

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, August 26, 2015
Wayzata City Hall

1. CALL TO ORDER

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

2. ROLL CALL

Members present: Dan Baasen, Wayzata; Gary Hughes, Spring Park; Gregg Thomas, Tonka Bay; Jay Green, Mound; David Gross, Deephaven; Gabriel Jabbour, Orono; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bret Niccum, Minnetrista; Sue Shuff, Minnetonka, and Deborah Zorn, Shorewood. Also present: Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Ann Hoelscher, Victoria; Fred Meyer, Woodland and Rob Roy, Greenwood

3. APPROVAL OF AGENDA

Jabbour recommended item 9F be moved to after item 14.

MOTION: Gross moved, Niccum seconded to approve the agenda as amended; making the change noted by Jabbour above.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

Baasen made the following two announcements: First, he thanked Jabbour for offering his watercraft on Saturday, August 22nd and providing a guided tour of matters currently facing the Lake; naming representatives from various partnering agencies that were present. Second, he directed the Board to a letter within their handout folder from Hennepin County Commissioner Jan Callison to Sheriff Stanek recognizing the Sheriff's desire to acquire a permanent access for public safety purposes on the north end of the Lake. Baasen stated a temporary site has been secured; however, the Sheriff has encouraged securing a permanent site.

5. APPROVAL OF MINUTES- 7/22/15 LMCD Regular Board Meeting
 7/27/15 LMCD Special Meeting
 8/10/15 LMCD Special Meeting
 8/12/15 LMCD Special Board Meeting

Hughes requested the following amendments to page four, under paragraph B of the 7/22/15 LMCD Regular Board meeting minutes on Electric Sock Drowning: First, that the words "portions of" be inserted after the word "utilize" in the sentence offered within the first bullet point. The sentence would read, "He thanked Nybeck, Hughes,for permission to utilize portions of Electric Shock Drowning..." Second, that "ESD" be added after "unofficial" in the

first sentence within the second bullet point. The sentence would read, "Based on his background, he refers to himself as an unofficial ESD safety specialist." Lastly, that the words, "also a member of" be replaced with "a volunteer with" and that the words "a member of the" be added prior to Minnetonka Power Squadron in the second sentence within the second bullet point. The sentence would read, "He is a volunteer with the ESDPA and a member of the Minnetonka Power Squadron."

MOTION: Gross moved, Thomas seconded to approve the 7/22/15 LMCD Regular Board Meeting minutes as amended, making the change noted by Hughes above.

VOTE: Ayes (9), Abstained (1, Shuff); motion carried

Zorn arrived at 7:05 p.m.

MOTION: Jabbour moved, Morris seconded to approve the 7/27/15 LMCD Special Meeting minutes as submitted.

VOTE: Ayes (7); Abstained (4, Hughes, Shuff, Thomas, Zorn); motion carried.

MOTION: Thomas moved, Baasen seconded to approve the 8/10/15 LMCD Special Meeting as submitted.

VOTE: Ayes (8); Abstained (3, Green, Gross, Shuff); motion carried

MOTION: Gross moved, Thomas seconded to approve the 8/12/15 LMCD Special Board Meeting as submitted.

VOTE: Ayes (10); Abstained (1, Shuff); motion carried

6. APPROVAL OF CONSENT AGENDA

Thomas requested clarification on check #20695, dated 8/27/15, in the amount of \$185.59 for Wayzata Bar and Grill.

Nybeck stated that check is a replacement to a previously approved lost check. The payment amount covered the catered food offered at the Board's first special meeting relative to strategic planning.

Shuff moved, Baasen seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A)** Audit of vouchers (7/31/15 – 8/15/15) and (8/16/15 – 8/31/15) and **6B)** July financial summary and balance sheet.

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

Mr. David Lang, residing in Minnetonka, thanked: 1) the Board for the recent opportunity to serve as a Board representative for the City of Minnetrista and 2) Nybeck for assisting him in presenting to his represented city

throughout his term. Additionally, he thanked Jabbour for giving him his first lesson in dirty politics by sending an 11th hour email to the City of Minnetrista Mayor Lisa Whalen misleading her about his participation during the special meetings for the advancement of the Board. Because of that submittal, it created misunderstanding about his participation in the strategic planning process. To this end, as the Board moves forward in their replacement of a vice chair, he asked them to be mindful as to whom they choose to replace Green, as some people choose to play dirty. He did not believe the same consideration was given to former Board member Chris Jewett as he continued to participate in those meetings; doubting that he sent an email to the Mayor of Deephaven expressing the same concerns. He believed this action needed to be placed on public record and reiterated that the Board should be mindful as to who they get in bed with.

Shuff requested to speak on a similar matter and inquired as to the proper procedure to do so.

Baasen deferred to LeFevere who stated it was the pleasure of the Board. To this end, Baasen invited Shuff to proceed with her comments.

Shuff stated that Lang [after serving on the Board] was invited by the Board to continue working with them within the special Board meetings relative to strategic planning; the development of a new mission statement, goals, etc. This process ended based on the 11th hour email that Lang referred to. Additionally, she wanted to enlighten the Board that a similar incident happened in the City of Minnetonka that she represents. Back in May, Jabbour called the city's manager to convey that their representative was not voting correctly. In this case, it backfired on him; however, this offers another example of events that the Board should be aware of.

Niccum asked when the Board was aware of Lang's continued participation in the strategic planning process.

Shuff stated the Board invited Lang to participate.

Niccum stated none of the Board members knew about it.

Baasen stated that the Board has a number of Board members who served less than a full term; however, they were previously involved in the strategic planning process back in January. For cohesive and consistency purposes, a number of those members were invited to continue to participate in this process. In regards to Lang's matter, the LMCD received notification from Mayor Whalen that Niccum was the current representative for the City of Minnetrista and that she would prefer only one representative provide comments relative to that process. In lieu of that request, the LMCD asked Lang not to continue his participation; starting with the special meeting of August 12th. He stated it was a little awkward; nevertheless, the LMCD had to respect the Mayor's request. He further stated that a number of member cities have representatives that serve for six months and then rescind and appoint a new member for the remaining six months. The other former Board members that are currently involved in this process will, most likely, be re-appointed back to the Board.

Jabbour believed it was appropriate for him to make the following comments: He wanted to assure the Board that his behavior will not change; it is what it is and he is what he is. He has relationships with an enormous amount of politicians and people that he had served with for years past and it continues to be what it is. In regard to Lang, he stated he would be happy to provide a copy of his email that was sent to Mayor Whalen, which only included an

agenda of the meeting with no personal comments added. In regards to the City of Minnetonka, he has appeared regularly requesting the reduction of the levy for the 2016 budget. He told the city that this is their chance to effect reduction of the levy. He has full intension to continue doing exactly what he does. If one thinks that is dirty politics, one is deluded; that is effective government. He reiterated he made zero comment to the Mayor of Minnetrista; acknowledging he would not have a concern in doing so and named other cities in which he has maintained communication with their mayors. He has stood in front of their council and told them how bad this government body (LMCD) is doing. If that is news to the Board, he does not know where they have been.

Baasen believed that if any Board member wishes to communicate with a city that they do not represent, they should, as a courtesy, notify the Board member who represents the city.

Jabbour stated this audience should know that he [pointing to Lang] is her [pointing to Shuff] son-in-law. In closing, he has full intension of meeting with the Mayor of Minnetonka.

Shuff stated, for the record, that the City of Minnetonka is not asking for a reduction in the levy, that she is the representative of that city, and that Lang being her son-in-law has nothing to do with Lang's representation for the City of Minnetrista.

Mr. Rich Anderson, who represents a couple marinas on Lake Minnetonka, thanked Green for his diligence and work as vice chairman; offering that he was always there to work with the marinas and was the first to respond when he sent an email.

Mr. Chad Sulheim, 60 Florence Drive in Tonka Bay, stated that he received a letter from an LMCD staff member relative to the storage of five boats moored at his site. He asked the Board what their concern is relative to the Proactive Code Enforcement Program, i.e., is it to regulate the number of watercraft out on the Lake or those stored at the site.

Nybeck stated [deferring to LeFevere if needed] that a site has the ability to store up to four restricted watercraft if they are all owned and registered to individuals that live within a single family dwelling on the site. If sufficient shoreline footage provides for the storage of five or more, based on the 1:50 foot General Rule, then a site owner could apply for a multiple dock license. He asked Sulheim how much shoreline he had.

Sulheim confirmed he had 100 feet of shoreline.

Nybeck confirmed he could store up to four restricted watercraft based on the requirements offered above but did not qualify for a multiple dock license to store five or more.

Sulheim stated his family has owned this site for 35 years and had recently built a new home on the site. This process restricted their construction to 25% hard cover; with anything over requiring a variance. He stated he owns a 25 foot boat, two sit down SeaDoo's, and a couple standup jet skis. His hull cover is 290 square feet. His neighbor next door has a 36 foot boat with a 14.5 foot beam that takes up 560 square feet of hull cover, plus a 21 foot runabout and a small fishing boat. Since he is restricted to 25% of hard cover on land, he questioned why they were not restricted to such for Lake use; suggesting the Board regulate the size and not

the number of boats. In closing, he offered the following: 1) that he could legally store a 70 foot boat with a 20 foot beam at his dock, plus additional boats, 2) that every one of the boats present were licensed to him, and 3) that he and his wife are the only residents residing in the home; therefore, not all five watercraft are out in the Lake at one time. He questioned if it was time for the Board to re-evaluate the formula for watercraft storage.

Baasen stated the Board is reviewing various LMCD codes and have been working with stakeholders around the Lake, i.e., marinas, sailing schools/yacht clubs, and municipalities. He anticipated the Board reviewing the riparian codes, in which they will keep Sulheim's comments in mind. However, he asked Sulheim to understand that no matter what the Board decides, criticism will be offered one way or the other. He did offer that a site could have unlimited number of unrestricted watercraft.

Sulheim appreciated Baasen's comments. He reiterated that he did not think it was fair to penalize someone that is offering a very small footprint for the storage of his watercraft. He would appreciate the Board's efforts in considering this matter.

LeFevere reaffirmed Sulheim's storage options as noted above.

Thomas introduced himself as his representative. He believed Sulheim made a good point. He confirmed the Board has been re-evaluating the code in various areas and would keep his comments in mind. Thomas stated the Board does not have any control over the number of watercraft out in the Lake because the LMCD does not regulate the access points.

Baasen stated that when the Ordinance Review Committee considers new or amended ordinances, it is common to have a public hearing prior to the Board's consideration of such. He could not confirm when the Board would consider changes to the riparian storage ordinances; however, Thomas will communicate such when that time comes.

Mr. Matt Johnson, 1432 Shoreline Drive in Orono, stated that he did not know Sulheim; however, in listening to his comments, he believed it was something the Board should look into. He further inquired on the process in which Sulheim received a letter from the LMCD staff on his watercraft storage.

Nybeck and Bassen provided an overview of the LMCD's Proactive Code Enforcement Program (for residential sites) and Multiple Dock Inspection Program (typically for commercial sites).

Thomas and Baasen also provided an overview of the formal complaint process in which residents can request sites be addressed for noncompliance of watercraft storage, side setbacks, etc.

8. PUBLIC HEARING

- **Driftwood Shores Association**, 2016 new multiple dock license (minor change) and variance applications to reconfigure the multiple dock facility on Harrisons Bay.

Baasen asked Harper for background of this agenda item.

Harper reviewed his staff memo, dated 8/20/15, which summarized a request from Mr. Chuck Auger who represents Driftwood Shores Association. He provided the following overview of this site:

- The facility is approved for 10 Boat Storage Units (BSUs), on approximately 535 feet of non-continuous shoreline (six full three-sided slips and four side tie-on BSUs).
- The shoreline breaks down to 510+ feet on Outlot 2 (island) and 25 feet on Outlot 1 (mainland). The 10 slip permanent dock extends between Outlots 1 and 2. The dock extends into the setback areas and across the extended lot lines on the east and west sides of Outlot 1. Because of this, a side setback and dock use area variance was required and granted for this facility on 8/25/1982.
- The dock is fully contained within the authorized dock use area of Outlot 2 although there are overlapping dock use areas with the residents on the mainland (Outlot 1).
- The site is considered a legal conforming facility with a BSU density of approximately 1:51 feet.

The applicant has proposed to add four new dock fingers to provide three-sided slips for all of the BSUs. The number, size and locations of the BSUs are not proposed to change. The applicant has submitted a proposed site plan which documents slight amendments to the adjacent docks at Lot 1, Block 3 and Lot 3, Block 2. These adjacent docks are not part of the multiple dock license, but were included in the variance that was approved in 1982. He provided an overview of four relevant LMCD Code Sections (2.03, subd. 7; 2.02; 2.01, subd. 1; and 1.07). He recommended that the Board direct LeFevere to prepare Findings of Fact and Order for approval of the new multiple dock license and variance applications. He entertained questions and comments from the Board, in which there were none.

Baasen opened the public hearing at 7:35 p.m. and asked the applicant if he would like to address the Board.

Mr. Chuck Auger, representing Driftwood Shores Association, stated he is the secretary of the association. He believed Harper provided a thorough overview of the application and entertained questions from the Board.

Baasen requested clarification as to how many BSUs were involved.

Auger confirmed ten BSUs. He stated they have not been full all of these years. However, new homes are being built within the association and they foresee all BSUs being utilized next summer; offering a more equal use of the slips. He confirmed there are 12 landowners; three of which are abutting the lakeshore and have their own personal docks. This site will have a slip for each of the remaining nine properties plus a guest slip.

Gross asked if the docks were permanent in construction, in which Auger confirmed they were.

Baasen closed the public hearing at 7:38 p.m.

MOTION: Green moved, Shuff seconded to direct LeFevere to prepare Findings of Fact and Order for the approval of Driftwood Shores Association 2016 Multiple Dock (Minor Change) and variance license.

VOTE: Motion carried unanimously.

9. OTHER BUSINESS

A. Chair update of 7/27/15 and 8/10/15 LMCD Special Meeting relating to littering on Lake Minnetonka

Baasen directed the Board to the minutes of the above referenced meetings that were approved under item 5 and recognized that those in attendance represented multiple entities. He asked Nybeck to provide additional information.

Nybeck, using a PowerPoint presentation, stated that at their July 22nd meeting, the LMCD Board addressed littering on the Lake by discussing: 1) the current ordinance and fines offered; including possible changes and the need to strengthen them, respectively, 2) that litter is a Lake-wide problem that also exists in the winter months, and 3) those that currently providing cleanup efforts; The Lake Minnetonka Association and the Minnesota Power Squadron. At that time, it was the consensus of the Board to create a smaller task force group with partnering organizations that would focus on tangible, action oriented recommendations to be reported back to the Board. The following update is offered from each of the meetings:

Monday, July 27, 2015

- Those in attendance included the LMCD (six Board members and Nybeck), City of Orono Mayor Lili McMillan, Lt. Kent Vnuk from the Hennepin County Sheriff's Water Patrol unit, Lake Minnetonka Association (LMA) President Tom Frahm, Three Rivers Park District representatives Tom McDowell and Rich Brasch, The Pioneer reporter Sean Miner, and stakeholder Rick Pinkus.
- Topics discussed, as outlined in a Points of Discussion spreadsheet created after that meeting, included education, enforcement, legislative interaction, and the implementation of physical projects.

Monday, August 10, 2015

- Those in attendance include the LMCD (three Board members and Nybeck), LMCD prosecuting attorney Steve Tallen, Frahm, McDowell, Brasch, Miner, as well as Minnesota Department of Natural Resources (MN DNR) Paul Nordell (Adopt a River Program), Minnehaha Creek Watershed District (MCWD) representative Darren Lochner, and stakeholders Don Haywood, Pamela McGrann, and Pinkus.
- Vnuk reported on the use of three electronic message signs around the Lake and an underage consumption/littering detail.
- The general consensus was that the discussion should focus on both littering and inappropriate behavior; including maximum and minimum fines (which he provided an overview of); charging fees at public accesses for added law enforcement (which would violate state law); MN DNR programs used elsewhere; and changing the buoy layout at Cruiser's Cove (Big Island). Pictures of the 2015 July 4th mooring of boats at Cruiser's Cove were offered, which highlighted some concerns in keeping the parallel safety lanes (marked by buoys) open.

Based on the above two meetings, the following general recommendations were offered; acknowledging that in speaking with Major Storms of the Hennepin County Sheriff's Office, many of the recommendations would need to be addressed next year; offering the LMCD Public Safety Committee as a review process.

- Publicize a "zero waste" event for the Labor Day holiday;
- Address the public safety lanes legislatively, ASAP; in particular the parallel lanes;
- Explore additional funding for enforcement at Big Island; and
- Perform E-coli testing before and after Labor Day at Cruiser's Cove.

Baasen suggested that the E-coli testing would not only be before and after but also during the Labor Day holiday to provide a level of awareness to its progression. Additionally, the meetings held detailed discussion of the buoys (better clarity to what the lanes mean, their national regulated colors/codes, etc.).

Nybeck and Storms recommended the Public Safety Committee, which provides for multiple agency representation, schedule a meeting in September or October to initiate discussion of the recommendations, which also included ordinance amendments for enforcement and the Sheriff's office further review of the safety lanes.

Jabbour stated that the committee, as described above, is not in existence as this body did not formally act to create such. He recommended that any future ordinance amendments be provided by the Sheriff's Office and that they be considered by the Ordinance Review Committee. Additionally, he provided the following update:

- That the organizations currently offering cleanup efforts are doing a great job.
- Based on weather, they try to clean up the beach on Tuesday or Wednesday; with a local resident present on a daily basis and the Minnetonka Power Squadron scheduled for September 12th.
- That he inspected the other side of Big Island where boats are regularly moored, in which he did not find one piece of litter (noting the culture of both heavily utilized areas).
- In referencing past discussion for the possible use of floating trash cans, he spoke with a representative from Apple River who stated they utilized that methodology for two years and offered that it was a total failure. He also spoke with representatives from Glacier National Park and referenced that the largest asset on this matter is the Three Rivers Park District (TRPD) who has an enormous amount of expertise and owns an estimated 1,800 feet of shoreline on Cruisers Cove.

Baasen asked if floating restrooms were considered.

Jabbour stated that 14 restrooms offered the City of Orono's Big Island Park and other concrete based facilities offered by the TRPD were destroyed and could not remain in existence. In referencing one of the July 4th Big Island pictures of watercraft moored at Cruisers Cove (offered within Nybeck's presentation) he stated that he could not see a person either giving up their moored spot or making an effort to reach a floating restroom.

Baasen stated that this concern will continue to be addressed by working with the Hennepin County Sheriff's Office, City of Orono, TRPD, and other partnering agencies.

Jabbour believed that breaking up the activity at Cruisers Cove would disburse the concerns elsewhere.

Gross stated that he discussed this concern with the City of Deephaven and their police officials and offered that St. Louis and Carson Bays maintain a high density of boats; many of which are moored on a Sunday afternoon. He stated, however, that there are no sanitary concerns within those bays and reiterated his belief that this is a Big Island problem and is not consistent in other areas of the Lake.

Baasen directed the Board to a letter within their handout folders from Jan Callison, Chair of the Hennepin County Commissioners to Sheriff Stanek that referenced: 1) Stanek's request to secure a permanent access point on the north end of the Lake for public safety purposes, 2) that the incidents of July 4th brought forward the need to secure such a site, 3) her understanding that a temporary arrangement has been made for the remainder of the 2015, and 4) that staff will be seeking negotiations, with the Sheriff's assistance, in securing a permanent site. He asked Rich Anderson, who spoke under Public Comments and continued to be in the audience, to address the Board on the temporary site that was secured for the remainder of the season.

Anderson confirmed that the temporary site will be held at Browns Bay Marina. He expounded by stating Sgt. Rick Waldon, who returned to the Water Patrol Unit, has been working with him before and after the July 4th event and the Sheriff was comfortable with the temporary arrangements.

Baasen thanked Anderson for his support. He asked Major Jeff Storms of the HCSO if he would like to address the Board.

Storms, who oversees enforcement, wanted to publically thank Anderson for the work he has completed with the HCSO; offering he has partnered with them for many years.

Jabbour reiterated his interest in the Board moving to officially create a Task Force for the meetings that have been held on this matter [as described above within this agenda item]. He stated this would be a way to alleviate confusion amongst all; referencing his belief that the Board officially voted on the three former Board members to continue their work on the strategic planning process and that the public comments offered by Lang were created by confusion in a similar manner.

Baasen stated that he would take Jabbour's comments into consideration; however, he would like to come back to the Board with suggestions on such from those that have attended the above noted meetings.

Thomas believed that some of the suggestions offered within Nybeck's presentation will have to be completed in 2016; however, he believed that the E. coli testing should be done this season for possible use of the results in future planning and education.

Nybeck confirmed that he has scheduled that test for this season with Mr. Rich Brasch of the TRPD.

Jabbour stated that the TRPD does have a lab in-house for running the E. coli test; however, that process takes 18 hours; causing concern for efficient notification of those that are moored at the time of testing.

Baasen believed that a Zero Waste campaign could be kicked off prior to Labor Day and had reiterated the

HCSO efforts in offering electronic signage of such. He believed those efforts, as well as continued communication with the press on this matter, could only offer positive results.

B. Review of draft electric shock drowning documents from Ed Lethert

Jabbour questioned why the Board is entertaining the agenda item. A presentation had previously been offered on this program which the LMCD supports.

Baasen stated that Mr. Lethert has requested to approach the Board. He believed the Board would like to hear his comments and recognized the challenges offered by electric shock drowning to the Lake. He asked Jabbour if he concurred that this is a challenge offered to the Lake.

Jabbour concurred with Baasen; however, he questioned if the Board had the expertise in this regard and that it may, in the end, muddy up the waters.

Mr. Ed Lethert thanked the Board for his ability to provide additional educational documentation on electric shock drowning (ESD) since his prior presentation of July 22nd. He reinforced the need to get the brochure, "Electric Shock Drowning A Silent Killer.." distributed around the Lake and that he is researching ideas to provide voltage testers to first responders, and will keep the Board apprised of those efforts. He thanked Hughes for his support and contributions to the materials offered within the packet, "Electrical Safety Recommendations for Private Docks and Lakeshores" and "Responding to An Electric Shock Drowning Incident" and confirmed that he retained ownership of those documents but offered a perpetual license to the LMCD for use of the materials to promote electrical safety on the Lake. He provided a detailed overview of each document and displayed a "no swimming" warning sign that he believed was being posted on all the piers at Tonka Bay Marina. He entertained questions and comments from the Board.

Shuff asked how large the field of danger is.

Lethert stated the greatest danger is within eight to 10 feet of the source; confirming that could be a prop on a boat or faulty wiring on a dock. With that said, tingling sensations have been reported as far as 100 to 150 feet away from the source.

Baasen thanked Lethert for his efforts in this regard and offered the LMCD's website and newsletter to spread the word on this safety matter.

Hughes stated the brochure relative to ESD is on the LMCD's website, under "Hot Topics." Additionally the documents offered this evening will also be downloaded. He asked the Board to reference the LMCD's website and all materials offered to their city council, as well.

C. Discussion of a process for consideration of a municipal planned unit development dock license ordinance

Baasen asked Klohs for an overview of this agenda item. Klohs deferred this to LeFevere.

LeFevere made the following comments:

- That this is the third step in considering amendments to the LMCD ordinances; offering the first and second pertained to the qualified commercial marinas and yacht clubs/sailing schools, respectively.
- The consideration of this draft ordinance offered a different approach from the above noted changes; that it is more of a limited change that took into account some municipal requests.
- That the document before the Board is offered at the recommendation of the Ordinance Review Committee.
- One of the differences is that, except for the City of Mound, all of the municipal shoreline is accounted for under the individually issued, single multiple dock license.
- The draft ordinance allows a municipality to carve out a piece of their shoreline and treat such as a separate respective license.
- The same rules would apply for consideration of a license, i.e., watercraft density and square footage of a non-conforming facility. However, this draft ordinance would allow the municipality to extend their dock use area (DUA) to 200 feet within the carved out shoreline that would maintain a separate license on the condition that only half of the DUA would be utilized.
- He referenced this as a clustering concept; preserving half of the shoreline/DUA without any watercraft storage.
- He offered the following options should the Board wish to move forward with the draft ordinance: 1) adopt the ordinance or 2) first consider obtaining public and/or municipal input.
- He entertained questions and comments from the Board.

Klohs stated, from the ORC's perspective, that one would need a minimum of 200 feet of shoreline to qualify for use of this draft ordinance. He emphasized that the municipalities could not request additional or larger docks or anything that would harm the Lake; offering the ability to re-approach the Board in consideration of reconfigurations that would offer an improvement to aesthetics and safety of the Lake. Lastly, he stated the intent of this ordinance is to provide the municipalities with some creativity in meeting their docking needs. He believed this offered a positive aspect; particularly for safety matters.

LeFevere confirmed that the draft ordinance did not require the municipalities to do anything; offering it was entirely permissive and does not impose any new restrictions or regulations. This merely offers other options for their consideration.

Klohs stated the respective city council would offer another layer of review prior to any request coming before the Board.

Baasen stated that, as with the marinas and sailing schools/yacht clubs, any conflict of navigation would restrict a request to extend the dock out to 200 feet. He asked Klohs to provide an example of how this might be of benefit to a municipality.

Klohs referenced the City of Excelsior who has enough shoreline to add docks. Under the current ordinance, any expansion of such would require the city to run them around their Commons area; offering that he believed that would be aesthetically and operationally negative for the Lake. Additionally, he

believed the clustering of their docks in areas outside of the Commons area would be a more positive/safer option for the Lake. This also alleviates consideration of a variance which would force them to document a hardship.

Jabbour believed the current ordinance forced cities to invade spawning areas of the Lake; offering the proposed Ordinance change would have a profound positive environmental aspect.

Green asked if the Board approved the draft ordinance, would it just be the first reading.

LeFevere stated that the multiple readings are offered as a custom to obtaining additional input; however, it is not a requirement and is not always utilized. He offered various options for consideration of readings and/or adoption for the Board to consider.

MOTION: Jabbour moved, Niccum seconded to approve the first reading, waive the second and third readings, and adopt the draft ordinance relating to municipal docks; amending the LMCD Code by adding new Section 2.14.

Morris believed the public should have the opportunity to weigh in on this matter.

Klohs stated that one of the couples that attended the ORC on this matter originally did not understand the draft ordinance; however, once explained, they did not have any concerns. He believed this offered a housecleaning aspect. He reiterated that nothing has changed for the municipalities and multiple levels of review are offered, i.e., city council, prior to the Board's consideration of a proposed license.

Morris concurred that in most circumstances, nothing will change. However, in regards to The City of Excelsior, they will be able to extend and add density to the existing docks; acknowledging that the ordinance would not increase density that is already available to the city, but that it would create longer docks that would give them the ability to add their already approved density further out into the Lake.

Niccum stated the purpose of the draft ordinance would prevent the unconstructed, approved docks from being placed around the pure grounds that are currently not being utilized.

Morris was not against the draft ordinance and would vote in favor of such; however, he reiterated the importance of providing the municipalities and public time to understand the concept of such.

Jabbour stated he would be happy to amend his motion to accept first reading only; offering a recap of what options this offers the municipalities. He reiterated this has a profound, positive effect; particularly to the Cities of Excelsior and Wayzata.

LeFevere stated that once a motion has been seconded, it technically belongs to the body and no longer in control in the motion maker. One can simply amend the motion and proceed with the respective votes or vote on the original and, if failed, move forward.

Jabbour withdrew his motion.

LeFevere stated that although Jabbour cannot technically withdraw a motion once owned by the body, almost anything can be done by unanimous consent. Therefore, the chair could announce that he is going to allow the motion to be withdrawn and if the body does not object to that, it is done.

Baasen announced he would allow the motion to be withdrawn, in which no objections were offered.

MOTION: Jabbour moved to approve first reading of the draft ordinance subject to the draft ordinance moving forward at the next Regular Board meeting.

Shuff asked if the second reading would be a public hearing.

Nybeck stated that staff can take the scheduling of the agenda item a step further by documenting it as a public meeting for comment, as well as forward the highlighted agenda item to the municipalities, additional databases, and the media; offering a cover sheet to accompany the agenda with an explanation of the draft ordinance.

Jabbour recommended the accompanying cover sheet be reviewed by Klohs.

Green re-clarified that any increase in municipally licensed boat storage units to accommodate additional watercraft density would only be offered by licensees that have not installed up to the originally approved licensed watercraft density.

VOTE: Motion carried unanimously.

- D. Accept resignation from Board member Jay Green as 2015 Vice Chair (consideration of nominations for the remainder of the term)

Baasen offered, on behalf of the Board, his regrets for Green's resignation as vice chair; however, he was pleased he was remaining on the Board. In referencing his comment of August 10th that the Board consider nominations from the floor, he solicited any objections to the proposed process.

Jabbour objected to that process. He recommended the chair address the reasons for Green's resignation; offering his belief that there is a problem within the Executive Committee that the Board has not dealt with. He referenced two letters that Green sent the Board that have not been responded to. He believed assigning someone a seat on the committee and their not having the ability to perform in that capacity is not democracy but bureaucracy. To this end, he would prefer the vacancy not be filled until the Board deals with the issues that forced Green's resignation.

MOTION: Jabbour moved, Niccum seconded to table this agenda item until the Board deals with the reasons as to why Green resigned from vice chair.

Baasen solicited comments from the Board; specifically their opinion of the committee and whether it is functioning effectively.

Gross stated that the resignation may not be required if the Board considered Green's reasonings for such.

Shuff opposed the motion.

Gross asked if the Board could discuss a motion to table.

LeFevere stated that under the Roberts Rule of Order, the only thing that could be tabled is a motion, in which one has not made. What the Board is considering is a motion to not hold an election until a future date the Board decides to consider such.

Zorn stated that since there is only three months left in the term of the position, it would be unfair for one to step into a different responsibility and catch up to speed.

Thomas recommended Zorn continue with that thought by recommending the position remain vacant until the end of the term, in which she did.

Jabbour expressed an interest in the Board continuing to deal with the concerns raised above.

Shuff asked if the LMCD had a list of duties for the vice chair.

LeFevere stated state law specifies the officers of the LMCD, which does not include a vice chair; however, it authorizes the Board to have additional officers. The LMCD's Bylaws do provide for a vice chair as one of the officers; however, he recalled the only duty was that the vice chair was to act as chair in his or her absence. If there is not a vice chair, the Board present elects a chair *pro tempore* for the respective meeting.

Shuff thought that might be the matter; therefore, she questioned if either the secretary or the treasurer would be willing to serve in both positions for the remainder of the term.

Hughes referenced a similar matter in which the City of Spring Park has elected an acting mayor in the current mayor's absence.

MOTION: Jabbour moved, Niccum seconded to amend his motion to delay, perhaps to the end of this term, nominating a vice chair until this Board, particularly the Executive Committee, dealt with the reasons set forth in the former vice chair's resignation letter and to allow the secretary to also act as vice chair until the seat is filled.

VOTE: Ayes (9, Gross, Hughes, Jabbour, Klohs, Morris, Niccum, Shuff, Thomas [after confirming with LeFevere that he could vote on this motion], and Zorn); Nays (1, Baasen); Abstained, (1, Green); motion carried.

E. Chair update of 2015 LMCD Strategic Plan project

Baasen asked Nybeck to provide an update on the 2015 strategic planning processes and recommendation on the next step.

Nybeck stated he spoke with the strategic planning facilitator Craig Rapp this date and confirmed that the first three sessions, held in June, July, and August, have been completed. He directed the Board to the draft minutes for July and August approved within this meeting, as well as a draft strategic plan offered within their handout folders. He stated Rapp will provide a final report by the end of this week and that the next step of drafting the strategic initiatives is typically completed by staff. However, in talking with Rapp, it was recommended the Board consider approving an additional session for \$2,000, in which he would work with the full time staff members and two or three Board members in accomplishing this task. He believed the session would take about a half a day and that it was money well spent. He entertained questions and comments from the Board.

Zorn realized the option was listed within his proposal. However, based on this task typically being performed by staff, she questioned if staff had discussed taking the first approach prior to expending the \$2,000.

Baasen believed that it was Rapp that recommended this.

Klohs concurred with Zorn.

Nybeck stated that, in talking with Rapp, it was indicated that some of the outcomes, key indicators, and targets will need to be adjusted; offering the benefit of having a professional facilitator assist in this process. He believed ultimately the LMCD will need his assistance on this project.

Baasen does not believe this has to be a complicated process. He recognized the Board had spent 15 plus hours on this activity and believed the Board was asking a great deal of staff to go back and dissect all that transpired. He reminded the Board that they had requested Rapp section off his proposal to offer additional sessions as needed.

Zorn recognized Baasen's comments; however, she continued to express an interest in having staff take the first pass as they are the closest to the work streams.

Klohs stated that the LMCD has limited staff, time, and budget. He believed that, based on those concerns, staff would have the best oversight in considering the initiatives.

Thomas proposed a few Board Members work with staff on this process without Rapp at this time, in

which Klohs, Zorn, and Shuff offered to assist.

MOTION: Zorn moved, Thomas seconded to not add on any additional "Optional Sessions" with Rapp and that the Board empower staff to begin the strategic initiative build out of the strategic planning process with two or three Board members.

Nybeck and Jabbour requested the participating Board members be named, in which Hughes, Klohs, Shuff, and Zorn volunteered.

VOTE: Motion carried unanimously.

10. UPDATE FROM STANDING LMCD COMMITTEES

Green made the following comments: 1) that the August 14th Aquatic Invasive Species (AIS) Task Force meeting was cancelled due to lack of agenda items, 2) that the State of Minnesota AIS Committee will be meeting tomorrow in which discussion at that meeting included an update/analysis on this past year's programming and the review of new promotional materials for use at the public accesses, 3) that Carver County was awarded a grant to the Initiative Foundation for a decontamination unit, which is now up and working at the Waconia Lake public access, and 4) that the same Foundation awarded an estimated \$700,000 in grant funds to the Minnehaha Creek Watershed District (MCWD) for the purpose of creating municipal parking restrictions that required an AIS inspection prior to launching a watercraft. As this programming effort received a lot of negative feedback, the MCWD revamped the proposal to provide additional staff at the decontamination stations, as well as roaming watercraft inspectors (changing their award amount to an estimated \$300,000). The MCWD will also continue their work with the Home Lake and Self Certification Programs.

Jabbour stated there was over four million dollars given to the Initiative Foundation by Lessard-Sams Outdoor Heritage Council for disbursement to innovative AIS programming solutions. He stated that both he and Green sit on that Foundation's Board and were the only members present when the MCWD presented their proposal. He offered that a great deal of grant funds remain as the programs being presented are having trouble meeting the criteria set. Therefore, if someone is watching this program, the Foundation would welcome your innovative ideas.

Baasen asked Jabbour if he foresaw the LMCD submitting a request for grant funds, in which Jabbour stated he did not (based on the criteria offered).

Klohs stated the Ordinance Review Committee (ORC) has finalized the review of ordinances for the marinas and yacht clubs/sailing schools and that they are considering the first amendments with the municipalities. He stated the number of matters the ORC can address is endless; offering comments made under item 7 above. Lastly, he stated that, based on receiving frequent questions, he believed the most important thing this Board can do is set priorities with staff.

Baasen concurred and recommended the ORC have a discussion as to what the next step should be. He

stated three priorities were set 18 months ago are coming to a close. He commended the ORC as to the speed in which they got the municipalities' amended ordinance through; offering it took the least amount of time but not the least important. He thanked the ORC for their efforts and welcomed their thoughts as to the priorities going forward.

Gross stated that in considering the prior adopted ordinances for the qualified commercial marinas and yacht clubs/sailing schools, the LMCD had personally requested input as to what they would like to see considered. After listening to the discussion held under agenda item 9C, he heard for the first time that the same process would not be considered for the municipalities; acknowledging that all the representatives for the municipal dock licenses were present this evening. He expressed concern that nobody has asked for the municipalities' input and that the draft ordinance presented this evening was drafted within a committee that the Board did not have prior input into its progress. He asked when the Board would ask the municipalities for such or when the Board members would be able to go to their municipalities and ask what they would like to see in ordinance amendment(s).

Klohs stated the Board has been provided this ordinance for at least two months.

Gross stated that is one ordinance in which it does not meet the needs of his city.

Klohs recommended the city make a request. He concurred there is significantly more this Board can and should do for the municipalities.

Gross reiterated that the Board asked the commercial marinas and yacht clubs/sailing schools what they wanted to see in ordinance amendments.

Jabbour stated that is not entirely true; speaking on behalf of the marinas. He stated it was imperative that we are transparent and inclusive. In regards to item 9C, multiple meetings were held within the ORC, in which its members represent two thirds of the Board.

Klohs stated this ordinance was discussed extensively within multiple meetings that were held over multiple months. The decision was to control the scope; offering there was no way one could deal with multiple requests from multiple municipalities. However, the ORC welcomes a request of a municipality at any time.

Gross requested clarification that the invitation he was waiting for is now being offered.

Klohs stated the invitation has always been there and that this matter has been discussed for 18 months; recognizing that Gross serves on the Board for half a year. He recommended Gross do his homework before offering such comments.

Nybeck believed Gross' comment relative to a deviation in the process was referring to a meeting that was originally held with the marinas and, he believed, yacht clubs. At that meeting the marinas were asked to come back with their recommendations in writing and a decision was made to divide the groups and consider them on an individual basis. In considering the municipalities, a similar meeting was not scheduled in asking

them what their concerns may or may not be; offering specific examples of such. He was not stating that the deviation in the process was flawed but believed that may be the core of Gross' concerns.

Jabbour stated the municipalities offer a profound difference as they have a representative present at the Board level.

Nybeck was not arguing the process but simply explaining the deviation of process in considering the municipalities; asking the ORC to keep in mind multiple versions of a letter was made but never sent out.

Klohs clarified that the ORC members extensively discussed how to interact with their represented municipality. He reiterated that each one is so unique; therefore that process was changed. He was open to the ORC or Board's consideration in offering a new process.

Thomas stated he is not on the ORC; however, he reads the minutes. To this end, he took it upon himself to bring this matter to his city council who is giving thoughts to their needs. Subsequently, he has shared a draft ordinance with the Mayor and asked that any concerns be communicate; acknowledging that the City of Tonka Bay is unique in that they cannot extend their docks to 200 feet.

Klohs recommended Gross review the minutes of the ORC for the last two years; reiterating the three step process; marinas, yacht clubs/sailing schools, and municipalities.

Gross stated the ordinances for the marinas and yacht clubs/sailing schools were handled by the Executive Committee, in which a variety of matters were discussed with significant ordinance changes. He believed that ORC has determined there is one ordinance for a single municipal matter that needs to be considered, the 200 foot dock extension, when in fact there are others, i.e., mooring fields. He did not believe the second reading of the currently proposed draft ordinance would not be the place to continue to express concern over the process offered for the municipalities as he did not have a concern with this one ordinance. He reiterated his concern in that they have been given one ordinance to consider, which did not take into account the mooring fields.

Green expounded on the fact that the municipalities have varying entities to consider; whereby the marinas and the yacht clubs/sailing schools were considered single entities. He assured Gross that the current draft ordinance being considered is only covering the clustering of docks and that the ORC is not done working with the municipalities.

11. EXECUTIVE DIRECTOR REPORT

Nybeck reported on the following matters: 1) that today's Lake level 928.97 (six inches below last year at this time), 2) that he spoke with Jabbour who has offered to provide a tour for the remaining Board members that were unable to attend the Lake tour, 3) that the Wayzata Lake Effect event held last Wednesday was very beneficial, in which he, Baasen, and Hughes were three of over 100 in attendance, 4) the harvesting equipment was removed last Wednesday and the \$95,000 budget (\$30,000 of which is offered via a Minnesota Department of Natural Resources Grant) is on schedule. He stated all of the Upper Lake and a few

areas of the Lower Lake were harvested twice.

Baasen thanked staff for their flexibility in coordinating the harvesting of a couple bays based on ineffectiveness of the herbicide treatments.

12. OLD BUSINESS

Baasen stated that LeFevere has represented the LMCD for many years. He has recently retired from his practice; however, continues to serve the LMCD at this time. He stated that although his service is not considered lightly; the Board is in need of preparing for his departure once it is announced. He asked LeFevere if he could provide the Board with an update on his LMCD retirement plans.

LeFevere acknowledged that he has not provided a good answer, to date, as to when he plans to retire his service with the LMCD. He confirmed the law firm held a retirement party for him; however, he continues to work for the firm (offering that he has served the LMCD in this capacity since 1978). There has been an orderly transition of retirement for the other public entities that he serves; however, he has not set the date for the LMCD as new business continues to arise. He introduced Troy Gilchrist who was in the audience. Gilchrist has served the LMCD in LeFevere's absence and will be permanently replacing him upon full retirement. He is delighted that Gilchrist was available to take this position as he has practiced municipal law for over 23 years (representing multiple towns, at least six metro area cities, and seven watersheds). He also advises on public contracting, open meeting law, and data practices. He stated Gilchrist will be serving the LMCD in his absence, assuring the Board that Gilchrist will receive the same backup as LeFevere has received with the law firm, until such time he sets his retirement date with the LMCD.

Baasen thanked LeFevere for the update. He stated that the LMCD will be submitting a Request for Proposal (RFP) for civil and legal services to prepare for the position at hand.

Nybeck stated a draft of the RFP will be provided to the Board on September 9th.

13. NEW BUSINESS

There was no new business.

14. PENDING LITIGATION- Update on Minnesota Court of Appeals Ruling relating to Application of EOF Investments, LLC, #A14-2176 (Note: Board may vote to discuss this agenda item in a closed session).

LeFevere recommended the Board have discussion with their litigation attorney via a closed session under the attorney/client privilege. He believed there were a number of matters to discuss in open session after such.

Mr. Justin Templin of Hoff, Barry, & Kozar, P.A., stated that he is the litigation counsel for the LMCD relative to a matter with EOF Investments, LLC. He directed the Board to a State of Minnesota In Court of Appeals document (A14-2176) offered within the Board's packet. He requested the Board go into closed session for

attorney/client privilege discussion, under state statute 13.d.05, Subd 3(b), for the purpose of discussing the narrow issue of whether to appeal the decision of the Court of Appeals that was filed on August 10th. He confirmed other issues will need to be discussed after the fact in open session.

MOTION: Baasen moved, Thomas seconded to: 1) go into closed session at 9:27 p.m. to discuss pending litigation as allowed by the Open Meeting Law and 2) reopen the session for continued general discussion.

VOTE: Motion carried unanimously.

LeFevere continued discussion of this agenda item at 9:45 p.m. in open session. He made the following comments:

- He directed the Board to a copy of Code Section 1.07, "Variance," offered within the packet. In referencing this and the Court of Appeals (court) document, he offered: 1) that the court decided this Board never concluded there was an undue hardship; therefore, the court felt additional findings might have to be made and 2) to amend the ordinance where referenced as a concern in the court document. He stated that the provisions of Subdivisions 1 and 6 within the ordinance have been in the LMCD Code before he started law school.
- That the remand should be based on what the Board decides undue hardship means; offering that the Board is not bound to make the amendments. However, whatever is decided will apply to future cases.
- He offered the following background in variances:
 - Discussion in this case relates to state law standards relative to the authority of cities to grant variances (Municipal Land Use Planning Act).
 - For many years, that law has defined undue hardship as, "The property in question cannot be put to a reasonable use if used under the conditions allowed by the official controls. The plight of the landowner is due to certain circumstances unique to the property not created by the land owner and the variance, if granted, will not alter the essential character of the locality." He stated the key to that definition is that undue hardship means that the property in question cannot be put to a reasonable use if it is used under conditions provided by the Code. In other words, if one has to comply with the ordinance, then that property has no reasonable use. This was defined in a Minnesota Court of Appeals *Rowell vs. Board of Adjustment of Moorhead*. He stated that court took a very liberal view of what that meant for cities to grant variance. That court stated they read the definition of undue hardships as, "requiring a showing that the property owner would like to use the property in a reasonable manner that is prohibited by the ordinance." He stated that it is very easy to satisfy that requirement as it is reasonable and the landowner wants to do it; providing for grounds for the granting of a variance. However, this did not mean a city had to grant a variance as some cities did take a harder line in this regard. To this end, many municipalities relied on that language offered within that 1989 case.
 - The Minnesota Supreme Court changed the above ruling in 2010 via the *Krummenacher v. City of Minnetonka* case, which is cited at the bottom of page 7 in the court document within the Board packet. Although this ruling made it more difficult to grant variance, the court stated one is bound by the rule as stated in the state statute, which means that a landowner has to show

that if a variance isn't granted, the property cannot be put to any reasonable use. He stated that if one applied that tough standard against the *Krummenacher* case, almost none of the variances granted by this body over the years could have been granted as most properties can be put to reasonable use without having a few extra feet here or there in their dock use area (DUA).

- After the *Krummenacher* case, the Minnesota legislature acted very promptly as they did not want that to be the law. Therefore, they amended that section of the statute so that it does not use the term, "undue hardship" and reverts back to "practical difficulties." Under that statute, practical difficulties means, "That the landowner proposes to use the property in a reasonable manner not permitted by the zoning ordinance."
- The above noted cases document the range or standards that could be adopted for the granting of variances.
- That the above background offers the range of standards that could be adopted. He reiterated that those cases were decided under the Municipal Land Planning Act. Although they are instructive, they do not apply to the LMCD as the district does not fall under that Act. He further stated that the *Krummenacher* language had never appeared in the LMCD Code. However, the LMCD Code does utilize the same term of "undue hardship."
- That the Board needs to decide what the LMCD Code means; not the standards for city or county but the LMCD standards. To move forward, he recommended the LMCD gather all information the Board deemed appropriate or helpful to decide what undue hardship means in the Code. A couple steps in this direction could be to: 1) invite representatives from EOF Investments, LLC (EOF) and the other landowners that challenged the decision in this case to submit letters, memoranda, or briefs that document their belief of what undue hardship means under the LMCD Code and 2) direct staff to obtain documentation on the history of the variance granted; including how the term has been interpreted and used by the Board.
- A question remains as to whether additional proceedings will be needed, i.e., obtaining testimony in the form of a hearing. The court does not require or suggest such but states that additional findings may be necessary. He offered different scenarios of how the Board's interpretation could affect EOF's variance.
- He believed the only hardship documented in the EOF variance was the effect of the City of Orono's zone line. He questioned if EOF had any additional hardships they would like to put forward that were not previously considered.
- Once the Board defines undue hardship, they can consider EOF's variance and direct amended findings to reflect such.
- He entertained questions and comments from the Board.

Jabbour requested LeFevere clarify a comment that he had a conflict of opinion with the court attorney.

LeFevere stated his comment referenced a question about what to do when the LMCD amends the ordinance. He did not believe there was a conflict in that regard and invited Templin to expound on his comments offered above.

Templin stated that he and LeFevere did not disagree about the process.

Jabbour thanked both and apologized for the misunderstanding.

Green asked if there was a timeframe for when the Board needed to provide a response to the interpretation of undue hardship.

LeFevere stated that if the Board would like to proceed with his recommendations, he would suggest directing staff to send out the request for documentations (as described above); providing for an estimated 10 days to respond. This would allow the Board to consider the response at the next or proceeding Board meeting.

Gross requested clarification as to whether the court ruling meant the approved variance does not stand and the dock is currently illegal; providing EOF to pull the docks out.

LeFevere stated the court did not say whether the variance was good. He stated the court ruled in the LMCD's favor in all respects. They simply stated one aspect of the application was not properly decided on; whether there was an undue hardship. To this end, it will be up to the Board to decide if the variance is good. He confirmed there is no timeline in this regard; however, to act promptly is in everyone's best interest.

Klohs questioned if legal counsel could initiate the process of drafting the amended Findings.

LeFevere stated his office will start that process internally; however, he thought it would be confusing to consider such before the Board makes their decision on what the ordinance means.

Nybeck recommended working with LeFevere within the next couple days to draft a letter that will be submitted to Mr. Tim Keane who represents the landowners that challenged this matter. Keane was present in the audience in which Nybeck asked if he could respond to such a letter by September 7th for consideration at the Board's September 9th meeting.

Mr. Tim Keane, 220 South 6th street, believed Nybeck's proposed timetable was reasonable. In referencing LeFevere's introductory comments relative to the use of the word "remand" and Gross' above noted questions on the legality of the dock structure(s), he stated the decision was to reverse and remand vs. just remand; reading the second to last sentence on page 10 of the court document. He did not believe there was any ambiguity as to the court's intent in this matter. To this end, he believed the process needed to be rebooted; providing for the Board to entertain a new application with a clear request from EOF based on the decision made by the Board was reversed.

LeFevere stated the decision was reversed because the court stated no findings were made relative to undue hardship. The decision did not stand as they do not have a variance but, at best, a pending application. In his view, there is nothing in the court's order that states the Board has to reboot and start over, including a new application and public hearing, as the court remanded it for this Body to decide whether there was an undue hardship with additional findings that may be necessary. To this end, when a case has been remanded (an appellate court sends something back to the district court) due to an error in law, they do not direct counsel to start a trial over. They are instructing the parties to do something with the instructions that have

been given to them.

As Keane stepped up to address the Board on this matter, Klohs intervened by stating this matter is not a court hearing and that LeFevere had responded to your concerns.

Jabbour questioned if there was any benefit to rehear the case based on new members of the Board not understanding what is being discussed, i.e., have the facts represented via a workshop, etc. He believed this would provide fairness to all involved, including the plaintiff and the applicant.

LeFevere stated there was a pretty complete hearing and hearing record that were provided to the Board.

Jabbour understood but questioned if the people sitting behind the bench understand this matter to the point of making an educated decision.

Shuff believed that is the nature of all matters in sitting on the Board; recognizing this is an extensive application process.

Thomas concurred stating the minutes were pretty explicit in terms of who spoke and what was stated.

LeFevere stated the specific question that is coming back to the Board is what the Code means relative to undue hardship and is there one present in this matter.

Jabbour reiterated his interest in having all Board members being brought up to speed on this application as some have not been present in the consideration of the application at the time it was heard and are not aware of what the considered hardships were. He believed this Board was notorious for making decisions without visiting a site. He believed the Board needed to know what constituted a hardship and how it applies to the site in question.

LeFevere stated that, in his opinion based on what he knows to date and the absence of documentation being requested and not yet received, he would not want to prejudge the matter. He reiterated that there is nothing in the court's decision that suggests one has to start the process over again.

Jabbour asked if it was fair and equitable to the applicant for the Board to decide what an undue hardship is; expressing concern for being arbitrary.

LeFevere stated the distinction is that the Board will not be changing the rules but deciding what the Code means relative to undue hardship. He confirmed the hearing was held and the Board adopted an order that documented a hardship. He regretted that the word "undue" was not within the original Findings; however, he believed a discussion to that affect could have been held if that question was raised. If that would have happened, the Board would not recommend starting the hearing over but to decide on the term and if the hardship existed.

Shuff asked if the established definition for the term "undue" would be Lake wide and not specific to one

application, in which LeFevere confirmed it would be written in the Code.

Baasen stated that both LeFevere and Templin indicated that the Board needs to go back and define the term "undue."

LeFevere stated that the Board does not have to decide this evening as to whether the hearing is reopened. Once the proposed requested information is received, the Board can make that decision with the inclusion of the parties relative to this matter. He recognized those parties are adversary to one another and the Board will need to make the final decision; referencing that EOF's counsel is not even present at this meeting. His suggestion was only to provide a way for the Board to move forward in making a final decision at an appropriate time.

Gross believed LeFevere's recommendation was very reasonable and recommended the Board consider defining the term "undue" on a universal basis which can be applied to the matter at hand.

Baasen concurred with Gross' comment.

LeFevere reiterated that the Board could have questioned and defined the term "undue" at the time the application was being considered. Since this matter has moved forward to the court, some additional layers have been added. He stated it may not be legally required to obtain input from the other parties; however, he believed the Board would make better decisions with that information available.

Thomas offered the ability to consider the term "undue" for the matter at hand and then, in the future, reconsider such for universal use.

LeFevere stated that Thomas had a good point and believed the matter at hand is to define the term "undue" as it pertains to this case.

Hughes recommended staff research the history of granted variances and summarize the documented hardships; providing for a foot print of interpretation.

MOTION: Klohs moved, Shuff seconded to direct staff to write letters out to the opposing council for their interpretation of the term "undue hardship" for consideration at the Board's October 14th meeting.

Gross stated that the Board has been considering the word undue hardships for 20 years and questioned why receipt of documentation was necessary as the Board could just look at what has been done in the past for consistency purposes.

LeFevere stated he was not going to tell the Board his suggestions were legally required. However, in fairness to the parties involved, this has become a more specific question than what the LMCD anticipated. To this end, he did not see any harm in giving the parties an opportunity to make any arguments they feel might be appropriate.

Baasen questioned if Gross' comments would be considered an arbitrary procedure.

Gross believed obtaining arguments is more arbitrary than just looking at what the Board has historically approved; providing for consistency.

VOTE: Ayes (9), Nays (2, Gross and Hughes); motioned carried.

9F. Chair update on 2015 LMCD Executive Committee review of action plan for Executive Director Greg Nybeck

Baasen directed the Board to a letter from the Executive Committee that was sent to each Board member relative to this agenda item. He entertained any questions or comments from the Board, as well as a motion to approve the action plan.

MOTION: Thomas moved, Hughes seconded to accept the Executive Committee's recommendation relative the Action Plan implementation process.

Zorn stated that she believed the committee's report put together on this matter was not representative of the meeting in which this was discussed; specifically that the committee members stated they observed progress in six of the eight areas. She stated that she shared her notes relative to this at the meeting, as well as collected those from attendees who were present. In reviewing her notes, as well as others, she did not concur with the committee's assessment.

Jabbour concurred with Zorn and offered the following reasons why he thought the committee had moved backwards; taking strong issue with the committee itself: 1) not following through in obtaining a professional to assist in the personnel matter, 2) the committee's lack of response to the two recent emails (one of which was a resignation letter as vice chair) from Green, and 3) the lack of transparency. He challenged Baasen who previously requested that Board members provide the courtesy to let other Board members know when they were going to speak to their represented municipal official(s). However, he was in receipt of a letter telling him he could not speak to a plaintiff on a case but when approached by the defendant and after telling that person he could not speak to him, he was informed by that individual that he received a letter from Baasen copied to Nybeck. He would like to know why he cannot stand in front of his represented city and inform them what is going on between the LMCD and his represented city. He stated that was a small, minor example of the lack of transparency and filtering.

Baasen stated this document did not represent one person of the committee but all three reviewed the performance as improved. He assured the Board that each item was reviewed by all, including the evaluation of the scores. The draft was submitted to the committee for review, with changes made, on August 12th. The changes were made and the document was resubmitted to the committee for final review, in which no further corrections were offered. He recognized some criticism was offered as to the process of this evaluation. He stated an evaluation process has never been established for the Executive Director and moving forward, believed that one should be. He stated this process: 1) started in January of last year, 2) was delivered to Nybeck in April, 3) three consecutive meetings were held, and 4) the summary of all was submitted for consideration.

Thomas stated that he was fully aware that what is offered is not representative of all the Board members. He confirmed that there are Board members that have documented a significantly higher and lower score. From his standpoint, he has worked hard to provide Nybeck with a fair and good review (on both the negative and positive side). To this end, he did not believe that everyone could agree on this document but that he could assure all that the committee has tried their best, i.e., listening to both the Board and Nybeck's feedback, to provide a fair review.

Zorn stated that if she worked through the action plan to see what progress had been made and noted that in some areas, it is documented that no action has been taken as this matter is currently being worked through the strategic planning process (but continued to rate the action above the score of two). She expressed concern that the Board new those matters were currently being worked through the planning process but still wanted documentation on all. She expressed concern about the committee and questioned if the document was a true reflection of the committee or the Board's opinion.

Thomas reiterated his assurance that he listened to all comments offered; offering he received equally strong opinions on both the positive and negative side.

Jabbour acknowledged that this is a Board of 14 and that all are equal. However, he stated that some of the Board members are engaged 20 to 60 hours a week while others parachute into meetings and simply provide their vote. Those people would clearly be one with strong positive comments as they are receiving all their information from staff; offering the notation of a great relationship. He recommended calling the question. After which, he would make a motion, as well.

Baasen provided an overview of the summary offered within their packet. He made the following comments:

- There were eight categories offered; all of which the committee provided documented on.
- The following areas were identified by the Board that they felt Nybeck needed to concentrate on:
 - Oversight of human resource management; more delegation to staff and the development of an Executive Director exit emergency plan.
 - Oversight of the standing committees; with the Executive Director to take an active role in confirming whether they are appropriate and functioning the way they should be.
 - Serve as a liaison for member cities and other organizations; particularly, offering ways to grow and engage in other partnering organizations. He referenced the recent special LMCD meetings held on littering and the interaction of partnering agencies involved.
 - Oversight of public and media relationships. He questioned if this is a function of the Executive Director and whether a communications committee should be considered.
 - Lead the integration of the to-be-determined strategic plan. He recognized this task has not been started to date but that it was an area the Board would like the Executive Director to move forward with in the future.
- The committee is not stating that all is okay and that there is no need to proceed any further. What they were stating is the committee should continue with the action plan and interaction with Nybeck. He reiterated that the committee believed progress has been made and recommended continuation of the plan.

- When 14 members are reviewing one individual, differences of opinion will and did exist.

Thomas stated that the plan remains in existence and there are expectations to be met.

Green stated that he participated in one and one-half of the three meetings. He could see how the aggregate of responses from the 14 Board members could come out. He believed the wording within the plan is so precise, referencing Baasen's comments above that some things need to be changed, that it makes it look like everything is just fine. To this end, that is the only thing he took away from reading such.

Baasen did not concur with Green's comments. He reiterated that what the committee stated was that some progress needed to be made, that they have further to go, and that an evaluation of adequate progress would be evaluated at the end of three months.

Klohs concurred with Baasen that the evaluation process needed to be defined from this point forward; offering inconsistencies that were provided in the review process. He believed that lack of process created a great deal of confusion in which he believed that was the Board's problem. He believed that some of the Board's comments through this process were not taken into consideration. As an example, he quoted Nybeck's comment that, "When the Board updates the strategic plan, implementation will be difficult if not impossible unless the Board works through this, including staff, to insure the organization is functioning like a team and moving forward together and not independently." He also referenced a comment by Nybeck that it was not clear to him relative to striving to be a "thought leader." He believed the LMCD needed leadership and vision and referenced that during the strategic planning process, the Board needed someone to step out and point the Board in a direction; referencing that Nybeck is the most experienced member the LMCD has and that he did not witness that during that process. To this end, he read Nybeck's comments that the Board is destined to failure; however, there was not leadership during the strategic planning process to resolve that concern.

Baasen clarified that Nybeck's statement referred to the Board as maintaining a division and that the Board needs to come together as one.

Klohs stated Nybeck needs to tell the Board how to come together; as the leader of such.

Nybeck stated that he also recommended the Board take up the Governance Optional Session offered by Rapp within the strategic planning process. He stated this Board is borderline dysfunctional and that the Board needed to start pulling in the right direction. He further stated that a strategic plan can look pretty but unless the Board is pulling in the right direction, the plan is ineffective.

Klohs stated that comments such as that are exactly what he is looking for in a leader; offering that type of initiative is what should be offered during the Board meetings, strategic planning process, etc.

Nybeck reminded the Board that he also recommended they obtain the assistance from Rapp relative to the strategic initiatives.

Baasen reiterated the summary takes into account the responses of the Board and Nybeck. The intent of obtaining the Board's input, right or wrong, was to give the Board a platform to voice opinions; providing for the ability to advise Nybeck as to how he can move this Board in the right direction. It was meant to not ignore or submerge but to place matters on the table as much as possible to come to a combined decision even though there was some disagreement on different matters throughout the process. That is why the action plan was developed in the first place.

Jabbour believed the committee is stating this matter is out of the ditch and that we should move on.

Baasen strongly disagreed with that comment.

Thomas stated that the three or four committee members, counting Jay for one and one-half meetings, have not sat in a back room and cooked this up. The meetings have been publicized and all were invited to attend. He believed this was the most open review process he has ever been involved in.

Jabbour believed it was a corrupt process; offering one cannot attend a meeting only to receive a large packet (estimated 500 pages) of material to consider at that time. He stated Klohs left as he could not read all that material and participate at that time. He emphasized that he did not mean to use the word "corrupt" as it relates to crooks but that the process was "flawed." He wondered when every member of the Board was going to receive that data. He pointed out that at the meeting where the committee considered the action plan, the vice chair had never seen it. Ninety days in the vice chair continued to not be familiar with the document. To this end, he did not know what standard the committee was utilizing; however, offered that it was not appropriate.

Baasen confirmed that the other members of the committee did not have the same opinions as the vice chair; recognizing he was not present at the meeting prior to this discussion.

Jabbour stated the vice chair nor the other Board members didn't have any information and questioned why the vice chair was not copied until 90 days later. Those are matters that are killing the LMCD; offering his belief that other agencies do not look up to the LMCD for such reasons.

Morris requested clarification as to the motion on the floor.

Baasen stated the motion was for the Board to accept the report which recommends monthly updates with Nybeck with an additional planned full review of the Action Plan implementation as proposed in 2014 Performance Review at the end of October 2015.

VOTE: Ayes, (4, Baasen, Hughes, Shuff, Thomas), Nays (6, Green, Jabbour, Klohs, Morris, Niccum, and Zorn), Abstained, (1, Gross); motion failed.

Jabbour moved to make a motion of no confidence in the Executive Director based on his experience and the fact that there has been zero direct communication with quite a bit of members of the Board and many other issues. This included his leadership and ability to demonstrate a better tomorrow for the LMCD.

The motion did not stand based on a lack of a second.

Baasen asked LeFevere for guidance in the Board's next step relative to this matter.

LeFevere stated that it might be helpful if the Board had any ideas; possibly starting the process over that would involve the Board as a whole or amending the document at hand.

Thomas stated the committee could send the 90 day progress report, along with the action plan and Nybeck's comments, to the Board for comments and numerical ratings on the eight sections.

Jabbour asked if the committee considered fulfilling their promise to hire a professional to oversee this process; offering the ability for that person to have individual meetings with the Board members. He believed this was a good example as to why the committee was not getting the Board's support; they received a promise that was not fulfilled.

Baasen believed that the vote this evening lend towards the decision of the committee and not specifically Nybeck.

Gross stated he abstained his vote based on the following comments: 1) that he has been on this Board longer than anyone present, 2) that he has a good relationship with Nybeck and relates well on a personal level, 3) that he has no idea how he regulates what he does in the office, including how he supervises the staff, and 4) to personally evaluate Nybeck's performance would be to do so in the dark. He asked the Board if this should be a Board matter or a supervisory matter, i.e., someone he interacts with. He believed that 90% of Nybeck's position is interacting with the Executive Committee. He referenced this matter as the Board tossing darts and concurred with Jabbour that the LMCD obtain a human resources professional that is familiar with the LMCD.

Baasen recommended the committee meet to provide further recommendations to the Board at their September 9th meeting.

MOTION: Zorn moved, Jabbour seconded to document no significant change in progress ratings for the 90 day review and that the Action Plan remains in place.

Baasen asked if Zorn felt it was fair to Nybeck to have to be evaluated by 14 Board members three times within one year. He stated that the committee had tried to involve the Board and did not believe that all three members would admit to trying to submerge or bury the comments offered by the Board members. He referenced Klohs' concern as to the process and, right or wrong, the committee opened it up to the full Board. He asked the Board whether it was right or wrong for either Nybeck or a future Executive Director to have to be subject to review by 14 different members.

Zorn believed the answer to that question is yes; if there are multiple points of concern.

Shuff did not believe the Board had that information and the Board had two dissenting members that were not a part of the committee.

Zorn stated this is where the Board votes.

Hughes believed there has been progress made; as documented by the committee as gradual improvement. He believed the motion on the table is flat out wrong. That level of progress is offered via different opinions; however, there is progress.

Jabbour stated it is obvious there is disconnect between the committee and the Board.

Hughes stated he regularly works with staff.

VOTE: Ayes, (4, Jabbour, Klohs, Morris, Zorn); Nays, (5, Baasen, Green, Hughes, Shuff, Thomas); Abstained, (2, Gross and Niccum); motion failed.

Baasen reiterated allowing the committee to come back to the Board with recommendations at their September 9th meeting.

Jabbour did not think that would solve the concerns and asked Baasen if he believed a serious problem existed.

Baasen stated the problem is for the Board to come up with a constructive, not destructive, solution for our leadership.

Jabbour reiterated his interest in hiring a human resources professional.

14. ADJOURNMENT

The meeting was adjourned at 11:09 p.m.

Dan Baasen Chair

Gregg Thomas, Secretary