

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, August 9, 2006
Wayzata City Hall

CALL TO ORDER

Skramstad called the meeting to order at 7:04 p.m.

ROLL CALL

Members present: Tom Skramstad, Shorewood; Katy Van Hercke, Minnetonka; Tom Seuntjens, Minnetonka Beach; Paul Knudsen, Minnetrista; Gene Altstatt, Greenwood; John Berns, Wayzata; David Gross, Deephaven; Steve Johnson, Mound; Pete Nelson, Victoria; Tom Scanlon, Spring Park; Herb Suerth, Woodland. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Doug Babcock, Tonka Bay; Leigh Harrod, Excelsior; Andrew McDermott, Orono.

CHAIR ANNOUNCEMENTS, Chair Skramstad

There were no Chair announcements.

READING OF MINUTES- 07/26/06 LMCD Regular Board Meeting

Skramstad recommended three changes to the draft minutes. First, on page 5 for agenda item 3A, the minutes should reflect his comments that "We have an obligation as the Board of Directors to make sure the organization is running financially in a sound way so we do a rigorous analysis at the end of the year and a mid-year analysis to make sure the Directors are aware of the goals and the ability to ask questions." Second, on page 7 under Old Business for "River Night 2006", it stated that Skramstad and his wife attended this event in 2005. Skramstad stated that his wife did not attend this event in 2005 and this should be reflected in the minutes. Third, on page 8 under New Business for "Update on Recent LMA Newsletter", insert the word "newsletter" between the words "LMA" and "had".

MOTION: Seuntjens moved, Van Hercke seconded to approve the minutes from the 7/26/06 LMCD Regular Board Meeting as amended, to include the three changes recommended by Skramstad.

VOTE: Ayes (7), Abstained (4, Berns, Gross, Knudsen, and Suerth); motion carried.

PUBLIC COMMENTS - Persons in attendance, subjects not on agenda (5 min.)

There were no comments from the public on subjects not on the agenda.

PUBLIC HEARINGS

Locust Hills Development, LLC (Grays Bay), new multiple dock license application for a major residential subdivision of the existing Sweatt property. The proposed new multiple dock license

application has been submitted for 44 Boat Storage Units (BSU's) on approximately 4,705' of continuous shoreline on the northwest end of Grays Bay.

Locust Hills Development, LLC (Minnetonka Inlet), new multiple dock license application for a major residential subdivision of the Sweatt property. The proposed new multiple dock license application has been submitted for seven BSU's on approximately 2,464' of continuous shoreline at a site located off of Grays Bay through a box culvert under Bantas Point Road.

Skramstad stated that two new multiple dock license applications have been received for this proposed development because the shoreline in question was non-continuous. However, for public hearing purposes, he recommended that these two applications be considered under the same public hearing because they were interrelated. He asked Nybeck for background on these new multiple dock license applications.

Nybeck reviewed the staff memo, dated 8/3/06, through a power point presentation. During his power point presentation, he reviewed past and potential future Board decisions that were relevant to these applications. He stated that the decision on these applications was the Board's, not staff's, as long as they are made consistent with the LMCD ordinances. Past and future Board decisions reviewed by Nybeck included: 1) Boulder Bridge HOA (South Upper Lake), 2) Carlson Real Estate Company (Halsteads Bay), 3) 5th Street Ventures (Seton Lake), 4) Park Hill/Park Island Apartments (Seton Lake), and 5) Beddor/Paul sites (South Upper Lake). There were a number of fundamental questions that he believed the Board needed to address in making its decisions. These included:

Grays Bay Site

What was the appropriate number of BSU's for this site? He believed that 44 BSU's were excessive if all of the BSU's were located on the Grays Bay shoreline and that some of the BSU's needed to be located within the lagoon area. He recommended approval of the Alternative Site Plan and denial of the Preferred Site Plan. He believed that approval of the Preferred Site Plan would set an undesired precedent and that the Alternative Site Plan was an appropriate compromise for the LMCD.

How did the Board feel about the straight-line measurement for this multiple dock license application? If it were the Board's conclusion that no docking and boat storage should take place within the lagoon area, he recommended that the Board conduct a straight-line measurement for this site and reduce the number of BSU's allowed on Grays Bay.

Were there any subjective criteria that the Board would like to take into consideration when considering this application? If so, which criteria were relevant?

Minnetonka Inlet Site

What was the appropriate number of BSU's for this site?

How did the Board feel about the storage of motorized watercraft at this site?

How did the Board feel about the straight-line measurement for this multiple dock license application?

Were there any subjective criteria that the Board would like to take into consideration when considering this application? If so, which criteria were relevant.

Nybeck entertained questions and comments from the Board.

Skramstad asked Nybeck why he believed 44 BSUs were excessive on Grays Bay.

Nybeck stated that if all the boats were stored on Grays Bay, the proposed BSU density of 1:17.5' was approaching the density standard for special density licenses on Lake Minnetonka, 1:10'. The Board should keep in mind that these facilities are to be available to the general public and these types of developments cannot qualify for a special density license. Additionally, the proposed BSU density exceeds the BSU density allowed in certain types of conversions of use from commercial to residential facilities, 1:20'. That conversion of use provision has very specific requirements and the end result is a legal, non-conforming facility, which contrasts with the proposal by the applicant for a legal, conforming facility for BSU density purposes.

Gross stated that 20 of the 44 BSU's proposed were designated for 40' long boats in less than three feet of water at the ordinary high water mark. He asked whether the LMCD had a low-water policy for these types of cases?

Nybeck stated that the LMCD Board has the ability to declare a low-water emergency when lake levels fall below 928.0'. When this occurs, temporary dock extensions for approved multiple dock facilities can be applied for and they need to be approved by the Board on a case-by-case basis.

Seuntjens asked for clarification of the water depths of the lagoon area and the area in question on Grays Bay.

Nybeck recommended that the applicant should address the water depths.

Van Hercke asked LeFevere for clarification of the thought process of the Board when the straight-line ordinance was adopted.

LeFevere stated that when the ordinance was adopted, the thought process was that the majority of dry land properties had already been developed and the marginal wetland properties were the most likely to be developed in the future. A number of applications were being reviewed by the Board in which the shoreline measured at 929.4 was not a straight-line or typical. Instead, the shoreline meandered along channels and wetlands. In those cases, the Board felt it was not a good indication of the carrying capacity of that stretch of shoreline and that it was inappropriate to give full credit for all of the shoreline. The ordinance was relatively new and he did not believe that the Board had applied it in the past. If the ordinance were applied, the Board could adjust the shoreline credit somewhere between the straight-line measurement and the meandering measurement.

Skramstad asked for further background and comments from the applicant.

Mr. Peter Pflaum, of Plum Investment Company, stated that he was one of the developers for this

project. His primary purpose at this meeting was to provide a background on what had been approved at this site to date. To date, there had been a significant amount of work and discussion already conducted with a number of governmental agencies. In addition to the LMCD, this included the City of Wayzata, the City of Minnetonka, the MN DNR, the Board of Soil and Water Resources, the Army Corps of Engineers, the MCWD, and Hennepin County. He reviewed the approvals already received from the City of Wayzata, the City of Minnetonka, and other agencies. He provided a pictorial overview of the land aspects of both sites through a power point presentation. The thrust of the villa concept of this development was to move away from the larger houses with larger lots, which the City of Wayzata was supportive of. Other key elements of this project include: 1) wetland and forest restoration (including storm water runoff management), 2) conservation easements, 3) public/private trail systems (including boardwalks and observation decks), and 4) restoration of existing buildings. He addressed the water depths of the lagoon area, noting that most of it was at least four to six feet deep, with other areas eight and 10 feet deep. He stated that the 929.4' shoreline at the Grays Bay site was 3,935' within the lagoon area and 770' on Grays Bay. The 929.4' shoreline at the Minnetonka Inlet Site was 2,464'. Utilizing the 1:50' General Rule for these two sites, he believed that they would be entitled to 143 BSU's, which compares to the request of 51 BSU's. At this time, he turned the presentation over to James Gilbert.

Mr. James Gilbert, legal counsel for the applicants, addressed the legal and factual issues that he believed needed to be addressed. A summary of his comments are detailed below:

The professional effort in this project has been extensive over the past two years. These efforts have been proactive with regards to the docking and dredging issues being considered at this meeting. This included eight meetings with the LMCD staff and seven with the MCWD staff.

He believed that the applications submitted were a compromise by his clients because they had not asked for the maximum number of BSU's allowed by LMCD Code.

When the City of Wayzata prepared the mandatory EAW document, conversations took place with LMCD legal counsel and staff on what needed to be included in this document to serve the needs of the agency. No formal written comments were received from the LMCD. Some of the most critical comments received during this mandatory EAW were received from the MCWD. They expressed concern about increasing boat traffic within the lagoon area and the impacts that it might have on the environment, the fish habitat, and other issues. Because of this, the MCWD discouraged dredging within the lagoon area and cited a joint dredging policy statement.

In deciding this issue, there were a number of factual issues that he believed were not in dispute. First, there was 4,705' of lakeshore frontage at the Grays Bay site and 2,467' of lakeshore frontage at the Minnetonka Inlet site. Second, the proposed dock plans were contained within the authorized dock use area at both sites. Third, LMCD Code Section 2.03, subd. 17 requires the construction of multiple dock facilities to be located and configured to minimize impact on adjacent neighbors. An adjacent neighbor has expressed concern about the docking and storage of watercraft within the lagoon area. Fourth, the request of 51 BSU's between the two sites was only 40 percent of the maximum number of BSU's that could be applied for under LMCD Code. Fifth, he believed that there was a jurisdictional battle between the LMCD and MCWD. His clients were trying to be

responsive to the interests of both agencies and he recommended that the Board utilize the joint dredging policy statement. This policy statement was taken into consideration in the preparation of the Preferred Site Plan.

He recommended that the Board not invoke the straight-line measurement ordinance because he did not believe that the facts and law justify it. The first question for the Board to address was whether to invoke the ordinance. This ordinance states that the ordinance may be invoked and is not mandated. Second, he reviewed the Board minutes from when the ordinance was adopted. There was discussion of the Sweatt property at that time and he believed it resulted in spot zoning and special legislation. Third, he believed that the ordinance was adopted for areas with cattails and wetlands. This area does not have cattails and was not a wetland area so that he did not believe the ordinance should apply to this site. He believed that the Board needed to take a number of factors into consideration when evaluating the proposal.

He objected to the analysis of Nybeck in which he discussed past and future LMCD Board decisions in the analysis of this application. He encouraged that the Board take into consideration the size of land when discussing this proposal. This proposal, based on his experience, was unique because there was a large amount of land that supports the shoreline in question. He summarized an alternative straight line analysis from the mouth of the lagoon to the north end of the lagoon, which resulted in 1,608' of shoreline. He believed that this shoreline, combined with the 770' of shoreline on Grays Bay, would support the proposal for 44 BSU's on Grays Bay.

He requested that the Board approve the Preferred Site as submitted. He entertained questions and comments from the Board.

Berns asked for clarification of the riparian rights of the three residential properties on Grays Bay.

Nybeck stated that the three residential properties each have approximately 200' of shoreline. When the proposal was initially brought to LMCD staff's attention, the applicant was proposing to store 20 boats within the lagoon area and 24 boats on Grays Bay with all of the shoreline, including these three residential sites, dedicated to the multiple dock license. At that time, staff recommended that the applicant might not want to dedicate the shoreline for the three residential sites to the multiple dock license because of the difficulty of communicating this to these property owners, which result in inspection problems. This initial assessment by staff not to dedicate the shoreline to the multiple dock license became more problematic when the current proposal was to store all of the boats on Grays Bay. He recommended that the Board should consider requiring that this shoreline be dedicated to the multiple dock license, with the possibility of limiting the number of boats at each residential site.

Berns asked the applicant how the Preferred Site Plan was decided upon.

Gilbert stated that the applicant made this decision based on LMCD and MCWD policies. The MCWD had expressed concern about dredging and the need to comply with the least minimal impact in the lagoon area, including the concern of one of the neighbors not to open the lagoon up to docking.

Berns stated that it appeared that the primary issue was whether dredging was appropriate in the lagoon area.

Gilbert stated that he believed the two main issues were dredging and whether the application of the straight-line measurement was appropriate.

Scanlon asked Gilbert to explain his comments relating to one dock per resident within the development. There were 51 BSU's proposed between the two applications for the 44 villas.

Gilbert stated that the proposal was for one dock per villa on the Grays Bay site. Some residents might have a second boat and might want to store them at the Minnetonka Inlet Site. One positive of the Minnetonka Inlet Site was that it was closer to the villas and might be more convenient. He stated that he was unsure of how these additional seven boats would be allocated by the homeowners association.

Van Hercke asked why the applicants had changed their proposed site plan from 20 boats within the lagoon area to the Preferred Site Plan where no boats would be located within the lagoon area.

Gilbert stated that the issues that factored into this decision included dredging and the complaints raised by one of the neighbors.

Van Hercke asked if the MCWD had ever considered that the Preferred Site Plan might require some dredging on Grays Bay.

Gilbert stated that the water in front of the shoreline on Grays Bay was navigable water and would not require dredging. The developers were not concerned about the water depths at this location based on work conducted by the surveyors.

Seuntjens questioned whether the Board should be addressing the two applications separately or together.

Skramstad stated that he preferred the applications being considered together at this time.

LeFevere stated that although one public hearing was being conducted for the two applications, actions by the Board should be separate for each application. In previous testimony received by the applicant, some of the shoreline on the west side of the lagoon area was to be reserved for a park by the City of Wayzata. He asked whether the applicant reserved this shoreline for docking rights or whether the shoreline was being deeded to the City of Wayzata.

Gilbert stated that he was unaware of those details.

LeFevere stated that this question needed to be resolved prior to giving the applicant credit for this shoreline.

Mr. David Newman, one of the principle developers, stated that the shoreline was being dedicated to the City of Wayzata. However, the shoreline was being used for the Grays Bay application this evening and the City of Wayzata would not be using it for any future docking applications on their behalf.

LeFevere restated that there was a need to clarify that docking rights were exclusively reserved for this development because both parties cannot claim docking rights for this shoreline.

Knudsen questioned whether the proposal for 51 BSU's between the two sites would be only for residents and would prohibit rental of these BSU's to non-residents.

Gilbert stated that rental of these BSU's would be prohibited and would be clarified in the Association documents.

Gross stated that it would be unlikely that the owners of each of the 44 villas would have a boat and want to use a slip. He asked how the Association would handle these excess slips.

Newman stated that they believed it was highly unlikely that some of the BSU's would not be used. In those circumstances, he believed that it would be difficult to tell another resident that they could not use the slip if one were available.

Altstatt asked for clarification of the three residential sites with each site having four slips.

Gilbert stated that the proposal for four slips at each residential site was permitted by LMCD Code, although the decision would be up to the individual property owners.

Altstatt asked Berns what site plan the City of Wayzata supported.

Berns stated that the City of Wayzata supported the Preferred Site Plan, primarily due to conservation and environmental concerns.

Seuntjens stated that it appeared that the dredge in the lagoon area would be rather minor if boats were to be stored within the lagoon area. Because of this, it appeared that the primary issue within the lagoon area focused more on limiting boat traffic rather than dredging.

Gilbert concurred with this comment.

Van Hercke asked if there were a historical maintenance dredge to the lagoon sometime in the past.

Gilbert stated that back in the 1930's, people generally did what they wanted to. Based on his review of the files, it appeared that some dredging had occurred in the past.

Newman stated that if a dredge occurred within the lagoon area, it would occur at a three to one slope. The deepest point would be five to six feet, with a rather small dredge of 2,500 square feet.

Van Hercke asked if smaller boat sizes had been discussed with the MCWD if boats were to be stored within the lagoon

Newman stated that the size of the BSU's were smaller on the Alternative Site Plan, 26'.

Skramstad opened the public hearing at 8:45 p.m.

Ms. Dorothy Welch, 2502 Bantas Point Lane, complimented the efforts of the developers. However, she hoped that the LMCD saw fit to support as many of the boats in the lagoon as possible, due to aesthetics and safety of the boats because the lagoon area was a good harbor area.

Mr. Warren Dunn, 16502 Grays Bay Blvd., stated that he totally disagreed with the comments from the applicant and some of the comments from Nybeck. He expressed concern about the number of boats to be stored because of the new multiple dock license applications and the boats that could be stored at the three private residential sites. He believed that this would overcome the number of boats at the Grays Bay Marina and would look awful.

Ms. Susan White, 16744 Grays Bay Blvd, stated that she was involved in the Grays Bay Task Force when Grays Bay Marina was purchased and converted to the current public access. No one had spoken about safety and the increase in boats on Grays Bay, which she attributed to the public access. She expressed concern about the safety of the children for those that are tubing on Grays Bay. She recommended that the Board should keep in mind the subjective criteria that stated "Whether the proposed facility will obstruct or occupy too great of an area of the public water in relationship to its utility to the general public". She stated that Grays Bay was a smaller bay that was self-contained.

Ms. Bunnie Alexander, 16540 Grays Bay Blvd., stated that she was worried about the impact on the 127 acres of Grays Bay. Before the public access on Grays Bay was constructed, the marina launched approximately 75 boats per day through the private access. This has increased to about 400 boats per day at the public access. She expressed concern about how this has added traffic to Grays Bay and she believed that an additional 44 boats would further add to this problem. If the lagoon was deemed to be inappropriate for docking and boat storage, she believed that the straight line measurement ordinance should be invoked because the storage of 44 boats in front of 770' of shoreline was too much.

Mr. Leonard David, 2300 Bantas Point Road, stated that he lived on the small channel area that was referred to by the applicants as the Minnetonka Inlet. He expressed concern about the damage to the wetland area that might occur from increased traffic from additional motorized watercraft. He also expressed concerned about who would be enforcing speed violations in this area because it currently was not occurring. This area was very shallow and currently does not have boats stored on it. He asked if a study had been conducted about the impact of the wetland area if docking and storage of motorized watercraft were to occur in this area. With regards to the Grays Bay site, he expressed concern about what the residents on Bantas Point Road would have

to look at if all of the watercraft were stored on Grays Bay. One means to address this would be to store some of the boats in the lagoon area.

Knudsen asked David if he stored a watercraft on the Minnetonka Inlet area.

David stated that he did not.

Mr. Bill Groetsch, 2435 Bantas Point Lane, stated that he had been a neighbor of the Sweatts for over 30 years. They have excellent neighbors and the developers were very conscientious. He expressed concern about dredging and the precedent that it could set, citing the dredging that occurred at the Binger site in the early 1990's as an example, because of problems associated with that dredge.

Mr. Patrick Alexander, 16540 Grays Bay Blvd., stated that he agreed with all of the public comments made. He expressed concern about the appearance of the docks and potential safety concerns. He questioned whether the lagoon area was originally dredged or if it was a natural lagoon area. He believed that getting credit for the shoreline within the lagoon area and moving the storage of the watercraft to Grays Bay was too much, especially because the area where these boats would be stored was quite shallow. There were good reasons why the straight-line ordinance was adopted and he encouraged the Board to utilize it on this application.

Mr. Richard Kline, 16800 Grays Bay Blvd., stated that he was building a home on Grays Bay Blvd. He watched the use of Grays Bay and two boats can generally occupy the bay due to its narrowness. He believed that adding additional boats to Grays Bay would create havoc and that it would create safety and aesthetic issues. He questioned whether the width of a bay could be taken into consideration with the straight-line ordinance. He believed that invoking the straight-line ordinance to determine the number of boats to be stored at this site was appropriate.

Newman stated that the developers could have contributed to what was envisioned for the Minnetonka Inlet site. The intention was that small fishing boats and possibly a pontoon would be stored at this dock. Motorized watercraft such as speed boats, ski boats, and personal watercraft would be prohibited.

Seuntjens questioned whether only small boats would be stored at the Minnetonka Inlet Site because the seven proposed BSU's would be 24' in length.

Newman stated that the culvert under Bantas Point Road would limit the size of boats to be stored at this site. He estimated that the clearance of the culvert was five feet.

Mr. Eric Evenson, Executive Director of the MCWD, made the following comments:

The MCWD does not have a dredging permit request from the applicants. Thus, there was nothing to act upon. If the developer would like to put smaller boats in the lagoon area off of Grays Bay, this would not be MCWD issue unless there was a need to dredge. He stated that comments he would make to the Board would be reserved for this lagoon area

because the wetland area at the Minnetonka Inlet Site was not within the MCWD's jurisdiction.

Typically, the MCWD reviews a proposed development after a number of other governmental agencies have acted upon the project. Based on his experience, this makes it difficult to sit down with the developer and to brainstorm alternatives that are more environmentally sensitive and more appropriate for the lake. He believed that the developers have done everything right and have done a phenomenal job to reduce adverse impacts. He did not believe that it was the role of government to stop development and he respected the developers because he believed that the developers felt personally responsible to develop this project in an appropriate way.

He believed that both agencies had the same basic purpose, which was to minimize adverse impacts on a public resource from private use. Although he recognized that public testimony was received during the public hearing relating to lake usage, he questioned what could be done from an ordinance standpoint.

The developers had been led to believe that 44 slips were always available, although LMCD staff had communicated that approval of these slips was up to the LMCD Board. This was the 12th hour of a very expensive development and he did not believe that this was the proper time to discuss the idea of reducing the slips back from 44.

A question was raised by a Board member asking whether a maintenance dredge had occurred in the lagoon area. Most likely, a maintenance dredge had occurred in the lagoon area. However, that would not be the sole reason why the MCWD would allow for dredging in this area. The MCWD primarily takes into consideration minimal environment impacts. He stated that he generally supported utilization of the straight line ordinance for adverse environmental impacts. However, the MCWD supports the clustering of docks when there was available land. He believed that the two agencies have worked well in the past, citing the non-motorized watercraft ordinance on Six Mile Creek as an example.

He was confused with some of the comments made in the staff memo. First, both options would result in 44 boats, whether they were stored entirely on Grays Bay or a combination of Grays Bay and within the lagoon area. Second, there was a comment that stated that no scientific evidence or testimony had been received that docking and boat storage within the lagoon area caused environmental problems. He believed that this was addressed at the July 20th joint workshop session when there was discussion on the need to protect littoral zones. If LMCD staff was seeking a specific scientific study for this site to determine the adverse impacts of the lagoon area compared to the Grays Bay shoreline, this statement was correct.

In 2003, the MCWD conducted a wetland inventory survey on Lake Minnetonka. Based on this survey, the MCWD concluded that this lagoon or wetland area was a "Preserve Category", or the highest category because of fish habitat. He reviewed a memo from Joe Bischoff from Wenck and Associates, dated 8/9/06. This memo stated that the lake would be better served by placing clustered docks out on Grays Bay. He questioned whether the storage of 30 boats on Grays Bay would be any more aesthetically pleasing than the storage of 44 boats on Grays Bay.

He recommended that the Board should protect the natural resources by providing greater public good rather than the aesthetics. He believed that protection of the fisheries, water quality, and the ecological resource was much more valued by the residents than the

aesthetics of the lake. He believed that this was a no brainer and he recommended that the Board approve the Preferred Site Plan.

He entertained questions and comments from the Board.

Skramstad stated that meandering shoreline was not a new topic for the Board. He confirmed that it was Evenson's opinion that clustered docks were more appropriate and that the MCWD Board of Managers would most likely not approve a dredge permit for the lagoon area.

Evenson stated that he was unsure of how the Board of Managers would review a dredge permit request for the lagoon area.

Knudsen stated that it was very clear how Evenson felt about a dredging request for the lagoon area off of Grays Bay. He asked Evenson to comment on the Minnetonka Inlet Site and the storage of watercraft within this wetland area.

Evenson stated that he was not familiar with the Minnetonka Inlet Site. In fact, he did not check to see whether this wetland area was in the "Preserve Category". He did not believe that the MCWD had jurisdiction in that area because no dredging was required. However, he did not believe that this was the best area to store seven boats.

Knudsen stated that he was unclear why this area was not under the MCWD's jurisdiction.

Evenson clarified that this area was part of the watershed district, although the developers were not requiring dredging at this time.

Suerth asked how much dredging would be involved to open the mouth into the lagoon area.

Evenson stated that he did not believe that a tremendous amount of dredging would need to be done. However, he believed that the larger issue was not to open the lagoon area to boat traffic.

Gross stated in the Bischoff letter, there was a reference made that cluster docks could be located to avoid the shallowest areas. On the Preferred Site Plan, 90 percent of the docks are located within the 926.0' contour. On the Alternative Site Plan, the depth of the lagoon was documented at 8 to 10 feet deep, which is twice as deep as the Grays Bay shoreline. He asked Evenson to reconcile this.

Evenson stated that there could be dispersion issues within the lagoon area, which he believed would not take place on Grays Bay. If the Board had concerns about water depths on Grays Bay, he believed that dock length variances would be appropriate.

Mr. Jack Hinnenthal, 2401 Bantas Point Road, stated that he disagreed with the comment made by Evenson because this was the time to discuss the number of docks. Docking on Lake Minnetonka was the jurisdiction of the LMCD, not the MCWD. He expressed a couple of concerns. First, the pictures associated with the shoreline in the Minnetonka Inlet Site appeared to be taken during the spring. That was the optimal time of the year and boats cannot traverse this area for most of a boating season because they get stuck. Second, he urged the Board to follow the recommendations of

Nybeck. He did not support the clustering of all docks on Grays Bay and he believed that the straight-line ordinance needs to be invoked if all of the watercraft were stored on Grays Bay. He did not believe that the public owed the BSU density proposed because there was not a need to have a boat for each residence. If the Board wants to count the shoreline within the lagoon area, he believed that some of the boats need to be stored within the lagoon.

There being no further comments, Skramstad closed the public hearing at 9:28 p.m.

Berns asked if the straight-line measurement were invoked on both sites, what number of BSU's would be allowed based on LMCD Code?

Nybeck stated that a minimum of 16 BSU's could be approved at the Grays Bay Site and a minimum of zero BSU's could be approved at the Minnetonka Inlet Site.

Berns asked whether the Board had ever held a licensee to the straight-line measurement minimum in determining the number of watercraft that can be stored at a site.

Nybeck stated that the Board had not held a licensee to a straight-line measurement minimum in the past. However, the Board did not allow the old Minnetonka Boat Works facility in Wayzata to expand its BSU's in the past utilizing this ordinance in part.

LeFevere stated that the Minnetonka Inlet Site could have four watercraft because it would not trigger the straight-line ordinance, which was reserved for facilities that require a multiple dock license.

Gross stated that he believed the crux of this matter was how much shoreline should be credited for the multiple dock license application on Grays Bay. He was convinced that docking and boat storage was not appropriate within the lagoon area based on the testimony of the developers and Evenson. However, should this shoreline be counted for docking purposes when it was deemed as an inappropriate area for docking and boat storage? He stated that he had visited the site on Grays Bay and was unable to get within the lagoon area and was unable to get within 200' from shore on Grays Bay. Because of this, he did not believe that the 770' of shoreline on Grays Bay could adequately store 44 BSU's, primarily because of shallow water in the area. He believed that the first question for the Board to resolve was how much shoreline the applicant should get credit for. Once this was resolved, he believed that the dock layout and number of boats could be resolved. He believed that a compromise was available by placing a few boats within the first part of the lagoon area, which would not have a significant impact on the environment.

Van Hercke stated that this was the first opportunity to have a defined proposal by the developers and to receive background on it, including public testimony. She believed that the first question for the Board to address was what shoreline was usable and what shoreline was not usable. Based on the testimony, it appeared that dredging within the lagoon area was an issue for the MCWD. Because of this, she questioned whether the shoreline within the lagoon area should be deemed usable for docking and boat storage purposes.

Nelson stated that he believed there were three issues for the Board to address. These include: 1) what was the appropriate number of BSU's, 2) where should these BSU's be located, and 3) what size of boats should be permitted. Taking into consideration all of these issues, he supported the Preferred Site Plan based on the testimony received from Evenson. He supported the clustering of docks on Grays Bay and avoiding dredging. With regards to the number of BSU's, he did not believe that the straight-line ordinance should be invoked because the shoreline within the lagoon area could become usable if dredged. Larger boats cause more prop dredging and he believed that the Board might want to consider restricting the size of boats to be stored at this dock.

Skramstad stated that he believed the size and nature of this property made it unique. He believed that the developers had done a good job of planning and invested much time and energy. He concurred with the comments made by Nelson.

Seuntjens stated that he believed the lagoon was already available for navigation based on the photos provided by the developer. He believed that the straight-line ordinance was more appropriate for cattail areas, which does not exist within this lagoon area. He supported giving credit within the lagoon area and transferring the BSU's to Grays Bay, although he expressed concern about the size of the BSU's. He expressed concern about the size and travel distance to the proposed seven BSU's at the Minnetonka Inlet Site.

Suerth stated that he supported minimizing the number of boats at both sites. He concurred with the comments made by Seuntjens relating to the Minnetonka Inlet Site. For the three residential sites, he supported limiting the number of boats to one or two. He did not believe that there was a need to have one BSU for each villa within the development based on the testimony of the public.

Berns stated that he had the same three issues that were referenced by Nelson, with the same approaches. He believed that no boats should be stored within the lagoon area, primarily for environmental reasons. He recommended listening to the comments from Evenson because the MCWD had more expertise relating to the environment and water quality. With regards to the number of boats, he believed that the expectation of one boat per property was reasonable. However, he did not believe it was inappropriate to limit environmental impacts by limiting the size of the boats, especially at the Minnetonka Inlet Site.

Nelson stated that he would support the 44 BSU's at the Grays Bay Site. However, he supported rejecting the proposed seven BSU's at the Minnetonka Inlet Site. He stated that he agreed with the comments made by Suerth about restricting the number of watercraft allowed at the three private residential sites on Grays Bay.

Van Hercke expressed concern about the area where the cluster of docks would be located on Grays Bay, primarily due to the area being shallow and the milfoil in the area. She questioned what the environmental impacts of this area would be. She respected the comments made by Evenson and could decide either to park boats in the lagoon area or not to park boats in the lagoon area. However, she believed that there was a need for the Board to determine how much shoreline was being counted and why. She reminded the Board that the straight line ordinance applied to meandering shoreline

within narrow inlets, not only wetland and cattail areas. She stated that the primary concerns were the location and size of the boats, not aesthetics.

Knudsen stated that three parcels of property were discussed within the City of Minnetrista. These included Six Mile Creek, the Carlson property, and the Beddor/Paul properties. From a selfish standpoint, he had concerns about aesthetics and adding density to the lake. However, he was reluctant other than to have all 44 boats stored on Grays Bay. He did not support the storage of seven boats at the Minnetonka Inlet Site and was willing to discuss limiting boat sizes.

Altstatt stated that he believed a number of good points had been raised by the Board. One possible compromise would be to reduce the number of BSU's at the Grays Bay Site from 44 to 37 due to the seven BSU's at the Minnetonka Inlet Site. A second possible compromise would be to lessen the impact on Grays Bay by storing as many boats as possible on the first part of the lagoon area, while not using the second and third parts.

Nybeck stated that there appeared to be some momentum to approving the 44 BSU's and locating them all on Grays Bay. If this were true, he suggested that the Board might want to consider using the conditions outlined in LMCD Code Section 2.02, subd. 5 for sites with non-continuous shoreline in close proximity.

LeFevere stated that the transfer of shoreline allowed in LMCD Code Section 2.02, subd. 5 was not required for this application because the shoreline was continuous. However, this ordinance recognizes the benefits of maintaining some parts of shoreline in a pristine state and the transferring of shoreline to another site. Although this ordinance does not apply, the Board might want consider it from an analogy standpoint.

Scanlon stated that he agreed with the suggestions to place all 44 BSU's out on Grays Bay. However, he was concerned about the storage of up to 40' long boats maneuvering in this area in shallow water, especially the inner slips. Most likely, he believed that this issue would be back before the Board for a dock length variance or before the MCWD for a dredge.

Nybeck stated that one of the original dock layouts was to place all 44 BSU's along the shoreline so that they opened towards the bay. This plan was changed based on some of the comments from other governmental agencies. One advantage of this type of dock layout would be that the water depth issues would be less problematic.

Mr. Miles Lindbergh, Westwood Engineering, addressed water depths in the area. A significant amount of time had been invested researching water depths. All slips in the center have approximately three feet of water depth. This was a minimal criterion and the developer has acknowledged that the owners may have to come back for a low water variance.

Nybeck stated that if the Board were to approve the Preferred Site Plan, one condition that the Board might want to include in the Findings would be to prohibit a dock length variance in the future because of water depth problems.

Seuntjens stated that 40' long BSU's were quite large, which were 20 of the proposed 44. He asked the developer to comment on this.

Mr. Dan Herbst, one of the primary developers, stated that he was the developer for the Trillium Bay HOA development in the City of Minnetrista. An attempt has been to limit the length of the BSU's, although there is a need to balance this from a marketing standpoint.

Harper stated that the original site plan for the Trillium Bay HOA consisted of side opening slips, similar to the Preferred Site Plan. The original site plan for Trillium Bay HOA was later amended so that they were lake opening. He believed that the primary purpose for this change was water depth problems for the inner slips, He asked Herbst to clarify this.

Herbst stated that the assessment of Harper was correct.

Berns asked LeFevere for the grounds of possibly denying the Minnetonka Inlet Site new multiple dock license application.

LeFevere recommended that the Board review the subjective criteria outlined in the staff memo. However, it would be unusual for the Board to deny a new multiple dock license strictly on the grounds of subjective criteria.

Berns asked the applicants whether they would be agreeable to withdraw the Minnetonka Inlet Site new multiple dock license application if the Board were inclined to approve the Grays Bay Site new multiple dock license application.

Newman stated that he and the rest of the developers would need a few minutes to discuss that question.

LeFevere stated the Board could use the same rational at the Minnetonka Inlet Site that it used at the lagoon off of Grays Bay that dredging and motorized watercraft were inappropriate. It might be easier for the Board to conclude the clustering of docking on Grays Bay was appropriate if the developers withdrew the Minnetonka Inlet Site application. It would seem a little bit inconsistent to conclude that the use of motorized watercraft was environmentally okay at the Minnetonka Inlet Site and not okay at the lagoon area off of Grays Bay.

MOTION: Nelson moved, Seuntjens seconded to direct LMCD legal counsel to: 1) prepare draft Findings of Fact and Order for the approval of the Grays Bay Site new multiple dock license application for the Preferred Site Plan, with a condition that no future dock length variances be granted for shallow water, and 2) prepare draft Findings of Fact and Order for the denial of the Minnetonka Inlet Site new multiple dock license application.

Nelson proposed a friendly amendment to the motion that would restrict the number of watercraft to be stored at the three residential sites to two. Seuntjens did not agree to this.

Suerth proposed a friendly amendment to the motion to restrict the length of the boats at the Grays Bay Site, such as 30' length overall. Nelson and Seuntjens did not agree to this.

Gross reminded the Board that there was a recent restriction of boat size at the City of Mound- Lost Lake Channel new multiple dock license application to 26' with single engines.

Seuntjens stated that the maximum size of boats should be 40' in length and the boats should be fully enclosed within the approved BSU. Nelson agreed to this.

LeFevere stated that if the motion passes, it was only to prepare Findings of Fact and Order. This motion in itself would not approve or deny the applications.

Berns recommended that the developers caucus to determine whether they would agree to withdraw the Minnetonka Inlet Site new multiple dock license application.

Skramstad recessed the meeting at 10:30 p.m. and reconvened the meeting at 10:37 p.m.

Newman stated that they conceptually agreed with the motion to withdraw the Minnetonka Inlet Site application if the Grays Bay Site application were approved as stated in the motion. However, they preferred to withdraw this application after they have had the opportunity to review the draft Findings for the Grays Bay Site.

Nelson and Seuntjens postponed the preparation of the draft Findings of Fact and Order for the Minnetonka Inlet Site.

VOTE: Ayes (8), Nays (3, Gross, Seurth, and Van Hercke); motion carried.

1. WATER STRUCTURES

- A. Cedarhurst Association**, consideration of 2006 new multiple dock license, with minor change, application.

Skramstad asked Harper for background on this agenda item.

Harper stated that the applicant had requested that this agenda item be tabled to the August 23rd Board meeting.

Skramstad stated that he would table this application unless a Board member objected to this request. There were no objections.

- B. LMCD Code Section 2.12, Subd. 2**, discussion of storage boxes on Lake Minnetonka

Skramstad asked Nybeck for background on the agenda item.

Nybeck stated that staff was collecting information from dock installers on the storage boxes currently being sold. Once this information has been collected, this information will be brought back to the Board for discussion, with possible changes.

C. Additional Business

There was no additional business.

2. LAKE USE & RECREATION

A. Update on 8/19/06 "Future of the Lake Day" Special Event.

Skramstad asked Nybeck for an update on this agenda item.

Nybeck stated plans for the 2nd annual "Future of the Lake Day" event, co-sponsored with Crystal-Pierz Marina, was progressing. Crystal-Pierz Marina continues to work closely on the coordination of this event with the scheduled K-102/St. Jude's Fishing Tournament. Posters have been prepared to promote the 2006 "Future of the Lake Day" event and he encouraged Board members to take some with them to distribute within their respective community.

B. Additional Business

Skramstad asked for an update on the 2006 Shoreline Inventory Project.

Harper stated that the project was on-going, although the project was far behind because of the added efforts for LMCD Code enforcement. Because of this, the methodology had been changed to finalize the 2006 Shoreline Inventory Project first. After this was complete, the multiple dock inspections would be done from land and the potential LMCD Code violations, which have been documented by GPS waypoints during the 2006 Shoreline Inventory Project, would be further checked into.

3. FINANCIAL

A. Audit of vouchers (8/1/06 – 8/15/06)

MOTION: Nelson moved, Seurth seconded to approve the Audit of Vouchers (8/1/06 - 8/15/06) as submitted.

VOTE: Motion carried unanimously.

B. Additional Business

There was no additional business.

4. EWM/EXOTICS TASK FORCE

A. Discussion of draft MCWD 10-year Comprehensive Water Resources Management Plan for Lake Minnetonka pertaining to invasive species.

Skramstad stated that he and Nelson had read the draft MCWD 10-year Comprehensive Water Resources Management Plan. He urged other Board members to do the same and he expressed concern about the lack of language in this Management Plan addressing the

prevention of zebra mussels into Lake Minnetonka.

The Board discussed the best means of commenting on this Management Plan. The consensus of the Board was to: 1) review the document prior to the August 23rd Board meeting, and 2) to prepare a draft letter to be submitted for discussion by the Board at the August 23rd Board on comments of the LMCD. It was recommended that this draft letter should include the language that the Board would like the MCWD to consider.

Van Hercke left at 10:45 p.m.

B. Additional Business.

Skramstad asked for an update on the second phase of the fundraising efforts to fund invasive species projects.

Nelson stated that this was on his to do list and that further work needed to be done. The goal was to add people and organizations to the existing "Save the Lake" database.

5. ADMINISTRATION

A. Discussion of possible topics to include in the upcoming LMCD Newsletter.

Skramstad stated that plans were commencing for the upcoming LMCD Newsletter. He encouraged Board members to consider possible topics for this newsletter and to communicate them to either him or Nybeck.

B. Additional Business

There was no additional business.

6. SAVE THE LAKE

There was no additional discussion.

7. EXECUTIVE DIRECTOR REPORT

There was no discussion.

8. OLD BUSINESS

Skramstad stated that he would like the LMCD to participate in National Marina Day, which was scheduled for August 12th. He asked Nybeck to forward any available information relating to the 2006 National Marina Day to all LMCD Board members.

9. NEW BUSINESS

There was no new business.

10. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:05 p.m.

Tom Skramstad, Chair

Tom Seuntjens, Secretary