

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, May 8, 2013
Wayzata City Hall

1. CALL TO ORDER

Babcock called the meeting to order at 7:00 p.m.

2. ROLL CALL

Members present: Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Gary Hughes, Spring Park; Jay Green, Mound; David Gross, Deephaven; Dennis Klohs, Minnetonka Beach; Fred Meyer, Woodland; Jeff Morris, Excelsior; Rob Roy, Greenwood; and Sue Shuff, Minnetonka. Also present: Charlie LeFevre, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Ann Hoelscher, Victoria; Anne Hunt, Minnetrista; and Mark Sylvester, Shorewood.

3. APPROVAL OF AGENDA

MOTION: Baasen moved, McDermott seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Babcock

There were no Chair announcements.

5. APPROVAL OF MINUTES – 04/24/13 LMCD Regular Board Meeting

Green directed the Board to the bottom paragraph on page 7 and proposed changing the words "over cost" to "overhead" within the second bullet point and adding the word "not" within the fifth bullet point. That sentence would read, "Osgood stated that he did not think so;...."

MOTION: McDermott moved, Hughes seconded to approve the minutes from the 4/24/13 Regular Board Meeting as amended, making the changes noted by Green above.

VOTE: Motion carried unanimously.

6. APPROVAL OF CONSENT AGENDA

Baasen moved, Shuff seconded to approve the consent agenda as submitted. Item so approved included **6A**, Audit of vouchers (5/1/13 – 5/15/13); **6B**, March financial summary and balance sheet, and **6C, Save the Lake Committee**, recommendation to approve 2013 Save the Lake Funds for the purchase of solar lights, as outlined in 4/10/13 staff memo.

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

There were no public comments.

8. PUBLIC HEARINGS

There were no public hearings.

9. OTHER BUSINESS

A. 2013 Lake Minnetonka Watercraft Inspection Program, consideration of draft Agreements

- **MCWD**, Cost-Share Agreement
- **MN DNR**, 2013 Joint Powers Agreement for AIS Prevention and Management

Babcock asked Nybeck to provide an overview of this agenda item.

MN DNR, 2013 Joint Powers Agreement for AIS Prevention and Management

Nybeck stated that the Minnesota Department of Natural Resources (MN DNR) Agreement was provided in standard format (consistent with past years).

Babcock entertained questions from the Board on this Agreement prior to proceeding with discussion on the MCWD Agreement, in which there were none.

MCWD, Cost-Share Agreement

Nybeck directed the Board to Section 1, "Grant Award;" of the Minnehaha Creek Watershed District's (MCWD) Agreement. In particular, part of the first sentence that read "Contingent on a determination by the MCWD that LMCD's AIS and lake management plans, implementation and related activities are and will remain consistent with the goals of the MCWD Comprehensive Water Resources Management Plan,...." He stated that he had requested clarification of that sentence from MCWD District Administrator Eric Evenson. Evenson had responded by stating they would need the LMCD to complete a questionnaire (which he provided to LeFevere) outlining the LMCD's involvement in all AIS management and prevention efforts (including harvesting, herbicide treatments, etc.). Additionally, if the LMCD were to provide funding to the Lake Minnetonka Bay Captains for herbicide treatments in 2013 (being considered under the next agenda item), the MCWD would like to review the proposed herbicide treatment plan (rate/ratio, timing, etc.) to determine whether all LMCD activities are consistent with the MCWD Comprehensive Water Resources Management Plan. He recommended that the Board take the above information into consideration prior to the approval of this Agreement, as well as consideration of agenda item 9B.

McDermott requested clarification that the MCWD wants to review all LMCD activities.

Nybeck stated the activities referred to by the MCWD were all AIS management and prevention activities; acknowledging they did not express concern about the harvesting program. In speaking with Evenson, he clarified that the MCWD was not against the use of herbicide treatments, but wanted to confirm the treatments were done appropriately (sensitive to the environment) and that they were not a cross purpose to the activities

provided by the MCWD. He directly asked Evenson if the proposed herbicide treatments were going to comply with the MCWD's AIS Plan, in which he could not receive a straight answer for.

Babcock requested clarification that the LMCD did not request funds for the management of AIS, but only for the prevention of AIS (specifically watercraft inspections).

Nybeck stated that the MCWD grant request was for watercraft inspections.

Babcock stated that he did not understand this condition in the draft Agreement since 100% of the funds requested were for inspections.

Nybeck stated that the safe and conservative approach to this was to approve the Agreement as presented, allow the LMA (on behalf of the bay captains) to present under the next agenda item, provide their proposed herbicide treatment plan to the MCWD (if funding is approved), but not take action on the request until the MCWD had an opportunity to review the information requested and provide a determination for such use (as noted above).

Green questioned if the MCWD's objection was that we are freeing up the LMCD's funds to do something else (the consideration of LMA's request), while requesting their funds for watercraft inspections.

Babcock stated he welcomes the MCWD's partnership (especially with the watercraft inspection program) but was not comfortable in the MCWD dictating how the LMCD's funds are spent (as we are not with them). He questioned their authority to place conditions on the operations of the LMCD's management programs (referring to this as a short-sided decision, in which he did not agree with their management style). He entertained questions and comments from the Board.

A summary of the Board discussion was as follows:

- Morris could understand the MCWD taking Green's point (above). However, he was not comfortable having contingencies placed on the LMCD's funds or moving forward as presented (setting a dangerous precedent).
- Babcock recommended further communication to the MCWD (expressing the point that the two programs are separate activities, there is a benefit to the Lake community, and they were not comfortable with dictated management).
- McDermott questioned if not approving the Agreement, as written, was worth giving up the funds offered.
- Baasen concurred with Morris that approving such would set a precedent.
- Gross asked how the original communication with the MCWD transpired, in which Nybeck provided an overview of. He believed it was just a matter of changing a few words within the Agreement to document the funds being spent in a way that is consistent with the program (watercraft inspections).
- Babcock stated the MCWD is focused solely on prevention programs.
- Nybeck reiterated that the MCWD wanted me to clarify that they were not against herbicide treatments and that the requested information from the LMA (if funding was approved) would clarify the concerns noted above. Additionally, he posed the question to Evenson as to whether the granting

of \$21,600 of matching funds could be pulled from the LMCD at a later date, in which he did not receive a clear response.

- Babcock stated the second half of the LMCD's Agreement with Volt Workforce Solution (Volt) is dependent upon receipt of the matching funds. He reiterated the need to provide further communication with the MCWD prior to considering approval of the Agreement and asked the Board for a consensus of such, in which no objections were offered. He recommended a motion to approve the Agreement with the MN DNR.

MOTION: McDermott moved, Gross seconded to approve the MN DNR 2013 Joint Powers Agreement for AIS Prevention and Management.

VOTE: Motion carried unanimously.

Nybeck stated there was a need for the Board to further consider (previously discussed at the April 24th Board meeting) whether they would like the watercraft inspectors to document the required MN DNR surveyed documentation manually (providing for LMCD staff to enter the data on a spreadsheet) or electronically. He directed the Board to a spreadsheet offered that assessed the costs of electronic tablets.

The Board had a few questions and comments, in which the following was offered:

- In considering how much the LMCD would save via the electronic method, Nybeck offered an estimated 40 to 60 staff hours to manually tabulate the surveyed results.
- Nybeck confirmed the former MN DNR Personal Digital Assistants (PDA) to electronically enter surveyed documentation were no longer going to be utilized (based on a newly designed electronic application).
- Consideration of whether the LMCD could purchase a few electronic tablets on a trial basis.
- The recommendation that all (the LMCD and MN DNR) be on the same page and provide for electronic surveying.
- Documented damaged or theft risk concerns.
- A review of other cities that are contracting with Volt for watercraft inspections; providing for the City of Chanhassen to manually survey (fewer public accesses). Nybeck to check on the possibility of sharing efforts (i.e., database, intern to tabulate results, purchase of tablets).
- The need to consider the use of the tablets as a tool to assist the inspectors in doing their job (i.e., higher productivity, etc). Additionally, this process would be more positive for the watercraft operator, as well.
- Confirmation that all data (state-wide) is downloaded to a secure MN DNR site; providing for their ability to generate surveyed data more efficiently.
- Consideration of whether the MN DNR would be providing the surveyed paper copy and what the drop dead date is for this decision, in which Nybeck confirmed inspections start two weeks from the upcoming Friday.

It was the consensus of the Board to start the season manually surveying the watercraft operators until more information is offered on how the tablets are working out. Additionally, staff was directed to communicate with the City of Chanhassen.

Babcock stated that MCWD District Administrator Eric Evenson just arrived. He drew the Board's attention back to the previous discussion (relative to the MCWD's grant agreement) and asked him to address the Board.

Evenson addressed the Board and requested clarification of the question(s) at hand.

Babcock asked Evenson whether the Agreement was approved by the MCWD Board and if there were conditions tied to such approval (i.e., management programs such as harvesting or herbicide treatments). He stated the LMCD needs to finalize the logistics involved in the watercraft inspection program; including contracting with Volt for inspectors.

Evenson stated that he spoke with Nybeck this date and provided a simple questionnaire for the LMCD to complete (outlining the Lake's management plans the LMCD currently has scheduled). He believed the LMCD's programs are important. He stated the questionnaire was provided to all grant recipients for the purpose of confirming all funded programs will not adversely impact other programs the MCWD is currently working on (in which he listed). Based on this Agreement, they would need to review the LMA's contracted applicator herbicide usage plan should the LMCD provide funds for such.

Babcock stated that he does not see how other funds expended on other projects affect a grant Agreement whereby 100% of the funding is being expended on the watercraft inspection program (a prevention effort).

Klohs asked what the MCWD's position was on the use of herbicide treatments.

Evenson stated the MCWD has not taken a position against herbicide treatments, nor do they have that discussion planned (seeing no reason it will be). The MCWD has used herbicide treatments themselves and he reiterated their need to confirm the grant programs will not adversely affect other financially invested MCWD programs.

Babcock did not see how a watercraft inspection program would have any adverse effects on the MCWD's invested programs (confirming the MN DNR does not require such documentation for this funded program).

McDermott and Klohs believed the MCWD request was not unreasonable; providing for the MCWD to be protecting their organization. Klohs believed the proposed funding to the LMCD (\$21,600) is small in comparison to the MCWD's budget, with McDermott believing the MCWD would not pull their funding once submitted.

Gross believed all agencies involved intend, and will continue, to cooperate. He asked if the LMCD and MCWD agree on the importance of inspections, in which Evenson stated he did.

Hughes asked if Evenson could provide the LMCD with a master list of their Lake Minnetonka programs, in which he was happy to do so.

Babcock asked the Board if they were comfortable expending funds to cover the inspection program should

the MCWD withdrawal their funding at a later date.

McDermott stated that he was comfortable with expending those funds.

Babcock stated they would be unbudgeted funds.

McDermott stated he was trusting the MCWD would not take the position of withdrawing the funds once awarded. Additionally, he stated his profession deals with government grants on a regular basis and this condition is not out of the ordinary.

LeFevere stated he has never seen a grant Agreement such as this (including other state agencies) whereby the Agreement ties the LMCD's activities with the MCWD's goals; providing for a future determination as to whether the grant was going to be okay or not. He reviewed the first sentence of Section 1, "Grant Award," in which he read, "Contingent on a determination by the MCWD..," which does not offer when the determination would be provided by. Additionally, he pointed out the wording, "...implementation and related activities are and will remain..."; reiterating the fact that there is no end date.

Babcock stated there is no way the LMCD can satisfy that clause. He was disappointed to receive a condition such as this; especially after what the two agencies have work towards this past couple of years. He does not want to see the MCWD turn the LMCD down in matching these important dollars. However, for future reference, he asked the MCWD to inform the LMCD of any such conditions up front (placing those conditions in your grant requests). Regardless of how this grant Agreement turns out, the LMCD remains committed to working with the MCWD as a partnering agency.

Evenson stated those are decisions the LMCD has to make; reiterating the importance of protecting the MCWD's program investments. Additionally, he reiterated the need (should the LMCD provide funding to the LMA for herbicide treatments) to document the chemical usage plan (chemical ratio, timing schedule, etc.).

Klohs believed Babcock was not going to get what he wanted (to independently tie this grant Agreement to watercraft inspections). He believed the MCWD was looking at all actives/programs as a whole and that Babcock was missing the point.

McDermott asked if the information requested was received, could the MCWD provide a determination within 30 days, in which Evenson stated yes.

Green asked whether proposed funding to the LMA would work against the LMCD receiving grant funds for the watercraft inspection program.

Evenson stated the MCWD is not telling you how to spend your funds but that the receipt of MCWD funds is contingent upon the funding program not adversely affecting the MCWD's programs. He stated the LMA can independently do this and not be obligated to address the MCWD. The review of programs is based on the expenditure of government funds.

Green stated that funding such provides, in some way, the MCWD's control of what the LMCD funds. He too

expressed concern that this Agreement has been held at bay far too long.

Evenson stated what the Agreement should do is allow the two organizations to work together to avoid cross programming. Should this request come from another agency directly, LMA, Minneapolis Park Board, etc., he would have asked for the same information. This is the first time an agency has expressed concern with this contingency, in which he is a little taken back by.

Green reiterated the concern that funding could be pulled at a later date based on a future activity that was not foreseeable.

Evenson stated the contingency forces an agency to report upcoming programs/activities to the MCWD, which may have not been reported in the future. He provided an example of one of their programs being performed in a bay that is requesting a herbicide treatment. The request for a treatment would initiate the communication with the MCWD. If both parties could not come to a reachable agreement, the MCWD would remove any past funding provided to the agency.

Green stated that he gets the removal of funds when a specific funded project is in direct conflict with the MCWD's programs. However, this Agreement places us financially at risk in obtaining contract agreements with vendors.

Roy asked why this matter was not raised months ago; at the initial grant process.

Evenson stated the Board recently considered this for current and future grants; acknowledging that municipalities have been required to develop a resource plan. Funds are not granted if their plan is inconsistent with the MCWD's Water Management Plan, in which they are asking nothing more than what we ask other public agencies.

McDermott requested a vote on this matter.

Babcock asked for LeFevere's legal review prior to entertaining a motion.

LeFevere believed the discussion at this meeting fleshed out the issues. He would be surprised their agreements with the cities were contingent upon not doing anything else (unrelated projects) that would adversely affect their Plan. He believed it was a matter of not running afoul with their Plan and the LMCD maintaining an interest to stay within those limits in order to maintain the future eligibility of the grant. He cannot give you an assurance that they will not pull the funding of the Agreement based on something the LMCD may do (including those you can't foresee) in the future. Once the funding is provided, he did not think they could take the funds back. However, funding could be removed during the timeframe that the Agreement is active. Additionally, he stated that grants never can be assured, i.e., if the State of Minnesota runs out of money, the grant goes away (carrying a risk but not unusual to move forward without such). As a matter of contract, the MCWD is reserving the right (at a later date) to not reimburse the LMCD based on documentation that adversely affects their programs.

Baasen requested LeFevere clarify that if the Agreement is approved, the LMCD comes under the supervision

of the MCWD.

LeFevere stated that the MCWD does not control the LMCD's decisions but can influence (up to \$21,600). He confirmed they do not have veto power over the LMCD but that is what is intended to make sure they have the influence and discussion being requested.

Morris stated that he does not see how the LMCD has not worked with the MCWD in the past. He believes there is another issue present that is being masked, in which he is unsure what that could be. He continues to believe the LMCD will work with the MCWD now and in the future (acknowledging the importance of being partners). He stated the funding of \$21,600 is not an end all deal, .but it sets a precedent for local government units to not run afoul (for the LMCD up to \$21,600) with the MCWD.

Shuff sympathized with Morris' comments (acknowledging LeFevere's comment that this is not being a typical Agreement). She believed it provided for a feeling of being held hostage.

Morris understood that all need to protect their investments. However, he urged the importance of meeting should there be something else to discuss (which he believes there is).

Hughes asked if this is the first time this clause has been placed in the MCWD's grant agreements and whether their legal staff had approved such language.

Evenson confirmed this was the first time the language was utilized (reiterating that the language is utilized for all grant agreements and not just for the LMCD), as well as legal staff approved.

MOTION: Babcock moved, Shuff seconded to approve the MCWD Grant Agreement as amended, striking out the words, "Contingent on a determination by the MCWD that the LMCD's AIS and lake management plans, implementation and related activities are and will remain consistent with the goals of the MCWD Comprehensive Water Resources Management Plan" from the first sentence of Section 1, "Grant Award."

Klohs stated that guarantees the LMCD will not receive the proposed grant funds.

Babcock stated that puts the MCWD in a position to decide how important this program is to the Lake, in which Klohs believed Evenson has been very specific about their decision.

McDermott stated it is the LMCD's responsibility to protect the Lake and questioned what would be gained by not taking the funds.

Morris believed the motion is setting a precedent.

Babcock stated the inspection programs should stand on its own and not be subject to any cross programming concerns.

LeFevere reiterated that approval of the Agreement, as proposed, and receipt of funding would require the

LMCD's activities to remain consistent with the MCWD's Plan.

VOTE: Ayes (5); Nays (6; Green, Gross, Klohs, McDermott, Meyer, and Roy); motion failed.

MOTION: McDermott moved, Klohs seconded to approve the MCWD Grant Agreement as written.

Gross stated there has to be a plan to save this Lake with one of the local governing units having the ultimate say. He believed the MCWD has the money and the expertise to do so. In terms of a disagreement between the two agencies, he would give the MCWD that benefit of the doubt. Therefore, he will be voting in favor of the motion.

Morris believed that whatever differences are present can be worked out. Therefore, he will be opposing the motion.

VOTE: Ayes, 6; Nays (5; Babcock, Baasen, Hughes, Morris, and Shuff); motion carried.

B. Lake Minnetonka Bay Captains, consideration of 2013 funding request

Babcock stated that the Board considered this request at their April 24th meeting. At that time, the Board requested Lake Minnetonka Association (LMA) Executive Director Dick Osgood (representing the Bay Captains) to provide a written proposal for the Board to review and consider. He directed the Board to that proposal and entertained questions and comments.

Green asked Osgood to clarify whether the income documented for Phelps Bay provided for public funds and whether those funds were equal to the private contributions.

Osgood stated that private funds have been raised for all of the bays, including Phelps. He did not include the public funds (other than what was listed at the bottom of page 2 of their proposal under, "To be raised"). He confirmed that all of the bays are at a financial target to allow a treatment. The treatments provide for the most expensive application (other than Carmans Bay due to limited funds). With respect to Phelps Bay, they have the greatest city contribution, as well as some carryover, but he did not believe their public contribution was equal to the private contributions offered.

Green stated that the City of Mound had contributed 37% of the public funds (greatest amount) over the past five years (referencing \$3,000 this year plus an additional \$1,500). Upon review of the report offered, as well as historical public contributions during the prior five years, 67% of funds allocated to Phelps Bay were public dollars (as opposed to 18% in St. Albans Bay). He believed, on the low end, public funds for Phelps Bay is estimated at 70% and he expressed concern about the current request of additional public funds. He recommended that if the Board approves funding this request, allocating the funds by bay, subject to the private contributions being a 50% or higher match. Additionally, he recommended that LMCD funds be returned for whatever bay is not treated.

Osgood stated that Phelps Bay is an exception to the other bays offered. Additionally, if one were to consolidate the private contributions, that number would exceed total contributions overall. He acknowledged the LMCD's ability to place conditions on the proposed funds.

Green stated the project management costs offered by Osgood at the April 24th Board meeting was estimated at seven to eight percent. However, in looking at the proposal offered, it was nearly 20% for Phelps Bay.

Osgood stated the bay captains (who have raised the bulk of the funds) have come to an agreement with the LMA as to what the management funds should be. He confirmed this matter is raised frequently, in which he stated the management fees offered are 60% of the hourly rate he charges for his consulting clients (providing for a flat rate).

Babcock summarized Green's concerns as follows: 1) the need to further delineate the public funds offered for each bay, 2) that public/private funding for any one treatment should be at least a 50% match, and 3) how management fees are assessed. He stated the Board would need to consider those matters without micromanaging. He recommended the Board address the second point above and proposed that the LMCD not expect the dedicated funds (if approved) to go to a bay's treatment that already exceeded the 50% match (Green recognized Babcock's comment).

Osgood stated that with respect to the 2013 treatments, those funds are artificial (based on carryover, etc.). However, in looking towards the future, he recommended the Board consider their Comprehensive Eurasian Watermilfoil (EWM) and Curly-Leaf Pondweed Plan (Plan), which allocates the percentage of public/private funding on a bay-by-bay basis (providing for a 60 to 70 percent public benefit). In regards to Phelps Bay, notwithstanding, that has been turned around in the past (requesting a little credit in that acknowledgment).

Hughes stated that he believed the Board was jumping the gun about allocation of funds, as all five Spring Park City Council Members (at their last meeting) were against spending any tax dollars for whole bay treatments. He believed that funding requests for specific whole bay treatments should be directed to their respective cities. The City of Spring Park would not support such a motion (acknowledging their discussion was philosophical as to whether the LMCD should or should not support the funding request). He confirmed that the city was not against chemical treatments but the use of tax dollars to support a treatment that is not within their jurisdiction. He stated the city council discussed alternatives, such as whole bay treatments in areas surrounding their jurisdiction (Black Lake, Seton Channel, etc.), in which they would rather see funds appropriated by the City of Mound and Spring Park directly vs. through the LMCD.

Klohs and McDermott stated that their represented cities have the same philosophical and financial opinion as the City of Spring Park.

Gross requested confirmation that the dated offered (2012) in the last paragraph on page 3 of the LMA's funding request analysis should be 2013, in which Osgood confirmed Gross was correct.

LeFevere stated that during the five year demonstration project, the contract specified that any expenses not incurred would not be paid by the LMCD. In reviewing both Green and Babcock's funding options offered above (50% match), he stated that the LMCD would be (in that scenario) funding the whole bay treatment program and not on a bay-by-bay basis.

Babcock confirmed that the past five year project was provided to obtain and assess scientific results. He did not feel that funding treatments considered from that point forward falls within the same goal (acknowledging the Board's approved Plan that identifies eight specific bays for such consideration). Based on this, he was not as concerned about proposed LMCD funding going to specific bays but a designed amount approved as needed for the eight identified bays.

LeFevere reiterated the process offered above would not address Green's concerns (the City of Mound contributing twice; through their city and the LMCD).

Babcock expressed an interest in finding a way for all public agencies to provide support for the Lake as a whole (doing the right thing for the community at large).

Green believed the City of Mound has already been doing just that.

McDermott re-stated the concern he raised at the April 24th Board meeting that 2,4-D is now being considered as a herbicide treatment when Renovate (triclopyr) worked well during the five year project.

Osgood believed McDermott's comment was not an accurate characterization of 2,4-D (based on it being around for decades and is not experimental). He recognized more information could be learned from all chemicals offered.

Babcock stated that Gabriel Jabbour has requested to address the Board on this agenda item.

Mr. Gabriel Jabbour, 985 Tonkawa Road in Orono, thanked the Board for this opportunity. He believed that consideration in the management of EWM is robbing the community's time in dealing with the true concerns of AIS. The community immensely cares about the Lake; providing for the difference as to how much one wants to get involved (educating, volunteering hours, funding, etc.). He expressed concern about the following:

- In 1987, the private sector donated \$350,000 for the purchase of the LMCD's mechanical harvesting equipment and the City of Orono believes in that methodology. He reported that the city received 1,700 acres of parkland donated by premier citizens, as well as a portion of Big Island (obtained with the MCWD's assistance; via implementing the LMCD's Management Plan).
- The LMA has drifted from, what he considered, as being a great organization. He acknowledged that the LMA used to be a partner to the LMCD in the partial funding of watercraft inspections on Lake Minnetonka. The LMA provided the LMCD \$8,800 (in 2003) and \$5,861 (in 2009) for this program, acknowledging those funds were based on volunteerism. Now the LMCD is considering providing them funds for another project when the LMA failed to provide continued funding for watercraft inspections, adding it was his "miserable" idea to approach the MCWD for assisted funding for watercraft inspections.

- For the past 40 years, one of his companies (West Photo) has established state and county contracts. He expressed concerned that all the systems available to us through the government processes are totally unused by utilizing a surrogate organization (the LMA). He believed the LMCD is bypassing the sealed bid process by giving tax dollars to the LMA. He is not against the LMA but was appalled that the member cities did not have a problem in giving funds to such an organization. In consideration of this, he spoke with the city attorney, in which they confirmed they did not have to go through a sealed bid process.
- He acknowledged that he participates in volunteerism and questions why he should provide personal funding to the LMA (which he stated he was going to do) when the LMCD is considering giving them tax payer funds. He respectfully asked the LMCD not to provide funding to the LMA (in which he would personally benefit from).
- He believed the community has to take care of Lake Minnetonka (acknowledging that he does so himself by providing docking space for many public agencies).
- He offered to manage the herbicide treatment program for one dollar and believed Osgood's talents should not be wasted on fundraising efforts (an estimated 80% of his time).
- He reiterated his request that the LMCD not provide funding to the LMA. He believed that the LMCD's relationship with the MCWD is stressed based on the LMCD not managing the herbicide treatment program (expressing an interest in people wanting to bid on such a project).

Babcock asked LeFevere to provide an overview of the sealed bid process requirements.

LeFevere stated that if a LMCD contract was over \$100,000, sealed bids would be required. If a contract was between \$50,000 and \$100,000, state law provides for the quote process or sealed bids (at the LMCD's discretion). He was unsure how that would unilaterally be done (in this regard); based on the leverage the LMA provides in the private funding of such. Additionally, he did not rule out other options that may offer a different way of satisfying a contract (i.e., a stipulation that the grantee obtain sealed bids for the subcontracted work).

Morris thanked Osgood for providing the information that the LMCD requested. He concurred with the LMCD's past involvement in the five year demonstration program and that the LMCD should be the coordinator in the whole bay treatments on the Lake. However, he does not believe the LMCD should provide funding to the LMA (acknowledging his belief in the use of herbicide treatments).

Shuff continues to support proposed funding to the LMA (assuming it is only for one year); based on the funding of such within the LMCD's Plan not confirmed to date.

LeFevere stated that the Board needs to decide whether to provide funding to the LMA. If the Board decides to provide such funding, further steps would need to be offered in the preparation of a contract (with conditions deemed appropriate by the Board).

Gross asked if Save the Lake funds were going to be considered for this purpose, in which Babcock stated it is currently not being considered (nor ruled out for future consideration).

Babcock stated that he would not be voting in favor of this request based on the discussions held with the MCWD above (budgetary decision).

MOTION: Hughes moved, Klohs seconded to not expend funds from LMCD taxpayer dollars for 2013 herbicide treatments. .

VOTE: Ayes (6); Nays (4; Baasen, Green, Meyer, and Shuff); Abstained (1, Roy); motion carried.

C. Staff update on current Lake Minnetonka water levels

Babcock asked Nybeck for an update on this agenda item.

Nybeck directed the Board to his staff memo (dated 5/8/13), in which he confirmed ice out had been declared; providing for an overview of the Lake readings taken by the MCWD to date. He believed the Lake was low but recognized other similar historical Lake level readings where "Low Water Conditions" was not declared. Staff will continue to monitor the Lake level readings.

D. 2013 EWM Harvesting Program, staff overview of project

Babcock asked Harper to provide an update on this agenda item.

Harper provided an overview of the 2013 EWM Harvesting Program. This included 1) staffing, including the proposal to hire seasonal employees, 2) the proposed use of independent contractors, which included Kirvada Fire Inc., for diesel engine and advanced maintenance and repairs; Curfman Trucking and Repair, Inc, for the trucking contract (providing for an update to this based off of 4/24/13 Board discussion), and other contractors based on response time and cost effectiveness, 3) harvester hydraulic issues (brought forward in 2012; providing for 2013 Board approved funds for the repair of such, 4) the EWM Harvesting Program budget, and 5) plans for the 2013 season. He recommended that the Board approve the following: 1) the hiring of five of the six seasonal harvesting employees (at an hourly rate of \$12 without benefits) and 2) awarding the trucking contract to Curfman Trucking and Repair, Inc. He entertained questions and comments from the Board.

The Board had a few questions, in which Harper confirmed any needs for harvesting in whole bay chemical treated areas will be done so in consultation with the LMA, bay captains, and the MCWD. He stated that there is a possibility of a late start date due to the late ice out; which will not be confirmed until the annual scouting is completed.

MOTION: Morris moved, McDermott seconded to authorize the hiring of seasonal employees and award the 2013 EWM Trucking Contract to Curfman Trucking and Repair, Inc. as recommended by Harper.

VOTE: Motion carried unanimously.

E. Review of draft 2012 Annual LMCD Report

Babcock asked Nybeck for an overview of this agenda item.

Nybeck stated that this agenda item was tabled from the April 24th Board meeting to provide more time to review the draft Report. He directed the Board to an amended Report page (provided within the packet) that would replace existing pages 15 and 16 (an updated paragraph on the lake-wide bowfishing ordinance that had since been adopted). He proposed the ability to provide a more thorough overview of the Report (via a prepared PowerPoint presentation) or to simply answer any questions or comments.

Babcock recommended the first sentence of the newly, drafted bowfishing paragraph be amended to include feedback from not only the member cities but the Hennepin County Sheriff's Water Patrol, as well.

MOTION: McDermott moved, Gross seconded to approve the LMCD's 2012 Annual Report (Executive Summary), as amended by Babcock above.

VOTE: Motion carried unanimously.

F. MCWD, discussion of draft AIS Management Plan

Babcock asked Nybeck to provide an overview on this agenda item.

Nybeck directed the Board to the MCWD's draft AIS Management Plan (Plan). He stated that the MCWD is requesting comments on the draft Plan by June 3rd. He recommended the following options: 1) to provide for discussion at this meeting and ultimately direct staff to work with the Babcock on the drafting of a letter outlining the Board's comments or 2) table the agenda item to the May 22nd meeting and designate Board members (expressed interest by Babcock, Morris, and Green who have served on the MCWD Advisory Committee) to further review the document for Board consideration of their direct comments (as well as others offered) at the next meeting.

Green suggested the draft Report be discussed at this Friday's AIS Task Force meeting.

Babcock summarized the second option offered above, in which there was no objections from the Board. He welcomed all Board members to provide their individual comments; providing those to Nybeck this next week.

G. Ordinance Review Committee (ORC) Update, consideration of the following draft ordinance amendments:

- An ordinance amending LMCD Code Section 1.02, Subd. 51
- An ordinance relating to dock length variances; amending LMCD Code Section 1.07, Subd. 3
- An ordinance relating to density of watercraft storage; adding new LMCD Code Section 2.02, Subd. 9
- An ordinance relating to boat slip canopies; adding new LMCD Code Section 1.02, Subd. 6b), and amending LMCD Code Section 2.12, Subd. 3 and Section 2.01, Subd. 3

Babcock stated that the four proposed ordinance amendments are relatively minor changes, based on staff experiences in working with the public, and have been discussed and reviewed by the Ordinance Review Committee. He provided a detailed overview of each of the drafted ordinances and entertained questions and comments from the Board.

The Board asked a few questions, in which the following responses were offered:

- Section 1.07, Subd. 3 – McDermott asked if the draft ordinance provided for an automatic dock extension of up to five feet. Babcock confirmed that a dock length variance application would need to be filed to reach five feet of water depth as measured from 929.4' NGVD.
- Section 2.02, Subd. 9 – Hughes stated the State of Minnesota has amended the terminology of their variance applications (removing the word "hardship" and replacing it with "practical use"). LeFevere confirmed that change was an amendment to the Municipal Planning Land Act, which applies to city zoning. Babcock stated the Board would not require the applicant to measure water depths; providing for the need to justify no adverse impacts against the abutting neighbors.
- Section 1.02, Subd. 6 b), Section 2.12, Subd. 3, and Section 2.01, Subd., 3 – Gross questioned if a canopy must be canvas material vs. a hard roof. LeFevere confirmed that a roof (hard) is prohibited by the LMCD Code.

MOTION: Babcock moved, Klohs seconded to approve first reading of the four proposed ordinance amendments, to waive second and third readings, and to adopt all four ordinance amendments.

VOTE: Motion carried unanimously.

10. Update from standing LMCD Committees:

Babcock asked for an update from the Chair, or designated representative, of each committee (Save the Lake, AIS Task Force, Finance, Personnel, Public Safety, and Ordinance Review).

Morris stated that the AIS Task Force is scheduled to meet on May 10th, at which time they will review the MCWD draft AIS Management Plan, as well as maintain other discussion.

Baasen stated that the Save the Lake Committee met on April 29th, at which time they approved the continued maintenance (maintaining the consistency) of the Solar Light Program (providing for the approval of Save the Lake funds for such). Additionally, an update was provided from the Save the Lake Sub-Committee on the proposed Boater Safety Education Program for Lake Minnetonka. The sub-committee is moving along and will provide further reporting at the June 3rd Save the Lake Committee meeting.

Babcock stated the Ordinance Review Committee will be meeting in June, at which time they will consider further ordinance amendments, as well as continue their progress on the amenities of a special density license.

There was no report from the Finance, Personnel, and Public Safety Committees.

11. EXECUTIVE DIRECTOR REPORT

Nybeck stated that he was scheduled for five upcoming city council meetings in the month of May to review the draft 2014 LMCD Budget.

12. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:22 p.m.

Doug Babcock, Chair

Andrew McDermott, Secretary