

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, August 22, 2007
Wayzata City Hall

CALL TO ORDER

Seuntjens stated that he would be chairing the meeting in Skramstad's absence and called it to order at 7:04 p.m.

ROLL CALL

Members present: Tom Seuntjens, Minnetonka Beach; Tom Scanlon, Spring Park; Doug Babcock, Tonka Bay; David Gross, Deephaven; Steve Johnson, Mound; Andrew McDermott, Orono; Jeff Morris, Excelsior; Pete Nelson, Victoria; Kelsey Page; Greenwood; Tom Tanner, Wayzata. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; Emily Herman, Administrative Assistant.

Members absent: Tom Skramstad, Shorewood; Herb Suerth, Woodland; Katy Van Hercke, Minnetonka; Lisa Whalen, Minnetrista.

CHAIR ANNOUNCEMENTS, Treasurer Seuntjens

Seuntjens believed that the public should be aware at the beginning of each meeting of what was included on the agenda for that meeting. At this meeting, there was an agenda item for "Additional Business" under Water structures, EWM/Exotics Task Force, and Financial. If the Board would like to add additional business for discussion at this meeting, he believed that it should be communicated at this time and it could be added to the agenda. Otherwise, he believed that the Board should approve the agenda for this meeting at this time.

Nybeck stated that the LMCD office had recently received a signed Settlement Agreement in the pending Canning litigation. Justin Templin from Hoff, Barry & Kuderer, would be in attendance later in the meeting to discuss this signed Settlement Agreement and he recommended that this be added to the agenda under "New Business".

MOTION: Gross moved, Tanner seconded to approve the agenda as amended: 1) deleting agenda items 1C, 2B, and 3C, and 2) adding discussion of the signed Canning Settlement Agreement under "New Business".

VOTE: Motion carried unanimously.

READING OF MINUTES- 08/08/07 LMCD Regular Board Meeting

Tanner requested that the second sentence on page four should be amended to read: "Additionally, he suggested the idea of establishing a Task Force to further study any proposed ordinance changes."

MOTION: Tanner moved, McDermott seconded to approve the minutes from the 8/8/07 LMCD Regular Board Meeting as amended, adding the change recommended by Tanner as noted above.

VOTE: Motion carried unanimously.

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

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

CONSENT AGENDA- Consent agenda items identified with a (*) will be approved in one motion unless a Board member requests discussion of any item, in which case the item will be removed from the consent agenda.

McDermott moved, Gross seconded, to approve the consent agenda as submitted. Motion carried unanimously. Item so approved included: **3A**, Audit of Vouchers (8/16/07 - 8/31/07), and **3B**, July financial summary and balance sheet.

PUBLIC HEARING

- **William Mernik**, variance application to amend a previously approved variance for a permanent dock at 5341 Three Points Boulevard on Harrison Bay.
- **Tom Niccum**, variance application to amend a previously approved variance for a permanent dock at 5351 Three Points Boulevard on Harrison Bay.

Seunjtens stated that these two public hearing would be conducted at the same time since the variance applications were for abutting neighbors and one staff memo was written for both applications because they were interrelated. He asked Harper for background on these variance applications.

Harper reviewed the staff memo, dated 8/16/07, which summarized a request from William Mernik and Tom Niccum to amend previously approved variances for a permanent dock at each residence. Mr. Mernik has proposed to install four permanent pilings as part of a Hi-Tide Topless boat lift. Mr. Niccum has proposed to: 1) install four permanent pilings as part of a Hi-Tide Topless boat lift, similar to the Mernik site, 2) to increase the width of the main walkway from four feet to seven feet, and 3) to increase the width of the dock use area for the storage of two personal watercraft on the east side of the dock near shore. He highlighted four relevant LMCD Code Sections in evaluating the variance applications. These included: 1) Code Section 2.06- outlines the permanent dock license process, 2) Code Section 2.01, subd. 1- authorized dock use area requirements, 3) Code Section 1.07- outlines the variance from LMCD Code process, and 4) Code Section 2.02- outlines the number of restricted watercraft that can be stored at a residential site based on the amount of 929.4' shoreline and the ownership of the restricted watercraft. Harper made two recommendations. First, he believed that the proposal to install four permanent pilings at the Mernik and Niccum permanent docks, and the proposal to widen the Niccum dock entrance to seven feet, seemed reasonable. He recommended that the Board direct LeFevere to prepare Findings of Fact and Order to approve these changes, subject to both applicants submitting an updated survey to document these changes. Second, he recommended that the Board should direct LeFevere to amend the draft Niccum Findings to include the expanded dock use area if it were deemed to be reasonable by the Board, subject to submitting an updated survey to document this proposed change. He believed that the four conditions in the 2003 variance order should be carried forward with any Board approval. He entertained questions and comments from the Board.

Babcock arrived at 7:16 p.m.

Tanner questioned whether the proposed variance applications should be acted upon by the Board together or separately.

Harper recommended that the variance applications should be treated separately.

Seuntjens agreed with Harper's recommendation because the variance applications were for two separate residences and there were additional changes proposed at the Niccum site. He asked Harper to further clarify the proposal to increase the size of the dock use area at the Niccum site.

Harper stated that the proposed addition to the Niccum dock use area was to store two additional personal watercraft, which would comply with the 10' side setback requirement.

Seuntjens asked Harper to clarify what the purpose of the four pilings were at both sites.

Harper stated that the four pilings were needed to support the proposed boat lifts.

Gross questioned why a side setback variance was required from both extended side site lines at the Niccum site.

Nybeck stated that the developer in 2003 proposed a side tie dock at all three sites in response to the congestion of the lagoon area and the neighboring properties. However, the width of the dock at the three sites triggered the need for a side setback variance because LMCD Code requires a side setback equal to the depth of the slip, which staff believed was the width of the docks. These sites could not comply with this more restrictive side setback requirement and he believed that the storage of boats opening into the lagoon area would further complicate an already congested area.

Babcock stated that he was unable to conclude what the justification was for the zero foot side setback variance from the westerly extended side site line that was granted in 2003. He questioned whether it would be more appropriate to address this zero foot side setback by adjusting the dock use for this site to the east rather than creating a larger dock use area as requested by the applicant. He reminded the Board that a hardship of congestion in the area was identified in 2003.

Seuntjens stated that the Niccum site would be limited to one restricted watercraft until a house was constructed. Thus, the applicant was seeking additional dock use area space for additional watercraft that could not be stored at this site currently. He opened the public hearing at 7:30 p.m.

Mr. Tom Niccum, 1754 Shorewood Lane, stated that he would represent both applicants. He believed that Harper overviewed the variance applications adequately. The purpose for the expansion of the dock use area at the Niccum site was to plan ahead for when the house was constructed and he was residing in it. He entertained questions and comments from the Board.

Seuntjens questioned whether Mr. Niccum would need to re-apply with the LMCD to allow for up to four restricted watercraft to be stored at the site after a house was constructed.

Niccum questioned whether he could store two restricted watercraft at the site without reference to ownership of the watercraft.

Harper stated that the site would not qualify for that grandfathered storage rule since the site was not in existence on 8/30/78.

LeFevere stated that one restricted watercraft could be stored at the site until a residential structure was constructed. However, there would be no restriction on the number of unrestricted watercraft that could be stored at this site, provided they were stored within the dock use area.

Niccum requested clarification on the potential expansion of his dock use area to store additional watercraft.

Babcock stated that the approved 2003 variance order defines a dock use area and where restricted and unrestricted watercraft need to be stored. The issues seemed to be: 1) the expansion of the approved dock use area to stored additional restricted watercraft, and 2) the limits on the number of restricted watercraft that may be stored at the site based on whether a residential structure was constructed on the site. He questioned what the hardship would be to add additional restricted watercraft to this site when congestion in the area was already an established hardship.

Niccum questioned whether it would be possible to relocate some of the square footage from the dock use area established for the west side of his dock use area and to relocate it to the east side near shore for the personal watercraft. He believed that this would address congestion in the lagoon area.

Babcock stated that he would prefer moving the entire dock use area at the Niccum site 10' to the east to relieve the zero foot side setback on the west side of the dock use area.

Niccum withdrew his request to expand his dock use area to the east because he believed that a better proposal could be made in the future.

Seuntjens acknowledge Niccum's request and clarified that the Niccum variance application was amended to: 1) the installation of four permanent pilings for the boat lift, and 2) to increase the width of the main walkway from four feet to seven feet. There being no further comments, Seuntjens closed the public hearing at 7:40 p.m.

MOTION: Babcock moved, Gross seconded to direct LMCD legal counsel to prepare Findings of Fact and Order to amend the previously approved variance for a permanent dock at 5341 Three Points Blvd. for William Mernik to allow for the installation of four permanent pilings, subject to carrying forward existing conditions in the approved 2003 variance order.

VOTE: Ayes (9), Nayes (1, Page); motion carried.

MOTION: Babcock moved, McDermott seconded to direct LMCD legal counsel to prepare Findings of Fact and Order to amend the previously approved variance for a permanent dock at 5351 Three Points Blvd. for Tom Niccum to allow for the installation of four permanent pilings and to increase the width of the main walkway to seven feet, subject to carrying forward existing conditions in the approved 2003 variance order.

VOTE: Ayes (8), Nays (2, Page and Tanner); motion carried.

- **Eric and Laurie Berg**, dock length and side setback variance application from LMCD Code at 2965 Casco Point Road on Spring Park Bay.

Seuntjens asked Harper for background on this agenda item:

Harper reviewed the staff memo, dated 8/17/07, which summarized a request from Eric and Laurie Berg for a dock length and side setback variance from LMCD Code. He made the following comments:

- The site is located on Spring Park Bay in the City of Orono, with approximately 20' of 929.4' shoreline established in 1978. The applicants have proposed: 1) a 55.5' long straight dock that would be 3.5' wide along the southerly extended side site line, with a zero foot side setback, 2) an 11' X 14' boat lift on the north side of the dock (presumably to store a restricted watercraft), and 3) a 3.1' setback from the northerly extended side site line.
- He highlighted three relevant LMCD Code Section in evaluating the proposed variance application. These included: 1) Code Section 2.01, subd. 1- authorized dock use area requirements, 2) Code Section 1.07- outlines the variance from LMCD Code process, and 3) Code Section 2.02- outlines the number of restricted watercraft that may be stored at a residential site based on the amount of 929.4' shoreline and the ownership of the restricted watercraft.
- He believed that there were three fundamental issues for the Board to address when considering the Berg variance application. First, the applicants have provided adequate documentation that shallow water exists at this site to grant a dock length variance. However, he questioned why a 55.5' long dock was needed if the furthestmost portion of the lift was located approximately 34' from the 929.4' shoreline. Second, he questioned what the appropriate width of the dock use area was for this site, which docking and boat storage must be contained within. He believed that the width of the lift and the dock should not exceed 10'. He questioned whether it was appropriate to grant a side setback variance for a site that was created after the 2/5/70 grandfather date for five foot side setback requirements. If a side setback variance was appropriate, the Board should determine what the hardships were. Third, what was the appropriate number and size of the restricted watercraft to be stored at this site. He believed that it seemed reasonable to limit restricted watercraft at this site to one, with the appropriate size to be determined by the Board.
- He believed that the width of the proposed dock and lift was excessive for a lot that was created in 1978 with 20' of shoreline. If the Board was inclined to act upon the variance application immediately, he recommended that the Board direct LMCD legal counsel to prepare Findings of Fact and Order to deny the side setback variance request and to approve the dock length variance request. In this case, the only way the site would have a dock use area would be if one or both of the abutting neighbors, by mutual agreement, adjusted the side setback requirements.
- An alternative recommendation was for the Board to table or continue this agenda item to a subsequent Board meeting to allow staff to work with the applicants to amend their application and site plan to meet the direction of the Board based off of information collected during the public hearing addressing the three fundamental issues outlined

above.

- He entertained questions and comments from the Board.

Seuntjens asked LeFevere to comment on the recommendation made by Harper to table or continue this agenda item, including the status of the public hearing.

LeFevere stated that the Board had two options to consider relating to the public hearing. First, the Board could open the public hearing, take testimony, and close the public hearing. Second, the Board could keep the public hearing open for additional testimony at a future meeting by tabling or continuing it. He reminded the Board that there was no need to act on the application at this meeting, whether or not the public hearing was closed.

Harper stated that he had recently discussed this recommendation with the legal counsel for the Berg's. He believed that there had been some preliminary discussion with the abutting neighbors on revising the proposed site plan.

Tanner asked if the abutting neighbors had agreed in writing on side setback relief for the applicants.

Harper stated the neighbors had not agreed in writing.

Babcock questioned the status of the variance application with the 60-day rule.

Nybeck stated that the 60-day rule commenced on 8/1/07 when the variance application was deemed complete.

Seuntjens opened public hearing at 8:00 p.m.

Mr. Eric Berg, 2965 Casco Point Road, stated that discussions were being held with the abutting neighbors to the north, Curtis and Kathleen, and the abutting neighbors to the south, Theodore and Deborah Roseboom. Alternative proposals, including a zero foot side setback from the Roseboom's site, have been discussed and Peter Johnson, representing the Bergs, was in attendance to discuss them.

Mr. Peter Johnson, Attorney at Law, made the following comments:

- There have been extensive discussions with the abutting neighbors and he concurred that changes should be made to the variance application at this point.
- The Roseboom's have indicated that they have no reluctance to a zero foot side setback variance, which has existed through consent since 1978. The Roseboom's also do not object to the granting of further variances from LMCD to adjusting the side site line(s) in order to make a 20' wide area, from which the dock use area would be established. However, the Roseboom's have requested that the dock be placed along the north side of the dock use area established by the variance from LMCD Code, with the boat to be stored on the south side of the dock. The primary purpose for this was to provide some distance between a deck at the Roseboom property and the dock at the Berg property.
- The Midthun's have indicated that they had no opinion at this time with regards to adjusting the extended side site line. They like the concept of a full five foot side setback and they were in attendance to provide additional comments.

- To continue the discussions with the abutting neighbors on a revised site plan, his clients have requested that their variance application be tabled or continued.
- He provided the Board some historical background on the use of this property. In 1978, there was discussion at the Orono Planning Commission to subdivide this site. An application was submitted that created 2965 Casco Point Road, which was currently owned by the Berg's, and preserved the shoreline improvement of the deck that the Roseboom's still enjoy at 2967 Casco Point Road. He believed that the site at 2965 Casco Point Road was configured as narrowly as it was because of this deck, with a variance granted by the City of Orono. A large amount of documentation from the City of Orono was submitted in conjunction with the variance application that the subdivision of the property in 1978 would not deprive his clients property of a dock use area.
- This site was created in 1978 with the idea that the dock use area would be preserved by mutual consent arrangements from both of the abutting neighbors. Thus, he believed that this site was comparable to a grandfathered lot that has consensus to either waive or reduced side setback requirements.
- He believed that the hardship for this site was that dock had existed at this site for around five decades. Enforcement of LMCD Code by staff a couple of years ago has made the dock go away.
- He entertained questions and comments from the Board.

Seuntjens stated that a claim had been made that the property owner at 2967 Casco Point Road historically agreed to a zero foot side setback. He questioned whether the owner of this site had changed since 1978.

Johnson stated that the owner of 2967 Casco Point Road had changed since 1978. However, the current property owner at 2967 Casco Point Road at one time owned both properties.

Babcock stated that LMCD Code does not allow for zero foot side setbacks. However, LMCD Code allows for combined dock use areas, with side setbacks required on the outer edges of the combined dock use area.

Johnson stated that he understood that. However, the previous testimony was raised to describe the process in 1978 to waive side setback requirements.

Babcock asked Johnson to comment on the variance granted by Orono on the dock use area.

Johnson stated that the City of Orono in 1978 granted reference to structures and a dock.

Babcock questioned whether the City of Orono would have granted a variance for docking purposes because of jurisdictional concerns.

Johnson stated that he had hoped this information would have been available for this Board meeting. LMCD staff had asked for multiple copies of this information and he was unable to provide this. This information would be made available for the next Board meeting when this application was up for discussion.

Harper clarified that the City of Orono does issue dock permits, on a one-time basis, for newly

platted lots.

Seuntjens stated that it appeared that there was a lot of work to be done on the extended side site lines. He believed that the Board might consider five foot side setbacks and that anything else would require consent from the abutting neighbor(s). If the variance application were to change, he asked what the Board options would be for the current public hearing.

Nybeck recommended that testimony be received from the public in attendance, with the possibility of continuing the public hearing to a specific Board meeting date.

Curtis and Kathleen Midthun, 2941 Casco Point Road, stated that they were the abutting site to the north of the applicant's site and they did not want to do anything that would prevent the Berg's from having a dock or boat. As the owners of 2941 Casco Point Road, we purchased the property in 2001, which included 90' of southwest facing lakeshore frontage. We assumed at that time that there would be 10' setback requirements from the adjoining properties on Lake Minnetonka. Approximately two years ago, the Berg's asked him and his wife for a side setback variance because the Berg dock at that time exceeded what was allowed by LMCD Code. The Midthun's stated that they disagreed with the Berg's request at that time and offered the Berg's a license to allow them to install a dock to the length and side setbacks that they needed for \$1 per year for personal use. The primary purpose to offer the Berg's an annual license was to protect their own investment for the future. This proposal was not agreed to by the Berg's and he stated that he understood that they were also trying to protect their own investment. Recently, they had discussed the proposed variance application with the Berg's and the annual license was offered to them again. The Berg's rejected this proposal again because of concerns that they had with the resale of their property. He and his wife also have concerns about the resale of their property; however, they would most likely agree to a five foot side setback from the common extended side site line. He expressed concern about the adjusting of the extended side site lines as discussed at this meeting, including the idea of changing the proposed site plan. He entertained questions and comments from the Board.

Scanlon asked how far out the docks in the immediate area extended out from shore.

Curtis Midthun stated their dock extended out approximately eight sections, with the Roseboom extending out a similar distance.

Babcock asked the Midthun's how much lakeshore frontage that they had.

Curtis Midthun stated that they had approximately 90' of lakeshore frontage.

Babcock stated that the dock use area at the Midthun property, based on LMCD Code, would extend the same distance that they have lakeshore frontage, provided it does not exceed 100'.

Page asked the Midthun's if they would be agreeable to maintain the current extended side site lines and to allow for a five foot side setback from their common extended side site line with the Berg's.

Curtis Midthun stated that he and his wife would agree to that.

Harper stated that the neighbors could annually agree to a reduced side setback through a mutual consent agreement rather than an approved variance process.

Seuntjens stated that although comments have been received from the applicants and the public, he believed it made sense to keep the public hearing open. This would allow the applicants to consider changes to their proposed site plan, in addition to allowing for further comments from the applicants and the public on any amendments.

Babcock agreed with Seuntjens assessment; however, he believed that it would be beneficial to provide the applicants some guidance or direction on where the applicants might consider some alternatives to the current variance application. Alternatives recommended by Babcock included: 1) a reduced five foot side setback makes sense because the lot was created by a subdivision as a result of a governmental agency, 2) if an adjusted dock use area was proposed, the brunt of the adjustment should be made to 2967 Casco Point Road since these two lots were one until 1978, 3) the length of the dock should be between 50' and 60', with no "L's" or "T's", 4) there should be one boat at the dock with no canopy allowed, and 5) mutual consent for side setback adjustments should be allowed to continue for combined docking situations. With the amendments to the proposed plan that follow these five alternatives, he believed that he could support this variance application.

Tanner stated that it sounded like there was discussion that needed to take place relating to establishing boundaries for docking and boat storage. With the 2007 boating season nearly over, he believed that it might make more sense for the applicants to withdraw their variance application, work out the boundary issues with the abutting neighbors, and re-apply for a variance from LMCD Code during the winter months.

Babcock stated that another option for the applicants to consider would be to sign an indefinite waiver to the 60-day rule.

Page asked Babcock to clarify what he would comfortable with regards to a side setback variance at this site.

Babcock stated that he would be comfortable with a five foot side setback variance from both extended side site lines, similar to past policy action by the Board. This would not preclude the neighbors from dealing with this at the neighborhood level on a year to year basis.

Page concurred with the recommendation made by Babcock to provide a permanent option at the neighborhood through the variance process. He believed that one could preclude that this was akin to grandfathered situation because of the governmental involvement in the creation of this site.

Nelson concurred with Babcock that if an adjusted dock use area was necessary at this site, he believed that the adjustment should be made towards 2967 Casco Point Road.

LeFevere stated that the replatting of this site in 1978 took place approximately seven years after the five foot grandfathered side setback was established in 1970. With regards to the governmental effect on the replatting of this site, this site would have only been allowed two restricted watercraft because it would have approximately 120' of lakeshore frontage but would not have qualified for the four boat rule. Thus, both of these sites benefited from a docking right

standpoint because of the replat that took place in 1978. He believed that an adjusted dock use area might not be needed in this case and that reduced side setback requirements might be more appropriate. He reminded the Board that it should grant a variance from LMCD Code if the applicants document that a hardship exists, whether or not the abutting neighbor(s) agree to the proposal.

Seuntjens recommended continuing the October 10th Board meeting to allow the applicants adequate time to consider amending their variance application, working closely with the abutting neighbors.

MOTION: Babcock moved, McDermott seconded to continue the Eric and Laurie Berg variance application public hearing until the October 10th LMCD Board Meeting.

VOTE: Motion carried unanimously.

1. WATER STRUCTURES

A. Mark and Kati Lovaas, dock length and side setback variance application at 17840 Breezy Point Road.

- Ordinance Amendment, second reading of an ordinance relating to dock use areas on Lake Minnetonka, amending LMCD Code Section 2.01, Subd. 2.
- Consideration of draft Findings of Fact and Order to approve a dock length and side setback variance (tabled at 8/8/07 LMCD Regular Board Meeting).

Seuntjens stated that first reading of the draft ordinance amendment was approved at the August 8th Board meeting, as well as a motion to approve the draft Findings as prepared, which was tabled. LeFevere was not in attendance at this meeting and the Board had a question relating to the status of the variance if the draft ordinance amendment were adopted by the Board.

LeFevere stated that if the Board adopted the ordinance amendment as prepared, the Lovaas' site would be grandfathered in for length and reduced side setbacks and a variance from LMCD Code would not be necessary. Thus, the site would comply with LMCD Code and would not be subject to any restrictions established by the Board.

Babcock stated that if the Board were to adopt the ordinance amendment, the applicants would most likely need to withdraw their variance application.

Seuntjens stated that there were two different points of view on how to handle this agenda item. First, there were some Board members that believe that the proposed ordinance amendment should be dealt with first prior to taking action on the draft Findings because the variance may not be necessary. This was preferred by the Lovaas'. Second, there were some Board members that believed the timing concern for the Board was the pending variance application and that the draft ordinance amendment could be resolved at a later date. He asked for feedback from the Board.

Babcock stated that he was comfortable with the changes made to the draft ordinance

amendment during first reading. Thus, he believed that it was a good long-term policy from a lakewide basis and he supported it.

McDermott and Johnson concurred with the comments made by Babcock.

Page stated that he remained opposed to the ordinance amendment.

MOTION: Babcock moved, Nelson seconded to approve second reading of the ordinance amendment as submitted, to waive third reading, and to adopt the ordinance amendment.

Seuntjens stated that the motion, if approved, would preclude further discussion by the Board on the draft ordinance amendment.

Page stated that the prior agenda item for the Berg's variance application, in which it was alleged that a city asked a property owner to subdivide a property into two, leaves a lot of room for finagling under this ordinance. He believed that individual cases should be made on a case by case basis.

Nelson stated that he believed adoption of the ordinance amendment would address a lot of concerns raised by the Lovaas' on what constitutes a change in a "site" that results in the loss of grandfathered clause.

Scanlon asked why the Board would not take a third reading on this ordinance amendment.

Babcock stated that if the Board recommended changes to the draft ordinance amendment, he would have made a motion to only approve second reading. Since no changes were recommended, he believed that third reading and adoption was appropriate.

Gross stated that he believed the purpose of the ordinances were to improve the condition of Lake Minnetonka. When the Board adopts an ordinance amendment, the concept of grandfathering is discussed, which he believed was necessary. However, the hope of an ordinance was to bring all facilities in compliance with LMCD Code sometime in the future. He believed that adoption of the ordinance amendment would further weaken the ordinance and provide further grandfathering, which would create more wiggle room. Because of this, he was against the ordinance amendment and stated that he would prefer to deal with these situations through the variance process on an individual basis where hardships exist.

Nelson believed that the ordinance amendment would clarify the ordinances rather than create additional fuzziness.

Seuntjens stated that he understood there was a need for ordinance changes. However, he stated that he would prefer to work on a proactive basis and he believed that the Board should take advantage of all three readings.

Babcock stated that he agreed that three readings of an ordinance amendment made sense in some cases. If the Board would like to make a friendly amendment to the motion to approve second reading only, he might agree to that.

VOTE: Ayes (4, Babcock, Johnson, McDermott, and Nelson), Nays (5), Abstained (1, Morris); motion failed.

Nybeck clarified that a majority of the entire Board, eight votes in the affirmative, would be needed in order to adopt an ordinance amendment.

MOTION: Babcock moved, Nelson seconded to approve second reading of the ordinance amendment as submitted.

VOTE: Ayes (7), Nays (2; Gross and Tanner), Abstained (1, Morris); motion carried.

B. Big Island, Inc., Seahorse Condominium Association, and Smithtown Bay Association, staff update on 2007 multiple dock license status.

Nybeck provided the Board an update on the three multiple dock license facilities that had not been licensed for the 2007 boating season. First, Big Island, Inc. has made some unauthorized changes to their dock that was observed by LMCD staff during its annual inspection process. He believed that an application was forthcoming and that a public hearing would be scheduled for the September 12th Board meeting. Second, Seahorse Condominium Association submitted a renewal, without change, multiple dock license application this past spring. This application could not be approved by the Board because unauthorized changes were made and the Board requested that a new multiple dock license application, with public hearing, be submitted by early June. This application was submitted by Seahorse Condominium Association in early June; however, it had recently been withdrawn. He expressed his disappointment because the LMCD was at the same part of the process as it was in May. He believed that a second renewal, without change, multiple dock license application was forthcoming and that this would be on the September 12th agenda. Third, it appears that Smithtown Bay Association would be proceeding with a renewal, without change, multiple dock license application rather than the reconfiguration of the non-conforming multiple dock license application previously submitted, with the public hearing conducted at the July 25th Board meeting. He believed that the renewal, without change, multiple dock license application was forthcoming and that one of these applications would be on the September 12th agenda.

Nelson stated that he did not believe that Smithtown Bay Association was aware prior to the public hearing that one of their options was to reduce the length of the docks so that they were consistent with the approved site plan. By doing this, there would not be a four foot overhang restriction on the boat stored in the slips, especially in the channel area, provided it does not cause a navigational problem. He questioned whether shorter docks and longer boats were in the best interest of Lake Minnetonka and the Smithtown Bay Association.

Babcock stated that the four foot overhang restriction only applies to legal, non-conforming facilities that reconfigure. An alternative for the Board to consider would be to place a four foot overhang restriction on all non-conforming facilities, whether or not they reconfigure. If the Board were to take this approach, it would have a great impact on a number of facilities and the concept of grandfathering would also need to be discussed.

Seuntjens recommended discussing this issue at a later date and suggested Babcock check into this with staff and report back.

2. EWM/EXOTICS TASK FORCE

A. Staff update on 2007 partial Lake Vegetation management Plan (LVMP) for Lake Minnetonka

Seuntjens asked Nybeck for background on this agenda item.

Nybeck stated that a copy of the finalized stakeholder survey and meeting notification had been finalized, with a copy in the Board packet. 755 surveys were sent out to a variety of stakeholders, which included the LMCD member cities, the multiple dock facilities and residents on the three targeted bays, EWM/Exotics Task Force members, a couple of commercial marinas, and 2007 special event licensees. Stakeholder meetings were scheduled for September 5th, September 26, and October 24th, with preparations commenced for the first meeting. He encouraged all Board members to attend these meetings, if possible.

Nelson's asked to comment on a letter he had been copied by the Lake Minnetonka Association regarding the observations that Dick Osgood had made about a MN DNR inspector on one day during hours that they were contracted with the LMCD. Questions were raised about an inspector not doing their job as contracted and he believed that there was a need to discuss whether this was an isolated incident or whether there was a systemic problem.

Nybeck stated that he had been active during the 2007 on observing MN DNR inspectors during contracted hours, which included an afternoon with the supervisor of the MN DNR Watercraft Inspection Program. He believed that the incident observed by the LMA was isolated and that there would be follow-up discussion after the 2007 contract ended, with the last day scheduled for Labor Day.

Nelson stated that he would prefer to spend more time on discussing invasive species issues at an upcoming Board meeting, including the MN DNR inspector contract and Internet Landing Installed Device Sensors (I-LIDS).

Nybeck stated that it would be beneficial for the Board to discuss the final Reports for the 2007 MN DNR inspector contract and I-LIDS at the same Board meeting. He believed that this would take place in either November or December.

4. LAKE USE AND RECREATION

There was no discussion.

5. ADMINISTRATION

There was no discussion.

6. SAVE THE LAKE

There was no discussion.

7. EXECUTIVE DIRECTOR REPORT

Nybeck stated that the lake level as of August 22nd was 928.56', with the dam closed. This was very similar to lake levels at the same time in 2003-2006 (928.76' in 2003, 928.60' in 2004, 928.69' in 2005, and 928.64' in 2006).

Nelson asked what the lake level was that triggered the closing of the dam on Grays.

Nybeck stated that the MCWD was required to close the dam by a policy that it has with the MN DNR when the lake level reaches 928.60' or below.

8. OLD BUSINESS

There was no discussion.

9. NEW BUSINESS

Seuntjens asked LeFevere to comment on the proposed Canning Settlement Agreement.

LeFevere recommended that the Board close the meeting and go into executive session, as an exception to the Open Meeting Law, to discuss a proposed Settlement Agreement signed by the Canning's. If the Board wanted to take formal action on the proposed Settlement Agreement, the executive session should be closed and the meeting should be re-opened.

MOTION: Scanlon moved, Babcock seconded to go into executive session at 9:25 p.m. to discuss the proposed Canning Settlement Agreement, as allowed by the Open Meeting Law.

VOTE: Motion carried unanimously.

MOTION: Babcock moved, McDermott seconded to close the executive session at 9:45 p.m. and re-open the Board meeting.

VOTE: Motion carried unanimously.

Seuntjens asked Justin Templin to provide a general summary of the proposed Canning Settlement Agreement.

Templin stated that the Canning Settlement Agreement was a product of extended negotiations. The proposed dock use area, which was depicted in Exhibit A, would allow for a 9.8' wide by 28' long dock use area for the Canning site. In order to maintain this dock use area generally in front of the Canning site, adjustment of the Johnson and O'Gara side site lines was necessary. He reviewed the ruling of the Hennepin County District Court and the Minnesota Court of Appeals relating to this situation. Although the solution was imperfect, he believed that it was a good one and the best solution under the circumstances. He recommended that the Board approve the proposed Canning Settlement Agreement.

MOTION: Scanlon moved, Johnson seconded to approve the proposed Canning Settlement Agreement.

Babcock stated that he would oppose the motion, although he applauded the efforts of the parties involved in this process. He was uncomfortable with the proposed Canning Settlement Agreement because of: 1) the potential impact a narrow lot has on other immediate properties in the area, and 2) it does not afford enough separation between real estate and riparian rights associated with that lot.

VOTE: Ayes (9), Nays (1, Babcock); motion carried.

11. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:51 p.m.

Tom Seuntjens, Treasurer

Tom Scanlon, Secretary