

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., October 9, 2019  
Wayzata City Hall

**WORK SESSION**

6:00 p.m. to 7.00 p.m.

**Members present:** Ben Brandt, Mound; Bill Cook, Greenwood; Ann Hoelscher, Victoria; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; Chris Rich, Woodland; Gregg Thomas, Tonka Bay; Nicole Stone, Minnetonka; Jake Walesch, Deephaven; Deborah Zorn, Shorewood. Also present: Troy Gilchrist, Legal Counsel; Vickie Schleuning, Executive Director Matthew Cook, Environmental Administrative Technician; Steve McComas, Blue Water Science (BWS); Jason Naber, Emmons & Olivier Resources (EOR);

**Members absent:** Dan Baasen, Wayzata; Vacant, City of Excelsior

**Present in Audience:** Eric Evenson; Gabriel Jabbour; Tom Jacob; Rob Schatzle; Shawn Wischmeier; Richie Anderson; and others that may not have signed the attendance sheet.

1. Board Update Lake Minnetonka Vegetation & AIS Master Plan

Mr. Naber (EOR) explained that he and Mr. McComas of BWS were providing the Board with an update regarding the progress and remaining timeline for the tasks laid out in their contract with the LMCD.

Mr. Naber noted that the Starry Stonewort (SSW) Protection & Emergency Action Plan, Tasks 1 and 5, has been drafted. He noted that the next steps for the SSW Plan are to have another meeting with the Technical Advisory Group (TAG) review the document and then finalize the document based on the TAG's input and CAGs input.

Mr. Naber said that the Harvesting Program Review, Task 2, has been drafted, and the report will be finalized in the coming weeks.

Mr. Naber stated that EOR and BWS have created GIS Mapping tools for the LMCD, as instructed for Task 3. He noted that EOR plans to update the maps as needed through the rest of their contract term.

Mr. Naber stated that the next steps in the development of the Lake Vegetation & AIS Master Plan, Task 4, are as follows:

- Review of Goals & Roles Memo by LMCD
- Finalization of outline and modules
- Write the Master Plan

Mr. Naber said that the remaining presentations and meetings, part of Task 6, are the second TAG meeting and the coordination of gathering input from the Citizen Advisory Group (CAG).

Naber stated that as part of Task 7, a public survey regarding lake vegetation presence and a Social PinPoint Web Tool had been developed for LMCD to use. He noted that members of the public can access the Web Tool through the LMCD's website.

Mr. McComas stated that EOR and BWS completed a lake vegetation survey spanning 70 miles of lakeshore. He explained that their work, combined with existing surveys of other bays, comprises the first lake-wide vegetation survey dataset for the 125 miles of lakeshore on Lake Minnetonka.

Mr. McComas stated while the abundance of Eurasian watermilfoil (EWM) in specific areas of the lake may vary year to year, the distribution of EWM across the lake may also be changed in the long term due in part to the proliferation of zebra mussels. He explained that zebra mussels enhance the clarity of the water, thereby enabling better penetration of sunlight which enables plant growth.

Mr. McComas stated that in considering the results of the survey and the review of the LMCD Harvesting program, a likely course of action would be to balance the management practices of harvesting and herbicide treatments.

Mr. McComas stated that SSW has been found in nearby Medicine Lake, among others. He explained that SSW is tough to eradicate once introduced, but can be effectively contained. Mr. McComas noted that early detection and rapid response are key components of containment.

Mr. McComas stated that during the survey, flowering rush was generally found in the areas it is already known to be in, and does not appear to have expanded much. He noted that the areas covered by Sagittaria, a native look-alike, have roughly tripled in recent years. McComas said that year-to-year fluctuations of Sagittaria can be significant, whereas flowering rush appears to vary less year-to-year in coverage. He referred to a graph depicting the expansion from lake-to-lake of zebra mussels, EWM, SSW, and flowering rush. Mr. McComas underscored that the curve representing expansion of flowering rush was quite flat.

Schleuning asked which plant species were paid attention to as part of the vegetation survey and research.

Mr. McComas stated that the EOR and BWS team focused primarily on EWM, SSW, flowering rush, and native plants.

B. Cook stated that the draft plans would be dispersed for comment soon. He encouraged the Board to keep in mind how the LMCD can be most effective with its resources as they read over the draft plans. B. Cook stated that he was expecting to propose that a more holistic AIS program be developed, with some of the following items included as part of the program:

- Harvesting capabilities
- Watercraft inspections
- Scientific data gathering and review

B. Cook acknowledged that such a program would require more funding. He stated that the LMCD ought to partner with the LMA and the University of Minnesota.

- B. Cook asked the EOR and BWS team to help the LMCD Board review and evaluate the following items:
- As St. Albans Bay and Gideons Bay are treated with herbicide, is Excelsior Bay effectively receiving treatment as well due to the exchange of water between those three bays?
  - What is the lake's equilibrium regarding to distribution of vegetation and AIS?
  - How might harvesting or not harvesting impact that equilibrium?
  - Given that it appears to be possible to remove or largely reduce the presence of flowering rush, is such an undertaking worthwhile given the plant's slow expansion?

B. Cook ended by encouraging the consultants to help the LMCD prioritize what actions to take with regarding to lake vegetation and AIS.

Walesch asked where the short-term social media goals referenced in the draft harvesting program review came from.

Mr. Naber stated that EOR and BWS recommended having a strong social media presence for a future harvesting program, as that was a common component of other successful harvesting programs they had reviewed, as social media enabled those programs to reach many people and clearly communicate the program's schedule.

Rich inquired as to whether there was notable research regarding the short- and long-term effects of herbicide treatments.

Mr. McComas responded that the EPA has conducted a quantifiable risk analysis for all approved aquatic herbicides. He acknowledged there may be some uncertainty, albeit unquantified, regarding long-term effects.

Rich noted that while other chemicals have been considered safe, class-action lawsuits have been raised alleging negative impacts caused by said chemicals. He expressed that he wants to be sure that a course of action the LMCD undertakes does not worsen the state of the lake in an attempt to protect it.

Klohs asked how confident the consultants were in their findings, given the tight timeline and budget.

Mr. Naber stated that while the task has been challenging, EOR and BWS were focused on receiving the next stage of input from other lake stakeholders.

Jabbour stated that the LMCD needs many more times the amount of information it had to develop a comprehensive plan noting carp, zebra mussels, and quagga mussels were not covered in the current plan documents.

B. Cook agreed with Mr. Jabbour that more information would be needed. He noted that the gathering of information would be an ongoing process. B. Cook stated that while the task can be overwhelming, the LMCD has to make a start somewhere.

Klohs underscored that the consultants ought to analyze an option of the LMCD to take no action and what effect that may have on the lake.

Mr. McComas concurred with Mr. B. Cook and Klohs. He stated that new information will always come forward, and the Master Plan can be adapted to the new information as it appears. Mr. McComas stated that the information needs to be compiled and put into a report at some point to begin action.

Mr. Naber added that the plan, as designed, is modular in structure. He explained that additional modules for animal species such as those listed by Mr. Jabbour can be developed and added to the plan.

## 2. Review of Reconfiguration Code Sections and Projects

Schleuning briefly reviewed the process and application types for reconfigurations of nonconforming structures, in addition do comparing the Code requirements for nonconforming structures with the requirements for Qualified Commercial Marinas.

Gilchrist stated that in creating and updating the language of the Reconfiguration of Nonconforming Structures, the Board recognized that requiring nonconforming docks to become conforming docks could create substantial hardships for owners of nonconforming docks. Gilchrist stated that the purpose of the Code section was to provide some flexibility for owners of nonconforming docks to make some changes to their docks without having to meet all of the standard code requirements so long as nonconformity is not increased.

Schleuning displayed some site plans from commercial marinas and provided varying site characteristics and approvals.

Walesch asked if the LMCD had recently approved any diagonally-oriented slips and not treated such slips as side-opening.

Schleuning indicated that the approval for 500NNL, LLC. met that description.

Walesch stated that the applicant had practical difficulties given the layout of the site. He noted that the Board should discuss what constitutes a side-opening slip.

The meeting was adjourned at 7:00 PM.

**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; Dan Baasen, Wayzata (arrived at 7:15 p.m.); Bill Cook, Greenwood; Ben Brandt, Mound; Gary Hughes, Spring Park; Dennis Klohs, Minnetonka Beach; Mark Kroll, Orono; Mike Molitor, Minnetrista; 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:** Excelsior Vacant.

**4. APPROVAL OF AGENDA**

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

**VOTE:** Motion carried unanimously.

**5. CHAIR ANNOUNCEMENTS**

There were no Chair announcements.

**6. APPROVAL OF MINUTES-** 9/25/19 LMCD Regular Board Meeting

**MOTION:** Zorn moved, Walesch seconded to approve the 9/25/19 LMCD Regular Board Meeting minutes as submitted.

**VOTE:** Ayes (11), Abstained (1), (Molitor). Motion carried.

**VOTE:** Motion carried unanimously.

**7. APPROVAL OF CONSENT AGENDA**

**MOTION:** Rich moved, Cook seconded to approve the consent agenda as presented. Items so approved included: **7A)** Audit of Vouchers (10/01/19 – 10/15/19); **7B)** September Financial Summary and Balance Sheet; and, **7C)** Resolution Accepting Save the Lake Contributions (08/22/19 – 09/24/19).

**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)** Continued Public Hearing for 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 the continued public hearing for consideration of applications for reconfiguration of a nonconforming structure and variances for the dock use area for the Caribbean Marina and Restaurant. He reviewed the existing and proposed dock comparison including BSUs, density, and linear BSU footage. He presented the site plans as revised on October 4, 2019 and October 9, 2019 noting changes to the east side and northwest corner. He identified the new location for the proposed gas dock. He highlighted key code considerations for the Board. He also reviewed the variance criteria that must be considered. He noted that no comments were received from the DNR or MCWD. He noted that the City of Tonka Bay would like the LMCD to take action before it carries out its own review process. He advised that the public comments received through October 4, 2019 were included in the Board packet.

Chair Thomas referenced the east side setback and asked if that would meet the code guidelines for side opening slips.

Matt Cook reviewed the setbacks proposed in the October 4<sup>th</sup> and October 9<sup>th</sup> site plans.

Schleunig stated that a nonconforming use would not necessarily need to meet or exceed the code, but the proposal meets the same as the original.

Chair Thomas asked and received confirmation that both the October 4<sup>th</sup> and October 9<sup>th</sup> proposals would be better than the original proposal.

Hoelscher referenced the setbacks for lake facing slips versus side facing slips and asked the required setbacks.

Matt Cook reviewed the required setback for each instance.

Hoelscher asked if the east side would meet the required setback if these were considered side opening slips.

Matt Cook stated that if this were a conforming facility that setback would not be met but given that this is a nonconforming facility, there could be flexibility.

Rich referenced the western most dock of the existing facility and asked how much further west the proposed dock would be.

Matt Cook commented that the further point proposed would match the current further point on the west.

Rich stated that his concern would be for the neighbor to the east as boats will need to back out to pull into their slips. He noted that currently the boats load into the slips from the interior while the new proposal would have those boats accessing from the outside.

Matt Cook stated that a representative for the neighbor is present tonight. He confirmed that the docks are essentially in the same location.

Walesch referenced the slips to the east and asked if those slips would require a variance if they were considered side facing slips.

Gilchrist stated that his impression is that a variance would not be needed as the slips would not extend further into the area. He explained this is nonconforming and therefore elements will remain nonconforming through reconfiguration. He stated that it would be the job of the Board to determine if this would have more impact on the neighboring properties.

Walesch stated that he would first like to have a discussion on what the Board considers side facing slips, specifically whether these are considered side facing slips.

Chair Thomas stated that it was his impression that whether or not these are considered side facing slips, a variance would not be required.

Matt Cook stated that given that there is a municipal site to the east that is the immediate neighbor, he would not see a reason to require a variance. He noted that there is a one to one mitigation provided.

Gilchrist stated that the question would be whether the Board feels there would be a negative impact from those side slips and confirmed that a variance would not be needed.

Zorn stated that during the worksession staff displayed other nonconforming uses with side slips, noting that those slips had acute angles while this applicant proposed obtuse angles. She commented that she would not see a valid reason to eliminate the requirement for a double side setback for those slips and therefore would not see a reason to allow those side slips at a diagonal angle.

Chair Thomas stated that because this is nonconforming there is not a requirement for a double side setback.

Zorn explained that it would be the decision of the Board whether or not to allow. She noted that the neighboring use is different and there should be a larger setback.

Rich commented that it is not whether it is a side load but will be an issue of whether this will increase boat traffic. He commented that there is a fire lane of 14 feet and his concern would be that the side slips to the east would cause additional traffic for the people on the other side of that fire lane. He applauded the new owners but noted that his personal concern is the side load slips on the eastern most side as that boat traffic will cause harm to the neighbor on that side.

Chair Thomas stated that in the last review there was concern with large pole that would remain and asked if those would now be removed.

Matt Cook confirmed that those poles would be removed under the new revision.

Baasen stated that it is his understanding that this cannot be treated as a qualified marina because of the boat club. He stated that if the boat club is going to be located on the eastern side that is not normal traffic as that generates much higher use and traffic. He asked the number of nonconforming marinas that extend beyond 200 feet.

Matt Cook stated that there are site plans and indicate that some portions extend beyond 200 feet but noted that some of those are quite old. He stated that gas docks routinely go beyond 200 feet for nonconforming structures.

Chair Thomas asked if any part of the current proposal exceeds 200 feet.

Matt Cook stated that the only portion that extends beyond 200 feet would be the gas dock and slips.

Schleunig clarified that gas docks are allowed to go 25 feet past. She explained that because this is nonconforming and the gas dock extended 20 feet, it can only extend 20 feet further and not 25 feet. She highlighted a triangular gas dock that will be removed.

Zorn referenced the two fingerlings to the east and asked the measurement between the two. She stated that her question would be whether that easterly dock could be shifted closer to provide additional setback from the neighboring property or whether that would impact navigation.

Molitor stated that although he was not able to attend the last meeting, he did review the written materials. He asked and received confirmation that there would be no transient slips proposed. He noted that therefore there would not be an ability for boat users to access the restaurant from the lake, which removes an amenity for lake users.

Klohs stated that there is obvious concern related to the east side from the Board. He noted that perhaps if

slips 120-124 are eliminated that would provide a double setback on the east side and there would be more probability that the Board could support the proposal.

Rich stated that perhaps if those were changed from side loading slips to four straight slips that could make the boat traffic less invasive as the boats would just tie up to the side of the dock. He noted that there would be a reduction in the number of slips but would still allow the dock space to be maximized without negatively impacting the neighbors.

Chair Thomas stated that there is a proposal and asked if the Board should be redesigning the proposal.

Gilchrist stated that the Board would not be in a position to design this for the applicant but noted that the comments made are expressing concern with elements of the proposal. He stated that there are a lot of issues involved in this review and some concerns remain.

Brandt referenced the October 9<sup>th</sup> revision, specifically the section parallel from the residential property and asked if that access would be solely provided through the water or whether there would be connection from the land.

Matt Cook confirmed that the access to the land has been removed from that location.

Kroll asked and received confirmation that under the currently proposed plan a boater could not tie up to the dock to access the restaurant.

Hughes stated that his concern would be along the side with the fire access and the high use a boat club would have for that area.

Chair Thomas stated that previously the applicant had stated that their intent was to place the boat club on the east as those users would have the least amount of trouble navigating that area. He asked if certain slips would be designated for boat clubs.

Schleuning stated that could be done but confirmed that the Board has not made that designation in the past.

Hughes referenced the angled slips on the other side, noting that would work fine when boaters come into dock but when exiting those boats would back out and then head out onto the lake, which would be intrusive to the neighboring property.

Hoelscher stated that there were public comments related to parking with the new plan and reminded the public that the Board does not have authority to regulate parking.

Chair Thomas noted that the revised plans both contain fewer slips than currently exist today.

Rich applauded the overall objective but noted that his concern remains the eastern most docking.

Thomas invited the applicant to address the Board.

Shawn Wischmeier, applicant, stated that they heard two key elements from the last discussion: to stay within the envelope and eliminate variances as well as make things right for the neighbors to the east. He stated that he also spoke with the neighbors to the west as well, which resulted in moving the gas dock. He stated that the only reason a variance was requested to the west in the past was to create a straight line. He explained that was eliminated and everything remains on the same existing line. He stated that leaving the large poles provided no benefit and they have eliminated that element. He stated that the poles can be removed with no trouble, explaining that it was just an offer if it was something the Board wanted. He stated that apart from moving the gas dock to the center, to keep it away from the neighbors on the west, they are only asking for the 20 feet allowed by code. He referenced the east side docks and stated that their attempt in angling the docks was to meet the conditions to ensure there would be good navigable water without causing problems to the neighbors to the east. He stated that he understands that the nonconforming changes the amount of setback required but they still ensured that enough setback would be provided to allow boats to back out of the eastern slips without extending over their property. He noted that the fire lane provides another 14 feet. He noted that the neighbor's dock is set back an additional ten feet, although the requirement should be 20 feet. He explained that there is sufficient space to ensure that the boats are not traveling into the fire lane. He stated that the boat club does not have to be located on the east side, he noted that the intent was that they are trained skilled drivers. He explained that if the belief is that the boat club would cause increased traffic, those slips could be moved. He referenced the issue of transient slips. He noted that there is not a goal of eliminating transient slips but explained that is not included in the plan right now because of the approaching winter season. He stated that their intent was only to request overnight storage right now in order to move boats around during construction.

Legal counsel for applicant, referenced the LMCD Code related to nonconforming structures which does not require double setbacks. She reminded the Board of the reasonable flexibility language that was created to address these nonconforming uses. She stated that this proposal meets the requirements of the code and asked that the Board look favorably on the proposal.

Molitor asked what the applicant would like to see for transient slips in the future.

Mr. Wischmeier stated that currently there are 20 transient slips identified but only 10 to 12 slips that can work effectively. He stated that his goal would be to have between eight and 12 transient slips. He noted that transient slips are not profitable, however they feel that the lake needs that amenity and has a commitment to add those back in.

Zorn asked the navigation space between the two easterly slips.

Mr. Wischmeier replied that there are three or four extra feet of navigation to allow boats to make the turn. He noted that it looks deceptively larger. He noted that it is marked 28 feet. He recognized that it is tight for navigation, but they want to make the walkways more user friendly. He commented that there is adequate space for navigation, but it is tight.

Robert Schatzle, applicant, confirmed that there will be attendants on the dock. He commented that the current configuration is very tight, and boats can see when another boat is coming and therefore the boat approaching would wait for the boat leaving to exit before attempting to gain access. He stated that very rarely do they have passing traffic, even with the restaurant customers. He stated that the corner will be eliminated to allow better navigation.

Zorn asked if there is an ideal location for the transient slips once they are added back in.

Wischmeier identified the desired location, closest to the restaurant.

Klohs asked for details on boat overhangs.

Wischmeier stated that they would follow whatever needs to be done. He noted that there are a number of marinas with large overhangs into the available space but advised that is not their intent.

Schleuning stated that if the overhangs are extended that would not be within the perimeter. She commented that the overhangs cannot extend past what exists.

Wischmeier stated that the configuration would ensure that boats backing out the slips should have sufficient space to backup without having to cross into the fire lane.

Thomas opened the public hearing at 8:04 p.m.

Mark Omstead, representing the property owners to the east, stated that the latest proposal is an improvement but there is still concern with the east side of the marina. He stated that his clients have taken their dock out and would move it ten additional feet if necessary. He commented that his clients have children and grandchildren that enjoy lake activities and that would be impacted by the boat traffic. He stated that in the current configuration there were no perimeter entering slips from the east side. He provided a copy of the order that was issued by the LMCD in the 1970's for this marina, which allowed encroachment on the west side with the variance. He stated that the license from 1978 stated that there was an additional stipulation that no parking signs be posted on the far easterly dock side. He stated that has been the history since 1978, with no boats parked on the east perimeter side but this proposal would have 12 boaters parking along that eastern perimeter. He stated that the purpose of his client's property is not for the marina to use it for navigation purposes as they like to enjoy the water with their family. He stated that opening the east side would be a change. He stated that he does not come up with the same 54 feet calculation on the distance between the eastern docks and his client's property line. He recognized that there is the fire lane but noted that the purpose of the fire lane is not for navigation of a marina. He stated that the fire lane and 20 feet of his client's property seem to be included in the 54-foot setback calculation, which is untrue and would make the actual setback only 20 feet. He stated that is a tight distance when you consider how big boats are and how much space they need to turn around. He referenced the property at 110 Sunrise, and the requirements and limitations on the number of slips allowed in front of that residential property.

Chair Thomas clarified that as long as the residential property is under common ownership of the marina, the

marina docks can extend in front of the residential property.

Gilchrist explained that although there may not be language that specifically states that, the property would be considered as part of the perimeter that can be used in this reconfiguration of a nonconforming structure.

Omstead referenced language in the LMCD ordinances related to a dock extension across different zoning areas. He noted that the dock extends from commercial property across to residential property, which would seem to be against the LMCD provisions. He stated that it is odd to have a residential lot with the current 11 slips that would be proposed to increase to 22 slips. He stated that at the previous meeting the real estate agent for the marina provided addresses that were in favor of the request. He noted that those properties are all vacant and do not have current residents living in them.

Matt Cook provided clarification on the language related to a dock extension from commercial to residential and the allowance with common ownership.

Richie Anderson, owner of North Shore Marina, stated that there should be double side setback on the west side as well. He stated that recent reconfiguration occurred at 5400 Howard's Point Road for that marina, noting that the side opening slips were required to be removed to allow for a double side setback. He referenced the reconfiguration that occurred at the marina at 1440 Shoreline Drive where the LMCD also required the side opening slips to be removed when reconfigured. He noted that those are just two recent configurations out of many that have been required to remove the side opening slips when reconfiguring. He presented a previous reconfiguration he presented in 2005 at 1440 Shoreline Drive which had side opening slips and the required 50-foot setback. He stated that when the side opening slips were changed, it reduced the number of slips from 12 to eight but was conforming. He provided a sketch of a marina in Maxwell Bay and highlighted the 200-foot line and how that was calculated. He also provided a sketch of the Maxwell Bay marina reconfiguration that became totally conforming under reconfiguration in 2007. He presented the current configuration of the Shorewood Marina and another sketch that will soon come before the Board and would propose to make that configuration totally conforming. He stated that the Caribbean could easily be made totally conforming. He stated that if a legal dock could not be built at the Caribbean there is a problem. He stated that he offered to help the applicant design the new plan as he has done it numerous times but never heard anything back from the applicant. He stated that the side opening slips should not be allowed as other marinas have been denied that option.

Don Westman, Echo Bay resident and marina owner, stated that he went through this process three years ago and is happy with the result. He stated that the idea of variances was never in the discussion with his marina reconfiguration. He stated that this layout seems so convoluted and there are so many opportunities to make the layout more navigable. He stated that this is a missed opportunity for layout. He stated that the applicant needs help to make the design flow better and more navigable. He stated that the east side is a problem area for the neighbors and will be a problem. He commented that it is not fair on the west side to use the fire lane for the traffic. He stated that perhaps it exists currently, but this is an opportunity to change it and make it fair. He commented that he is concerned with the boat traffic in Echo Bay as the boats keep getting larger and there is increased traffic. He lobbied for a slow buoy plan that would make it easier to control marina traffic. He commented that this is a missed opportunity to improve this layout.

Christine Peterson, resident to the west, thanked the applicant for moving the gas dock. She stated that she is very concerned with the boat traffic. She commented that the covered dock in the picture is her dock and the current renters in those western docks do not use their boats very often. She requested that the transient restaurant traffic not use the docks on the western side as those boaters often drink and she has five children that she would be concerned about in the water. She commented that the layout is interesting. She understands the difficulty in rebuilding and reinvesting in a site, but from a neighboring standpoint she requested that the traffic be kept to a minimum on the west. She stated that there is a lot of traffic coming and going between the properties in the winter with fishing traffic. She noted that it becomes a little dangerous with the deicing at the marina. She confirmed that the boats do back up and wait in the area near her home to wait for slips at times currently.

Mike Palm, 121 Grove Lane, real estate agent that sold the properties, stated that the Board should consider the fire lanes and how many of those are used by the cities for docks. He stated that Tonka Bay is allowing the LMCD to make a decision before they make a decision on the land use request. He stated that in Minnetonka Beach there are two properties with docks inside the fire lanes. He commented that the marina should be considered a friend to the neighbors as they will be great operators. He explained that in his last comments speaking in support of certain properties he was commenting in support of those properties, while some are vacant properties he has listed.

Gabriel Jabour, 985 Tonka Road, asked the LMCD why there was not an EAW completed on the last four reconfigurations. He stated that he will be submitting a reconfiguration application himself within the next month and would like to have the correct information presented.

Schleuning stated that there are certain criteria for when an EAW is needed and this request did not require an EAW. She explained that if a marina is extending out into new areas an EAW is required.

No additional comments were offered, and the public hearing was closed at 8:42 p.m.

Walesch asked if this consideration could be continued or whether there is a timeline for review. He asked if the applicant would prefer a yes or no decision or whether they would support a continuation if there are issues.

Schleuning confirmed that the application could be continued but a 60-day extension would be recommended.

Wischmeier stated that winter is approaching, and they feel that they need to start taking action soon. He stated that they have met what they have been asked to meet. He recognized that legal configurations were presented from another marina owner but believes that the reconfiguration presented tonight is legal under the LMCD code without variances. He was unsure what else could be done and noted that they still need approvals from Tonka Bay. He stated that they have met the requirements for legal nonconforming docks.

Walesch stated that he has a big concern on the east side and noted that comments were also received from the neighbor on the west side. He stated that he considers the east docks to be side facing slips. He noted

that the prior approval stipulated no parking on the east side of the docks.

Legal counsel for applicant stated that the current dock as it exists, the new dock would not extend past the current dock location.

Walesch stated that while he understands that comment, his opinion of the intent was to prevent boat traffic from the east side of the dock. He stated that he has concern for the neighboring property owners. He stated that when you compare the existing to the proposed, there would be a significant increase in boat traffic and would be an enhancement of what exists. He stated that he considers those side load slips that would be an enhancement and therefore double setbacks should be required.

Legal counsel for applicant stated that she would disagree with those comments.

Rich stated that currently there is no traffic on the east side and even though you move the dock eight to 12 feet, you would have 12 slips that load from the side and that traffic will extend outside the envelope whereas the current traffic does not extend outside the envelope. He recognized that this is challenging but noted that he has the same concern for the neighbors to the east and west with the side loading docks.

Chair Thomas commented that the double setback rule does not apply to a nonconforming marina, but that does not mean that this needs to be approved. He stated that the Board would simply need to explain the reasons it would not support the request, sighting traffic increases and safety concerns.

Walesch commented that the gas dock is provided for in the code. He stated that there are other marinas that have gas docks in excess of 200 feet and those slips are gas dock slips and not rentable slips over 200 feet. He commented that west side has side facing slips and therefore this does not seem to be an improvement. He commented that it seems the applicant is getting a lot of credit for the City owned land and fire lane. He stated that his concern is for the east side as that traffic did not exist before and this would be a large change to the existing conditions.

Hoelscher stated that the LMCD code provides the ability to reconfigure within the perimeter and commended the applicant for working hard to work within the perimeter. She commented that Lake Minnetonka is a small community that cares and encouraged the applicant to listen to the comments that were made tonight. She commented that under LMCD code, related to whether the new plan would have an adverse impact on nearby properties. She believed that the side opening slips would have a negative impact on the neighboring residential properties. She stated that there may be an argument that the nonconformity is increasing in the request as well, noting that those two elements of the code would allow the Board to deny the request. She stated that she was hoping the applicant would comment that he would be willing to continue and work with those that are offering help to the applicant.

Chair Thomas noted that the applicant requested the Board to approve or deny rather than continue.

Schleunig explains that if the application is denied, the entire process would need to be started over including public notice and public comment, rather than continuing the review.

Molitor stated that he understands that comment but noted that the action would not be to deny tonight but to direct staff to prepare that motion that the Board would consider at the next meeting.

Wischmeier stated that he would like everyone to be happy, but the interest of time is important to them. He stated that he would be willing to offer to eliminate the first 50 feet of slips (122, 123, and 124) on the eastern side, which would align with the length of the neighbor's dock. He stated that he could instead side tie a maintenance barge for the marina in that location which would not cause traffic.

Chair Thomas noted that this would be a change to the plan and asked staff how that would work.

Gilchrist stated that if the Board can still give direction. He noted that the Board could provide staff the direction to draft an order to approve, deny, or approve with the change in slips as indicated by the Board. He noted that additional changes could be made at the next meeting when reviewing the order if desired as well.

Zorn noted that the public hearing is closed, and the Board was having discussion and asked if that could continue before a motion is made.

Molitor stated that he appreciates the most recent offer to eliminate some slips. He stated that while he appreciates the desire to move forward from the applicant, this is a long-term reconfiguration, and this is an attempt to get this right. He noted that the intent of a marina is to get traffic directly out to the lake while this plan spills this traffic onto adjacent properties. He stated that while the traffic to the west already exists with side slips, this is a chance to correct that problem.

Walesch echoed the comments of Molitor.

Zorn agreed with the comments of Molitor. She stated that the spirit of the 1978 license was for no traffic on the east side and believed that should stand and be improved. She believed that the envelope needs to be improved and updated on the west as well to eliminate that side spilling traffic. She encouraged the applicant to work with the stakeholders on the lake that have offered help.

Brandt commented that there has been good communication from stakeholders on the lake tonight and believed that continuation and further revision could address the issues that remain.

Hughes commented that he is concerned with the side facing slips and the traffic that would spill onto adjacent land.

Rich commended the applicant for the work they have done. He stated that he remains concerns with the side facing slips and encouraged the applicant to work with Mr. Anderson because he has experience and could help to keep the traffic inward rather than outward.

Baasen thanked the applicant for purchasing the property and noted that the applicant has made great strides. He stated that although the site has been cleaned up tremendously, it does need work. He stated

that as submitted the plan appears to be very congested and if this is going to be done right, they need to make sure that they are not creating an issue. He explained that the lake has experienced bad boaters for its entire life and if the marina is congested that would cause a problem. He noted that there is a degree of infringement to the property owners on the east and west. He stated that if he lived next door, he would not want to see a work barge outside their home. He encouraged the extension to allow additional work to be done on the plan as he could not support the plan as it is today.

Cook agreed that he is concerned with the east side as this would increase the nonconformity of the situation.

Stone agreed with the comments of Baasen. She stated that when she moved onto the lake, she received a lot of advice, some that she wished she would have taken and encouraged the applicant to take the advice.

Hoelscher asked if the applicant would agree to continue this. She believed that a continuance would be a shorter path as there does not appear to be support for this plan.

Gilchrist stated that the option to continue is the decision of the Board. He noted that it will be the decision of the applicant as to whether they amend their plan. He stated that the Board is well within the allowed window.

**MOTION:** Hoelscher moved, Baasen seconded to continue this review to the next meeting.

**VOTE:** Motion carried unanimously.

## 10. OTHER BUSINESS

There was no other business.

## 11. OLD BUSINESS

### A) Watercraft Wastewater Discharge Code Amendment

Schleunig reported that additional input was received on the proposed code amendment. She noted that while there was not a lot of input, there was a mix of positive and negative comments received. She explained the proposed penalties that would exist under misdemeanor. She stated that there would be a potential gross misdemeanor or felony under LMCD code, dependent on the occurrence and other circumstances. She stated that she looked into the language related to urination and noted that other municipalities include both urination and defecation. She stated that from an enforcement standpoint, someone should not be standing up and peeing into the lake or in the winter times. She provided additional information on urination in the water, noting that while it may not cause direct illness it should be something prohibited rather than promoted. She noted that this would just be another tool in the toolbox for enforcement.

Hughes commented that there are some parts that he can agree with, such as turning off the Y valve, but noted that he would not believe that the LMCD can ask someone to disassemble parts of a boat as part of an ordinance. He believed that the goal could be achieved without requiring mechanical and electrical disassembly. He asked how

this would be monitored as boats come from storage and go into the lake. He believed it would be easier to lock the Y valve.

Kroll asked that this discussion be continued because of the length of the meeting and the lack of urgency on this topic.

Walesch stated that if this is something that is approved, it would be beneficial to get the information out as soon as possible as boats are taken off the lake. He noted that if this is passed a portion of the work on the boats could be done this fall and the remainder in the spring.

**MOTION:** Hughes moved, Kroll seconded to continue this discussion to the next meeting.

**VOTE:** Ayes (9) Nays (4) (Brandt, Stone, Walesch, Zorn). Motion carried.

Gilchrist stated that prior to the next meeting the Board should provide specific feedback on the items they have issue with.

Hughes stated that he would like additional information on securing the Y valve.

Walesch noted that research was done on that element and it was determined that the Y valve could be easily unsecured for those that wanted to dump waste into the lake.

Hoelscher asked how comments should be provided to staff.

Gilchrist agreed that comments could be sent to staff to be considered. He stated that he can also provide detailed information in the next packet to help the Board focus a discussion and make a decision.

## **B) LMCD Fact Sheet Draft**

Hoelscher noted that a draft fact sheet was provided in the packet and asked the Board to provide comments to staff. She noted that this information could be used for different audiences.

## **12. NEW BUSINESS**

### **A) Draft City Letter of Appointment of 2020 LMCD Board Members**

Schleunig reported that the letter will be sent to member cities related to reappointments. She asked the Board to review the term expiration dates and asked the Board to provide an update before the letter is sent.

Baasen stated that a number of cities have deadlines for appointment and suggested that the letter be sent as soon as possible.

Chair Thomas confirmed that comments should be received by Friday and the letter should then be sent.

### 13. TREASURER REPORT

Cook had no report.

### 14. EXECUTIVE DIRECTOR UPDATE

#### A) Lake Minnetonka Vegetation & AIS Master Plan Progress

Schleuning stated that the Board received an update from the consultants earlier and they are making a lot of progress. She stated that a lot of the data gathering has been done and highlighted the next steps.

**MOTION:** Cook moved, Thomas seconded to authorize staff to send draft copies of the report to the Citizen Advisory Group (CAG) and Technical Advisory Group (TAG).

**VOTE:** Motion carried unanimously.

#### B) Lake Activities

Schleuning stated that staff worked to post a special events calendar on the LMCD website. She noted that this will help people that want to participate in the events or avoid those special events.

### 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

There being no further business, the meeting was adjourned at 9:31 p.m.

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Gregg Thomas, Chair

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Ann Hoelscher, Secretary