the extension of the three slips beyond the property line to the north. He stated that these three slips, as currently constructed, were not part of the 1985 approval and has been in existence for nearly 30 years.

Nybeck stated that the application that had been submitted is for the first three fingers at the north dock to extend over the extended zone site line. The third finger was already approved in 1985 and the request is to seek approval for the first two fingers. He believed that the rationale for the application could be better addressed by the applicant.

Keane asked for procedural clarification as to where the LMCD is at in the processing of these applications.

Nybeck stated that the Board was currently considering public comments. Once comments have been received, the Board would review and consider the amended proposed site plan. Should the Board decide that they would like to consider approving it, draft Findings of Fact and Order would need to be prepared to approve the new multiple dock license and variance applications. Draft Findings for approval of the applications have been prepared, which could be considered at this, or the next, Board meeting.

Keane questioned whether what was being considered by the Board at this meeting is the staff ratification of the amended proposed site plan with the approved 1985 site plan. Otherwise, would the variance being requested at this meeting be a new variance standing on its own.

Nybeck stated that if the Board would like to consider the two fingers that extend across the zoning site line, they could do so by amending the approved variance for such.

Keane questioned whether a new public hearing should be required to consider such.

Nybeck stated that staff, which LeFevre concurred with, believed the public hearing conducted on August 27th would legally be sufficient because the scope of the plan had been reduced. However, he stated the Board had the ability to conclude that an additional public hearing should be conducted.

Keane noted, for the record, his objection to the ratification of the staff's interpretation that this proposal is in conformity with the 1985 variance approval. He believed that further new applications, including a request for variance, should be required rather than bootstrapping that approval that took place nearly 30 years ago. Additionally, he voiced his objection to the interpretation on whether a mandatory EAW needed to be conducted. He asked for clarification of the mandatory EAW calculations for the proposed dock that would parallel the shore.

Nybeck stated that the EAW calculation, excluding walkway, was nine BSUs that were 6' x 14'.

Keane questioned whether this dock was 160 feet in length.

Nybeck stated that the width of the two commercial properties was approximately 120 feet. He estimated that the length of the dock that paralleled the shoreline was between 70 and 90 feet.

Keane questioned whether the structure's square footage for this dock was included in mandatory EAW calculations.

Nybeck confirmed that it was.

Keane stated that this marina has operated the entire 2014 season without a license. He believed that operating without a license for a year suspends whatever vested or non-conforming rights that the applicant may contend exists. He believed that any license in 2015 should be done in full conformity with current regulations and requirements of the LMCD.

Baasen asked Gilchrist if he had comments to make at this point.

Gilchrist stated that he had no comments; however, he would take questions from the Board.

Keane submitted a letter for the record, dated 10/8/14, which further summarized the concerns of his clients.

Baasen stated that applications for this marina have been under reviews since June 23rd. Public hearings have been conducted to allow the public to provide testimony on the proposal. Based on the public hearings, the applicants have been respectful of the testimony received and changes have been made to the proposed site plan.

Keane concurred that the applicants have been respectful; however, the marina has operated an entire boating season without a license.

Mr. Irwin Jacobs, 1700 Shoreline Drive in Orono, stated that he was the largest property owner on Tanager Lake (estimated at 1,400 feet of shoreline). He indicated that he had experience dating back to 1985 when he owned Minnetonka Boat Works and was granted a five-year temporary permit for some slips (due to water depth issues). To the best of his recollection, 1985 appeared to be the same time that the applicants put their request in for additional docks. The docks that Minnetonka Boat Works had approved were required to be removed after five years because water depth issues had rebounded. He questioned what records the LMCD had from 1985 that provided for this facility.

Nybeck stated that the approved site plan was from 1985. With regards to his multiple dock facility in Wayzata Bay, the docks in question were approved for a temporary low-water variance. Some of these docks were constructed out beyond the 200 foot contour and were granted a five-year sunset clause (the docks were to be removed after five years).

Jacobs stated that he did not believe the LMCD was as cooperative with him as they are currently being with the applicants. The applicants should have known what they could do when they purchased the marina. If approvals were needed by the LMCD, they should have been secured in advance. He stated that he did not have a problem with the marina and what they currently have (to some degree). However, he stated he lives on the bay and there is not a need for an additional 10 to 15 rental personal watercraft (with parking and everything that is associated with such). He did not believe the area could handle much more pressure. He believed that there is a limit of what can be done in this area (communicating an observation

he made in recent weeks where two kids almost got killed crossing County Road 15). He stated that he was opposed to the proposed applications, based on what they did in 1985 (questioning whether the Board knew what occurred in 1985).

Baasen stated that it was clear, based on comments and the record, what was approved by the LMCD in 1985. What is currently being proposed by the applicant is to bring the current dock installation within the southerly extended site line (per an approved 1985 variance). This reconfiguration is being done to not restrict the applicant's ability to do business, while at the same time respecting the neighbors.

Jacob questioned why the previous owners were allowed to continue this violation.

Nybeck stated the violation of the approval was brought to staff's attention one year ago. Although the approved site plan dates back to 1985, the facility existed prior to this and there were other site plans approved prior to this.

Mr. Rodney Burwell, 1100 Millston Road in Orono, spoke with regards to personal watercraft. He stated that in recent years, there has been a major change to the usage pattern on Tanager Lake. For years, the public was able to water ski around the perimeter of the bay. More recently, the operation of wakeboard boats on the bay operate differently (not around the perimeter of the bay). He believed that the addition of 10 or 12 personal watercraft would add to the situation and could cause an accident.

Baasen stated that the nine BSUs proposed along the shore would be for smaller watercraft (not limited to just personal watercraft).

Mr. Matt Johnson, 1432 Shoreline Drive in Orono, requested clarity as to whether there would be changes to the north dock that is currently installed.

Nybeck stated that was staff's understanding.

Johnson stated that it was pretty clear to him, based on the approved 1985 site plan, that the dock starts a couple of feet to the south and is different than the approved site plan. He believed, as well as those in attendance that are frequent users of Tanager Lake and have familiarity with County Road 15: 1) the LMCD needed to see the big picture on the intensity of this site (not just the Lake issues), 2) that allowing for the rental of personal watercraft would further intensify the use of this site on issues that are currently being addressed by the City of Orono (i.e., parking and access to County Road 15), and 3) that the LMCD had the authority and responsibility to all drive by to look at this from a mile high perspective instead of six inches.

There being no further public comments, Baasen asked the applicant if they would like to address the Board.

Jellish thanked all in attendance and stated that he did not want to be redundant. He provided the following comments:

- He and his partners closed on this property in September of 2013. Shortly after this, LMCD staff brought to their attention that the south dock was not in compliance with an approved site plan. Despite this, multiple dock licenses have been issued through the 2013 boating season.
- He commented on dock use area (DUA) rules per LMCD Code, extended side site lines, and the lack of state law pertaining to this. The intent is to resolve the dock in question, per LMCD Code, but swinging the south dock to the north (consistent with the approved site plan) creates an unsafe situation. Swinging the north dock to the north is also not an option because it would cross a municipal zoning line.
- He complimented the efforts of staff, including LeFevere, to work with them to identify ways to resolve this.
- Currently, it is difficult to lease a slip for 2015 from current customers when it is an unknown on what is currently approved (in particular since there are rumors floating around that the marina will not be in existence in 2015).
- No matter what the outcome is, he believed that there would be some unhappy people (against change). He believed that there were the following two options for the owners to consider: First, the submittal of the currently proposed amended site plan. He believed that this was a no-brainer site plan and would allow them to have an approved site plan to allow for 2015 slips rentals. Second, to consider an ordinance such as adopted in Crow Wing County and the State of Wisconsin that defines a DUA, which he further expounded on through an aerial map provided from David Landecker from Wenck and Associates.
- He commented on a court case in which the LMCD's straight-line measurement to establish a DUA was challenged by a Mr. Miles B. Canning. He stated that this was rejected by the court. At this time, EOF does not want to legally challenge this and would like to resolve this matter and run their business. Thus, the amended proposed site plan was submitted where the primary change would involve removing the south opening slips for the south dock and relocating the dock to the zero foot side setback already established by an approved variance. No changes are proposed to the number and size of the slips at this dock.
- He commented on intensification on the use of the site, which he expounded on.
- He entertained questions comments from the Board.

Zorn asked for further details of the nine BSUs proposed along the shore.

Jellish stated that the nine BSUs are proposed at 5' x 14' (with a four foot overhang allowance).

Zorn questioned whether a four foot overhang at BSUs 2, 4, 23, and 25 could be achieved because of their proximity to the nine BSUs along the shore.

Jellish stated that the watercraft stored at the nine BSUs along shore would need to be whatever the smallest vessel turns to be (possibly a personal watercraft). The marina had two personal watercraft stored at the facility and he did not want to evict customers. One goal for the use of the BSUs is to maintain the number and square footage associated with them.

Zorn asked if EOF had a plan for the use of these nine BSUs, in particular type of watercraft.

Jellish stated that they did not have such a plan. The current goal is to have a plan approved that the Board can support. The 2015 renewal date of current slip customers is October 15<sup>th</sup>, in which they are waiting for feedback on what will be allowed.

Jacobs stated that he was in the boat business and he was unaware of a five foot wide boat.

Mr. Rich Anderson, owner of North Shore Marina (Browns Bay), questioned whether he could speak because this was not a scheduled public hearing.

Baasen stated that he had allowed for public comments on this agenda item at this meeting.

Gilchrist stated that the Board gave the public an opportunity to comment on the applications at this meeting, which has been closed. Whether to allow further comments was at the discretion of the Board, although he was comfortable with moving forward without these comments.

Baasen stated that this agenda item was not a scheduled public hearing. However, public comments were received at this meeting from the audience and the applicant, including answering questions from Board. He stated that Mr. Anderson chose not to speak during public comments and he did not want continual back and forth discussion taking place.

Gilchrist stated that the Board did not need to entertain back and forth discussion. This was not a scheduled public hearing; however, public comments were allowed and have closed. He believed that the Board is perfectly fine to continue at Board level.

Green and McDermott requested that the Board allow for Anderson to provide his public comments.

Anderson stated that he owned the abutting property to the south. He believed the amended proposed site plan was a good one; however, he commented on what was required when he made changes to his multiple dock facility (in particular, to meet conforming side setbacks for the facility on Browns Bay). When he owned the multiple dock facility for this agenda item, the number of BSUs was reduced from 118 to 98. These 20 slips were lost when the reconfiguration occurred to get the site plan approved that he proposed. A similar reduction occurred for the facility he owns on Maxwell Bay (85 to 75 BSUs) when he reconfigured the non-conforming structure. For the amended proposed site plan, he questioned whether the four foot overhang allowance had ever been allowed outside of 200' from shore or in a side setback requirement.

Nybeck clarified that the four foot overhang allowance for the north opening BSUs for the north dock would comply with the LMCD Code for side setback requirements because the setback line is from the north side of the residentially zoned properties. The site line between the commercial property and the residentially zoned properties only prohibits dock structures from crossing this.

Anderson stated, based on his past experience, sometimes you have to give up something (i.e., slips) in order to get what you want.

Harper clarified that the LMCD Code for reconfiguration of non-conforming structures does not require giving up slips, provided there is not a cumulative increase of square footage associated with the approved

BSUs. For some applications, BSUs need to be reduced when the applicant proposes an increase in the slip sizes. It is not uncommon for an applicant to seek approval of smaller BSUs to maintain the number and cumulative square footage for future requests.

Jellish stated that he believed Anderson made some good points. However, the amended proposed site plan would make the BSUs smaller.

Baasen asked the Board how they would like to proceed in processing the applications for the amended proposed site plan. Findings of Fact and Order would need to be prepared to either approve or deny these applications.

Green stated that the Board asked the applicants to bring their non-compliant dock into compliance last June. The amended proposed site plan was what he envisioned; however, he expressed some concern for the two fingers on the north dock extending across the residentially zoned line.

Nybeck stated that if the Board concurred with Green's comment about the two additional fingers crossing the residentially zoned line, he believed that the applicant could address this through some further reconfiguration of the length of the fingers (acknowledging that staff had previously discussed this with the applicants; however, they have decided to proceed with the amended proposed site plan).

Baasen stated that the applicant has communicated that the north dock is proposed to remain as currently installed.

McDermott asked for clarification of what variances are being requested.

Nybeck stated that the applicant has requested amendments to: 1) the zero foot side setback variance from the southerly extended side site line and 2) allow for the first three fingers to extend across the residentially zoned line. He reminded the Board that one of the conditions in the draft Findings was to submit an as-built survey within 30 days after the dock is reconstructed. He believed that this will provide the LMCD a better idea of the accuracy of the proposed site plan (including whether future changes are needed).

Zorn thanked staff and the applicant on the submittal of the amended proposed site plan. Where she struggled was with the parallel dock and activity in a more concentrated area. In particular, trying to understand how a 5' x 14' slips will be used safely. She acknowledged the neighbors concerns and the concentration of these crafts, which was her only struggle point. She was really pleased to see the south dock moved into compliance.

**MOTION:** Green moved, Shuff seconded to approve the draft Findings of Fact and Order approving the Browns Bay Marina (Site 2) 2014 multiple dock license and variance applications as amended, subject to inserting the date "May 1, 2015" in condition "H" on page three.

Gross expressed concern relative to the proposed maneuvering space for the inside opening slips between the two dock structures.

Nybeck stated that he believed there was 48 feet in between the inside opening slips.

**ROLL CALL**

**VOTE:** Ayes (9), Nayses (2, McDermott and Zorn); motion carried.

Keane addressed the Board asserting that the approval was inconsistent with the approved 1985 variance. Therefore, he will be appealing the action.

**B. Public Safety Committee**, recommendations relating to petition for Quiet Water Area in north Seton Channel area (parts of Harrison's Bay and West Arm)

Baasen asked Hughes for an overview of this agenda item.

Hughes directed the Board to Nybeck's memo, dated October 1<sup>st</sup>, in which he made the following comments:

- A petition, with listed attachments, for a Quiet Water Area (QWA) in north Seton Channel was received on August 5<sup>th</sup>.
- Staff has received a number of public comments (both favorable and opposed) that will be provided to the Board should they proceed to schedule a public hearing on this petition.
- Review of the petition is to be conducted in accordance with the approved QWA policy (within the packet). In accordance with this policy, staff attempted to conduct field observations on six days during the 2014 boating season (offering complications based on inclement weather).
- The LMCD Public Safety Committee met on September 22<sup>nd</sup> to discuss the petition, at which time they recommended the Board schedule a public hearing based on public safety purposes only and not environmental (e.g., shoreline erosion). This recommendation was based on the concurrence of committee member Tony Brough with Hennepin County Environmental Services (who was unable to be at the September 22<sup>nd</sup> meeting). Staff and committee members Hughes and Roy met with Brough since that date, at which time he confirmed concurrence with that recommendation.
- Should the Board concur with the committee recommendation, staff recommended the public hearing be scheduled for their November 12<sup>th</sup> meeting.

**MOTION:** Hughes moved, McDermott seconded to schedule a public hearing on November 12<sup>th</sup> in the consideration of the QWA petition in the north Seton Channel area.

The Board had a lengthy discussion on this agenda item. A summary of the discussion was as follows:

- How the public will be notified of the public hearing.
- The need to prepare a diagram of the proposed QWA for the public's use.
- A discussion of procedures for public hearings conducted by the LMCD.
- Encouraging the petitioners to have one person speak on their behalf at the public hearing.
- The need to have a representative of the Sheriff's Water Patrol in attendance.
- Recognition that although the committee has recommended the Board consider this request based on public safety factors only, it does not prevent the public from offering testimony to other

factors, i.e., environmental concerns (acknowledging the petition stemmed from historically high Lake levels and its effect on shoreline erosion).

- The expectation for the public hearing (including when a decision could be made on the petition).

**VOTE:** Motion carried unanimously.

**C. Finance Committee**, recommendation to transfer bank depository

Baasen asked Hughes for an overview of this agenda item.

Hughes directed the Board to the Finance Committee's memo, dated 10/2/14, in which he offered the reasons for the committee's recommendation (outlined within the last paragraph).

**MOTION:** Hughes moved, Shuff seconded to transfer the LMCD's banking depository to Beacon Bank.

McDermott questioned if LeFevere had reviewed the bank's collateralization policy.

Nybeck confirmed that this had occurred.

**VOTE:** Motion carried unanimously.

**D. Consideration of annual Hennepin County Sheriff's Office Water Patrol special deputy candidate**

Baasen requested that the Board consider approval of up to \$2,000 to cover the costs of creating a video that would promote growth of the Hennepin County Sheriff's Office (HCSO) special deputy program, which included highlighting the LMCD Special Deputy of the Year.

**MOTION:** Gross moved, Shuff seconded to expend up to \$2,000 of Save the Lake Funds in creating a video production promoting the HCSO special deputy program.

Morris questioned whether this video would be shown at the annual banquet dinner, as well as distributed through other media sources.

Baasen confirmed that it would.

Morris stated that he was okay in allocating the funds; however, he wanted to make sure a wholehearted effort was given in recruiting more deputies as the Lake is sorely in need for such.

Zorn recommended focusing on how to become a special deputy.

Hughes stated that he believed the focus will be on the program itself (let's say five minutes long). The video could be approximately 50% of the HCSO special deputy program and 50% on the special deputy to be recognized.

McDermott requested the removal of the 3<sup>rd</sup> bullet point forward within the nomination as it does not pertain to the LMCD.

**MOTION:** Green moved, McDermott seconded to approve the nomination of John Feyder as the 2015 Special Deputy of the Year

**VOTE:** Motion carried unanimously.

## 10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Morris stated that the Aquatic Invasive Species (AIS) Task Force had not recently met. However, there was a West Metro AIS Coordinating Committee meeting scheduled for October 10<sup>th</sup>. He further outlined recent zebra mussel infestations in area lakes (Lake Waconia, Lake Virginia, and Lake Independence).

Baasen stated that the next Save the Lake sponsored Boater Safety Education session is scheduled for Saturday, November 1<sup>st</sup> at the Water Patrol office.

Nybeck stated he was working with the local newspapers on an article pertaining to that session, as well as contacting the school districts.

Baasen stated the Executive Committee will be meeting at 7:30 a.m., October 14<sup>th</sup>, at which time they will be discussing: 1) 2015 LMCD Board appointments, 2) the nominating committee for 2015 LMCD Board Officers, and 3) 2015 LMCD standing committee assignments. He invited all to attend.

Klohs stated the Ordinance Review Committee would be meeting at 5:30 p.m. on October 22<sup>nd</sup> at Wayzata City Hall (just prior to the Board meeting).

## 11. EXECUTIVE DIRECTOR REPORT

Nybeck asked for questions or comments from the Board.

Zorn questioned the status in further researching options to address littering on Lake Minnetonka (as discussed at their September 24<sup>th</sup> meeting).

Nybeck stated he was working with Baasen in regards to that.

## 12. OPEN MEETING LAW TRAINING

Baasen asked Gilchrist to outline the procedure offered in continuing this meeting via a Board workshop to discuss Open Meeting Law (OML) training.

Gilchrist recommended that the Board make a motion continue the meeting in a workshop format for training purposes. He further explained that the meeting will remain open to the public.

**MOTION:** Gross moved, Morris seconded to continue the meeting in a workshop format for the purpose of receiving training on the Open Meeting Law.

**VOTE:** Motion carried unanimously.

Baasen requested a five minute recess to set up for the workshop session. Once returned, he asked Gilchrist to proceed in offering a training session on the OML.

Gilchrist provided the Board with a presentation outline (dated October 8<sup>th</sup>), as well as a *Quick Reference Guide to the Minnesota Open Meeting Law for Town and City Officials* booklet (offered as a handout within the packet). He provided a detailed overview on the following OML discussion points: 1) what it is, 2) the purpose, 3) who is subject to such law, 4) when does it apply, 5) what are the kinds of meetings subject to such law, 6) the required notices, 7) what issues may arise during a meeting, 8) the penalties for violation of, and 9) and lessons learned to consider.

Gross left the meeting at 9:22 p.m.

The Board interjected with the following questions, in which Gilchrist responded to: 1) consideration of quorum and when the Board can and cannot discuss business (e.g., a recent Lake tour), 2) the publishing of the notice(s), 3) the closing of meetings, 4) emergency meeting requirements, and 5) email and other social media usage.

### 13. ADJOURNMENT

There being no further business, the meeting was adjourned at 10:05 p.m.

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Dan Baasen Chair

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Andrew McDermott, Secretary