

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 PM, Wednesday, September 12, 2007
Wayzata City Hall

CALL TO ORDER

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

ROLL CALL

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

Members absent: Doug Babcock, Tonka Bay; Katy Van Hercke, Minnetonka.

CHAIR ANNOUNCEMENTS, Chair Skramstad

There were no Chair announcements.

READING OF MINUTES- 08/22/07 LMCD Regular Board Meeting

MOTION: Tanner moved, McDermott seconded to approve the minutes from the 8/22/07 LMCD Regular Board Meeting as submitted.

VOTE: Ayes (9); Abstained (3, Skramstad, Suerth, and Whalen); 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.

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.

Seuntjens moved, Whalen seconded, to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **1F**, Jeff and Jill Pugh, staff recommends Board approval to refund \$60.20 of the \$250 deposit for a recently approved variance from LMCD Code at 3585 Frederick Street, and **3A**, Audit of Vouchers (9/1/07-9/15/07).

PUBLIC HEARING

- **Big Island, Inc.**, new multiple dock license application to reconfigure 14 Boat Storage Units (BSUs) on 1,500' of continuous shoreline.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 9/6/07, which summarized a request from Tom Wolfe of Big Island

Inc. for a new multiple dock license application to reconfigure the legal conforming facility. The site consists of 14 BSUs on approximately 1500' of continuous shoreline. Four changes have been proposed by the applicant. These included: 1) to decrease the number of BSUs from 14 to 12, 2) to designate all of the 12 BSUs as overnight use to accommodate the occasional overnight use of the docks, 3) to reconfigure the three docks, and 4) to relocate some of the BSUs. He highlighted two relevant LMCD Code Sections to evaluate the application. These included: 1) Code Section 2.03, subd. 7- new multiple dock license application requirements, and 2) Code Section 2.01, subd. 1- authorized dock use area requirements. He believed that there were four issues that the Board should resolve prior to considering approval of this application. First, he questioned whether the hand drawn site plan was adequate. Second, the applicant should clarify if the dock structure in the wetlands was in existence and if that shoreline was dedicated towards the multiple dock license. He believed that dock dimensions should be added to the proposed site plan to determine whether it was within the dock use area for this site. Third, it should be clarified how much and where the 929.4' shoreline dedicated to this multiple dock license was located. Fourth, the applicant should clarify the width of the dock sections at all three lakeward docks and ensure that they were depicted on the proposed site plan. He entertained questions and comments from the Board.

Seuntjens asked Harper to explain the ownership of this site and the use of the BSUs.

Harper stated that it was his understanding that there were 29 shareholders that owned this site, with the BSUs designated for weekend recreation. This site has a conditional use permit from the City of Orono that is zoned for recreational use.

Tanner asked Harper to summarize the deficiencies of the applicant outlined in the 9/6/07 staff memo, including any penalties that could be enforced by the LMCD.

Harper stated that the primary deficiency was that the dock installation in recent years was not consistent with the approved site plan. Because changes had been made to the approved site plan, a renewal without change was not appropriate for this site. He and representatives of Big Island, Inc. had been working together to resolve this primary deficiency through a new multiple dock license application, with a public hearing. There is a 10% late penalty for renewal, without change, multiple dock license applications that are received after December 31st for the following boating season.

Skramstad informed the newer Board members that when the LMCD was working with a multiple dock licensee to resolve non-compliance issues prior to their scheduled renewal process, the LMCD generally provides some flexibility in the timing of when change applications were submitted for consideration by the Board.

Scanlon questioned the LMCD's position on the dock that was placed in the wetland area that was not accessible for use.

Harper stated that if the dock originated from shoreline dedicated to the multiple dock license, the dock and boat storage should be depicted on a site plan approved by the Board.

Seuntjens commented on the hand drawn site plan proposed by the applicant. He believed that the question for the Board to consider was whether there was a need for the applicants to document the proposed changes on a survey. Although the site plan provided was dated, he hesitated at this time to require a new survey because of the large amount of 929.4' shoreline and the overall size of this site.

Gross requested confirmation that the approved site plan does not include the wooden dock in the wetland area.

Harper stated that the approved site plan does not include the wooden dock in the wetland area. However, a previously approved site plan did document this wooden dock on that plan.

Nybeck stated that he and Harper had recently conducted a multiple dock license inspection for this site. During this inspection, staff verified that this dock in the wetland area still existed, although it was very dilapidated. He believed that the Board might want to consider requiring the applicant to remove this dock for safety purposes.

Skramstad asked for further background and comments from the applicant.

Mr. Tom Wolfe, 122 Second Street in Excelsior, stated he represented Big Island, Inc. He has worked with Harper to get the license up to date and he apologized for the timing of the multiple dock license application. However, he was new to the position of representing Big Island, Inc., and that it took some time for him to come up to speed of the process with the LMCD. The dock in the lagoon was installed in the late 1970's when that area was accessible from the main part of the Lake. The channel to that area filled in during the late 1980's and access to this dock was lost at that time. Once the wetland was filled in, no attempts have been made to dredge the area. He did not believe the shoreline associated with the wetland was dedicated to the multiple dock license. He entertained questions and comments from the Board.

Skramstad asked Wolfe what their intentions were with the dock in the wetland area, including the possibility of removing it.

Wolfe stated that the removal of the wooden dock in the wetland area was a possibility, provided that it could take place during the winter months. He confirmed that he prepared the proposed site plan that included the installation of four foot wide crepeau dock sections. The majority of the shoreline at this site was steep; therefore, handicap accessible docking was needed in particular for the loading and unloading of boats from that dock. The reconfiguration of the main dock was primarily due to low water conditions at the approved location, with overnight storage being limited.

Seuntjens stated that he believed the primary issue for the Board to resolve was whether 929.4' shoreline associated with wetland area was dedicated towards the multiple dock license for this site.

Harper stated that this site was essentially an island. On the approved site, which was an acreage survey, he believed that this included the total acreage for this site. However, he believed that the 1,500' of 929.4' shoreline dedicated to this multiple dock license, after further investigation, only included shoreline on the main part of the Lake, not the wetland area.

Skramstad opened the public hearing at 7:29 p.m. and invited the public to comment on the application. There being no comments, he closed the public hearing at 7:30 p.m. He asked Seuntjens to expound on whether the hand drawn site plan was adequate.

Seuntjens re-stated that he believed the hand drawn site plan was adequate at this time because of the amount of 929.4' shoreline dedicated to this multiple dock license and overall acreage of this site.

However, he believed that there was a need to document the widths of the docks and the width of the BSUs, adding he believed that creapeau docks were 3.5' wide rather than four feet. Additionally, he stated that he believed the removal of the wooden dock in the wetland area was appropriate during the 2007-2008 winter months.

Gross concurred with Seuntjens comment relating to the removal of the wooden dock in the wetland area. If this were to be made a condition for approval of the application, he believed that this dock should be removed from the approved site plan.

MOTION: Seuntjens moved, McDermott seconded to approve 2007 Big Island, Inc., new multiple dock license application, subject to: 1) staff documenting that the width of the docks was 3.5', 2) to require the applicant to removed the wooden dock in the wetland area during the 2007-2008 winter months, and 3) to direct staff to verify by inspection in 2008 that this dock has been removed.

VOTE: Motion carried unanimously.

1. WATER STRUCTURES

A. William Mernik, consideration of draft Findings of Fact and Order approving a variance application to amend a previously approved variance for a permanent dock at 5341 Three Points Blvd. on Harrison Bay.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that LeFevere had prepared draft Findings of Fact and Order consistent with the discussion at the last Board meeting. These draft Findings would amend the existing variance for an approved permanent dock at this site to allow for the installation of four permanent pilings to be used in conjunction with a boat lift.

MOTION: Seuntjens moved, Gross seconded to approve the draft Findings of Fact and Order as submitted, approving the William Mernik variance application at 5341 Three Points Boulevard on Harrison Bay.

VOTE: Motion carried unanimously.

B. Tom Niccum, consideration of draft Findings of Fact and Order approving a variance application to amend a previously approved variance for a permanent dock at 5351 Three Points Blvd. on Harrison Bay.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that LeFevere had prepared draft Findings of Fact and Order consistent with the discussion at the last Board meeting. These draft Findings would amend the existing variance for an approved permanent dock at this site to: 1) increase the width of the walkway to seven feet, and, 2) to allow for the installation of four permanent pilings to be used in conjunction with a boat lift.

MOTION: Seuntjens moved, Tanner seconded to approve the draft Findings of Fact and Order as submitted, approving the Tom Niccum variance application at 5351 Three Points Blvd. on

Harrisons Bay;

VOTE: Motion carried unanimously.

Nybeck stated that both Mernik and Niccum would be providing the LMCD updated survey work in the near future so that it was consistent with hand drawn site plans that were attached to the draft Findings approved by the Board. LMCD staff will verify that this survey work was consistent with the hand drawn site plans.

C. 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).

Skramstad stated that Seuntjens served as acting Chair at the August 22nd Board meeting when neither he nor Vice Chair Van Hercke were in attendance. He asked for an overview of the Board discussion at this meeting.

Seuntjens stated that he solicited feedback from the Board members in attendance at the August 22nd meeting on whether to proceed first with the draft ordinance amendment or the draft Findings of Fact. There was some concern raised by some Board members relating to how approving the Findings of Fact and Order for the pending variance application would be impacted if the Board adopted the draft ordinance amendment at a later date. LeFevere has communicated that the variance granted would become immaterial due to the approval of the ordinance granting the variance automatically. A motion was made at this meeting to approve second reading of the ordinance amendment, to waive its third reading, and to adopt it. This motion failed; however, a second motion was made to only approve second reading. This motion was approved by the Board at this meeting. He believed that the question for the Board at this meeting was whether to proceed with the third reading of the draft ordinance amendment or to consider the draft Findings of Fact and Order.

Nybeck stated that if the draft ordinance amendment were adopted by the Board, the Lovaas' would need to formally withdraw their variance application.

MOTION: Whalen moved, Suerth seconded to approve third reading of the draft ordinance amendment as submitted, and to adopt it.

Gross stated that he would oppose the motion because he believed that it should be the goal to have all sites comply with LMCD Code. He believed that the fundamental question for the Board to address was at what point a grandfathered site loses their grandfathered rights. He believed that the policy of the LMCD in the past was that occurred when a replat of site occurred. The proposed ordinance amendment would provide three exceptions to bringing a site into compliance with LMCD Code; which he believed that it would make more sense to handle these through a variance application process.

Nelson stated that was in favor of the motion because he believed that the Lovaas' have pointed out

a situation that was ambiguous and that the ordinance would tighten up these types of situations. He encouraged the Board to vote in favor of the motion.

Suerth concurred with the comments made by Nelson.

Page stated that he continued to be opposed to the draft ordinance amendment because he believed that paragraphs two and three would have too many potential permutations over the years. However, he might be in favor of the ordinance amendment if these two paragraphs were deleted.

Tanner concurred with the comments made by Gross and Page. He believed that the Board should take action on the draft Findings prepared for the pending Lovaas variance application. He concurred with the comment made by Seuntjens at the previous Board meeting that the Board should be more proactive, not re-active, relating to ordinance amendments. He recommended that a Task Force should be established to review LMCD Code in its entirety rather than on a case by case basis.

VOTE: Ayes (6; Johnson, McDermott, Nelson, Skramstad, Suerth, and Whalen), Nays (6); motion failed.

MOTION: Seuntjens moved, Gross seconded to approve the draft Findings of Fact and Order as submitted, approving the Lovaas dock length and side setback variance application at 17840 Breezy Point Road.

VOTE: Ayes (10), Nays (2, McDermott and Nelson); motion carried.

Skramstad asked LeFevere to provide background on the status of the draft ordinance amendment.

LeFevere stated that the draft ordinance amendment had not been adopted by the LMCD Board. However, this would not preclude a Board member from bringing this back for Board discussion at a later meeting.

D. Seahorse Condominium Association, consideration of 2007 renewal, without change, multiple dock license application;

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 9/7/07, which summarized a 2007 renewal, without change, multiple dock license application submitted by Scott Seeman on behalf of Seahorse Condominium Association. He made the following comments:

- This legal, non-conforming site is approved for 77 Boat Storage Units (BSUs) on 2,645' of continuous shoreline, with a BSU density of approximately 1:34'. Of these 77 BSUs, 67 are for overnight storage and 10 are for transient purposes.
- The Association has proposed to: 1) obtain approval of the 2007 renewal, without change, multiple dock license application, even though the docks and canopies installed were not consistent with the approved site plan, and 2) to physically bring the docks and canopies that were installed illegally into compliance with the approved site plan using the 7/3/87 Slip Size Report for slip size documentation.

- He provided the Board an overview of the deficiencies recognized by LMCD and the communications with the applicant. Additionally, staff has had problems determining the sizes of the approved docks because the approved site plan lacked details, primarily slip dimensions. This site plan was originally approved in 1980 and has been renewed, without change, since.
- In 2006, LMCD staff observed obvious violations with the transient docks on the east side of the property. Staff researched the applicant's historical file and found dimensions from a 1987 Slip Size Report. He provided the Board with a Slip Size Report that included: 1) the approximate scaled slip dimensions for the approved site plan, 2) slip dimensions from the 7/3/87 Slip Size Report that were amended by LMCD staff, and 3) what was installed in August 2006. Harper reviewed, in detail, how the numbers were obtained for the revised 1987 Slip Size Report.
- Staff has spoken, and repeatedly met, with representatives from the Association since last fall to help them come into compliance with LMCD Code. This site has operated the entire 2007 boating season without an approved 2007 LMCD multiple dock license.
- He believed that the Board could approve the 2007 renewal, without change, multiple dock license application, subject to: 1) the docks, canopies, and boat storage must be brought into compliance with the revised 7/3/87 Slip Size Report by 10/15/07 to allow for a 2007 inspection to verify compliance, and 2) the Association must submit a revised to-scale site (prepared by a surveyor) showing all details based off the revised 7/3/87 Slip Size Report.
- He entertained questions and comments from the Board.

Seuntjens asked Harper to comment on when the first application was submitted for this site. Additionally, he asked Harper to comment on whether these docks were installed for 12 months a year.

Harper stated that this dock exists back to the early 1970's, although the first site plan was approved in 1984. Additionally, these docks have historically been installed year a round.

Suerth asked what was the significance of bring the docks into compliance with the revised 1987 Slip Size Report by October 15th rather than a date after the first of the year to allow the Association to work on the ice.

Harper stated that this was a recommendation made by staff since this has been worked on since last November. However, the Board could establish an alternative date if it desired.

Gross stated that it appeared that the current BSUs that were the most in non-compliance with the revised 1987 Slip Size Report were BSU 5-9. He questioned whether there was any compelling evidence on why they were so much wider.

Harper stated that he had not observed any compelling evidence. In fact, the beams of the boats in these BSUs were relatively modest.

Skramstad stated there were four BSUs that were installed narrower than the revised 1987 Slip Size Report. These include BSUs 3, 4, 23, and 30.

Seuntjens provided an overview of the BSUs that needed to be adjusted so that they were in

compliance with the revised 1987 Slip Size Report. He believed that these changes should be made by April 1st to allow LMCD staff to inspect shortly thereafter.

Skramstad asked for further background and comments from the applicant.

Mr. Scott Seeman, 5430 Three Points Blvd., apologized to the Board and staff for the time the Association has spent resolving these issues, over one year. It was the Association's original hope that a new docking system would be brought up to date since the current docking system was between 25 and 30 years old. This was initiated through an application process because the Association controls the main license to the property. Unfortunately, there are 67 separate individual dock owners and initiating a configuration consistent with the revised 1987 Slip Size Report was too difficult to solve because there was a need to reduce additional cumulative square footage to comply with LMCD Code. The reconfiguration of a non conforming multiple dock license application was recently withdrawn because of opposition at the Association. The Association has now tabled those plans, including the replacement of electrical work, for discussions this fall in hopes of receiving more support. He hoped to build consensus at the Association in the near future to replace the existing dock structure. He entertained questions and comments from the Board.

Seuntjens stated that the interest of the LMCD was that the dock installation was consistent with an approved site plan. He recognized that there were complexities at the Association level that were outside the concern of the LMCD. He believed that there needs to be an expectation of compliance at the Association. Without this compliance, the LMCD would need to proceed to ensure that there is compliance, with one possibility the Association losing their rights to the grandfathered dock. If the Board were to proceed approving the application consistent with revised 1987 Slip Size Report, he believed that one condition should include the submittal of a new survey.

Seeman stated that he believed that updated survey work could be accomplished because of previous survey work already done in conjunction with the reconfiguration of non conforming multiple dock license application that was recently withdrawn.

Skramstad concurred with the comments made by Seuntjens that there was a need of compliance with an approved site plan and the need to submit a new survey by a specified date. However, he was somewhat flexible with what this date should be.

Seeman stated that three members of the Association had recently measured the existing slip sizes from four different angles, which resulted in a varying degree of non-compliance. He recommended that the surveyor should remeasure the existing docks to docking and LMCD specifications to verify to what level there was non-compliance with the approved site plan.

Nybeck stated that he and Judd had recently conducted the annual inspection for this multiple dock facility. This included re-measuring the slip sizes and he believed that the LMCD staff could forward these measurements to the Association.

Seeman stated in the past 20 years, there have been eight docks lengthened and six docks have been shortened. He was unable to explain the change of widths in the dock structures.

Nybeck advised the Board that there was a need to conclude how to deal with the six transient slips that had been changed illegally from stick docks to three sided slips.

Skramstad asked Seeman to comment on how the Association would like to deal with these transient slips.

Seeman stated that the 10 transient slips go back to 1982 or before. He questioned why the Association had 10 transient slips because there was not a need for them. There has been a conversation with LMCD staff regarding reducing the number of transient slips and reallocating the square footage of these slips for overnight storage purposes. He believed that this would be a positive step because some dock owners would like additional square footage and this would reduce the overall number of BSUs, which should reduce the pressure on the Lake.

Harper stated that would not be permitted by LMCD Code because it would be a conversion of use. Additionally, this site was approved for 67 BSUs in 1977-1978, with an additional 10 BSUs approved by the Board in 1982 or 1983 specifically for visitor slips. One could make the case that these 10 additional BSUs should have not been approved. On the approved site plan, there is a stipulation that the "ten visitor slips may not be converted to any other use, and that the slips be marked with "Visitor Parking Only" signs".

Page asked for clarification of how many slips need to adjusted through the Associations proposal.

Harper stated that there were two BSUs on the north side of the lagoon that were one section too long and needed to be shortened. There were also a number of slips on the south side of the lagoon that were too wide and needed to be reduced in width.

Page asked the Association who would be making the changes to bring the dock installation in compliance with the revised 1987 Slip Size Report.

Seeman stated that the owner of each dock slip in the Association currently takes care of their own dock. However, these changes were more substantial and would take a lot of work.

Tanner asked whether the Association had a policy, or was creating a policy, that each BSU owner was responsible to monitor their own dock to ensure compliance after the necessary adjustments were made. He believed that this should be done by the Association rather than relying on LMCD staff.

Seeman stated that there was not currently a formal policy, although one was being worked on. An honest mistake that was made by the Association relating to slip size increases because of the range of slip dimensions for Watercraft Storage Units (WSU) on each years renewal application with the LMCD. Because of this, some unauthorized changes were made.

Scanlon asked how many residential units there were at this Association.

Seeman stated that there were 107 units, with one rental unit owned by the Association.

Scanlon asked if there were any residential units within the Association that owned more than one dock space.

Seeman stated that he believed the 67 overnight storage spaces were currently owned by 67 different

property owners.

Skramstad asked whether the Association was going to fix what docks they currently have to the revised 1987 Slip Size Report or if they were going to go through the application process for a new docking system.

Ms. Margie Oxborough, 5420 Three Points Blvd., stated that she was the Association's President. This issue has been discussed in great deal the past year and she concurred with the comments made by Seeman that there had been some opposition to a new docking system, which resulted in it not happening. The Association wants to come into compliance with the revised 1987 Slip Size Report; however, she expressed concern about the domino effect if too many adjustments needed to be made. She requested the Board approve the 2007 renewal, without change, multiple dock license application because it might be some time before a decision could be at the Association level regarding a new docking system.

LeFevere recommended that the Board take action on the application, with a specified date to bring the dock into compliance, rather than waiting for the Association to proceed with a new docking system.

Whalen stated that the decision on whether to adjust the existing docks or to install a new docking system was a decision that needed to be made by the Association, not the LMCD. The primary focus of the LMCD was to approve an application with any conditions deemed necessary by the Board, including a date such as May 15, 2008 to when the docks needed to be installed consistent with an approved site plan.

MOTION: Whalen moved, Page seconded to approve 2007 Seahorse Condominium Association's renewal, without change, multiple dock license application, subject to: 1) the submittal of a to-scale survey, with the proper dock dimensions, that are being assumed from the revised 1987 Slip Size Report by May 15, 2008 or before, and 2) to bring the existing dock installation in compliance with the revised 1987 Slip Size Report at or before May 15, 2008.

Gross requested clarification of what would be approved if the motion were passed. He believed that the application was for renewal without change and he questioned why the revised 1987 Slip Size Report was being considered rather than the approved dimensions from 1984.

Harper stated that the revised 1987 Slip Size Report was recommended for use by LMCD staff because the Association has been paying for BSUs within these WSU categories since 1987. The approved site plan dimensions was staff's best effort of scaling off estimated slip sizes because of lack of details on the originally approved site plan in 1984. He could not explain why these necessary dimensions were not included on the originally approved site plan.

LeFevere stated that the approved site plan was a drawing, with no dimensions, that was not to scale. For this reason, Harper made an effort to estimate the slip dimensions in 1984. To give the applicant the benefit of the doubt, Harper has recommended that the Board use the revised 1987 Slip Size Report as the approved plan since this was the first time that slip dimensions were available.

Seuntjens clarified for the Association that the transient docks would need to be consistent with the approved site plan, not the transient docks that had been installed in 2006 without approval by the Board.

Nybeck stated that one of the reasons for a 10/15/07 to bring the docks into compliance with the revised 1987 Slip Size Report was the 2008 renewal, without change, multiple dock license process. These applications are historically sent out in October for the upcoming boating season. If the dock does not need to come into compliance with the approved site plan until 5/15/08, he stated that staff would hold off on sending out their 2008 renewal application until it has been confirmed next spring that the necessary adjustments were made by the Association.

Mr. Steve Carlson, 5450 Three Points Blvd., stated that he was one of the residents serving on the Association's dock committee. The dock width concerns appear to be around BSUs 3-10. He questioned how the width of the remaining slips might on the south end of the lagoon have occurred over the years, estimated at 11', without disrupting the width of all docks on the south end of the lagoon.

LeFevere stated the primary reason for the condition that required a survey was to document that the dock was installed consistent with the revised 1987 Slip Size Report.

VOTE: Motion carried unanimously.

- E. Smithtown Bay Association**, consideration of 2007 renewal, without change, multiple dock license application.

Skramstad asked Harper for background on this agenda item.

Harper reviewed the staff memo, dated 9/7/07, which summarized a 2007 renewal, without change, multiple dock license application submitted by Tom Sheehan on behalf of Smithtown Bay Association. He made the following comments:

- This legal, non-conforming site is approved for 17 Boat Storage Units (BSUs) on approximately 308' of continuous shoreline, with a BSU density of approximately 1:18'
- The Association has proposed to: 1) obtain approval of the 2007 renewal, without change, multiple dock license application, even though the docks and canopies installed were out of compliance with the approved site plan, and 2) to physically bring the docks and canopies that were installed illegally into compliance with the approved site plan.
- He provided the Board an overview of deficiencies recognized by the LMCD and the communications with the applicant. In general, these deficiencies included: 1) a number of slips on the channel that expanded from 20' to 24' in length, and 2) side setbacks being out of compliance on the south side because the neighboring property is required, by LMCD Code, to submit an annual mutual letter of consent.
- The Association has submitted two documents that were referenced in the 9/7/07 staff memo. This included: 1) a letter from Tom Thompson, the abutting neighbor to the south, consenting to the current dock configuration for 2007, and 2) a surveyed site plan, with approved dimensions, as required by a Board condition in 2001. He stated that he was encouraged by the submittal of the survey from the Association, although there were a few details that need to be corrected that he would work in resolving with the Association.

- He reviewed the multiple dock license applications submitted by the Association in 2007. These included: 1) a renewal, without change, multiple dock license application in March that was withdrawn in June, 2) a reconfiguration of a non-conforming multiple dock license application in June, with a public hearing conducted in July that was withdrawn in August, and 3) re-submitting a renewal, without change, multiple dock license application in September. This site has operated the entire 2007 boating season without an approved 2007 LMCD multiple dock license.
- He highlighted two relevant LMCD Code Sections in evaluating the application. These included: 1) Code Section 2.01- authorized dock use area requirements, and 2) Code Section 2.01, subd. 3c)- outlines mutual consent arrangements. He highlighted the dock installation and boat storage that extends over the southerly extended side site line.
- He believed that the Board could approve this application for 2007 with three conditions. These included: 1) bringing the docks, canopies, and boat storage with the approved site plan by 10/15/07, 2) the submittal of a revised to-scale (prepared by a surveyor) showing all required details, 3) the submittal of an updated mutual consent letter from the abutting neighbor to the south, Tom Thompson, waiving side setback requirements.
- He entertained questions and comments from the Board.

Skramstad asked for background and comments from the applicant.

Mr. Jeff Marshall, 911 Iris Circle, stated that he was in attendance representing the Association. Two of the documents recommended by Harper, the to-scale survey and the mutual consent letter from Tom Thompson, have been submitted as previously noted by Harper. He question why the letter received from Mr. Thompson would not allow for the jet ski to be parked on the south end of the multiple dock.

LeFevere stated that the abutting neighbor could consent to waiving side setback requirements, not the number of restricted watercraft stored at the multiple dock license.

Harper stated that this site was approved for 17 BSUs. The location where the jet ski was being parked was not an authorized BSU and would need to approved by the Board through a new multiple dock license application, with public hearing. If the jet ski were relocated to the Mr. Thompson's dock use area, this would count towards his density allowance and might restrict what he could store at his site.

Skramstad asked Marshall if the Association could comply with the October 15th date to bring the dock consistent with the approved site plan.

Marshall stated that he would prefer to make these changes during the winter months.

MOTION: Page moved, Johnson seconded to approve the 2007 Smithtown Bay Association's renewal, without change, multiple dock license application, subject to: 1) bringing the existing dock installation into compliance with the approved site plan by May 15, 2008, and 2) the submittal of a to-scale survey (prepared by a surveyor) sufficient to staff's discretion by May 15, 2008.

Seuntjens questioned why the Association had not considered moving the docks and boats further to

the north on the channel. He believed that the current docking and boat storage was impacting the abutting property to the south.

Marshall stated that moving the docks and watercraft to the north would be problematic because of water depth concerns.

McDermott proposed a friendly amendment to maintain the 1986 channel navigational study as referenced on the approved site plan. Page and Johnson agreed to this.

VOTE: Ayes (11), Abstained (1; Nelson); motion carried.

G. Additional Business.

There was no additional business.

2. EWM/EXOTICS TASK FORCE

A. Staff update on 9/5/07 Lake Vegetation Management Plan (LVMP) Stakeholder Meeting.

Skramstad asked Nybeck for background on this agenda item.

Nybeck stated that the first of three LVMP stakeholder meetings was held at Wayzata City Hall on September 5th. Discussion at this meeting included: 1) what a LVMP consisted of, 2) what MN DNR permits were required and when would they need to be obtained, 3) what consists of good and bad vegetation, 4) why would a LVMP plan should move forward (i.e., comprehensive studies for chemical and harvesting use), and 5) any variances that might be needed. He directed the Board to a press release in their handout folder, dated September 2007, in which he reviewed in detail. He stated an estimated 80 surveys from stakeholders had been received to date and that the next LMVP public meeting was scheduled for September 26th, which would be held in place of the LMCD Regular Board Meeting. He entertained questions and comments from the Board.

Tanner asked how the stakeholders were being notified of the meetings and if the Board of Directors could receive an email notifying them of the meeting.

Nybeck stated that the press release he reviewed was submitted to the three local newspapers, along with the West Metro Section of the Minneapolis Star Tribune. He communicated that the LMCD office would forward this press release by e-mail to all LMCD Board members.

B. Additional Business

Nelson stated that he believed there had been some data collected relating to possible violations of law by transporting aquatic vegetation to Lake Minnetonka, which was captured by the Internet Landing Installed Devices Sensors (I-LIDS). He asked if anything had been done to communicate with these individuals relating to these possible violations.

Nybeck stated that he had recently talked to Board member Suerth relating to this. The consensus was to take the possible violations identified by Eric Lindberg and to forward them to the MN DNR for further discussion relating to possible enforcement. He cautioned the Board that some of the possible violations identified were most likely not a violation of state law.

Nelson stated that he believed the MCWD had funds available in its budget for enforcement training.

Nybeck reminded the Board that final Reports from the 2007 I-LIDS and MN DNR Inspection Program contracts would be presented in November or December. Once these Reports have been presented, he believed that the Board could start its planning process for 2008.

3. FINANCIAL

C. Additional Business

There was no additional business.

4. LAKE USE AND RECREATION

There was no additional business.

5. ADMINISTRATION

There was no additional business.

6. SAVE THE LAKE

There was no additional business.

7. EXECUTIVE DIRECTOR REPORT

Nybeck updated the Board on two items. First, the 9/26/07 Regular LMCD Board meeting was cancelled to accommodate the second LVMP stakeholder meeting held in its place. Second, the lake level as of 9/12/07 was 928.47', with the dam closed.

8. OLD BUSINESS

There was no discussion.

9. NEW BUSINESS

Skramstad stated that Vice Chair Van Hercke had recently informed him that she was resigning from the LMCD Board. This was primarily due to her time commitment with a new family business and she has notified the City of Minnetonka, with a new representative to be named in the near future.

10. PENDING LITIGATION (LMCD vs Canning- the Board may vote to discuss this pending litigation in an Executive Session).

11. ADJOURNMENT

Skramstad stated that the abutting neighbors to the Cannings had made a request to voice their concerns about the approved Settlement Agreement prior to the Board considering going into an executive session. He asked Nybeck to provide further details.

Nybeck stated that the Board discussed the Settlement Agreement at its August 22nd Board in an executive session. The Board approved it at the same meeting after the Board closed the executive session and reopened the Board Meeting to the public. This Settlement Agreement was then forwarded to the abutting neighbors and some concerns have been raised relating to it. In particular, the abutting neighbors have expressed concern about Exhibit A, which defines the Canning, Johnson, and O'Garas dock use areas as part of this Settlement Agreement.

Skramstad invited a representative for each of the abutting properties to address the Board.

Mr. Mark Bendix, 5580 Maple Heights Road, stated that he was the second abutting neighbor to the north of the Canning site. He believed that his rights had been affected and stated that he would like to address the Board with his concerns.

Skramstad expressed concern about taking comments from other properties in the area rather than the immediate abutting neighbors. He asked LeFevre to advise the Board on Mr. Bendix's request.

LeFevre stated that Mr. Bendix's property was affected because he resided to the north of the Johnson's property. Although the Bendix's interest in the pending Canning litigation was not as serious of impact as the immediate abutting neighbors, LeFevre advised the Board that it might be beneficial to allow Mr. Bendix to comment on the approved Settlement Agreement. If the zero foot side setback and length variance that was part of this Settlement Agreement for the Johnson site was being considered as part of a variance from LMCD Code process, Mr. Bendix would be allowed to voice concerns as part of that process. However, Mr. Bendix or his representative would be allowed to comment on the approved Settlement Agreement at the District Court. He stated that the Board had the discretion on whether to allow Mr. Bendix to comment at this meeting or at another time.

Skramstad invited Mr. Bendix to provide the Board his comments on the approved Settlement Agreement.

Bendix made the following comments:

- He was not in direct relationship with the Cannings; however, he believed that his docking rights would be affected by the approved Settlement Agreement.
- He and his family purchased the property on the basis that they had lake access, the use of a dock, and the right to store a boat. His family purposely did not state their views on the litigation process originally because they did not believe their rights were affected until a draft Settlement Agreement was received from Justin Templin from Hoff, Barry, and Kozar.
- He believed that the Settlement Agreement was more about money and property values to the Cannings' rather than lake rights. However, he recognized that the Cannings' have riparian rights to a dock that cannot be eliminated without payment or compensation.
- He was notified by Templin this past May, and not again until July, stating that there was a possibility that the Johnsons would be given a zero foot side setback as a result of adjusting the neighboring properties dock use area to settle the litigation. Bendix stated that he informed Templin at that time that a zero side setback was not acceptable and that he would oppose any such effort. He stated that he did not purchase his property to have a neighbor's docking rights sit on his property line. He was prepared to use all legal means to settle that matter and reiterated that as the Board was attempting to settle one litigation matter, they were very likely to striking up another.

- The abutting neighbors were scrambling to save their property values while he believed that the Canning's were the party benefitting from the approved Settlement Agreement. He questioned where the Cannings had compromised.
- The Canning's have now purchased a much larger watercraft that was sitting at their dock. He believed that if the Canning's wanted a larger watercraft, they should purchase property with more lakeshore rights.
- He urged the LMCD to go back to District Court and to allow the judge, who favored the LMCD's rights in the first try, to decide the outcome. He did not believe the judge would not be as generous to the Cannings as described in the approved Settlement Agreement.

Mr. Rick O'Gara, 21020 Excelsior Boulevard, stated that he was the abutting neighbor to the south. He expressed his frustration that he was in attendance at another Board meeting expressing his concerns. He reviewed the history of the court rulings relating to this and he stated that he would like the LMCD to not settle and let the courts decide on the riparian rights of the property owners. At that time, the Board could amend the LMCD Code to reflect what the Courts have ruled. The only reason why he was even considering agreeing to give up a portion of his land value was to put the matter at rest. He expressed concern that all parties involved agreed upon a Settlement Agreement only to find that the LMCD changed the proposal and did not notify the neighbors. He was willing to continue considering the Settlement Agreement that was presented to the abutting neighbors on the basis that the LMCD goes back and changes the Settlement Agreement to its original state. If not, and the LMCD does not let the Court settle the matter, he stated that he would litigate against the LMCD.

Mr. Jason Johnson, 5600 Maple Heights Road, expressed his frustration in the continuation of the pending Canning litigation. He reviewed historical discussion and settlement options that he was previously involved in, one of which was to eliminate his entire dock use area. He believed that it was outrageous that one individual could affect abutting neighbors to this degree. He concurred with O'Gara's comment that if a Settlement Agreement cannot be agreed upon, he will too join litigation against the LMCD. This process has taken a toll on his family and quality of life to the extent that this was the only reason he was even considering a Settlement Agreement.

Skramstad thanked the abutting for their comments on the pending Canning litigation. He believed that the Board would be going into an executive session to discuss this in further details.

LeFevere stated that the purpose for closing this meeting and going into executive session, as an Exception to the Open Meeting Law, was attorney/client privilege to discuss the pending Canning litigation. Upon completion of the executive session, the Board most likely would adjourn the meeting.

MOTION: Seuntjens moved, Scanlon seconded to: 1) go into executive session at 9:30 p.m. to discuss pending litigation, as allowed by Open Meeting law, and 2) to adjourn the meeting upon completion of the executive session.

VOTE: Motion carried unanimously.

Tom Scanlon, Secretary