

**LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, October 14, 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; Gregg Thomas, Tonka Bay; Gary Hughes, Spring Park; Jay Green, Mound; Ann Hoelscher, Victoria; Gabriel Jabbour, Orono; Chris Jewett, Deephaven; Fred Meyer, Woodland; Jeff Morris, Excelsior; Bret Niccum, Minnetrista; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Deborah Zorn, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

Members absent: Dennis Klohs, Minnetonka Beach

3. APPROVAL OF AGENDA

MOTION: Roy moved, Meyer seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

4. CHAIR ANNOUNCEMENTS, Chair Baasen

Baasen made the following Chair announcements:

- The City of Deephaven recently appointed Chris Jewett as a returning Board member to the LMCD. LeFevere administered the Oath of Office and Jewett was welcomed to the Board.
- In follow-up to LeFevere's recent retirement, the LMCD solicited proposals for a 2016 civil and legal services attorney (with a deadline was October 9th). The Selection Committee met today to review the three proposals received (with two law firms identified for interviews). He asked Nybeck to provide an overview of that respective schedule.

Nybeck stated that the Selection Committee will interview two law firms on October 28th (7:30 p.m. at Wayzata City Hall). The Board will consider the committee's recommendation at their November 4th Board meeting.

- Baasen stated that the success of the LMCD is greatly enhanced by the partnership of volunteers who dedicate their personal time in serving on an LMCD committee and/or special projects of interest. He recognized the service of two long-standing Lake Minnetonka stakeholders that have dedicated their service to the LMCD; Save the Lake Committee Member and Boater Safety Education Program Instructor Jay Soule and Three Rivers Park District retiree John Barten. He offered the following recognitions:

Jay Soule

Soule is a representative of Al & Alma's Supper Club and Charter Cruises (Al & Alma's) who serves as an active supporter of the LMCD in general and as a member of the Save the Lake Committee. Since 2013, the Save the Lake Committee established the Boater Safety Education Program to assist youths, with guardian participation, in obtaining their Minnesota Department of Natural Resources (MN DNR) Operator's Permit. He recognized Soule as the primary instructor and his unparalleled ability to keep the youths' attention for up to ten hours in the day long program. Baasen believed that Soule's background in working with children is evident in the success of the class. Through this process, Soule and Al & Alma's contributed an abundance of snacks that kept the students' energy up throughout the day of training. He stated that Soule has also incorporated the following partners that have contributed to this program:

- Brian Roath assisted Soule, as well as led multiple breakout sessions.
- Marine Max and St. Boni Motorsports each provided a brand new watercraft.
- Mound Fire and Rescue were present at each session to work with the youths on the use of a fire extinguisher and general fire prevention practices.
- Hennepin County Sheriff's Office/Water Patrol Deputies were present at each session to work with the youths on law enforcement and safety practices.
- LMCD Board members and staff assisted in mentoring the youths throughout the day.

In closing, Baasen presented Soule with a framed aerial photograph with recognition plate, which he read. He thanked Soule for his dedication; offering the LMCD would be lost without him.

John Barten

Barten was originally hired by the Three Rivers Park District (TRPD) as Water Quality Manager in the 1980's and recently retired as their Director of Natural Resources. As a representative of the TRPD, Barten has served the LMCD for the past 26 years by:

- Serving on the Aquatic Invasive Species (AIS) Task Force; formerly known as the Eurasian Watermilfoil (EWM) Harvesting Program;
- Acting as an advisor and assisting in special projects;
- Working closely with AIS watercraft inspections that are performed on Lake Minnetonka over and above what is offered by the MN DNR; and
- Overseeing areas of the Lake that are owned by the TRPD (a portion of Big Island and multiple islands in the South Upper Lake).

In closing, Baasen presented Barten with a framed aerial photograph with recognition plate. He thanked Barten for not only his partnership but his leadership throughout his career.

5. APPROVAL OF MINUTES- 9/23/15 LMCD Regular Board Meeting

MOTION: Hughes moved, Shuff seconded to approve the 9/23/15 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (10), Abstained (3, Jewett, Meyer, and Roy); motion carried

6. APPROVAL OF CONSENT AGENDA

Thomas moved, Meyer seconded to approve the consent agenda as submitted. Motion carried unanimously. Items so approved included: **6A)** Audit of vouchers (10/1/15 – 10/15/15); **6B)** Draft 2015 Save the Lake Budget.

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. Hennepin County Sheriff's Office, update from Major Jeff Storms on added Water Patrol Deputy funded by Save the Lake in 2015

Baasen welcomed Major Storms and asked him to provide his update.

Major Jeff Storms stated that he oversees the Enforcement Services Bureau within the Hennepin County Sheriff's Office (HCSO); including the Water Patrol. He made the following comments relative to the added Water Patrol deputy funded by Save the Lake in 2015.

- Last year the HCSO entered into an agreement with the LMCD for the use of Save the Lake funds to provide additional enforcement coverage on Lake Minnetonka; specifically, from 4:00 p.m. to 2:00 a.m. on Thursdays, Fridays, holidays and weekends (Memorial Day through Labor Day). He stated this partnership was imperative to assure a licensed deputy would be present on the Lake during times that they know are the most risky not to have one present or to be pulled away to another site. To this end, the HCSO's goal in this process was to not only look at how the services were provided but to make sure a licensed deputy was available to serve Lake Minnetonka 100 percent of the time.
- The HCSO is responsible for 104 lakes and 3 rivers within Hennepin County. This includes all water related drowning incidents that could happen within a hot tub, pool, etc.
- The grant itself was for reimbursement of services and expenses up to \$33,264. Independent of the agreement, the HCSO started the licensed deputy two months prior to Memorial Day weekend for specific enforcement training.
- Between Memorial and Labor Day weekends, the assigned licensed deputy put in 620 hours and was accompanied by other assistant deputies for an additional 120 hours (720 hours total). The HCSO expended an estimated \$46,000 as they believed it was imperative to independently provide services over and above the approved agreement.
- The HCSO is going to: 1) continue the use of that specific licensed deputy through the end of the year and 2) meet with the LMCD to discuss the benefits of this program and whether it should continue.
- He provided an overview of the following events and statistics offered by the deputies utilized for this added position: 1) the public safety matters that arose over the July 4th weekend, 2) two underage consumption details (four cited), 3) several medical calls, 4) dignitary protection for candidates that came out on the Lake, 5) aids to citizens, 6) responses to various property damage claims, 7) 14

Boating While Intoxicated (BWI) arrests, 8) 43 citations, and 9) 263 verbal warnings. He stated the Water Patrol takes pride in maintaining positive public relations as it is their goal to discuss and educate the public through the issuance of warnings when warranted.

- He appreciated the recognition of Jay Soule as the LMCD's Boater Safety Education Program is a wonderful program the HCSO would like to continue partnering with.
- He addressed a common complaint which pertains to rules of the road. He believed all partnering agencies could do a better job improving on this particular concern.
- He entertained questions and comments from the Board.

Shuff asked how the HCSO determines whether they are going to issue a warning or citation.

Storms stated safety is a primary concern for citations, i.e., lack of life jackets or personal floatation devices, as well as alcohol enforcement. He stated the HCSO is a leading agency in the state for alcohol enforcement, which he believed contributes to keeping the boating accidents down. Similar to road enforcement, the HCSO would investigate, educate, and issue warnings for matters such as registration documentation.

Hoelscher thanked Storms for all that the HCSO does. Based on the LMCD's recent strategic planning discussions relative to prioritizing public safety, she asked about receiving regular updates so that Board members are up to speed on how the LMCD can assist HCSO when needed.

Storms welcomed the opportunity to provide monthly updates to the Board.

Meyers inquired on a recent death of a little girl that may have died from carbon monoxide poisoning and whether the HCSO had impounded the watercraft.

Storms could not discuss that matter as it is under investigation. However, he did confirm that carbon monoxide is being named as a contributor to her death and that the watercraft, as with any similar incident or accident, is held until cleared.

Baasen inquired on whether the HCSO has considered watercraft safety inspections.

Storms was unsure and questioned if that would be something the HCSO could physically support. Although he pointed out that the deputies do a great job in looking over a watercraft that is pulled over for visual safety concerns. Additionally, the HCSO has a media campaign that can release educational material on matters that the HCSO deems warranted.

Baasen asked Jabbour if the boat manufacturers are installing carbon monoxide detectors.

Jabbour confirmed that carbon monoxide detectors are being installed in the newly manufactured boats. Additionally, he stated the Lake Minnetonka Power Squadron provides free safety inspections; recognizing that technical matters could happen overnight. He further stated it was nice to see a snap shot of the respective program but offered there is much more going on around the Lake. He and the City of Orono believed the additional enforcement offered (via this Save the Lake grant) is a county concern. However, for the Board members to educate their represented cities on the importance of funding for enforcement services over and

above the common services offered, he believed more Lake events need to be documented. He believed the HCSO offered substantially higher enforcement services in 2015 than years past. He expressed concern that the importance of such was not spelled out within the statistics offered. He personally believed the additional services provided a massive amount of positive results to the Lake. He asked Storms if he could offer more of a detailed report.

Storms confirmed that the statistics offered this evening were specific to the Save the Lake funded project and does not show the entire picture of Lake-wide events that took place year-round. He reiterated that safety is HCSO's number one goal and how they enforce such is through multiple methods, e.g., undercover work, foreshadowing, and taking control of hot spots prior to something getting out of control.

Baasen thanked Storms for not only their services but their partnership, as well.

B. Lynn & Associates, consideration of proposal to develop a performance management system for the Executive Director position.

Baasen directed the Board to a draft proposal within their packet from Jim Lynn of Lynn & Associates. He stated the Board has gone through procedural difficulties in how to professionally provide a performance review of the Executive Director. Therefore, the Board moved to obtain a human resources professional to take a look at the current procedure and how the Board could more effectively provide for this task. He invited Mr. Lynn to address the Board; offering he was referred by the LMCD's strategic planning facilitator Craig Rapp.

Mr. Jim Lynn stated that he (a consulting psychologist) and Rapp (former City Administrator) are partners that work with an estimated 45 municipalities within the Twin Cities and five peer groups (maintaining a leadership meeting with the city administrators monthly). Lynn confirmed he had a great deal of experience with performance management of personnel that report to multiple council members or larger boards that do not have an agreed perception of the executive director/administrator performance needs. In individually talking to Baasen, Nybeck, and Zorn, he outlined the following three issues that have been uncovered:

1. The Board members' roles and responsibilities relative to evaluating the performance of the Executive Director are not clear. *His services would provide for devising a roles and responsibilities matrix that would include, but not all inclusive, how the executive director is evaluated and the role of the chair, Executive Committee, and Board.*
2. The need to clearly define the whole process in how the Executive Director gets evaluated. *His services would provide for the creation of a structured process (typically starting this time of the year) in which the executive director would start a self-appraisal process that would be evaluated by the Board. He would then comprise all the documentation, have a discussion with either the full Board or designated group, and proceed with the evaluation process.*
3. The need to clearly define what performance looks like. *He referenced vague phrases that are often used by high level boards when evaluating an executive staff member, e.g., improve leadership, improve communication skills, be a better thought leader, etc. The use of those*

phrases does not clearly define the action one is looking for within their executive personnel. He offered an example of taking a phrase and adding specific tasks to accomplish their documented concern. There should be specific goals and objectives (highlighting specific skills) for the personnel to achieve the desired performance.

He entertained questions and comments from the Board.

Green believed Lynn's recommendations provided a great direction moving forward so that they play by the rules. He asked if he would be assisting in the current process as the Board has reached a stalemate relative to the Executive Director's 2014 performance review.

Lynn stated that he reviewed the Executive Director's 2014 performance review documentation and concluded the performance report was so vague it was hard to conclude what the Board wanted him to do. He offered that if he received such report, he would ask what was meant by the documentation. He stated that if the Board wants to establish clear accountability for the Executive Director, they would need to start setting clear expectations using an established evaluation process prior to and not after the fact.

Jabbour stated that he is familiar with Lynn's work, including within the private sector, and believed he works very hard with the various municipalities. He is also a strong proponent in acquiring his services in the future to help the Board. However, he is adamant that he will do anything he can to not undo the work that has been done on this matter to date. Jabbour believes they have a problem and it is called "Minnesota Nice." He does not believe the Board is doing the Executive Director a favor by sugar coating and wrapping it up with a bow. He further believed that some of the people trying to defer the issues are like the Federal government trying to kick the can along. He confirmed an evaluation has been performed that received a majority, if not unanimous, motion. Additionally, there is a "thing" in place whereby the majority voted against the Executive Committee on that matter. Lastly, he stated that from the beginning of time, he thought the LMCD should engage someone like Lynn to get them moving in the right direction. He reiterated that he is a strong proponent in acquiring Lynn's services but not to move backwards; referencing they are at the end of that performance review process.

Lynn questioned the Board as to what they would like to hire him for; to evaluate how the Executive Director is doing now, which could be documented within a performance plan. Or, what he thought he was asked to do which was to create: 1) a performance management and evaluation system for the executive director position and 2) a process as to the roles and responsibilities of the Board members.

Jabbour stated Lynn was right; the Board was looking to acquire his services to fix them and the mess in which they caused; retroactively.

Lynn estimated, upon hire, that he would spend the next three months clarifying roles and responsibilities, creating the evaluation process, and setting up clear goals and objectives (with Board approval). This would be initiated in 2016 and by year-end there would be a fair sense of accountability and clear expectations set.

Jabbour stated that he is supportive of the above noted effort as long as it does not stop the current evaluation process for 2014 that is in place as it comes to a conclusion based on how the Board has

voted to make it happen. The Board does not want to wait for Lynn to make his conclusions and then retroactively look at what they did wrong as that ship had already sailed. He asked Lynn how he felt with that perspective and whether he was on the right track.

Lynn stated he was unsure what Jabbour was asking of him.

Baasen clarified by stating a 2014 performance review was completed and delivered to Nybeck in April of this year. This provided for a six month review process in 2015 (three month increments). The Board had a stutter step in August which was the end of the first three months. At the end of August, the Board voted to extend the review process until the end of November. He believed Jabbour was stating the Board does not want to lose everything that was done so far and asked if there was a way to retrieve it and still provide a fair and effective review of the Executive Director.

Lynn reviewed the performance review materials and a number of requests and goals expected of the Executive Director were vague, not clear, and not specific. In all fairness to the Executive Director, they need to be re-considered in which he would be able to help the Board provide the Executive Director with a document that has greater clarity and accountability.

Zorn thanked Lynn for acknowledging the two of them spoke. She stated that the draft proposal outlines what he would do moving forward. She would like to see a two step process that would involve: 1) finish this current performance improvement plan and action period and 2) go back and look at the Board's processes and build that process out further. She believed that the Board had 75% of the work accomplished on the review period; recognizing the Board is just at a standstill as referenced by Baasen. To this end, she believed the Board needed a little guidance relative to completing the current evaluation process and does not want to go back and re-event the wheel as Jabbour has indicated. She stated the Board is treading water at this point. She wanted to confirm Lynn receives all the adequate information to provide a proposal that would accomplish both steps offered.

Baasen believed the whole Board, not divided, is asking for Lynn's assistance in offering clarity and closure to the current process in place; prior to moving forward with the recommendation offered for 2016 and beyond. In closing, he stated the Board wants to be fair to both the Executive Director and the organization as a whole.

Lynn stated that having 14 bosses makes an evaluation process tough. He recommended the Board consider forming an executive or steering committee of three to five members that would manage and work closely with him on this process. He would then work with those members in reviewing the current goals and objectives in place to better provide for more clarity and accountability. With that said, he had to warn the Board that part of the reason they are moving through a dysfunctional process is that the goals and objects set are not clear.

Baasen stated the Board is in a little bit of quick sand and would like a life line; including establishing a process for the Board to utilize going forward.

Lynn reiterated his availability to meet with a small group to bring closure to the current process. He believed what is offered is good work; however, it needed to be clarified and fair to the employee being

evaluated.

Jabbour believed the current system is badly flawed. He proposed that next year the Board cannot have an executive committee that takes over everything. He believed individual Board members offered a variety of talents that could be offered as committee leaders. To this end, he believed the Executive Committee should be resolved in 2016 and beyond and only have committees as needed. For the record, he stated the Board previously moved that the Executive Director did not do his job last year. The performance review was not clear and decisive; confirming he clearly thought this process needed professional help. The Executive Committee concluded there was some improvement and the Board voted to not agree with the Executive Committee. He believed the Board should scrap all this and start all over; figuring out who has expertise and utilize them.

Lynn stated that frequently a Board will have a personnel committee that has three to five members with expertise in that area.

Baasen stated that the Board is not only working on this process but they are currently reviewing the strategic planning process, as well as initiating the review of the LMCD By-Laws. To that point, he believed that many of Jabbour's concerns could be address by re-writing the By-Laws.

Jabbour disagreed with that statement as he believed it was an appointment issue; referencing the lack of a vice chair as the Board has chosen not to re-appoint one until they fix the current problems that existed. He believed that the Board should determine at this time, which members have expertise in this area to work with Lynn on his proposals. Jabbour stated LMCD needs to either rejuvenate or evaporate.

Baasen asked the Board if they wish to engage Lynn.

Jabbour stated not unless there was a process in place that would get the Board moving forward.

Baasen stated that the Board will not vote on acquiring Lynn until the process is in place (getting back to Lynn by the end of the month).

Lynn stated the process would include appointing three to five members that have human resources experience to work with him. He further recommended they provide background for such.

Baasen stated that the members and their expertise will be solicited; at which time, an amended proposal will be offered to Lynn.

C. EOF Investments, LLC, to consider and possibly take action regarding the variance request remanded back to LMCD from MN Court of Appeals

Baasen asked LeFevere to provide background on this matter.

LeFevere made the following comments:

- The Board previously conducted a hearing for EOF Investments, LLC (EOF) for a variance and new dock license applications. After that hearing, the Board found there was a hardship and that granting of

- a variance was within the spirit and intent of the LMCD Code.
- That decision was challenged by some residents of Tanager Lake by appeal to the Minnesota Court of Appeals (Court). The Court rejected most of the challenges brought, but did hold that the LMCD Board should have decided the EOF variance request under the “undue hardship” within the meaning of the Code. The Court further stated that whether EOF had an undue hardship was a question for the Board to determine in the first instance; meaning the Board, not the Court, needed to make that decision. Therefore, the Court remanded the matter back to the LMCD Board for such a determination.
- In his view, the Court did not remand this matter for a new hearing, but instead for the Board’s consideration of the variance request under the undue hardship standard. He stated that as there was no fault found with the hearing or its process, in his view, the Board is back where they were after the hearing but before the Board made its decision. At that point, the Board made a decision that there was a hardship, and now it needs to take into consideration whether the hardship constitutes an undue hardship within the meaning and the Board’s interpretation of the Code.
- He provided an overview of the documentation offered within the Board’s packet, including a historical outline of granted LMCD variances.
- He entertained questions and comments from the Board that would ultimately assist them in moving to direct staff to draft amended Findings of Fact and Order (approving or denying the variance request) based on whether an undue hardship exists.

Baasen provided a brief summary of what the Board needed to consider. For the benefit of those in the audience, he stated consideration of this agenda item is not a public hearing. Therefore, he will not be taking comments from the floor.

Jabbour stated he spoke with the applicant today as he believed it would be of assistance to the Board, particularly to him, in clarifying a couple matters. The applicant referred to the case where the various cities were denied “practical hardship” prior to the legislature reinstating “undue” hardship. He asked LeFevere to confirm the term “practical” would not apply in this case.

LeFevere stated the Board has to decide what an undue hardship is. This can be obtained by common usage or the reference of other sources. As an example, if the Board determined what a hardship was, an undue hardship could simply be an unwarranted hardship, i.e., the neighborhood would not be hurt by granting the variance. He further stated that when the LMCD adopted the Code on variances around 1970, it used the term, “undue hardship.” At that time, state law that applied to cities also used the same term. It was not until years later that the legislature amended the statute so that an undue hardship meant a city could not grant a variance if the property in question could be put to reasonable use without a variance. The courts worked with that language to provide the cities with a little working room; however, a case entitled, “Krummenacher” determined zero working room was offered in that definition. The legislature responded to the decision by removing that language. When the LMCD adopted their ordinances, the stricter language was not a part of the state law and that limitation on what constitutes an undue hardship was never applied to the LMCD.

Jabbour requested clarification that, at that time, financial consideration could not be considered a hardship.

LeFevere believed that was generally the consideration. He further stated that the LMCD looked at that from time to time and did not grant variances for the purpose of saving or making money for the applicant. The

advice he had provided the Board over his years of service included the fact that there has to be a two step process. If a hardship did not exist, the Board could not grant a variance. However, if there is a hardship, one does not necessarily get a variance as the Board would have to look at what the impact of that variance would be and whether granting it would be in keeping with the spirit and intent of the ordinance. In some cases, it is a reasonable request with a hardship and granting the variance does not have such a serious impact on the neighborhood and imposing that hardship was warranted. The circumstances under which it is appropriate and how readily the body is willing to depart from their written standards are all over the map.

Jabbour stated that what the legislature passed for the cities' use is not reflected on the LMCD.

LeFevere reiterated that the current LMCD Code utilizes the term "undue hardship." He was unsure how the Krummenacher case was argued in this matter since that case dealt with the laws applicable to the cities that were in effect for some years. He stated the Board may want to consider the definition utilized in that case, but it would not be because the legislature mandated it because that standard does not apply as it is not a part of the LMCD Code and never has been.

Baasen requested clarification that his advice is for the Board to direct their staff to examine undue hardship.

LeFevere stated that is the question for the Board and not of staff. To that end, the Board has to decide if there is an undue hardship in the EOF case. The Board could have a discussion amongst themselves on this definition or a member could simply document their belief that an undue hardship existed or not and direct staff to draft the Findings of Fact and Order for such.

Jabbour believed the Board needed to define an undue hardship.

LeFevere stated that each and all of you will have to decide how they are going to answer that question. Giving a comprehensive definition of an undue hardship will not be easy; providing for the need to define both words in the term. However, the Board may have an idea of what undue hardship means based on applications from other licensees.

Jabbour believed that this process arbitrarily makes a decision without accountability of the body to decide what constitutes undue hardship; providing for the need to have some parameters in place for consideration of such. He further believed that passing this would be helpful to him personally; however, he was not here for himself. He pointed out that when Jewett took his Oath of Office, the Constitution of the United States was in existence way before the LMCD.

LeFevere stated that the Court pointed out that none of the terms in the ordinance are defined. Therefore, if the Board considers this in the future, they could provide for more definite guidelines; providing for a more universal consideration of the Code vs. just this application; not that the Board should not discuss what undue hardship means.

Hoelscher stated that LeFevere just addressed her first question in that the Court stated that the LMCD has at least three different standards in granting a variance. Therefore, she hoped that moving forward the Board would consider cleaning up the ordinances. She requested LeFevere clarify that, with respect to this case, the Board could consider whether an undue hardship existed without any additional supporting facts.

LeFevere stated there has to be facts supporting the definition, but the Board does not have to have a definition as such that applies Lake wide. The Board found that, in this case, the application of the Code to cut his dock use area (DUA) down to half the size based on the zoning of the properties was found to be a hardship. He reminded the Board that no new hardships have been found since that date; therefore, was the prior decision an undue hardship.

Shuff stated that, in following up on LeFevere's comment, the Board could: 1) apply their decision to just this case; and 2) that the definition of the Board for undue hardship could be the lessening of the DUA to half the size.

LeFevere confirmed Shuff was correct; offering historical findings of the Board.

Baasen stated that the Board historically made a determination that a hardship existed. The Court is asking the Board, in this particular case, that documentation needs to provide more than just a "hardship."

LeFevere stated the Court is not telling the Board what an undue hardship is. What the Court is saying is the ordinance uses several different terms which none are defined. The Court concluded undue hardship was the standard and they asked the Board to define such in this case.

Hoelscher directed the Board to the first paragraph, second sentence on page 2 of the October 8, 2014 approved findings (Exhibit A within their packet) that read, "The application of this provision reduces the available dock use area of the subject site by approximately 50%." It was her understanding that that is what the Board needed to determine for this case as an undue hardship.

LeFevere stated that put differently, if the Findings of Fact and Order were previously drafted with the word undue in front of hardship, would the Board have continued to approve the document.

Thomas stated that the Board does not want to be arbitrary and that the Board needs to be consistent. In looking at the Board's historical approval of variances, the Board has consistently said we have to answer five specific questions as outlined at the top of page 3 in LeFevere and Gilchrist's memorandum within the packet, dated 10/8/15. To this end, in order for the Board to not be arbitrary and to provide consistency, he recommended the Board treat this variance request as the others have been treated.

Shuff believed those were the points discussed in approving this variance and asked LeFevere to clarify, in which LeFevere confirmed they were.

Baasen asked if it would be unfair to send this back to staff to review the five referenced points for preparation of Findings of Fact and Order for approval or denial.

LeFevere stated he was unsure what staff could add to this; referencing the 150 variances that have been considered over the years. He reiterated, in the end, it is up to the Board to decide. Relative to this case, those five points were in the staff report; offering staff and public have provided information. Therefore, the Board is back to where they were after the hearing.

Jabbour stated the Board needs to make decisions much faster than is currently done. He believes the Board botched this application and he apologized to the applicant as his representative on the Board. He reiterated that he spoke with the applicant for over an hour today and heard how this process has made his life miserable. He confirmed he may not be in agreement with all of his comments, but that the process offered to him was unacceptable. Lastly, with respect to the Board, he believed that two-thirds of them did not know what hardship meant when this was approved.

MOTION: Roy moved to table this agenda item to the Board's November 4th Board meeting for discussion and conclusion.

Jabbour requested an explanation for the delay.

Roy stated that he did not read over the Findings of Fact and Order to date and did not want to make an uneducated vote.

Jabbour respected Roy's response and thanked him.

Baasen requested a second to the motion. Seeing none, he seconded the motion.

Hoelscher concurred with Jabbour as she believed the Board has all the information they need to make this decision and that they were not going to have more information to consider by the next meeting. She believed an undue hardship existed, recognizing she is one vote and that the decision should be made at this meeting.

Baasen, after consulting with Roy, solicited the Board's interest in withdrawing the motion. Seeing no concerns, the motion was withdrawn.

MOTION: Hoelscher moved, Shuff seconded to direct staff to prepare Findings of Fact and Order to approve EOF Investments, LLC variance based on all of the evidence the Board previously heard in this matter (briefs, ruling from the Court, statements of LMCD counsel, Board discussion) and that the Findings of Fact and Order previously prepared do demonstrate an undue hardship.

Meyer referenced a prior conversation that one cannot use a financial hardship. However, he stated that if the variance is not approved, the applicant will lose half his boat storage units. He requested clarification that the Board cannot consider such hardship.

LeFevere stated that the Board cannot consider the variance based on a financial loss. He believed it is true that if the Board had denied the variances historically granted, their property would not be worth as much. To that point, the Board cannot grant a variance simply based on the fact of losing money.

Baasen requested clarification as to what level of BSU loss would exist if the variance is approved.

LeFevere stated that the original Findings concluded there was a hardship because the LMCD Code would not allow the use of half of the DUA because it was located in a residential zone.

Nybeck reminded the Board that they could consider amending the Code to allow for docks over the zoned lines in a conforming manner; offering length and side setbacks.

Baasen asked Hoelscher to review her motion.

Hoelscher stated that she moved to direct staff to issue Findings of Fact and Order to determine undue hardship for the granting of the variance.

ROLL CALL Ayes (9); Nays (3, Jabbour, Meyer and Zorn); Abstained (1, Jewett); motion carried.

VOTE:

LeFevere stated that the draft Findings are prepared by staff; however, the Board should make sure they are consistent with the Board's intent.

10. UPDATE FROM STANDING LMCD COMMITTEES

Baasen asked if the committee chairs had anything to report.

Green stated that the West Metro Aquatic Invasive Species (AIS) Coordinating Committee will not be meeting in October. However, he reported on the State AIS Committee that recently met. The following items were discussed: 1) information on the starry stonewort infestation on Lake Koronis; 253 acres near the public access off of Highway 55. He stated this alga is difficult to discern amongst other algae in the lake and once discovered, a treatment was tried but it did not go so well and the public access was closed to prevent the spread, 2) newly discovered zebra mussels in Lake John (Wright County) and Bryant Lake (Eden Prairie), and 3) \$750,000 that will be cut from the Minnesota Department of Natural Resources (MN DNR) AIS budget; affecting their aquatic invasive management grant program. The members voted to advise the MN DNR to go with a program that would maximize that grant at \$4,999. He personally voted against this as he believed he had a conflict based on his position with the LMCD and the \$30,000 in grant funds that are typically received.

Baasen requested confirmation that the LMCD could lose 80% of their grant funds.

Green confirmed that was correct. He stated the MN DNR budget is going down from an estimated \$700,000 to \$200,000. He continued to report that: 4) Jabbour hosted an AIS meeting at the Lafayette Club to engage the sportsman community in AIS with a goal to hold a summit next year to consider AIS as a whole. Those in attendance included Jeff Forester of MN Lakes and Rivers Advocates, a number of other representatives from sportsman's groups, business industries, associations, a resort owner from Lake Koronis, and the media. He believed the issues of AIS prevention and public access will meet head on with these groups; providing for a need to find a balance, and 5) that he has initiated the process of reviewing the watercraft inspection data from the 2015 season, which will be reported to the Board in the near future.

Jabbour requested Green apply for a Save the Lake Grant to offset the loss of the MN DNR grant funds. He stated that harvesting was originally funded by private contributions and now is included within the levy from the 14 member cities.

Baasen stated, to that point, the Save the Lake Committee has released the application process for the

solicitation of funded projects; confirming the deadline of December 1st.

Nybeck stated that when staff presents the Harvesting and Watercraft Inspection Reports, a review of their respective budgets and expenditures will be offered; providing for the availability of surplus funds for consideration of future use.

Roy stated that five other bays are in the primary stage of creating a Lake Improvement District (LID); similar to the recently created St. Albans Bay LID. He believed this was the only way long-term AIS management funding can happen.

Baasen stated that the Executive Committee met yesterday. At that time, the members: 1) asked Nybeck to review and provide recommended updates to the LMCD By-Laws that have been in effect since 1967, 2) discussed the need to reformat the newsletter for more effective deliverance of communication (possibly incorporating the annual report into the fall edition), and 3) recommended the Board reconsider obtaining LMCD strategic planning facilitator Craig Rapp for his proposed "Effective Governance – Roles and Responsibilities" optional session that was offered in addition to the approved strategic planning proposal. In reference to the latter, Baasen stated Rapp would familiarize the Board with "best practices in governance and effective decision making," reading the full description of the proposed session. He stated the Board originally moved to expend up to \$16,500 for Rapp's services; of which, the Board has currently allocated \$7,500. He estimated the governance session to cost \$2,000 to \$2,500. In closing, he stated the members believed this would be a good time to hold this single day session.

MOTION: Thomas moved, Hughes seconded to engage Craig Rapp for his session on governance.

Zorn asked if a date for this session had been considered and whether there could be a possibility of coordinating Rapp's session with the proposed work of Lynn; second component as offered by her under agenda item 9B above.

VOTE: Motion carried unanimously.

Baasen stated that the Save the Lake Committee is scheduled to meet on November 4th.

11. EXECUTIVE DIRECTOR REPORT

Nybeck reported on the following four items: First, the Strategic Planning Subcommittee met with staff on September 30th, in which three Board members were present. In follow-up to that meeting, staff will be drafting a second initiatives document that would take into consideration further strategic planning, as well as the staff's core activities and programs. The subcommittee will meet one more time prior to forwarding the draft document to the Board at their December 9th meeting. Second, the 2016 Civil and Legal Services Attorney Selection Committee met just prior to this meeting. A decision was made to interview two of the three firms that submitted a proposal. The interviews would take place at 7:30 p.m. on Wednesday, October 28th at Wayzata City Hall. Third, he referenced the following reports that will soon be presented to the Board: LMCD Harvesting and Watercraft Inspection Reports (November 4th) and LMCD Proactive Code Enforcement Report (December 9th). Lastly, he spoke of LMCD seasonal employee Miles Wilson who had worked for the LMCD for three seasons and had recently died.

Baasen added that, in talking with staff, they will truly miss Miles as he was an exceptional young man who carried a positive aura with him in the variety of tasks that he performed for the LMCD.

12. OLD BUSINESS

Jabbour stated that many years ago the Board supported his movement to initiate a law relative to mandatory operator permits. He and Green have reinstated this work in which they have tried to get this matter on both the state and Three Rivers Park District legislative agendas. To this end, the State AIS Committee formally voted to ask the MN DNR to place this matter on their agenda; requiring the Governor to approve this act. He provided the following overview of the proposed program as being discussed today: 1) that it would be self-sustaining and not require government funds, 2) incremental changes to the currently required age limit, 3) a component of AIS education, and 4) strengthen some of the current safety laws, e.g., Boating While Intoxicated. Although the State AIS Committee approved the request to place this on the MN DNR agenda, he and Jay will be presenting the proposed program to the committee (26 state representations) this Thursday. Lastly, he stated Sheriff Stanek had asked the LMCD to accelerate the efforts in cleaning up some of the LMCD Codes. He provided an overview of some of the Codes and how they are outdated. He recommended this matter get scheduled through the Ordinance Review Committee (ORC).

Nybeck stated that he spoke with Maj. Storms on this matter. He suggested a meeting be coordinated that would also include Lt. Vnuk, staff, and interested Board members for an initial review and recommendations of Code changes.

Jabbour believed the Sheriff wanted this matter to go through the ORC; offering the Sheriff's presence, as well. He believed this matter was to be presented to the Board two meetings ago and reiterated the Sheriff will not consider the recommendations unless it goes through the ORC. He restated the need to have the prosecuting attorney present, as well.

Nybeck reminded the Board that when the Chair commented that the LMCD needed to review and update the ordinances, staff was never given the direction to proceed in doing so. He recommended the Board consider this action at this meeting.

MOTION: Jabbour moved, Niccum seconded to immediately direct this matter to the ORC.

MOTION TO AMEND: Hughes moved to amend the motion to include the Public Safety Committee.

Jabbour stated that any and all can attend committee meetings; recommending the LMCD asks Klohs to chair it. He expressed concern for receiving a push back on this matter in which the LMCD has lost in court based on outdated ordinances and the Sheriff's comments that he will not enforce them.

Baasen asked if there was a second to the amended motion.

Shuff seconded the amended motion.

VOTE ON: Ayes (9), Nays (4; Morris, Jewett, Zorn, and Jabbour); motion carried.
MOTION TO AMEND:

VOTE ON: Motion carried unanimously.
ORIGINAL MOTION (AS AMENDED)

Baasen stated, on behalf of the Board, that he fully supports his efforts in working with the legislature on the operator safety laws.

Jabbour thanked Baasen for his comments. He further stated that he has been working on a permanent emergency landing site for use by the Water Patrol. He wanted to thank Morris for persistently recommending a site that could very well be in place by the next boating season. This proposed site is public and would not require land acquisition.

13. NEW BUSINESS

Hoelscher stated that in reviewing a previous Personnel and Executive Committees meeting minutes, she noticed that one of the Board members stated certain constituents had expressed to that particular member great concern about the direction the LMCD was taking. She expressed hope that all of the Board members recognize the Board is the primary spokesperson and that it is part of the Board members' job to alleviate any concerns the constituents bring forward. If that is not possible, she hoped the Board directed those constituents to staff so that the members do not leave constituents out there with concerns; providing a positive perception of what the LMCD is trying to do as the LMCD moves forward.

Zorn recommended the Board initiate the process to establish a nominating committee; recognizing there is one vacancy on the Executive Committee.

Baasen stated the Board members' terms run through January 31st of each year. The nominating committee process is typically initiated in November or December of each year.

Nybeck confirmed this matter could be scheduled for either meeting.

14. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:05 p.m.

Dan Baasen Chair

Gregg Thomas, Vice Chair/Secretary