

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, October 26, 2011  
Wayzata City Hall

**1. CALL TO ORDER**

Babcock called the meeting to order at 7:01 p.m.

**2. ROLL CALL**

**Members present:** Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Kelsey Page, Greenwood; Anne Hunt, Minnetrista; Chris Jewett, Minnetonka; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Debbie Siakel, Shorewood; Roger Swanson, Spring Park; and Herb Suerth, Woodland. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director, Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** Steve Johnson, Mound.

**3. APPROVAL OF AGENDA**

Babcock requested the following changes to the agenda: 1) to table the September 28<sup>th</sup> LMCD Regular Board Meeting minutes (agenda item #5) to the next meeting to accommodate more review time and 2) the removal of draft Findings for Russ & Gina Nettle and Ed Alexander (agenda item #6D) from the consent agenda for consideration under agenda item #7A.

**MOTION:** Jewett moved, McDermott seconded to approve the agenda as amended, accepting the changes noted by Babcock above.

**VOTE:** Motion carried unanimously.

**4. CHAIR ANNOUNCEMENTS**, Chair Babcock

Babcock stated that the City of Deephaven had recently appointed Keith Kask as a new Board member to the LMCD. He welcomed Kask on behalf of the Board and asked LeFevere to administer the oath of office, in which LeFevere did. Kask was seated as representative for the City of Deephaven.

Nybeck solicited the Board's consideration of moving the November 9<sup>th</sup> Regular Board Meeting to November 16<sup>th</sup> (providing past historical Board action in light of only one meeting scheduled for the month of November). It was the consensus of the Board to hold the meeting on November 9<sup>th</sup>.

Babcock directed the Board to a Lakeshore Weekly News Guest Column article by Dick Osgood of the Lake Minnetonka Association (LMA) within their packet. He stated that this article generated personal receipt of written communication (both through the City of Tonka Bay and the LMCD). In reading that communication, he believed that the column provided a notion that the LMCD had been operating for the last 20 years without any sort of an aquatic invasive species (AIS) plan. For this reason, he documented (for the record) that the LMCD has been operating and providing considerable funding for both an AIS prevention and harvesting program plan. He asked that the Board members to relay that information to their respective cities in hopes of

educating the public to that affect.

Olson arrived at 7:05 p.m.

**5. APPROVAL OF MINUTES – 10/12/11 LMCD Regular Board Meeting**

**MOTION:** Baasen moved, McDermott seconded to approve the minutes from the 10/12/11 LMCD Regular Board Meeting as submitted.

**VOTE:** Ayes (12), Abstained (1, Kask); motion carried.

**6. APPROVAL OF CONSENT AGENDA**

McDermott moved, Jewett seconded to approve the consent agenda as amended, removing item 6D as noted under agenda item #3 above. Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (10/16/11 – 10/31/11); **6B**, September financial summary and balance sheet; **6C**, Minutes from the 6/10/11 AIS Task Force Meeting; **6E**, Draft letter to be forwarded to LMCD Member Cities regarding Board appointments for 2012; and **6F, Save the Lake**, announcement on Funds available for 2012.

Babcock stated that the attachment to agenda item #6E had two column headings transposed (Total Meetings and Number Meetings Attended); providing for the need to edit the document prior to submittal.

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

**A. Russ & Gina Nettle and Ed Alexander**, dock length, side setback, and adjusted DUA variance application to amend a previously approved variance for a combined dock at 4658 and 4662 Kildare Road.

Babcock directed the Board to an updated draft Order within their handout folders that provided for the structure's variance lengths of 154' and 163' (condition #3) placed diagonally to the shoreline. He asked Nybeck for background on this agenda item.

Nybeck stated that both Gina Nettle and Ed Alexander were in attendance at this meeting. He informed the Board that prior to this meeting, Nettle had inquired if condition #5 could be amended to allow for both properties to have a canopy.

Babcock invited the applicants to address the Board on this request.

Mr. Ed Alexander, 4662 Kildare Road, introduced himself and Ms. Gina Nettle (4658 Kildare Road). He believed that some Board members (within their prior discussions) seemed open to the idea of allowing for a canopy at both sites. He asked Ms. Nettle to address the Board.

Ms. Gina Nettle apologized to the Board for not being in attendance at past meetings when this application was considered. She provided an overview of her and her husband's current challenges that

prevented their attendance while Alexander appeared on their behalf. She stated that she had a chance to review the prior comments made, as well as the draft Order, which allowed her to be better prepared to discuss the matter. She continued by making the following comments: 1) the non-conforming dock structure existed when they purchased the home, 2) they hired the dock installer to remove the structure at whatever length the Board seemed fit, 3) she acknowledged the environmental benefits of not having a canopy and boat, in which she currently owned a 20' boat to minimize that impact, and 4) she and her husband plan to live there for a long period of time. With that said, she stated that they currently do not intend to erect a canopy; however, she asked the Board to consider providing for that option for the purposes of future equity and aesthetics (noting the neighbors all have canopies). She entertained questions and comments from the Board.

The Board discussed Nettle's request; taking into consideration the documented hardships. Although some concern was raised that hardship(s) do not exist for this purpose (expounding on the Code's definition of both hardships and the canopy structure itself), the following options were offered: 1) the placement of one canopy over both slips, 2) applying for an amended variance in the future, or 3) leaving the dock structure as is and utilizing slip covers over a boat lift (shore station).

Alexander stated that he assumed the current and past minutes, in consideration of this application, would be in existence to consider future applications to amend the variance.

Babcock stated the Board's final approval of the variance will be based on a situation that is workable for the current and future owners, as well as the LMCD and the community at-large. He suggested that they go back to the drawing board (working with staff) to consider their options.

The consensus of the Board was to table this agenda item to the November 9<sup>th</sup> meeting; based on the applicants agreeing to sign an Indefinite Waiver to the 60-day rule, in which the applicants agreed to do so.

Babcock asked the public if there were other comments on subjects not on this agenda, in which there were none.

## 8. PUBLIC HEARING

- **City of Deephaven**, new multiple dock license and variance applications to reconfigure the Carsons Bay docks. The variance application has been submitted for an adjusted dock use area and side setback requirements.

Babcock asked Harper for background on this agenda item.

Harper reviewed his staff memo, dated 10/18/11, which summarized a request from the City of Deephaven (City) for a new multiple dock and variance license to make changes at the Carsons Bay docks. Proposed changes include: 1) to replace the 4' x 4' wooden docks with pile driven permanent docks (similar to the docks in St. Louis Bay), 2) to convert two slide Boat Storage Units (BSUs) to slip BSUs on the east dock, and 3) to reconfigure the two docks slightly to allow either a 2' wide dock or a pole between the individual BSUs. These changes would increase the Carson's Bay slip BSUs from 38 to

40 and reduce the slide BSUs from 39 to 37. He expounded on the proposed changes, as well as the variance application before the Board for an adjusted dock use area (DUA) and side setback requirement to address converging lot lines on the east and west sides of the site. He highlighted five relevant LMCD Code Sections in evaluating the variance application. These included: 1) Code Section 2.03, subd. 7 – outlines new multiple dock license application requirements; 2) Code Section 2.01, subd. 1- authorized dock use area requirements, 3) Code Section 1.07, subd. 2 – outlines converging lot lines; 4) Code Section 1.07 - outlines the variance from LMCD Code process; and 5) Code Section 2.02, subd. 1 – outlines watercraft density requirements. He stated that staff supports the proposed size and location of the reconfiguration and replacement of the two City docks. However, he believed that the Board should evaluate how the proposed west extended lot line affects the approved permanent dock at the Boyd property. Once that matter was resolved, he recommended the Board direct LeFevere to prepare Findings of Fact and Order for approval of a new multiple dock and variance license for the 2012 season, subject to three recommendations noted within the staff memo. He entertained questions and comments from the Board.

Babcock asked if any of the three sites (the applicant and two abutting neighbors) currently had a variance from LMCD Code, in which Harper confirmed they did not.

Nybeck stated that permanent docks for residential sites are currently approved at staff level. However, if staff would have had the ability to consider that permanent dock at the Boyd site knowing the current situation, he believed that staff would have brought it to the Board for consideration. He acknowledged the area needed to be cleaned up to define the dock use area (DUA) of all involved.

McDermott asked if the applicant had de-iced and whether they will do so in the future.

Harper stated that the applicant has historically de-iced after March 15<sup>th</sup>, in which a license was not required. He recommended that future de-icing plans be addressed by the applicant.

Babcock invited the applicant to address the Board.

Mayor Paul Skrede and City Administrator Dana Young, representing the City, introduced themselves and entertained questions and comments from the Board, in which Young confirmed that the City will continue to de-ice after March 15<sup>th</sup>.

Babcock opened the public hearing at 7:41 p.m.

Mr. Randy Boyd, 19960 Minnetonka Blvd., introduced himself and his wife. He stated that they are the direct neighbors to the west of the City's dock site. He documented their objections to the applications by reading a letter they provided to the Board, dated 10/24/11, which also offered alternative options within. He entertained questions and comments from the Board.

Mr. Harry Campbell and Skip Dickle, present and prior Commodores, were in attendance on behalf of the Minnetonka Yacht Club (MYC); which is located directly to the east of the City's dock site. Campbell stated that the MYC was in favor of the application before the Board. However, he asked the Board to be

considerate of the property line and respective setbacks documented in the application, in which he asked Dickle to expound on.

Dickle reiterated that the MYC endorsed the applications to allow the City to reconstruct their docks; acknowledging the two properties are good friends that have co-existed for many years. However, he expressed concern that the granting of the proposed variance would not provide for an adequate setback between the two properties. Therefore, he asked the Board to articulate any approval of a variance by stating that the area between the two properties would be shared equally; providing for an equally effective variance in terms of any setbacks with respect to the City's dock and the MYC's slips.

Babcock asked staff to clarify if the MYC had a variance for side setbacks on the west side of their property.

LeFevere confirmed the MYC did not currently have a side setback variance and did not need one (based on the proposed application). Only one of the southern most slides on the City's side of the property line would fall within the setback area of the unadjusted DUA. He reviewed, in detail, the proposed site plan as it relates to the easterly setbacks adjacent to the MYC, which was summarized as follows:

- The 24' side setback was proposed due to the City's side opening slips (equal to the depth of the slip as required by Code). He clarified that the MYC's easterly side setback would result in 13' to the closest slide, in which they only need a 10' setback.
- The current property line runs parallel to Minnetonka Blvd. and that the point at which the extended lot line hits the 929.4' shoreline could not be confirmed. Therefore, he stated the proposed site plan provided for an artificial line from which setbacks would be measured from the pin (which is represented by the black dot on the site plan). With that said, a line was drawn perpendicular to Minnetonka Blvd. (west of the artificial line by an estimated 28'). He believed that made sense as that perpendicular line also would provide for a perpendicular line to the shoreline.

Campbell stated that their property line (noted by the referenced pin) extends about 12' paralleling Minnetonka Blvd.; providing for 16' from the corner property to the setback (estimating the total setback at 24' minus the before mentioned 12'). With that said, he was uncomfortable with the proposed measurements as it relates to future growth. He confirmed that currently the boat lengths are 16' to 18'; however, he did not want to obligate future needs based on increasing technologies.

Dickle confirmed the MYC is limited to the geography offered and reiterated their interest in providing for a shared right of variance to both adjacent property owners (providing his assistance in working with LeFevere on the wording).

LeFevere stated that the proposed application alters the shoreline; constraining where the docks are placed. He confirmed that the actual shoreline will be utilized for density purposes; therefore, double counting of shoreline would not be a concern. He stated that it is difficult to consider a variance based on the MYC's future expansion needs as there is not a plan before them. What the Board could consider is granting a variance that is agreed to by the MYC, but is predicated on continuing use of those slides (providing for the ability to have the MYC come back to the Board to request an amendment to the

variance based on a specific plan).

There being no further comments, Babcock closed the public hearing at 8:00 p.m. He asked Skrede if the City had future plans to expand further west (adjacent to the Boyd property).

Skrede stated that the City's current interest is to update the construction of the dock and not to expand further west. If the City had such interest, it would have been before the Board at this time.

Babcock asked Skrede if the City would agree to an established 90 degree side site line that would be perpendicular to the shoreline; providing for a side setback variance that would grandfather in today's boat and slip size without further encroaching on the Boyd property.

Skrede reiterated that it was not the City's intention to expand BSUs to the west; predicating that he had not polled the city council because he did not anticipate that question.

Babcock solicited comments from the Board.

McDermott asked Babcock to clarify the 90 degree angle he was referring to.

Babcock stated that the 90 degree side site line would provide for a line drawn north and south that would provide for adequate maneuvering space without a side setback variance, taking into consideration Boyd's comments. He believed this would result in the Boyd property not needing a variance and all matters could be handled via the City's application.

LeFevere stated the Board needs to take into consideration the slides at the west edge of the shoreline, in particular if a 90 degree angle is used to clarify the adjusted extended side site line. If the Board utilized that concept, they would have to restrict the size of the boats, as well. If the lot line was not adjusted, there would not be anything to prevent Boyd property from building out to 100', which does not resolve current potential conflict. In asking his preference, he stated that if the Board follows Boyd's first suggestion (at a 45 degree angle) the City would need a small variance for the end slips; providing for the needs to be met by both property owners. Both sites would have adjusted lot lines that would provide for the ability to plan future expansion. He stated that the angle is what defines the line from which you measure setbacks. Therefore, if the Board does not grant the setbacks, the properties could theoretically go out to the legal setbacks from that adjusted lot line.

The Board finalized discussion of this matter by making the following comments:

- Klohs stated that it is difficult to predict the future and recommended the Board remain consistent with precedent and define a line. He believed a 45 degree angle from the Boyd property was adequate.
- McDermott recommended conditions be placed on the slides' placement.
- Babcock expressed an interest in minimizing the impact of the properties when defining a line.
- Jewett was in support of a 45 degree adjustment of the Boyd/City common extended side site line, with a zig at the end of this site line so that it runs to the north.
- Kask referenced staff's recommendation to restrict length overall (LOA) on BSUs 21, 23, 25, and

27. However, in an effort to reach a goal of maintaining same or similar usage, that would not be a restriction that the Board would typically impose; acknowledging the Board is not imposing the envelope concept. In speaking for the City, they were asked to come up with a deflection number to be considered, in which 53 degrees was a compromise. He believed consideration of a 45 degree angle places more restriction on the current docks in place (based on the proposed LOA condition). He asked the Board to consider (in the spirit of same and similar) allowing the same size and type of boats to be stored on the westerly docks as historically have (suggesting that the LOA condition not be considered). If that is not possible, he was prepared to accept a four-foot overhang restriction.

- LeFevere confirmed that the applicant is reconstructing a non-conforming structure. Therefore, the four-foot overhang is applied facility-wide.

The consensus of the Board was to direct staff to work with the applicant (taking into consideration comments made at this meeting) for reconsideration of the applications at the November 9<sup>th</sup> Board Meeting.

## 9. OTHER BUSINESS

### A. Discussion of LMCD Code relating to canopies on Lake Minnetonka.

Babcock asked Nybeck for background on this agenda item.

Nybeck directed the Board to his staff memo, dated 10/19/11, in which he highlighted the following:

- An overview of discussions held at the Board's September 28<sup>th</sup> meeting, in which two Orono residents appeared under "Public Comments" soliciting the Board's assistance in resolving a dock and canopy issue they were having with a neighbor located between their properties. In summary, the Board directed staff to schedule a future agenda item; providing the necessary documentation relating to this dock and canopy issue, as well as documentation on the current ordinances pertaining to canopies.
- An overview of staff's involvement, in conjunction with McDermott, in resolving the noted dock and canopy issue during the course of the 2011 boating season. He acknowledged the documentation to that affect is in the Board packet, per the request of the two residents. He confirmed a side setback violation did occur in 2011 and that staff has set expectations in resolving this matter in 2012.
- A conforming dock plan has been proposed, in which the following features were outlined: 1) use of the entire width of the dock use area (DUA), 2) a "blaze Orange" canopy, and 3) a 6' extra tall canopy to cover two slips. Those features, specifically the "blaze Orange" canopy, resulted in the Orono residents seeking assistance from the Board.
- He asked the Board to consider review of the ordinances pertaining to canopies on a lakewide basis and not particular to this matter.
- He cited LMCD Code Section 2.12, subd. 3, which outlines the current ordinance pertaining to canopies. He acknowledged the ordinance does not specifically document the structures height, area, volume, or mass; only that it may be of no greater size needed to secure and protect the number of watercraft in which it is designed to shelter.
- Staff does not have a recommendation; however, believed that the Board should consider

discussing three specific points, which were outlined within his staff memo.

- He entertained questions and comments from the Board

The Board discussed this matter at length, in which the following comments were made:

- A brief overview on the Board's historical consideration on canopies was provided, as well as the varied colored canopies that are currently in existence (documenting an established precedent on aesthetics and keeping a balance amongst neighbors).
- Acknowledged empathy for the neighbors by some Board members. However, there was some concern expressed that intervening on this dispute was at the expense of the residents lakewide.
- That a palate color for canopies should not be considered based on respect to personal preference and the ability for a property owner to utilize a non-palate color on another structure or watercraft within their dock use area (i.e., a sailboat).
- Colors not harmonious with nature have a broader aesthetic effect on a bay and its respective property owners, as well as documentation that solid colors do not impose a greater financial impact should the Board regulate them. Additionally, there was a belief that property owners are responsible for the use of the public waters that they have been given reasonable rights to utilize.
- Some Board members expressed an interest in the Ordinance Review Committee (ORC) reviewing the current ordinance to determine whether changes should be considered. Possible aspects for the ORC to consider included: 1) why canopies were becoming higher (e.g., watercraft and/or their boat mast; acknowledging that the Code currently does not regulate watercraft height), 2) what is reasonable, 3) moving from an objective to subjective ordinance (setting guidelines), and 4) a review of how site lines are considered.
- Confirmation from staff that expressed historical concerns trended towards color and height.
- The belief that the current ordinance speaks to the size necessary to secure and protect the number of watercraft which it is designed to shelter.
- Expressed interest in the neighbors working together as enforcement is difficult.

LeFevere stated that because the Board is talking about the public waters, any structure that is erected is not grandfathered in; providing for the ability to change the ordinance and require compliance should prosecution not resolve the matter.

Babcock invited the respective neighbors to address the Board.

Mr. Jay Nygard, 1386 Rest Point Road, stated that he was the offending individual that is noted above. He expressed concern about prior Board's comments by stating that "empathy" was provided to the other residents without hearing his side. The Board has acknowledged the need to discuss the canopy issue on a lakewide basis, but directed their discussion based on his situation; providing for the Board to mask and play games. He stated that the abutting neighbors had previously provided him verbal consent to maintain a five side setback encroachment for the placement of his boat house. Those neighbors have now removed that verbal consent (for reasons he would prefer not to discuss) and proceeded to "harass" him through the processes available with the LMCD and the City of Orono. He credited Nybeck's professional efforts to resolve this matter. In summary, he believed the issue at hand is the proposed color and height of his boat house and asked if there currently was an ordinance that prevented his

intentions.

Babcock confirmed that at this time there is not adequate LMCD Code in place to regulate his proposed color and height of his boat house. However, he confirmed the situation provided for a catalyst for the consideration to amend the Code.

Nygaard believed his boat house structure, which is currently in existence, fits into the neighborhood of the community. He stated that he is the first for a lot of things and questioned why "blaze Orange" is worse than any other color; acknowledging he could reduce the size by a foot. He believed "beauty is in the eye of the beholder" and that it was silly to control a canopy color. He thanked the Board for their time.

The consensus of the Board was to not send the current ordinance pertaining to canopies back to the ORC for their review.

#### B. 2011 Lake Minnetonka Watercraft Inspection Program Report

Babcock asked Nybeck for background of this agenda item.

Nybeck provided an overview of the draft Report by making the following comments:

- The Program was coordinated by the LMCD with a primary goal to inspect incoming and outgoing watercraft and trailers for the purpose of educating the watercraft operators. Partners included the Minnehaha Creek Watershed District (MCWD), Minnesota Department of Natural Resources (MN DNR), and Three Rivers Park District (TRPD).
- He reviewed the methodology established for the Program, which included: 1) nine of the 11 public accesses that were covered, 2) two public accesses not covered (Phelps and Echo Bays), and 3) watercraft inspection components (MN DNR, LMCD, and TRPD) as follows:
  - MN DNR: 4,000 inspection hours were targeted (2,000 hours each on weekdays and weekends) with coverage to parallel LMCD inspections from Memorial Day weekend through Labor Day. Of the 4,000 hours, 2,331 were provided (58.3% coverage). Contributing factors included 1) State of Minnesota (State) shutdown and 2) staffing concerns. Public accesses covered included Grays, Maxwell, North Arm, and Spring Park Bays. He solicited the Board's interest in asking a MN DNR representative to provide a further update to their findings, in which Babcock expressed an interest that they be invited to present on their 2012 plans for Lake Minnetonka.
  - LMCD: 2,292 hours (2,064 inspections, 128 supervision, and 100 training) were contracted with Volt Workforce Solutions from Memorial Day weekend through Labor Day on Fridays (11 a.m. to 7 p.m.) and Saturdays, Sundays, and holidays (6 a.m. to 6 p.m.). Training was held on May 20<sup>th</sup> and June 24<sup>th</sup>. Of the 2,292 hours, 2,005 inspection hours were covered (97%). During the State shutdown, inspectors were redirected to North Arm and Spring Park Bay. Grays Bay and Maxwell Bay (State controlled accesses) were unable to be covered by Volt inspectors because of State policy (classified as volunteers).
  - TRPD: Continued assisting the LMCD on an in-kind basis at the Lake Minnetonka Regional Park for gate attendance inspections from 9 a.m. to 5 p.m. on: 1) weekends in May prior to Memorial Day weekend and 2) seven days a week from Memorial Day through Labor Day.

He estimated the in-kind service at 1,000 hours, acknowledged that the partnership has worked well, and he hoped it could continue in the future.

- He reviewed the following funding sources for the 2011 program: 1) LMCD (approximately \$30,000), 2) MCWD (\$7,500), 3) MN DNR (\$6,200 in grant funds), and 4) TRPD (in-kind).
- Summary points included: 1) acknowledgement of multiple agencies (including the LMCD) and lake stakeholders' support for the new aquatic invasive species (AIS) legislation, in which some of the changes were implemented in 2011, 2) a recommendation that staff work with the MN DNR in changing their policy to allow volunteers to inspect at State controlled public accesses, 3) the LMCD and the MN DNR have been working closely to educate lake service providers on the new State AIS transportation laws, and 4) the MCWD has been active in zebra mussel monitoring during the 2011 boating season, in which they have been soliciting the assistance from lake service providers.
- He entertained questions and comments from the Board.

Olson expressed concern about the MN DNR's inability to cover planned watercraft inspections; acknowledging their 58.3% coverage in 2011. In particular at State controlled public accesses during a State shutdown mode; acknowledging the need for backup inspections during such time.

Babcock expounded on his experience in finding zebra mussels on his watercraft when it was pulled for the season (acknowledging that they were found in areas that could not be visually spotted). As one cannot provide for a 100% preventative inspection, he was unsure how to proceed (expressing concern for the remaining bodies of water that are currently not infested). He reiterated his interest in establishing a State policy (placing the responsibility back on the watercraft operator). He believed that the MN DNR needs to give out a single lake access license (providing for further inspections to gain access to other bodies of water).

Page concurred with Olson's comments; finding the inability for LMCD inspectors to assist in watercraft inspections at State ran public accesses during a shutdown troubling. He recommended the LMCD address this matter before it resurfaces.

Jewett believed the LMCD needed to take its leadership role that it is charged with and address the State legislature on the matter of prevention and management of AIS.

Suerth concurred with Babcock's comments above.

Baasen recommended that the LMCD be more aggressive and go on record and communicate their concerns to the MN DNR.

**MOTION:** Baasen moved, Siakel seconded to communicate the LMCD's reflections on the matter of aquatic invasive species during the 2011 season, as well as what is recommended for the 2012 season, with the respective bodies involved (LMA, MCWD, MN DNR, etc.).

Jewett concurred with the motion and commented on the need for the LMCD to take an active leadership role and address the legislature on a recommended plan of action. He did not believe expressing the

LMCD's concerns to the MN DNR was effective enough. He recommended that the LMCD address this matter at a Board Workshop/Planning Session.

Baasen proposed a friendly amendment to his motion for the LMCD to schedule a Board Workshop/Planning Session on November 16<sup>th</sup> to determine the course of action that the LMCD should take as it relates to the successes or failures of aquatic invasive species in 2011, as well as taking a more aggressive stance for 2012. Siakel agreed to Baasen's friendly amendment.

Jewett recommended a friendly amendment to the "course of action" noted above to include establishing the leadership role in which the LMCD is charged with. Baasen and Siakel agreed to this.

**VOTE:** Ayes (12), Abstained (1, McDermott); motion carried.

**C.** Update on vacant part-time Administrative Clerk position

Babcock asked Nybeck for an update on this agenda item.

Nybeck reviewed his staff memo, dated 10/26/11, which summarized the hiring process for the vacant position. First and second interviews were conducted from the 48 applications received. He recommended that the Board authorize staff to enter into a permanent, part-time employment agreement with Tammy Duncan, who has accepted an offer of employment. The agreement specifies a start date of October 31<sup>st</sup>, for up to 24 hours a week, at an hourly rate of \$13.00. No employee benefits are provided per LMCD Personnel Policy. However, as a permanent employee, Ms. Duncan will be required to participate in the Public Employee Retirement Association (PERA) public pension program. He entertained questions and comments from the Board.

**MOTION:** Olson moved, McDermott seconded to enter into permanent, part-time employment agreement with Tammy Duncan as the part-time Administrative Clerk, at an hourly rate of \$13.00 with no employee benefits (other than PERA participation), and a six month probationary period.

**VOTE:** Motion carried unanimously.

**D.** Chair update of 10/21/11 AIS Task Force Meeting

Babcock asked Page for background on this agenda item.

Page stated that the AIS Task Force met on October 21<sup>st</sup> and it was well attended by both the members and public (acknowledging that all represented parties had an opportunity to speak). The Task Force discussed the Coordinated Herbicide Treatment Project (from 2008 to 2011), in which the committee compared results to date against the adopted Lake Vegetation Management Plan (LVMP). They concluded that the remaining 2011 statistics (provided by the U.S. Army Corp of Engineers) were needed before a definitive consensus of the program's results could be provided. Additionally, the Task Force discussed management techniques for Eurasian Watermilfoil Program (EWM). This included the subject

of purchasing a new harvester, as well as subcontracting out this technique. This is also pending further data and information before a definitive consensus of the program could be provided. He anticipated a follow-up meeting in November or December (depending on the submittal of all information needed). He entertained questions and comments from the Board.

Suerth asked if the committee would be able to provide a definitive response to the management techniques of EWM in time to satisfy the deadline of the insurance proposal offered for the harvester incident on July 26<sup>th</sup>.

Page believed that this timeline would be satisfied (noting that the LMCD is within 90 days of the 180 day recommended settlement date).

Morris stated that he attended the Task Force meeting. He concurred with Page that a definitive response on both matters required further data before moving forward.

**E. LMCD Resolution**, draft resolution providing support for the MCWD to develop a comprehensive watershed-wide AIS Protection and Management Plan.

Babcock asked Olson for background on this agenda item.

Olson stated that he believed the draft resolution was well written, strong, and clearly stated. It established the LMCD's leadership role, the facts that all are facing in this matter, and confirmation that the LMCD would be involved in the development of a comprehensive, watershed-wide AIS management plan.

**MOTION:** Olson moved, Siakel seconded to adopt the draft resolution as written.

McDermott proposed a friendly amendment to the motion to add the words "and supports the hiring of an AIS specialist" in the first sentence of the second to last paragraph. The sentence would read, "NOW, THEREFORE, ..... supports the development of a comprehensive, watershed-wide AIS management plan, and the hiring of an AIS specialist, with the provision that representatives...". Olson and Siakel agreed to this friendly amendment.

Babcock stated that he was not in favor of the draft resolution for a number of reasons. First, Lake Minnetonka is the jewel of the watershed. It is the majority, per acre of water, within the watershed with many of the bodies of water connected to. For this reason, he believed it will be difficult to create a management plan that Mother Nature will adhere to. Second, the focus of having a watershed-wide plan is a positive move but believed the plan would have to be no less than 75% focused on Lake Minnetonka to be effective. Third, the draft resolution does not come close to encouraging the level of participation and results that reflects the bearing of Lake Minnetonka within the watershed (acknowledging the bodies of uninfested waters that are in desperate need of protection). Fourth, a plan needs to provide a balance that represents the surface and usable water area for boat and management traffic, in which he believes the draft resolution does not address. Fifth, he will not support a plan that closes Lake Minnetonka (acknowledging that statement needs to be added into the draft resolution) as the LMCD has worked over

the last 25 years to provide the perception that it is open to the public. He believed that providing any other perception will jeopardize the existence of this body going forward. If the Board would include a statement to that affect in the resolution, he would be more supportive of it.

Jewett stated that the LMCD, in some circumstances, has more governing power than the MCWD on Lake Minnetonka. This could include the ability to govern any access that is proposed to be closed on Lake Minnetonka.

Babcock expressed how important it is for the LMCD to not align themselves to a plan that allows for such (acknowledging it would go against the LMCD's historical actions over the past 25 years).

Baasen stated that the LMCD had communicated to the MCWD (at their September 28<sup>th</sup> meeting) that they would not support or endorse the MCWD in the development and leadership of a plan. However, he believed that the LMCD would support the development of a plan that the LMCD would have the ability act upon. He did not believe that the draft resolution addressed that matter.

McDermott stated the City of Orono recently considered a resolution of support for the MCWD, in which they were reluctant to pass without any caveats up front (i.e., a plan).

Jewett believed the MCWD is continuing to hear the same concern. He encouraged the MCWD to learn from the experience of the LMCD and cautioned the MCWD from putting themselves in a box.

Morris stated he did not concur with all portions of the draft resolution; acknowledging some that he did concur with. For this reason, he would most likely vote against approving the draft resolution.

Kask stated the City of Deephaven tabled the draft resolution supporting the MCWD, in which they invited the MCWD to present to the city council. Until the city council meets with the MCWD, he could not vote in favor of the draft resolution as he could be in conflict with the position of the City of Deephaven.

Baasen reiterated his concern in adopting the draft resolution as it could be wrongly perceived that the LMCD endorses a plan that is not yet written.

Siakel stated she believed one cannot build a plan without prior support, acknowledging that there are other cities that have adopted a resolution in support of the MCWD.

Babcock acknowledged that the draft resolution before the Board is not the same resolution the other cities have adopted or considered. He believed both resolutions were consistent in their goals; however, the other resolution did not mention the LMCD or come close to including them in the goals noted. He would like to see the LMCD's resolution going further; documenting the Board's interests and concerns.

Jewett stated that consideration of the draft resolution is government at its finest. He believed the LMCD should not adopt a resolution but partner with the MCWD (and other agencies) to move forward on the management and prevention of AIS. He did not think it was effective to consider a resolution based on Lake Minnetonka being 75% of the watershed, as this issue is bigger than that as it is all inclusive (state

or regional wide).

Baasen stated that the MCWD acknowledged they had the funds to move forward. He reiterated his concern in providing a blank endorsement and recommended supporting a partnership.

Olson, speaking as a Board of Manager for the MCWD, stated that the existence of the watershed district in Minnesota is unique. He acknowledged that AIS is not a typical function of a watershed and that only two other districts are addressing this issue. He commented on an upcoming three day conference that is not addressing the matter of AIS nor does the MCWD's ten year plan. He believed the LMCD, in considering adopting the draft resolution, is providing for the attempt to tell the MCWD that AIS is a big issue. To this end, the Board of Managers of the MCWD are considering this issue but will not put themselves at risk if they do not have the support of the cities, LMCD, or other stakeholders. He recommended the Board consider removing the words "are invited" in the last sentence of the second to last paragraph and replace it with "to participate."

Babcock recommended that the Board form a Joint Powers Agreement with the MCWD (reiterating the need for Lake Minnetonka to be at least half the focus of the plan).

Baasen recommended the words "... supports MCWD, in partnership with the LMCD," in the development of a comprehensive, watershed-wide AIS management plan....; acknowledging that "partnership" is a very strong word.

Morris expressed an interest in the draft resolution documenting the goal of obtaining results (acknowledging that leadership comes from results). He reiterated his interest in documenting specifics, as well.

Babcock recommended that the Board add a second agenda item to the November 16<sup>th</sup> Workshop/ Planning Session (as noted under agenda item #9B above) and not only draft a resolution to the State of Minnesota but also the MCWD taking into consideration comments noted above.

Baasen believed that the LMCD had to consider the public's perception in drafting a resolution; as that perception will go a long way in providing greater comfort in the cities supporting this matter.

**VOTE:** Aye, (3, Hunt, Klohs, and Siakel); Nays (10); motion failed.

Babcock recommended that this matter be added to the November 16<sup>th</sup> Board Workshop/Planning Session (taking into consideration comments made above).

**MOTION:** Olson moved, Page seconded to address this matter at the Workshop/Planning Session of November 16<sup>th</sup> (providing for the creation of a draft resolution taking into consideration the comments noted above).

Swanson asked for clarification as to where other cities stood in considering the draft resolution passed by the City of Shorewood and provided to the cities for consideration.

A number of the Board members provided a brief update on this for the cities that they represent. Nybeck believed that the City of Orono had recently polled this, in which he would follow-up on.

**VOTE:** Motion carried unanimously.

**10. Update from standing LMCD Committees:**

- Ordinance Review Committee
- Public Safety Committee
- Save the Lake Committee

Babcock asked for an update from the Chair, or designated representative, of each committee.

Ordinance Review Committee

Babcock anticipated a committee meeting scheduled for the first or second week in November.

Public Safety Committee

Nybeck, speaking on behalf of Johnson, stated a committee meeting would be scheduled in November or December.

Save the Lake

Olson stated a committee meeting is scheduled for November 1<sup>st</sup> at 8:30 a.m. in the LMCD office.

**11. EXECUTIVE DIRECTOR REPORT**

There was no Executive Director Report.

**12. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:25 p.m.

Douglas E. Babcock, Chair

Andrew McDermott, Secretary