

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., September 25, 2019
Wayzata City Hall

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Ann Hoelscher, Victoria; Bill Cook, Greenwood; Dan Baasen, Wayzata; Ben Brandt, Mound; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Chris Rich, Woodland; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; and, Deborah Zorn, Shorewood. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and, Matt Cook, Environmental Administrative Technician.

Members absent: Mike Molitor, Minnetrista. Excelsior Vacant.

4. APPROVAL OF AGENDA

MOTION: Rich moved, Hughes seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

Chair Thomas commented that following the last meeting an email was received from Eric Evenson noting that there was an item on the agenda where the Board had materials that were not made available to the public. He stated that staff had copies available but will make sure a public copy of materials provided to the Board is available to view on the table in the back.

Baasen provided an update on James J. Hill Days in Wayzata, noting that he staffed a booth for the LMCD for both days of the event. He stated that many people stopped by the booth with the most interest in weeds, harvesting and the Save the Lake boater safety class.

Chair Thomas thanked Kroll and Brandt who also helped to staff the booth on Sunday of the event.

Cook provided an update on Apple Day in Excelsior, noting that he began at 8:00 a.m. and staffed the event until 6:00 p.m. He thanked Baasen for assisting him during the event. He noted that many people stopped by with questions.

Chair Thomas thanked Baasen and Cook for coordinating those events. He stated that the LMCD staff has a box of materials available for any Board members that wish to staff similar events in their city.

6. APPROVAL OF MINUTES- 08/28/2019 LMCD Regular Board Meeting

MOTION: Kroll moved, Baasen seconded to approve the 08/28/2019 LMCD Regular Board Meeting minutes as submitted.

VOTE: Motion carried unanimously.

7. APPROVAL OF CONSENT AGENDA

MOTION: Cook moved, Baasen seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (09/16/2019 – 09/30/2019); and **7B)** August Financial Summary and Balance Sheet.

VOTE: Motion carried unanimously.

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

There were no public comments.

9. PUBLIC HEARING

A) Caribbean Marina and Restaurant (Tonka Bay Holdings, LLC), New Multiple Dock License Application to Reconfigure Nonconforming Multiple Dock Facility; Variances for Dock Use Area (Side Setbacks, Length, and Special Density); Located on Lower Lake South; 100, 110, and 135 Lakeview Avenue, Tonka Bay

Matt Cook presented an application from the Caribbean Marina and Restaurant for reconfiguration of nonconforming structure, special density license and variance applications. He stated that staff recommends continuance, bringing the application back with any requested changes to the October 9th Board meeting. Staff would like feedback on certain aspects of the proposal. He reviewed background information noting that the site was purchased in the 1960s and began operations during that decade. He stated that on September 28, 1978 the LMCD granted a variance to the site for encroachment beyond the west side site line and approved storage of 148 watercraft. He noted that the license was renewed on April 11, 1992 with the condition that one slip be removed and the total BSU at 147. He noted that the special density license is not applicable as the density is already greater than one unit per ten feet of shoreline. He summarized the reconfiguration of a nonconforming structure, noting that the shoreline would remain the same while the proposed BSUs would be reduced from 147 to 116 in the revised plan. He noted that the linear footage of boat storage would also decrease. He displayed an aerial photograph of the existing site as well as a revised sketch of the proposed structures. He compared the existing and proposed docks including BSUs, density, and linear BSU footage. He highlighted the relevant code sections that would be applicable in this review. He provided additional details on the variance criteria that must be considered. He stated that the typical 10-day public agency review was completed, noting that the City of Tonka Bay reviewed the request at their September 24th meeting with no comments provided to the LMCD. He reviewed the public comments received thus far by staff. He highlighted the currently existing posts at the gas dock, noting that the applicant

has proposed to leave those posts in place as they could be useful for storing a charter boat. He highlighted the location of the new gas facility, noting that three slips would be used solely for gas dock use. He recommended that the Board receive public comments and hold an active discussion. He noted that staff will then take the comments and bring back a proposal, with changes if needed, for consideration at the next meeting.

Baasen asked if there are any other exceptions to the 200-foot line that would be similar to this proposal.

Schleuning confirmed that there are provisions in the code and there are other gas docks that can extend past 200 feet. She stated that there is language specific for nonconforming structures that state the same distance into the lake can continue, but that length cannot be increased resulting in 20 feet instead of 25 feet.

Walesch referenced the poles that would remain and asked for details on whether there would be an environmental impact if the poles remain or are taken out.

Matt Cook stated that posts were going to be removed as part of the project and staff is not concerned. He noted that disruption is disruption.

Walesch clarified that the concern would be that there would be a remnant of the post in the ground. He referenced the gas dock which states that the relocation would improve safety and asked how pushing the area further into the lake would protect it from wake or wind.

Matt Cook replied that the applicant can address that question.

Walesch asked what is considered a lake facing slip and slide facing slip, as practically the slips on an angle would still require backing out and turning around in front of the neighboring property.

Gilchrist replied that he was not able to find a specific definition. He stated that in conversations with staff, the idea is that this is something for the Board to consider as the dock is not straight out to the side and whether the Board would be comfortable that meets the threshold of not being a slide facing slip.

Walesch referenced the findings of fact in the staff report that state the unusual configuration of the site creates a practical difficulty unique to the property. He asked what the unusual configuration would be.

Matt Cook referenced language within the reconfiguration code.

Walesch referenced deicing activity requirements and asked for additional information.

Matt Cook provided additional details noting that the deicing can occur to the side site line. He confirmed that a variance could be obtained to protrude into the fire lane no different than exists currently.

Zorn asked if the local dock installers were consulted regarding the environmental impacts of leaving the posts or removing them.

Matt Cook stated that it is his understanding that the applicant spoke with local dock installers about the posts in terms of practical difficulties of attempting to remove them. He was unsure if environmental concerns were discussed. He confirmed that staff could ask the DNR for that information or could ask the applicant to do so.

Zorn stated that she does have concerns with the gas dock location being so close to the public access point. She asked staff to provide additional information on how docks are allowed to be in front of a neighboring home as she has concerns with side setback and deicing capabilities, specific to the property on the east.

Matt Cook replied that property has been a part of the property for many decades. He stated that as far as the code is concerned, dock facilities can use adjacent residential properties for dock area as long as the properties are under common ownership.

Zorn referenced the resident on the western side and asked if input has been received from that resident.

Matt Cook stated that he is not aware of any input from that resident.

Zorn referenced the public comments that were reviewed in the presentation and asked if staff is going to inform the Board of the responses to those comments.

Matt Cook confirmed that responses would be provided to the Board at the next meeting.

Chair Thomas stated that it is his understanding that the home on the eastern side of the property is owned by the marina owner, but the lot is zoned residential and the city of Tonka Bay has previously stated that multiple docks can be placed in front of that property. He stated that some people have asked that the City reaffirm the variance that would allow that to happen.

Matt Cook confirmed that to be true and noted that the City will be considering that action.

Klohs asked if Tonka Bay will comment on the residential variance prior to the Board's next meeting.

Schleuning stated that Tonka Bay will not take action before the Board and is awaiting action from the Board.

Klohs noted that there would be reason to support that order being flipped. He explained that is an integral part of this request.

Chair Thomas stated that the Board could make its action conditional upon the variance approval from Tonka Bay, should that be the desire at the next Board meeting.

Schleuning stated that the City Administrator has been absent and therefore LMCD has been working with other City staff. She explained that Tonka Bay would like to hold off because of multiple iterations that may be made through the LMCD process as the LMCD considers many impacts to the lake.

Klohs asked for additional input on parking, as he did not believe that the LMCD has the ability to control parking.

Gilchrist stated that there is no question that there is a coordination that needs to occur, but the reality is that while the two entities would like to work together, each has its separate approval process. He stated that if something approved by the LMCD is also contingent upon City approval, the LMCD would just need to be upfront about that.

Walesch stated that he received a question from another marina owner in regard to the codes being applied. He stated that the submittal was for a nonconforming commercial dock application and it has been questioned as to whether the application should have been for a qualified commercial marina and whether elements of the code are being "cherry picked" for application.

Gilchrist stated that his initial reaction would be that it would be up to the applicant whether to seek a qualified commercial marina status and this applicant did not make that request. He was not aware of anything that would require the applicant to do so, as this is a nonconforming structure. He stated that it would be helpful for staff for the Board to identify elements they feel may be "cherry picked". He noted that one reason staff suggested continuing the action tonight is to receive and consider all the public input and Board comments received tonight.

Walesch referenced the nonconforming criteria and asked if the applicant would need to meet all of those criteria or just some elements.

Gilchrist stated that the criteria need to be met with the understanding that there is some flexibility. He stated that there is internal flexibility based on the language, but a variance could also be issued assuming the Board finds practical difficulty.

Zorn stated that these are permanent docks and asked if variances granted would need to be reviewed again in the future.

Gilchrist replied that typically variances would run with the dock as long as it is not being changed.

Chair Thomas asked if a change in ownership would impact a variance that has been granted.

Gilchrist replied that if a new owner was taking over the dock system as is, the variance would remain. He explained that if the new owner wanted to reconfigure the dock system, then all elements would be considered.

Zorn stated that the task of the Board would then be to determine if the variance from the 1960s should continue.

Gilchrist recommended the Board start from a higher level to see if the request is acceptable and then drill down on the details. He noted that some elements may not require a variance and provided examples.

Rich asked for details on the envelope concept and asked why this request would follow the contour of the shoreline.

Gilchrist replied that this is how the applicant submit the request.

Rich commented that would then contain that gas dock.

Kroll asked if this would be a convex hull perimeter, with no dents.

Gilchrist read aloud language from the envelope section of the code.

Kroll replied that would be a simple rectangle rather than a convex hull.

Thomas invited the applicant to address the Board.

Shawn Wischmeyer stated that he and his partner purchased the marina, along with their wives and are present to answer any questions. He stated that Rob Shatsall and his wife grew up on the lake and he and his wife recently moved here. He stated that they love the lake were proud to purchase this longstanding marina. He stated that their goal is to fix up the marina and make it something that everyone can be proud of. He noted that they are flexible to finding the right solution and are simply attempting to upgrade the facility to make this good for the community. He referenced the gas dock, which currently exceeds 20 feet from the 200-foot line, noting that moving that to the west would move that element into calmer water. He stated that moving it to the west would not make the wake disappear but would make it safer. He stated that they have a relationship with Bay to Bay Boat Club, which has professional drivers and the proposal would put those boats into the angled slips on the right to ensure trained drivers are using those slips. He stated that they would like to maintain access on the east without harming the residents to the east. He stated that the intent with practical difficulties is to offer slips to their customers that have been there for more than 30 years while still improving and decreasing the number of slips.

Robert Shatsall stated that the pilings in question are 18 inches and are quite cumbersome, while 95 percent of the dock supports/posts are insufficient and not sturdy.

Mr. Wischmeyer stated that there is concern that the 18-inch posts are buried so far that it would be difficult to remove. He stated that they felt it could be a reasonable consideration that if there are five 18-inch pilings in place, perhaps it would make sense to use those for charter boat storage. He stated that they would also be amenable to breaking or cutting those off.

Mr. Shatsall noted that storing a charter boat in that location would help to mitigate wake from boats that pass by as well.

Mr. Wischmeyer stated that they have spoken to the resident on the western side, whom is very comfortable with the plans as proposed. He noted that the concern from the resident on the west is more with the people

utilizing the public access that is located between the properties. He stated that Tonka Bay has stated that because changes to the application with LMCD were made, Tonka Bay is delaying action until the LMCD takes action as there is more involved with the LMCD request.

Klohs asked if Tonka Bay staff or Council have expressed concern with continuing the variance.

Mr. Wischmeyer stated that there has not been any concern expressed thus far, as the activity has been ongoing for many decades. He stated that they have counted the parking stalls and have created additional parking stalls by removing some of the old boats. He stated that they have been working to clean up trash and elements that have remained for many years. He stated that Mr. Shatsall and his wife own RSI Marine in Shakopee and therefore there would be an ability to store boats there in the winter if needed.

Klohs stated that to clarify if approved, the LMCD cannot regulate parking and therefore that should be addressed by Tonka Bay.

Mr. Wischmeyer referenced the envelope noting that the straight-line concept would provide additional capacity, but they attempted to stay within the available footprint as much as possible. He noted that they were going to shift to the east, but that was not desirable to the neighboring property owner and therefore that footprint was shifted to maintain the setbacks on the east. He stated that they are changing from two-foot walkways to proper four-foot walkways for safety and accessibility. He stated that the intent on angling the eastern docks is to avoid conflicts with the neighboring property owner. He referenced the west side, which would require a variance for some extensions into the water on the west. He noted that the furthest out point would be 14 or 15 feet into the fire lane. He stated that they would prefer a clean straight line rather than the meander. He stated that while they propose overnight slips on the western side that would be to provide flexibility throughout this process and with ice conditions. He noted that eventually the intention would be to use the western slips as transient slips but recognized that would require additional approvals in the future.

Chair Thomas asked how the proposed dock, extending over the side site lines, vary from what exists today.

Matt Cook replied that the difference is primarily in the south slips, closer to shore, noting that one of the first or second slips would stick out a few feet while it currently does not stick out at all. He noted that the gas dock slips to the north would also be different.

Chair Thomas stated that currently the marina has a variance to extend into the fire lane, while this would provide a slightly larger encroachment. He asked for details on the access and egress to the lake from the boat launch.

Mr. Wischmeyer stated that the boat launch is in the center and followed the path boats follow to get out on the lake. He stated that part of the redesign concept would make a straight shot out, which would provide a better ability to bring boats in and out.

Hoelscher noted that it is not directly related to the application, but asked if the redesign would allow the Minnehaha to be launched at the facility.

Mr. Shatsall commented that he could not be certain as that is a wood boat. He stated that he has seen the current storage location and could review the possibility.

Walesch stated that if the applicant is going to consider revising the plan, he would ask if the revisions could be made without variances, specifically on the west side. He noted that there is not just a zero setback but exceeds across the property line. He stated that personally he has heard a lot from other marina owners that have proposed similar actions in the past that have been denied and therefore were required to make revisions. He noted that reconfiguration often results in lesser boat slips and he wants to ensure that the code is enforced equally for all applicants. He agreed that this includes good improvements for the site and structures, but his criteria would be that the applicant does not need to exceed the envelope and should meet the setbacks.

Mr. Wischmeyer commented that he believes the difference to be qualified commercial marina versus nonconforming reconfiguration and that is why they are relying on the nonconforming language and meeting that intent. He stated that if there is a problem with the straight line on the west, they could continue to meet the current variance.

Walesch noted that on the western side they are not just up to the property line but are over by 30 to 40 feet. He recognized that slips may be lost to meet that requirement.

Mr. Wischmeyer stated that they believe that there is flexibility under the nonconforming language to meet their request but noted that they would consult with a lawyer.

Kroll stated that as a citizen he visited the site and visited the restaurant. He stated that he enjoyed the improvements to the restaurant area and the dock area also needs improvement. He stated that this clearly needs some work.

Thomas opened the public hearing at 8:19 p.m.

Matt Johnson, 1432 Shoreline Drive, stated that he understands that the new owners are trying to do the right thing and understands the interest in improving the docks. He stated that he lives next to a marina and lives with the experience of having side opening slips up to the property line with zero setback. He stated that he has experienced constant and consistent violations of no overhang. He stated that he is also a member of a City Council on the Lake and understands how difficult enforcement can be. He stated that as the plans are reviewed that include side opening slips on each side, the only way to ensure that the interest of the neighbors is protected would be to not include side opening slips on the outside. He stated that boats on the western side would need to go 40 feet back before they can swing around. He stated that if the applicant is concerned with observing the rights of the neighboring property owners, those side facing outside slips should be removed. He noted that because he is a member of a City Council, he would provide comments about having commercial activity on residential property. He stated that he agrees that he would want the opinion from the City to be received first before something is granted that could violate City Ordinance.

Mark Onstead, Attorney representing the Erdahls at 120 Sunrise Avenue, noted that his clients live at the property directly to the east of the marina property. He highlighted the concerns of his clients which include the docking of charter boats, noting that there has never been a charter boat docked at this property and that docking would interfere with the sightlines from the residential property. He stated that perhaps that charter boat could be parked in another location out of the sight of a residential property. He noted that his clients are also concerned with the increased boat traffic in front of their residence, explaining that the east most dock currently only has access from the north. He stated that the proposal would provide access from the east, which would increase the amount of traffic in front of their home. He stated that in the past there has been a bubbler system in the marina that keeps the area from freezing and does not hurt the docks. He noted that signs are then placed to ensure that snowmobile traffic is aware of the activity. He stated that if deicing is going to occur, he would want to know where the bubbling system is going to be and where the signs would be placed. He stated that if the deicing is going to go all the way out to protect the eastern docks, the bubbling system would need to go to the far edge on the right and would cause the sign placement further towards his clients' property. He asked why so many slips would be permitted in front of the residential property as there are currently about 15 slips. He explained that the slips are not connected to the residential lot and instead connects with a plank to the docks on the west. He stated that there is a proposed connection to the residential property and that would increase foot traffic on the property. He stated that if the proposal is allowed as presented, the marina would conduct more activity in front of his clients' property.

Richie Anderson, owner of Northshore Marina, distributed information to the Board. He provided information on the widths between the lanes. He stated that when he reconfigured his docks in 2005, he proposed side opening slips on a straight 25-foot setback and he was told he needed to be 50 feet from the property line. He stated that he also reconfigured his property on Maxwell Bay in 2007 without side opening slips and perfectly conforming to the rules and regulations. He presented a perfectly legal reconfiguration for this marina, using the same numbers for lane widths and size of the slips, noting that the proposal could have been approved by staff. He stated that the reason that no one else wanted to buy the property is because it would need to be reconfigured and slips would need to be reduced. He stated that he lost 15 slips at Northshore Marina, but it was worth it because the docks needed to be replaced. He stated that when he reconfigured Maxwell Bay, he lost 20 slips, but the area is more usable. He stated that there is no dock that exceeds 200 feet and he is not aware of a reason one would need to be. He stated that his reconfiguration in 2005 looked similar to this marina because it followed the shoreline as well. He stated that the reason this applicant did not go under qualified commercial marina is because they are already at 200 feet. He stated that the gas dock as proposed is 57 feet and instead could be ten feet wide and 25 feet out. He stated that it would be really quite simple to conform to the regulations of the LMCD as the other marinas have had to do. He stated that the other marina owners did not bid on the property because they were aware of the number of slips that would need to be lost.

Gabriel Jabbour, 985 Tonka Bay Road, stated that in 1976 the marinas were out beyond 300 feet and the LMCD asked the marinas to go back to 200 feet. He stated that all the marinas did that with the exception of one, which is now called Wayzata Marine. He stated that the City of Orono and the LMCD took the marina to court and the court stated that the marina does not have grandfathered rights. He stated that the LMCD then decided to change the regulation to 100 feet, which then in turn made all the marinas that voluntarily complied with the 200-foot request into legal nonconforming uses. He stated that he worked with the LMCD to tell the

marinas that what exists does not comply with any standards, using examples of ADA compliance or widths. He stated that he helped to write the envelope concept ordinance when he was on the Board. He stated that it was proven difficult to be existing with any future as a nonconforming status. He stated that at that time the Board worked together to develop the qualified commercial marina license. He stated that it is hard to sit in the audience and see all the speculation as there was a logical and well thought reason behind the development of that license. He stated that he owns four marinas and has worked diligently to work with other marina owners to be good legitimate citizens that do not request anything outside the parameters of the LMCD regulations. He stated that he would not want to see citizens view marinas as a source of problems on the water. He stated that the LMCD has had many applications since the development of the qualified commercial marina license. He provided examples of marinas that have submitted successful license applications that comply with the regulations since that time. He stated that this request breaks that tradition. He noted that additional marinas are going to come forward with reconfigurations, as is he. He stated that he has shown staff his thoughts for Shorewood Yacht Club that would comply and that does not rely on the number of slips but relies instead on following the regulations and setbacks. He stated that this would be a total breakaway from what the other marinas have done. He stated that this is not a case of practical hardship as the property line is a V shape, which opens up the whole lake. He provided an example of another request in the past that had a true practical hardship. He noted that a qualified commercial marina would not apply because 20 percent of the slips would need to be dedicated for boat club or restaurant. He asked that the Board not take the neighbor's rights and impose undue hardship. He stated that he is a founder of the corporation that owns the Minnehaha and noted that the Minnehaha has limited its ability to be on the road. He stated that there is no environmental problem with removing the posts, as posts break. He stated that the LMCD should work with the new owners but did not want to see this approved, which would open the door for additional requests that do not meet the requirements of the LMCD. He stated that his proposed reconfiguration does not include any side openings. He commented that marinas should be good citizens to the lake. He commented that charter boats should not be in a neighborhood and should instead be in a commercial district due to his belief of nuisances and safety hazards.

Mike Palm, commercial real estate broker, stated that he is the broker that sold the marina to the current owners. He stated that he served on the Planning Commission for the City of Minnetonka Beach and has been involved in various variance requests. He stated that he met with LMCD staff to ensure that as long as the residential property was owned by the marina owner, docks could be in front of that home. He stated that he marketed the property as such. He stated that it would be important for Tonka Bay to be aware that LMCD is okay with docks being in front of the residential property, as long as the marina owner owns both properties. He referenced the side yard setback and noted that the western setback would be different than a neighboring residential property as the property to the west is a boat landing area and therefore believes it would be a common sense variance to allow for that activity to continue. He referenced multiple property owners that are in support of the request and are excited about the improvements at the marina. He stated that the restaurant building with the deck has the original Tonka Boat House piers inside the property. He stated that the new owners have invested into the property to maintain the commercial marina activity and the restaurant, which provides a value to the neighboring property owners. He provided calculations on the value that would be added through the new dock improvements but noted that 116 slips would be needed to justify that investment. He believed that this should be a common sense decision as the property to the west is not a beach or residence.

No additional comments were offered, and the public hearing was closed at 9:04 p.m.

Walesch stated that he did not get the sense that the docks in front the residential property would be an issue as the properties are under common ownership.

Matt Cook stated that the docks being in front of the residential property is the decision of the LMCD, while the City's decision will be whether the dock is connected to the land of the residential property.

Walesch confirmed that there is no issue with the docks being in front of the property, to clarify the concern from the real estate broker.

Schleuning stated that when people come into the LMCD office, LMCD staff advises them to also speak with the City regarding land-based concerns.

Chair Thomas noted that the staff recommendation is to carry this over to the next meeting in order for staff to review the information received from the public.

Gilchrist stated that staff was hoping to not only gain input from the public but also from the Board. He stated that while staff could respond to public input there has not been much direction from the Board.

Brandt stated that he would encourage the applicant to do more to conform without variances.

Walesch agreed.

Zorn encouraged staff to work with the applicant to develop a conforming dock with no variances.

Hughes echoed the comments of Zorn.

Kroll stated that he would want to more understand the existing marina owners on the lake. He asked if the position was that allowing this new dock plan would mean that the existing marina owners would be interested in applying for more dock space whether or not there is an ownership change. He explained that he would want to better understand the precedent that could be set if this were approved.

Chair Thomas stated that staff met with some of the marina owners to obtain feedback and some of the marina owners spoke their concerns tonight as well. He was unsure what additional information would be requested. He noted that Mr. Anderson stated that he came into compliance, although it cost him slips. He stated that Mr. Jabbour stated that he is coming in next to reconfigure and if variances are granted on this, he will request variances as well.

Gilchrist noted that staff can follow up with that as well, noting that the marina owners would be happy to express their thoughts in more detail.

Stone stated that she feels that she needs to digest the information a little more. She noted that in preparing for the meeting she, like Kroll, thought this seemed pretty cut and dry but after hearing the input tonight she is unsure.

Hoelscher thanked the new property owners as this is a cool property in need of updating. She stated that it seems like the property owner is willing to work with the LMCD and would like the applicant to attempt to work within the envelope as that would be the easiest solution.

Baasen stated that this looks like a marina to him. He explained that when the LMCD worked five years ago to define a marina, the intent was to provide flexibility to work within a specific envelope. He stated that it would be nice to see the applicant tweak their application to work within that envelope as it is important to consistency and fairness. He commended the property owner for taking the project on but believed that in working together a desired result could be achieved.

Cook stated that he is concerned with the slide opening slips on the east side of the proposal and is also concerned with encroachments on the west side. He encouraged the applicant develop something that is closer to the requirements of the LMCD, if not meeting all the requirements. He stated that there are some significant impacts of the slide opening slips on the east and west.

Klohs stated that it is his understanding that Mr. Jabbour is simply stating that if this approved, every other marina on the lake would request similar densification and the Board should be aware that this would be precedent setting and could significantly impact residential properties all along the lake. He stated that staff did say that docks can be in front of the neighboring residential property, as long as things do not change on the land side as the City controls that element. He believed that the City should take action first on the residential variance before a lot more time is spent answering the questions of the LMCD. He stated that Tonka Bay will be the key stop related to the docking in front of the residential property.

Chair Thomas stated that it will be the discretion of the Board whether to allow public input when the topic is discussed at the next meeting and confirmed the consensus of the Board to allow public comments at the next meeting.

MOTION: Thomas moved, Baasen seconded to continue the public hearing for the Caribbean Marina and Restaurant's 2019 reconfiguration of nonconforming structure and variance applications to the October 9, 2019 Board meeting for further consideration.

VOTE: Motion carried unanimously.

Chair Thomas briefly recessed the meeting.

Chair Thomas reconvened the meeting.

10. OTHER BUSINESS

Hoelscher thanked the Water Patrol, noting that she attended a ride along this past week and really enjoyed the activity. She recognized that the activity takes time for the Water Patrol but noted that she found the information helpful and encouraged other members of the Board to participate.

Hughes noted that he also learned a lot on his ride along with the Water Patrol in the past and encouraged other Board members to do the same.

11. OLD BUSINESS

A) Watercraft Wastewater Discharge Suggested Code Amendment – Public Input

Walesch stated that the proposed language speaks for itself and commended Gilchrist noting that the drafted language is reflective of the intent. He thanked Mr. Jabour for his input and for the Sheriff's Department and DNR also provided. He noted that a number of marinas and service providers were consulted to ensure that this would not be too cumbersome for a boat owner. He noted that there were discussions with numerous people in attempt to find the best manner to proceed, as well as reviewing alternatives. He commented that a very thorough review was done and the best way to prohibit intentional or accidental discharge of waste into the water would be to remove the pump, which is an accessory. He noted that it would not be cost prohibitive. He noted that in addition to the research and outreach that his group has done, staff attempted to gain public input as well.

Chair Thomas asked the intent for tonight in regard to public input.

Schleuning stated that an update went out today from the LMCD to the cities, lake service providers, licensees, and email list about this topic. She noted that additional request for information will be placed on the LMCD website and Facebook page with the intent for the Board to consider adoption in October.

Kroll commented that this is very well written. He suggested that the word urinate be removed from the language and urine is typically sterile.

Walesch stated that he would be open to modify that language if desired.

Hoelscher commented that she looked that up today, whether urination in lakes is a problem, and noted that in the ocean it is fine but is not suggested for lakes. She agreed that language should be removed as it is not enforceable. She stated that she would be hesitant to amend an ordinance if it cannot be enforced. She referenced the language regarding launching a watercraft and asked if that would apply to the owner or the party that launches the boat. She also referenced the reporting violations and noted that if there is not a penalty for not reporting it would seem pointless to have that language included.

Walesch commented that the language was requested to be included by the service providers as a mechanism for reporting as a requirement of the LMCD. He stated that in terms of enforcement, a violation would need to be noticed by a marina when pumping or launching a boat. He noted that preferably the partners that help enforce the

code would help to enforce this code. He noted that the Sheriff's office can also help with enforcement. He acknowledged that not every boat would be able to be checked but the intent would be to help educate those that launch boats and boat owners. He confirmed that the intent would be that the owner would be liable as well as the person that is present when the violation occurs.

Chair Thomas clarified that it sounds that if a marina owner or service provider launches a boat with the pump installed, they would then be subject to the violation. He asked if the employee or the marina owner would be liable.

Gilchrist clarified that the employee that launches the boat would be liable, similar to an employee that sells tobacco to an underage person. He noted that if the owner fails to remove the pump that would be a separate violation. He explained that the ordinance has two parts, adoption of reference of the State statute rules that prohibit discharge into the lake and the other elements specific to the ordinance.

Chair Thomas asked staff to check with Minnesota Department of Health of Minnesota Pollution Control Agency regarding urination into the lake.

Schleuning stated that there have been problems in the past that required enforcement.

Mr. Jabour commented that it is illegal in Minnesota to urinate in public.

Chair Thomas commented that he would assume that is more in regard to public decency rather than public health.

Schleuning confirmed that she would follow up on that item.

Walesch stated that language was added related to ice houses as well.

Kroll commented that the law 30 years ago did not prohibit public urination and noted that it still does not.

Chair Thomas asked if the marina owners are okay with their employees potentially being fined.

Walesch confirmed that element was explained clearly and in terms of the responsibility. He noted that certain marinas initiated this conversation and one even wants to go further. He noted that some marinas do not have boats of this size that would support this equipment and therefore would not be an issue. He stated that universally there was support and understanding of what would be required and the exposure to employees that could exist.

Gilchrist stated that the message he received from marina owners was that they want to be required to follow this ordinance. He confirmed that it would not be a crime/jail time for employees, but there would be a fine.

Walesch stated that staff and the Board would have discretion in the situation where someone makes an honest mistake.

Baasen stated that some smaller boats also have the pumps and therefore marina owners should not assume that smaller boats do not have them. He stated that the LMCD needs the help of service providers and need to publicize

the information within the ordinance. He thanked Walesch for his efforts.

Hoelscher stated that it would seem that the distinction between intentional and non-intentional would need to be made if that is the intent.

Walesch provided an example of someone launching a boat without realizing that there was a pump, as the pump could be located elsewhere. He stated that perhaps that person constantly does good work for the lake and simply did not notice the pump because it was in a different location, compared to someone that has repeat violations. He stated that there would be no way to accidentally discharge as the pump should not be there.

Hoelscher commented that she would want to see the code enforced equally.

Chair Thomas asked when the Water Patrol would look for the pump.

Lieutenant Magnuson replied that Water Patrol would need probable cause, such as seeing discharge. He noted that they would need reasonable cause to go under deck to look for it. He noted that under certain circumstances under impound, that could be found but not under probable cause for DUI/BUI.

Rich thanked Walesch for his work. He stated that personally this needs to be punitive to the boat owner rather than punish the marina and to punish an hourly employee.

Walesch stated that this has been requested by the marina owners and therefore there would not be backlash.

Rich acknowledged that the marina owners have stated that but commented that logically the punishment should stop with the boat owner.

Walesch stated that the marina owners asked for that specific section as it would also be incumbent on the service providers and not just boat owners. He explained that the person launching the boat should have some responsibility. He noted that it would be easy to make contact and educate the service provider rather than attempting to reach every boat owner.

Rich commented that the Board should not take the preference of a few marina owners and apply that to every marina owner as they may not all share the same opinion.

Chair Thomas agreed that the marina owners Walesch worked with do not represent all marina owners. He stated that the intent would be that this draft ordinance would be noticed and brought back in October, noting that other marina owners can contact LMCD staff prior to the meeting or attend the meeting to provide input. He noted that boat owners may also have input.

Hughes stated that he has done some research on this subject and noted that no other entity or state has required the pump to be removed. He stated that instead the other regulations lock the Y valve. He noted that some boat owners use their boat here and in Florida and it would be an unreasonable cost to remove that pump only to reinstall.

Chair Thomas commented that Director Hughes' point was well stated.

Walesch acknowledged that this would most likely be the only place to remove the pump removal. He noted that Lake Minnetonka is unique in that it has its own governing body. He stated that there is only one function for the pumps, to discharge waste. He noted that it is only legal to dump into international waters and therefore it would be illegal to discharge into Florida waters. He stated that if someone can trailer a boat to travel to Florida, they would be able to pay for the \$140 fee to remove and reinstall the pump.

Chair Thomas noted that this simply repeats the discussion on whether pump removal would be required versus Y valve. He noted that once public input is received the Board will need to make the decision on whether it wants to be unique in requiring removal of the pump or comply with State regulations to seal the Y valve. He thanked Walesch for his efforts on this topic.

12. NEW BUSINESS

There was no new business.

13. TREASURER REPORT

No report.

14. EXECUTIVE DIRECTOR UPDATE

Schleunig noted that included in the packet and on the back table is a copy of the September 20th updates sent to cities, which will also be posted on the website. Briefly, some items to note include:

- Solar light removal by October 14th and buoys by November 15th
- Importance of preparing for winter so watercraft and structures are off the lake before ice
- She attended the University of Minnesota AIS Showcase, which was a good event. Presentations and boards are available at <https://www.maisrc.umn.edu/news/showcase-presentations-2>.
- Hennepin County will be working on the sea wall at Henricksen Channel this fall, beginning soon. Updates are available at <https://www.hennepin.us/hendricksonchannel>.
- An article in the Lakeshore Weekly News related to students work about microplastics in Lake Minnetonka. She encouraged everyone to help reduce trash and pick up litter when observed.
- An update regarding www.adopt-a-drain.org and stated it would be great if all the storm drains around Lake Minnetonka were adopted to help prevent pollution.
- She highlighted upcoming events.

A) Lake Minnetonka Vegetation and AIS Master Plan Process

No additional comments other than in the September 2019 update document.

15. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species Taskforce: No report.

Budget Workgroup: No report.

Save the Lake Committee: No report.

Strategic Plan Subcommittee: No report.

16. ADJOURNMENT

Being there no further business, the meeting was adjourned at 10:08 p.m.

Gregg Thomas, Chair

Ann Hoelscher, Secretary