

**LAKE MINNETONKA CONSERVATION DISTRICT  
BOARD OF DIRECTORS**

7:00 PM, Wednesday, November 9, 2005  
Wayzata City Hall

**CALL TO ORDER**

Skramstad called the meeting to order at 7:06 p.m.

**ROLL CALL**

**Members present:** Tom Skramstad, Shorewood; John Berns, Wayzata; Steve Johnson, Mound; Michael Maloney, Excelsior; Pete Nelson, Victoria; Tom Scanlon, Spring Park. Also present: Charles LeFevere, LMCD Counsel; Greg Nybeck, Executive Director; Judd Harper, Administrative Technician.

**Members absent:** Doug Babcock, Tonka Bay; David Gross, Deephaven; Paul Knudsen, Minnetrista; Andrew McDermott, Orono; Tom Seuntjens, Minnetonka Beach; Herb Suerth, Woodland; Katy Van Hercke, Minnetonka; Cree Zischke, Greenwood.

Skramstad stated that there would not be a formal meeting because a quorum of the Board was not present. Although no formal decisions or action would be taken by the Board because of a lack of a quorum, he recommended that there will be a meeting that includes discussion. He asked LeFevere to clarify the proceedings for the record.

LeFevere stated that there was a need to take into consideration the LMCD's by-laws, Roberts Rules of Order, and the Open Meeting Law. The LMCD by-laws prohibit the Board from conducting business when a quorum is not present. Essentially, the Board could convene the meeting and adjourn the meeting due to the lack of a quorum. Roberts Rules of Order would prohibit the Board from taking action as an official body. However, this would not prevent having a meeting of a group of people as long as there is compliance with the Open Meeting Law. He did not believe that complying with the Open Meeting Law would be a problem because a Meeting Report would be prepared highlighting the discussion, the meeting would take place on a scheduled meeting date, and the press was in attendance.

**ADJOURNMENT**

**MOTION:** Nelson moved, Scanlon seconded to adjourn the 11/9/05 Regular LMCD Board of Directors Meeting at 7:10 p.m. due to the lack of a quorum.

**VOTE:** Motion carried unanimously.

Tom Skramstad, Chair

Greg Nybeck, Executive Director

### Agenda Items Discussed

Six agenda items were informally discussed by those Board members in attendance. These agenda items, with a brief summary of the discussion, are detailed below:

**1. CHAIR ANNOUNCEMENTS, Chair Skramstad.**

Skramstad made two Chair announcements. First, the annual meeting with the Hennepin County Sheriff's Water Patrol was scheduled at the Water Patrol office in Spring Park on Tuesday, November 15th, at 7:30 a.m. Second, the 11/23/05 LMCD Regular Board Meeting was cancelled due to the Thanksgiving Holiday.

**2. Update from LMCD Board member Pete Nelson on proposed 2006 Milfoil Demonstration Project.**

Skramstad asked Nelson for an update on this project.

Nelson stated that LMCD, in partnership with a number of other organizations, was exploring a chemical treatment demonstration project in 2006 to investigate whether this should supplement the LMCD's mechanical harvesting program in the future. He provided an overview of the key elements of the proposed project through a powerpoint presentation. These elements included: 1) objectives, 2) process steps, 3) organizational responsibilities, 4) key individuals, 5) key decisions, 6) proposed treatment plan, 7) project schedule, and 8) a list of possible commercial applicators to send out a Request for Proposal for sealed bids. He envisioned two related activities at the 12/14/05 Regular Board Meeting. These activities would include: 1) a public meeting to further explain the program and get public input, and 2) Board consideration to decide whether to continue with the project, which would include a joint press release and the submittal of a permit application to the MN DNR.

**3. Update on culverts being considered under Smithtown Road between Smithtown Bay and Lake Virginia.**

Skramstad asked LeFevere or Nybeck for an update on this project.

LeFevere stated that one of the potential impacts of the proposed project is that it could increase navigation between Lake Minnetonka and Lake Virginia. Both the Board and the public should keep in mind a number of things. First, this is not a LMCD project. There are other agencies that will decide whether to construct this project and decide what it will look like. Second, the LMCD is not a permitting agency for this project. Third, the project is likely outside of Lake Minnetonka and the jurisdictional boundaries of the LMCD. He suggested that it might be beneficial for the Board to: 1) have the project explained further by those organizations that are more familiar with it, including the series of options, and 2) get feedback from these organizations and other parties on the potential impacts to Lake Minnetonka. The Board could decide: 1) whether to gather additional information, 2) whether to study the project further, 3) whether to take a position on the proposed options, and 4) whether to provide input as an interested party to the governmental agencies that have permitting authority.

Nybeck stated that the Board directed staff in October to schedule an agenda item at this meeting to invite governmental agencies that are more familiar with the project to provide background. Bill Cook from the Met Council will provide some background on the overall project; Eric Zweber and Mayor Jerry Bohn from the City of Victoria will provide some background for the city; and Julie Ekman from the MN DNR will provide some background of how they view this project from a permitting standpoint. He provided the Board background of the proposed project area through a series of photos.

Mr. Bill Cook, Engineering Planning Manager for the Met Council, stated that there have been a number of projects explored to expand the capacity of sanitary sewer service. This service is provided for 103 communities in the Twin Cities metropolitan area. He provided an overview of a powerpoint presentation that highlighted improvements for the Victoria and St. Bonifacius area. Highlights of his presentation included:

- A schematic of the existing facilities. This includes 12.5 miles of pipelines, with five pumping stations. It currently serves about 30,000 people and it estimated that it would need to provide service for 50,000 people in this area by 2030.
- Design concepts being considered. Two pump stations at Baycliffe and Shutz Lake could be eliminated by the construction of deep tunnels. Elimination of pumping stations by deep tunnels would increase reliability (no moving parts), increase flexibility (volume allows short-term maintenance without loss of service), and reduce costs (less frequent and lower level maintenance requirements).
- He provided an overview of the existing Smithtown Road culvert. The existing sewer pipe goes over the top of the existing culvert and is a turbulent set-up, which periodically results in a release of sewer odors. The proposed sewer pipe cannot go under the existing culvert so there is a need to raise the existing culvert by approximately two and a half feet to allow this to occur. This would allow for the installation of two 36" wide pipes.
- The Met Council originally proposed one replacement alternative that would replace the existing culvert with an equivalent hydrological structure. This would have involved two, four foot by 10 foot culverts laid on their sides, with grates on the end to deal with safety concerns. It was later discovered that this alternative would not be permitted by the MN DNR because of historical evidence of navigation between the two lakes through the existing culvert.
- Three other alternatives have been established based on comments received from two public meetings and staff from the MN DNR, the MCWD, and the City of Victoria. Option B, which consists of two culverts, is similar to the original culvert except that the crown of the culvert is above the 100 year flood elevation. Option C, which consists of three culverts, would make historical canoe and kayak access a little bit safer with an increased clearance for width and height above the water level. Option D, which would consist of two culverts, was requested by some members of the public. This option would require raising the culvert a couple of additional inches compared to Options B and C because of the thickness of the wall. He stated that the Met Council has explored these options to assist the City of Victoria in making a decision.
- He reviewed the permit process to replace the existing culvert. The City of Victoria owns the existing culvert and has authorized the mayor to submit an application with the MCWD for Options B, C, and D. The MCWD will review the application and issue or deny the permit, with possible revisions to the application based on comments received by the MCWD. An application will need to be submitted with the MN DNR for Option D. The Victoria City Council would then chose between options that can be permitted by the MCWD and/or the MN DNR.
- He reviewed the timeline to replace the Smithtown Road project. The intent is to replace the existing culvert first prior to finalizing the paving of Smithtown Road. He envisioned this taking place in 2006 or 2007.
- He entertained questions or comments from the Board.

A number of questions were raised that Cook addressed. Some of these questions included:

- Was one of the options to leave the culvert the way it is?
- Who has the final say on this project?
- Who would pay for this project?
- Whether there would be less navigation in the proposed culvert options?

- Why Option D with the significantly larger culvert was proposed?
- Who would maintain the channel leading to Smithtown Bay?
- Whether the existing wall near the culvert would be fixed when the replacement culvert is installed?
- How to deal with increased snowmobile traffic through Options C, D, or any other option?

Mr. Eric Zweber, Victoria City Planner, stated that he believed Cook gave an accurate overview of the status of the project. The City of Victoria is seeking feedback from the MCWD and the MN DNR on which options they would permit prior to further researching the questions listed above.

Skramstad asked if the City of Victoria was under time constraints to making a decision on this project?

Zweber stated that there are time constraints; however, they are somewhat long-term because the reconstruction for Smithtown Road is planned for 2007. Feedback on this project would be beneficial within the next six months, preferably sooner. He stated that the applications have been prepared but not submitted by the City of Victoria to the MCWD and the MN DNR for Options B, C, and D.

Berns stated that a number of public safety concerns have been raised, both during the winter and summer, in the area of this project. He asked Zweber if he would like to comment on any of these concerns?

Zweber stated that the City of Victoria, both staff and city council, have expressed some of the same safety concerns. These safety concerns were what predicated the first option that the MN DNR does not support. All of the concerns raised are valid and would likely need to be addressed by the City of Victoria in the near future.

Mayor Jerry Bohn stated that the Victoria City Council has agreed to investigate all of the options because of the huge interest from residents. Increased access from Lake Virginia to Lake Minnetonka has been requested in the past and this is an opportunity to determine whether this is actually an option. He realized that Option D was the most problematic and there would be a number of issues for the City of Victoria to address. He stated that the City of Victoria would like to hear from the Board because the LMCD would have jurisdiction possibly all the way up to the culvert. One issue for Victoria to address, which could be challenged, is the granting of riparian rights from one lake to another lake. He envisioned funding by the City of Victoria above the cost of replacing the existing culvert would be problematic.

Nelson stated that there were a number of conditions in the original permit that was approved in 1979 that allowed for the dredging of the channel area leading up to the culvert from Smithtown Bay. One of these conditions restricted the number of boats that could be stored on the lakeward side of Smithtown Bay in exchange for the dredging of the channel area. He suggested that this might need to be readdressed if access through the culvert is increased and it is determined that docking and boat storage at properties along the channel area are creating an impediment to navigation, especially if the LMCD has jurisdiction in this area. Another concern is that this area is a major fishing area.

Berns stated that in addition to public safety and jurisdictional concerns in this area, he believed that there was a need for the City of Victoria to address the infestation of other invasive species, with an emphasis on zebra mussels, at the public access on Lake Virginia.

Julie Ekman stated that she was the Area Hydrologist for the MN DNR. Although the MN DNR has issued a General Permit to the MCWD to issue permits for the MN DNR on these types of projects, the MN DNR

reserves the right to require a separate permit at any time. For this proposed project, she believed that Options B and C could be permitted through the General Permit; however, the MN DNR would likely exercise its authority for a separate permit for Option D because of the potential larger impacts to the environment and to all interest parties, including the LMCD.

Nelson stated that he would like to have MN DNR fisheries involved in the permitting process.

Ekman stated that MN DNR fisheries was involved in the internal permitting process. Currently, the existing culvert acts more as an equalizing pipe between the two lakes. She stated that the MN DNR does not have an issue with the raising of the bottom of the culvert closer to the ordinary high water mark because the bottom of the existing culvert is quite low. Feedback from MN DNR fisheries staff at this time was that they were not overly concerned with the proposed change to the existing culvert because winter kill caused by fluctuating lake levels is not uncommon.

Nelson stated that he believed there was a need to investigate why the lake levels between Lake Virginia and Lake Minnetonka fluctuate by six to 12 inches, especially if the existing culvert serves as an equalizing pipe.

Skramstad thanked the representatives from the Met Council, the City of Victoria, and the MN DNR providing further background on this proposed project. He believed that the LMCD should provide the permitting agencies comments on behalf of the LMCD; however, this should be discussed at a meeting when there is a quorum of the Board. The next Board meeting is scheduled for December 14th and he stated that he would schedule it for that meeting, unless the Board members in attendance objected. There were no objections.

#### **4. Discussion of possible changes to LMCD Code for activities occurring on Lake Minnetonka during the winter months.**

Skramstad asked Nybeck for an update on this project.

Nybeck stated that two documents were included in the packet for review and consideration by the Board. First, a draft ordinance amendment was included to simplify and update winter rules on Lake Minnetonka. Second, a draft Request for Quotes (RFQ) was included to update winter access signage on Lake Minnetonka, which assumed that the new winter rules would be adopted by the Board at this meeting. To keep the new winter public access signage project moving forward, he recommended sending out the draft RFQ out in the near future and bringing back both the draft ordinance amendment and quotes received at the December 14th Board Meeting.

The Board discussed this and the Board agreed with the recommendation made by Nybeck.

#### **5. Update on nominating committee for 2006 LMCD Board Officers.**

Skramstad stated that Maloney, Nelson, and Scanlon have previously agreed to serve on the nominating committee for 2006 LMCD Board Officers. Nelson has recently communicated to him that he would be unable to serve on the nominating committee. Maloney and Scanlon have agreed to continue serve on this task.

Berns stated that he would be able to assist Maloney and Scanlon on this task.

Skramstad stated that Maloney and Scanlon should use their discretion on whether they need assistance from Berns.

**6. Appointments for 2006.**

Berns stated that he would like to have a brief report on contractual appointments for 2006, with an emphasis on the LMCD's Prosecuting Attorney.

The Board discussed this and the consensus was for Nybeck to invite Steve Tallen to provide a brief report at the 12/14/05 Regular LMCD Board Meeting.