

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 P.M., Wednesday, January 9, 2013  
Wayzata City Hall

**1. CALL TO ORDER**

Babcock called the meeting to order at 7:05 p.m.

**2. ROLL CALL**

**Members present:** Doug Babcock, Tonka Bay; Dan Baasen, Wayzata; Andrew McDermott, Orono; Jay Green, Mound; Gary Hughes, Spring Park; Anne Hunt, Minnetrista; Keith Kask, Deephaven; Dennis Klohs, Minnetonka Beach; Jeff Morris, Excelsior; Bill Olson, Victoria; Rob Roy, Greenwood; Sue Shuff, Minnetonka; and Mark Sylvester, Shorewood. Also present: Charlie LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician; and Emily Herman, Administrative Assistant.

**Members absent:** Fred Meyer, Woodland.

**3. APPROVAL OF AGENDA**

Babcock stated the Cities of Mound and Greenwood have appointed Jay Green and Rob Roy, respectively, to serve on the LMCD Board of Directors. Therefore, there is a need to amend the agenda to accommodate their Oath of Office (recommending adding agenda item 3A).

**MOTION:** Baasen moved, McDermott seconded to approve the agenda as amended, making the change noted by Babcock above.

**VOTE:** Motion carried unanimously.

**A. Administer Oath of Office**

Babcock asked LeFevere to administer the oath of office to Green and Roy, in which he did. Babcock welcomed both representatives, who were seated as representatives for the City of Mound and Greenwood, respectively.

**4. CHAIR ANNOUNCEMENTS, Chair Babcock**

Babcock made the following two Chair announcements: First, he extended a debt of gratitude to former Board members Steve Johnson and Kelsey Page (representing the Cities of Mound and Greenwood, respectively). Second, he reminded all of the 46<sup>th</sup> Anniversary "Save the Lake" Recognition Banquet scheduled for Thursday, February 21<sup>st</sup> (to be held at the Lafayette Club, with social hour starting at 6:00 p.m.).

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

Green requested the second sentence in bullet point #4 on page 5 (under his personal testimony) be amended to document the statistical information submitted by the MN DNR as 2011 data.

**MOTION:** McDermott moved, Shuff seconded to approve the minutes from the 12/12/12 Regular Board Meeting as amended, making the change noted by Green above.

**VOTE:** Motion carried unanimously.

## 6. APPROVAL OF CONSENT AGENDA

Nybeck stated there was an amended Audit of vouchers (1/1/13–1/15/13) within the handout folders for agenda item 6A. He clarified that check #19585 (South Lake Excelsior Chamber of Commerce) was voided to correct the vendor (South Lake Office Building, LLC- check #19587), in which the amount did not change.

Shuff moved, McDermott seconded to approve the consent agenda as amended, including the amended Audit of vouchers (1/1/13 – 1/15/13). Motion carried unanimously. Item so approved included: **6A**, Audit of vouchers (12/16/12 – 12/31/12) and (1/1/13 – 1/15/13); **6B**, November financial summary and balance sheet; **6C**, 2013 LMCD Meeting Calendar; and **6D**, Approval of Lakeshore Weekly News as official newspaper for LMCD in 2013.

## 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. Public Safety Committee, Discussion of bow-fishing ordinance concept for Lake Minnetonka.

Babcock asked Nybeck for background on this agenda item.

Nybeck directed the Board to his staff memo, dated 1/11/13, in which he made the following comments:

- Bow-fishing is allowed per state law on Lake Minnetonka (subject to local firearm, weapon, and archery ordinances). These local ordinances vary greatly amongst the member cities (with existing jurisdiction water boundary questions). The Public Safety Committee had previously recommended one bow-fishing ordinance for Lake Minnetonka, with the following original recommendations that would be more restrictive:
  - 300' setback from a swimming beach or swimmer;
  - Nighttime restrictions (allowed two hours after sunset and one hour before sunrise); and
  - Nighttime bow-fishing allowed outside of these restrictions (at least 300' from all structures).
- He provided the following overview of the State of Minnesota (state) law regarding bow-fishing:
  - Duration of Season – May 1<sup>st</sup> to the last Sunday in February.
  - Possession of Bows and Arrows – 1) may possess on or within 100' of the waters, 2) subject to local firearm, weapons, and archery ordinances, and 3) provide reasonable measures to retrieve arrows and wounded fish.

- Nighttime Restrictions – 1) noise levels shall not exceed 65 decibels (“A” scale at a distance of 50’) and 2) shall not discharge an arrow when within 150’ of an occupied structure (such as a house) or 300’ from a campsite.
- He provided an overview of discussions held on this matter at the September 26<sup>th</sup> Board Meeting. Discussion included the consideration of two versions of a draft ordinance, as well as comments provided by Mr. Brian Petschl (Minnesota Bow-Fishing Alliance). This was referred back to committee to: 1) investigate whether one ordinance could be attained for Lake Minnetonka, 2) better define the proposed 300’ setback requirement from swimming beaches, 3) assess night-time bow-fishing (in particular light pollution and the proposed 300’ setback from a habitable structure), and 4) consider establishing a bow-fishing map for Lake Minnetonka.
- This matter was subsequently reviewed by the Public Safety Committee on December 10<sup>th</sup>. A summary of the discussion at this meeting was as follows:
  - The committee believed that there is a need for closure on this topic in the near future.
  - A map of Lake Minnetonka (displayed at this meeting), which was prepared by the Three Rivers Park District, has identified jurisdictional lines on land and in the water. In providing this map to the committee, staff communicated to the members that they were comfortable with only the jurisdiction lines on land.
  - Efforts were made by staff, but have been unsuccessful, to establish a bow-fishing map for Lake Minnetonka. In consultation with Board member Hughes and Lt. Art Saunders, staff obtained the City of Orono’s 2012 bow-fishing permit. One condition on this permit prohibits night-time bow-fishing in the City of Orono, which has approximately 30 percent of the shoreline on Lake Minnetonka.
  - Two amended options proposed by the committee, which would allow for closure on this matter, included: 1) to allow bow-fishing during the daytime only (subject to all 14 member cities agreeing to amend their ordinances to support this), and 2) to continue as we currently do utilizing state law (providing for gathering contact information from the cities for public use).
- He encouraged feedback from the Board on the following questions:
  - Does the Board believe there is need for closure on this topic?
  - What feedback does the Board have on the two Public Safety Committee recommendations?
  - What feedback does the Board have on the draft letter to be sent out to the member cities on the two options?
- He entertained questions or comments from the Board.

Babcock asked for comments from the Board.

Hughes stated that he was a member of the Public Safety Committee and Spring Park City Council. In providing regular updates on this matter to the city council (at least three times), he reported that the City of Spring Park has not wavered in their interest to prohibit bow-fishing on Lake Minnetonka all together. He expressed an interest in offering an amendment to the draft letter; adding a third option to prohibit bow-fishing all together on Lake Minnetonka (recommending the Board personally present all options to their respective city). He commented on the City of Minnetonka’s documentation within the draft memo’s attached exhibits. To this end, he would not vote in favor of the submittal of the draft letter as it is currently drafted, as the City of Spring Park recognizes bow and arrows as a weapon under their firearm ordinance. However, he would vote in favor of submitting the draft letter to the member cities if the above

noted third option was added.

Baasen stated that when the Board first considered this concept, interest was expressed in moving towards having the member cities amend their ordinances for consideration of adopting a lake-wide ordinance with set rules (providing for a platform within the draft ordinance for cities that prohibit the sport within their jurisdiction). This concept would provide guidance for public inquiries. He concurred with Hughes that Lake Minnetonka is an urban lake and recommended taking a somewhat restrictive approach (acknowledging that the nighttime restriction of sunrise to sunset was minimal).

Morris stated that he was opposed to the act of banning (prohibiting). He reminded the Board of LeFevere's comment at a previous Board meeting that any ordinance drafted and approved would be more restrictive than state law. He believed that this would directly affect those that bow-fish and did not see any reason, as of yet, to further restrict this sport.

Nybeck stated that one aspect of state law discussed by the committee was the 150' setback from an occupied structure, such as a house, during nighttime bow-fishing. Because most homes on Lake Minnetonka are constructed within 75' to 100' from the shore, most bow-fishing at night already does not comply with state law since there was previous discussion that bow-fishing occurs real close to the shoreline (such as 30').

Morris stated that state law already exists that addresses bow-fishing, as well as a number of ordinances from the various member cities that address weapons, firearms, and archery. Although he believed it would be nice to have a uniform, lake-wide ordinance, he restated his concern that whatever is adopted would be more restrictive than state law.

Shuff stated that although the exhibits provided within the draft letter perceive the City of Minnetonka (City) as being against a lake-wide ordinance, that is not the impression she is receiving from their City staff. She met with the City Manager who asked her to do an informal survey on this matter with lakeshore residents before the City would consider responding to any further communication or proposals, in which she will be completing.

Hughes stated that the City of Spring Park already has an ordinance prohibiting the use of bow and arrows. However, he acknowledged the Hennepin County Sheriff's Water Patrol (Water Patrol) and members of the committee have expressed an interest in a lake-wide ordinance.

Babcock made the following comments: 1) he was doubtful all member cities will be 100% in agreement on this matter, 2) he believed the committee was looking for the Board to provide guidance more than uniformity, 3) he was willing to proceed with some type of ordinance as long as it is reasonable, 4) he concurred with Morris that he does not like the action of banning, 5) he favored further restrictions (i.e., perimeter, usage, lighting, hours, etc.), 6) he was hesitant to put city restrictions into an ordinance (expressing the concern of expending increased enforcement funds for the various jurisdictional ordinances), 7) he believed State law needed to further define "banks" (disposing of fish at specific public landing points, etc.), and 8) that bow-fishing is not compatible for high usage areas (expressing an interest in outlining the areas that are).

McDermott questioned how Babcock's suggestions would differ from what is currently being offered for the sport.

Babcock commented on the need to define the jurisdictional boundaries within the water and dictate the enforcement responsibilities for such (cities with more restrictive ordinances expending the costs for their enforcement vs. a lake-wide ordinance being enforced under LMCD ordinance). He favored producing an informational listing of areas that we know bow-fishermen can comply with state law (as well as providing a listing of areas that they cannot). He recommended sending this matter back to staff and/or the committee for some quick updates.

Hughes stated that he would be willing to make a motion to amend the draft letter to add a third option (prohibit bow-fishing entirely on Lake Minnetonka). He did not believe that sending this matter back to committee would accomplish a great deal because the Public Safety Committee has discussed this topic numerous times. He liked the idea of adding an informational document outlining the high use areas that are not conducive to complying state law (or areas that are).

Babcock recommended the Board provide staff with areas of the Lake that they believed were conducive to bow-fishing and complying with state law.

**MOTION:** Hughes moved to proceed with the draft letter to the member cities, amending it to add a third option to ban bow-fishing from Lake Minnetonka.

Babcock clarified Hughes' motion, which provided for communication to the member cities to:

1. Do nothing and allow state law to prevail.
2. Prohibit bow-fishing entirely on Lake Minnetonka.
3. Come up with another draft of the ordinance (with specific conditions that need to be determined).

Hughes stated the third bullet point noted by Babcock should just be to ban bow-fishing at night. He withdrew the motion so that a new motion could be made after Board discussion. He questioned whether an ordinance should be drafted for each option offered.

Babcock stated an ordinance does not have to be drafted to provide for allowing state law to prevail.

Kask questioned if the above discussions included the option to ban nighttime bow-fishing or is it still on the table to allow it.

Babcock stated that it should remain on the table; however, it should be more restrictive in the footage distance from an occupied structure.

Nybeck stated that when the Public Safety Committee met to discuss this matter, both the Water Patrol and Minnesota Department of Resources (MN DNR) enforcement personnel expressed an interest in having something that is clearer from an enforcement standpoint. Concern was raised at this meeting about enforcing a law or ordinance that involves numerical setback distances.

Babcock questioned if the Board would like to offer a prohibition within an authorized dock use area (DUA); acknowledging this type of action has not historically been considered. He concurred with Nybeck's comment above and offered "any residential or commercial structure," etc. because the term "occupied" is difficult to enforce.

Baasen reiterated the need to not make any new ordinance relatively simple, not too cumbersome.

Roy questioned why the LMCD's draft ordinance could not utilize the use of the words "shoreline" and "footage."

Babcock questioned if it was the consensus of the Board to restrict bow-fishing 150' from all of the Lake's shoreline.

Hunt questioned whether the ordinance should restrict bow-fishing within a DUA since that is where the majority of bow-fishing occurs. She believed that it would be difficult to bow-fish outside of a DUA and acknowledged that there are few areas on the Lake that one can bow-fish during the nighttime and abide by state law.

Babcock stated he believed there was 30% to 40% of the lake that would comply with state law (wetland areas, Big Island, etc.). However, he concurred that there is a large percentage where state law could not be complied with.

Nybeck reminded the Board that the City of Orono already prohibits nighttime bow-fishing.

Babcock believed that the Board will not get anywhere if the LMCD takes into consideration what other cities are doing on this topic. He recommended proposing and considering an ordinance lake-wide since the LMCD will not be able to reconcile the city ordinances.

Morris proposed that the cities enforce their own ordinances. He believed that the LMCD would be doing a disservice to Lake Minnetonka stakeholders if we adopt concepts that are currently considered via other municipal ordinances (and not enforced by such).

Nybeck re-stated that one of the two options recommended by the committee is to keep operating as they are now (subject to state law and local ordinances). He acknowledged that enforcement of municipal ordinances is their responsibility (not the MN DNR or Water Patrol). Additionally, the draft letter documents the importance of communicating to the LMCD staff contact information for each member city so that the public can properly be referred for education of their ordinances. He re-stated the committee's recommendation to keep working towards closure on this matter.

Morris stated he believed the LMCD could always step in when there is a significant concern with a member city enforcing their ordinance.

Hughes reiterated his preference of submitting the draft letter to the member cities, with his recommended

change to add a third option (a total prohibition of bow-fishing on Lake Minnetonka).

Sylvester stated that if state law (only) prevails, he recommended providing restricted areas that are known for not being able to meet state law.

Shuff asked what the catalyst was for originally bringing forward the discussion on bow-fishing.

Nybeck stated that the catalyst was to provide clearer feedback to the public on where, and where not, they can bow-fish on Lake Minnetonka. Additionally, this clearer feedback would benefit lakeshore property owners (noting that complaints on this sport are brought to the attention of the LMCD and the Water Patrol).

Babcock stated that in consideration of a third option for a new ordinance, with specific conditions to be determined, he offered the following comments: 1) to continue the sunset to sunrise prohibition, 2) to add some restricted areas based on recreational use patterns, and 3) to make the LMCD's ordinance subject to local ordinances (similar to state law). He questioned if the Board had any further amendments to be added, in which none were noted. Babcock stated that he would like to see the Board provide staff recreational areas to be included with this option, as well as a listing of cities that have more restrictive ordinances (not what their ordinances state).

McDermott recommended firming up the cities responses so that multiple representatives within the same city provide a consistent response.

Hunt recommended adding recreational areas where bow-fishing was encouraged (acknowledging the City of Minnetrista would welcome bow-fishing on parts of Halstead Bay where residents do not reside).

Babcock stated that staff could obtain, from the member cities, information on areas they would prefer this activity occur, or not occur. He suggested a motion to prepare a letter to the member cities outlining the following three options: 1) that no ordinance be drafted and abide by State law, 2) draft an ordinance prohibiting bow-fishing entirely on Lake Minnetonka (at all times), and 3) draft an ordinance with the modifications discussed at this meeting. Once the letter and ordinances are drafted, the Board can consider moving this communication forward to the member cities.

**MOTION:** Hughes moved, Hunt seconded to proceed as outlined by Babcock above.

Baasen recommended the memo to the member cities provide for a copy of State law.

**VOTE:** Ayes (12), Nays (1, Morris); motion carried.

**B. MN DNR, Discussion of 2013 Watercraft Inspections Grant Application Administered by Local Governmental Units.**

Babcock asked Nybeck for background on this agenda item.

Nybeck directed the Board to his staff memo, dated 1/3/13, in which he made the following comments:

- \$125,000 has been budgeted for aquatic invasive species (AIS) management and prevention projects in 2013 (\$95,000 for harvesting and \$30,000 for unspecified projects). Possible unspecified projects include watercraft inspections, herbicide treatments, and biological (weevil) research.
- He directed the Board to the 2012 LMCD Watercraft Inspection Program Summary Report. Within the report, he acknowledged that staff recommended continuation of the program in 2013. However, he believed the Board needed to consider the LMCD's future role in the management of the program, as well as the LMCD's role in funding watercraft inspections.
- He provided a thorough overview of the following two options for the Board to consider: 1) to continue to take the lead (project management) for a similar program as provided in recent years, or 2) to allow another public agency, such as the Minnehaha Creek Watershed District (MCWD), to take the lead (project management). In considering the second option, he reminded the Board of their original goal in the establishment of the watercraft inspection program, which was to prevent the introduction of zebra mussels. Additionally, this option would not preclude the LMCD from providing grant funds to another public agency.
- The Minnesota Department of Natural Resources (MN DNR) has solicited 2013 Watercraft Inspection Grants to Local Government Units applications (including Delegation Agreement) by January 18<sup>th</sup>. He directed the Board to the respective application and agreement within their packet. He recommended the following: 1) that the Board direct staff to submit both documents by January 18<sup>th</sup>, as it can always be withdrawn without penalty and 2) that the Board begin its decision-making process on how to expend the \$30,000 line-item for unspecified AIS management and prevention projects.
- He entertained questions and comments from the Board.

The Board asked a few questions and made comments as highlighted below:

- Nybeck provided clarification of the proposed plan for 2013, which included what agency would be performing the watercraft inspections at the respective public accesses. He stated that there is a need to focus on watercraft inspections during peak days and times (biggest bang for the buck). He confirmed that inspections would be for both in and out-going watercraft.
- Green expressed concern about the lack of MN DNR inspector presence at the tail end of this past boating season. Nybeck stated that if the LMCD proceeds as project manager for watercraft inspections in 2013, he will coordinate a meeting with the MN DNR to address this concern (welcoming Green, or anyone else's, participation).
- Babcock stated that he attended a MCWD AIS Planning Committee meeting this date. In addressing this topic, the MCWD expressed interest in hearing the LMCD's discussion on this matter prior to offering input on their involvement in watercraft inspections. He believed the Board should proceed in directing staff to submit the 2013 MN DNR Grant Application, in which he reviewed the 2012 funding partners for this project. Additionally, he believed future discussion on the expenditure of the \$30,000 line-item noted above was warranted; however, no action on this matter was needed at this meeting. He asked Nybeck how many public access inspection hours were documented in 2011 (believing the hours doubled in 2012). With that said, he thought that would be a good measurement as to how many hours the LMCD might consider funding for the 2013 boating season.

- Nybeck stated he would have to obtain those figures and report back (acknowledging that some of the hours reported in 2012 were inflated due to MN DNR travel time and multiple inspectors being assigned when the Level 2 inspections were conducted).
- Olson stated that he recognized the historical goal of the watercraft inspection program was to prevent the introduction of zebra mussels into Lake Minnetonka. However, he acknowledged that there are more AIS threats to Lake Minnetonka. The MCWD's 2013 AIS Stop Gap Plan is based on matching funds. Therefore, he recommended that the Board not focus on the MCWD's funding level in 2012 (\$7,500) and move forward with a program for 2013 with a more aggressive grant request from the MCWD. He anticipated a 2014 Stop Gap Plan for the entire watershed district (questioning whether the MCWD would run or fund the inspection program at that time).
- Hughes questioned if there would be some value in separating the Level 1 and 2 inspectors at the public accesses.
- Baasen recommended staff be directed to submit the MN DNR Grant by the January 18<sup>th</sup> deadline to secure their funding, as well as determining the deadline from the MCWD to secure their matching funds; leaving the \$30,000 (as noted above) in place as that may play a part in increasing the matching fund amount.

**MOTION:** Baasen moved, Hunt seconded to direct staff to: 1) submit the 2013 MN DNR Watercraft Inspection Grants to Local Government Units application and 2) confirm the MCWD's process (including deadline) for the submittal of a matching funds request.

**VOTE:** Motion carried unanimously.

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

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

Olson stated that the contributions to Save the Lake are doing well; acknowledging that if we put the last seven days of contributions into a specific timeframe, we would have exceeded all past years. The LMCD has more than doubled in contributions from 2011-2012 (providing for support from family foundations and organizations). He expressed a debt of gratitude to those that support the Save the Lake Fund. He stated that some contributors have expressed their interest in expending fewer funds on equipment and hardware and more on the ecology aspect of the Lake (which was duly noted). He reminded the Board that solicitation of grant proposals are on hold at this time to focus our attention on the safety education training campaign.

There were no other committee reports.

#### 11. EXECUTIVE DIRECTOR REPORT

Nybeck made three comments: First, he attended (as well as Green) the 2013 MN DNR Roundtable Session on January 4<sup>th</sup> and 5<sup>th</sup>. He believed that a lot of good information was provided. Second, he stated that he personally was not chosen to serve on a 2013-2015 MN DNR AIS Advisory Committee; however, Green was (representing not only Anglers for Habitat but now also the LMCD). He reviewed the 15 member committee

selection, in which both Gabriel Jabbour (Tonka Bay Marina) and John Barten (Three Rivers Park District) would also be serving on (a 20% local representation). Third, staff will be conducting de-icing inspections this Thursday and Friday. He asked all members to contact the LMCD should they see any concerns on the Lake.

LeFevere stated that the MN DNR Delegation Agreement was not approved in considering the motion for agenda item 9B. He recommended a motion to that affect.

**MOTION:** Morris moved, Hughes seconded to approve the MN DNR Delegation Agreement for Aquatic Invasive Species Prevention Inspection of Water-Related Equipment.

**VOTE:** Motion carried unanimously.

## 12. EXECUTIVE SESSION- Performance Evaluation of Executive Director

Babcock asked LeFevere to provide the proper verbiage in going into Executive Session for the purpose of conducting an evaluation for the Executive Director.

LeFevere stated that the Open Meeting law provides an exception for the Board to close a meeting for the purpose of personnel evaluations or personnel subject to its control, which includes the Executive Director. It is the Board's choice as to whether to go into executive session. If the Board chooses to, a summary of the results of that personnel evaluation must be provided at the following Board meeting.

**MOTION:** McDermott moved, Hughes seconded to: 1) go into executive session at 8:10 p.m. (providing for a brief recess prior) to discuss the Executive Director's personnel evaluation, as allowed by Open Meeting law and 2) to adjourn the meeting upon completion of the executive session.

**VOTE:** Motion carried unanimously.

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Doug Babcock, Chair

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Andrew McDermott, Secretary