

**MINUTES OF THE REGULAR MEETING OF  
THE MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**April 20, 2006**

**CALL TO ORDER**

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order by Manager James Calkins at 7:00 p.m. in Victoria City Hall, Victoria, Minnesota 55386.

**MANAGERS PRESENT**

James Calkins, Pamela Blixt, Richard Miller, Lee Keeley, Lance Fisher, Jeff Casale.

**MANAGERS ABSENT**

Ethel Smith.

**ALSO PRESENT**

Eric Evenson, District Administrator; Renae Clark, District Project Manager; James Wisker, District Permitting Officer; Michael Panzer, District Consulting Engineer; Chuck Holtman, District Counsel.

**MATTERS FROM THE FLOOR**

None.

**APPROVAL OF AGENDA**

*It was moved by Manager Fisher, seconded by Manager Keeley, to approve the agenda. Upon vote, the motion carried 4-0.*

**CONSENT AGENDA**

*It was moved by Manager Keeley, seconded by Manager Calkins to approve the consent agenda except for the checking register consisting of the petty cash and surety registers and the purchase of a weather station from Campbell Scientific for water quality monitoring and lake modeling. Upon vote, the motion carried 4-0.*

Managers Blixt and Miller arrived.

**REGULAR AGENDA**

Permit 06-089, Frank Dunbar, Erosion Control, Stormwater Management (St. Louis Park)

Mr. Wisker reviewed the staff report for the project, which involves the demolition of existing structures and construction of about 379 multi-family units and 25,000 square feet of retail space and parking on 11 acres at 38<sup>th</sup> Street and Webster Avenue, St. Louis Park. The applicant has provided for measures to meet the District's erosion control requirements and stormwater requirements for rate control, water quality and inclusion of best management practices. Mr. Wisker noted that a stormwater pond will not be completed until 2007 due to site phasing constraints but that the pond will meet future development needs of upstream development. Mr. Wisker advised that the fourth condition of the recommendation requiring an amendment of the plans has been met, so that the staff recommendation is limited to proposed conditions 1, 2, 3 and 5.

Manager Fisher asked whether further development would occur at the site. Mr. Wisker replied that this proposed development and the permit request encompass four phases that to his understanding would fully develop the property. Responding to Manager Keeley, Mr. Wisker affirmed that the application does include permanent stabilization plans with appropriate seed mixes. Manager Calkins asked what the change in impervious surface would be. Mr. Wisker directed the board to the plan sheet in the packet of materials showing that presently there are 7.46 acres of impervious surface and that after redevelopment this would increase to 7.84 acres.

***It was moved by Manager Miller, seconded by Manager Fisher to approve the permit in accordance with staff recommendations. Upon vote, the motion carried.***

Permit 05-419, Virginia Shores, Erosion Control, Stormwater Management (Shorewood)

Mr. Wisker presented the staff report for the project, which would involve construction of 13 single-family house lots on a 16.5-acre site across from 27964 and 27990 Smithtown Road in the City of Shorewood. The development site comprises a southern parcel owned by Virginia Shores Riding Trust and a northern parcel owned by Thomas Wartman that was used as a dump site in the 1930's and 1940's and is now being remediated under oversight of the Minnesota Pollution Control Agency. The site is extensively wooded and individual lots will be custom graded to limit tree loss and other disturbance. Wetland impacts will be avoided and a 35-foot wetland buffer will be provided around the Type 3 shallow marsh in accordance with District Rule D.

Manager Fisher asked whether both present land owners have joined in the application. Mr. Wisker replied that the northern site impacts only require an erosion control permit, which was issued under District permit 05-578 to Mr. Wartman. The present application

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applies only to work on the southern parcel. After the permit is issued, both parcels will be conveyed to the developer, who then will seek a transfer of both permits.

Mr. Panzer asked as to the status of the contamination and the PCA's assessment of the use of infiltration on the site. Terry Pernsteiner, the developer, addressed the board. He stated that the site disturbance for development will largely avoid the area delineated and possibly contaminated, which lies largely on the northern parcel. He said that some residual contamination will be capped and subject to a deed restriction, and that the PCA is very comfortable with the development plan. Mr. Holtman advised the Board that in similar past situations, the District has included a condition requiring written PCA confirmation that the proposed site development and stormwater management plans are acceptable to the PCA.

Don Dyer addressed the board. He said that he lives across the lake and owns 30 riparian acres. He stated that the land in question was a pig farm for 40 years and is concerned that the contamination is still there. He questioned whether a 35-foot buffer is sufficient. He also indicated a concern about increased runoff but that District staff has addressed that.

Mr. Pernsteiner referred to a 250- to 300-page report that had been prepared with many soil borings, showing sandy soils and a limited number of hot spots caused by the previous dumping.

***It was moved by Manager Fisher, seconded by Manager Keeley to approve the permit in accordance with staff recommendations in addition to a condition as recommended by counsel requiring written PCA confirmation that the development and stormwater management plans are acceptable. Upon vote, the motion carried.***

Permit 05-546, City of Victoria, Erosion Control, Floodplain Alteration, Shoreline Improvement, Water Body Crossing (Victoria)

Ms. Clark reviewed the three permit applications submitted by the City of Victoria to replace the present culvert under Smithtown Road. This culvert provides for water flow from Lake Victoria through a channel to Lake Minnetonka. The culvert replacement is necessitated by a Metropolitan Council Environmental Services project to replace an existing pump-driven sanitary sewer line and pump station with a gravity line running under the channel at Smithtown Road. The three proposals, denoted as Options A, B, and C, consist, respectively, of a 14-foot by 14-foot box culvert along with a 4-foot by 8-foot box culvert; two 10-foot by 5-foot box culverts; and two 4-foot by 8-foot box culverts with a third, 5-foot by 8-foot box culvert on end in the middle. Ms. Clark stated that the District has received a number of public comments, many of which it has summarized and posted with responses on the District web site, and that all written comments received have been included in the packet provided to each board member.

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Ms. Clark presented slides showing the results of staff's analysis and the basis for its recommendation that the board approve the application proposing Option B and deny the other two applications. Staff concludes that Option B is the "minimal impact" alternative under Rule G because it will avoid creating boat traffic and will accommodate a wildlife crossing suited to the terrestrial species in the area. With respect to water quality, Lake Virginia is a shallow lake with the majority of its area less than 10 feet in depth. Studies cited in the staff materials have concluded that boating activity in waters less than 10 feet in depth will have water quality impacts resulting from suspension of sediments and addition of nutrients to the water column, which among other things affect fish spawning and rearing.

Manager Calkins opened discussion. He advised that many written comments had been submitted and that these would be entered into the record of the permit action. He noted that representatives from the City, MCES, and the County Sheriff's Office were present. Mr. Evenson added that a Lake Minnetonka Conservation District representative also is here. He noted that the LMCD and the Minnesota Department of Natural Resources have commented. Ms. Clark corrected statement number two in the Rule G report to note that the sediment depth is not 1.6 feet, but 2 feet.

Manager Fisher asked how stormwater runoff from Smithtown Road at the crossing would be managed. Bill Cook, MCES Engineering Planning Manager, stated that Option B and Option C are designed to allow City storm sewer facilities to pass over the culvert. Eric Zweber, City Planner, stated that when the City reconstructs the road in 2007 it will evaluate its options. He noted that the Option B design specifically allows the City to be flexible in its storm sewer options, whereas option A would constrain options.

Manager Blixt asked as to the wildlife crossing design. Ms. Clark replied that Option B is the only option providing a feasible wildlife crossing, which would be a 1-foot by 1-foot concrete shelf along each side of the culvert above the ordinary water level. She informed the board that a short concrete ledge will lead to the shelf, which will accommodate the species native to the site as identified by the applicant.

Greg Lang, a Lake Virginia homeowner, stated that he spoke with a Bonestroo engineer who is working on this project, and who said there are ways to set the culvert at a lower bottom elevation using arch sewer pipe and a culvert without a concrete bottom. He understood that together these would provide an additional 1.5 feet of water depth and would perhaps be less costly as a second box culvert could be eliminated. He also advocated that the Board authorize the larger culvert to allow for boat passage and reduce the safety risk for people who may fall into the water and be carried into the culvert. He also suggested that deer, fox and coyote were present in the area and would be able to use a larger culvert for passage. He presented a petition signed by 80 Lake Virginia residents favoring the larger culvert option.

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Bill Cook stated that the MCES looked at using arch sewer pipe to lower the effective culvert bottom elevation, but that this pipe is designed for storm sewer use and is not structurally favorable for sanitary sewer. The MCES has identified a thin-walled pipe fabricated from specialized materials that can reduce the culvert bottom elevation by about 6 inches. The MCES is continuing to explore design options, but must be very careful that the sewer line is permanent so that there is not a breach of the pipe into the lake nor a need for future disruptions related to replacement. He noted that a three-sided culvert will not work because of the need to protect the underlying sanitary pipe from impact.

Kevin Arnal appeared and made a presentation with slides advocating for Option B to maintain the status quo. He noted that if the culvert were enlarged to allow navigation, the Lake Virginia boat launch would be the southernmost point of access to Lake Minnetonka and therefore would be highly used.

Tom Colfert, a Lake Virginia resident, stated that his first concern is to reduce potential for a sewage discharge into the lake. He believes that Option A improves navigational capacity and stated that the water quality studies reviewed by Asplund in the material cited by Mr. Arnal do not apply because fish do not spawn in the culvert.

Gene O'Brien, a homeowner on Lake Virginia adjoining Minnewashta Creek, asked that the board delay action so that City residents can work for a positive change with the City. He stated that the City process has been externally driven and very fast.

Responding to Manager Fisher's question, Mr. Holtman noted that under state law, the District must either grant or deny the City's permits by May 5, 2006, unless the City agrees to an extension.

Dara Gault, a Lake Virginia homeowner, stated that the channel was dredged in 1979 from Lake Minnetonka to Smithtown Road. He noted that a 1957 aerial photo in the District's possession shows the existence of a stream but not a channel.

Mr. Dyer stated that he is 74 and to his knowledge in his lifetime there always has been a stream providing an outlet from Lake Virginia to Lake Minnetonka.

Mr. O'Brien stated that Lake Minnewashta is 9.5 feet higher than Lake Virginia and that the creek connecting the two lakes currently is flowing 2.5 feet deep. He also noted that the Smithtown Road outlet is the only Lake Virginia outlet.

Mr. Gault suggested that with respect to Lake Virginia water quality, facilitating navigation between the lakes would reduce boat traffic in Lake Virginia because most Lake Virginia homeowners would boat in Lake Minnetonka. He also suggested that

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sewage spills have contributed most substantially to the water quality issues in Lake Virginia. He echoed Mr. O'Brien's suggestion that a broad involvement of residents and interested governmental bodies could produce an outcome with wider public benefits. For example, he summarized his analysis estimating that the larger culvert would increase tax benefits to the City and County by about \$100,000 per year. He also noted that raising the bottom of the existing culvert would risk impeding fish passage.

Tom Sheehan, a homeowner on the channel, observed that the channel was created in the 1970's by the Smithtown Bay Association, but that the retaining wall on the association side of the channel was not built to accommodate the impacts of boat traffic. He expressed as his greatest concern that opening the culvert would allow for winter snowmobile passage in an area that is subject to thin ice and open water. He presented several photographs supporting his concern.

Kevin Siefering, a Lake Virginia resident, stated that flows through the culvert during high rains and snow melt can be very high and that it is this velocity causing the erosion on the Lake Virginia shoreline. He suggested that a wider and deeper culvert would reduce flow velocities and therefore bank erosion. He also noted that muskies and walleyes spawn in the creek flowing from Lake Minnewashta to Lake Virginia and that these species do not live in Lake Virginia, but come from Lake Minnetonka. He further observed that Lake Virginia has winter fish kills so that maintaining the passage from Lake Minnetonka is very important to allowing the recovery of the fish population in Lake Virginia. His biggest concern is that all three proposals would raise the culvert bottom.

Pete Nelson, a twenty-year resident on Lake Virginia, urged the board to approve Option B. He also urged the Board to require that the storm sewer pass over the culvert and that the stormwater be properly treated. According to Mr. Nelson, Lake Virginia is a tremendous fishing spot and he does not want that injured by increased boating and water quality impacts. He suggested that there would be an annual cost of \$60,000 to \$70,000 for boating enforcement on Lake Virginia if navigation is opened up. He suggested that the lake then would function essentially as a "bay" of Lake Minnetonka, but would be unregulated because there would be no LMCD or Hennepin County oversight.

Mr. Dyer suggested that the future will bring development and increased hard surface in the Lake Virginia drainage area and that the culvert will need to accommodate the resulting flowage. He also expressed the desire that the parties step back and carefully arrive at the best solution.

Mr. O'Brien stated that his business is fabrication and that he would provide at no cost an aluminum cover for the sanitary sewer line. He also stated that as an example of the urgency to deal carefully with these issues, he and his neighbors own an area of property and have been approached by developers for what would result in a substantial increase

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in the number of lakeshore homes. He urged all the parties to go “outside the box” to come to the best solution for the future of the lake.

Randy Hertjes stated that to him, the “minimal impact” criterion of the District’s rule is key and that maintaining the status quo would be the minimal impact approach.

Gayle Beckman stated that the area in question has very much been affected by human activity over the years and that decisions need to be made that are best for the resource.

Richard McConnell, a homeowner on the channel, stated that enhancing navigation would greatly affect properties on the channel and the neighborhood itself.

Mr. Arnal offered his view that the process has not been overly accelerated. He noted that the process before the District began in October 2005 and that District staff has thoroughly reviewed, researched and responded to all of the many questions and concerns put forward by interested parties.

Mr. O’Brien replied that his understanding from conversation with the engineer involved is that the three culvert proposals were generated in less than an hour.

Mr. Gault emphasized that there will not be another opportunity to affect the infrastructure and that this is the one chance to get it right. He further represented that the MCES has said it doesn’t care which culvert design is installed provided that the gravity sewer line can be constructed.

Mr. Nelson noted that 14 channels in Lake Minnetonka are maintained by Hennepin County Environmental Services, but that this channel would not be maintained by Hennepin County.

***It was moved by Manager Miller, seconded by Manager Fisher to close public testimony if no new speakers wish to offer comments.*** Manager Calkins determined that no further members of the public wished to speak. ***Upon vote, the motion carried.***

Manager Blixt asked whether the LMCD or County Sheriff representative wished to speak. Greg Nybeck, LMCD Executive Director, stated that the culvert is not within LMCD jurisdiction, but the LMCD Board recognizes the impacts of expanding navigation and concurs in the recommendation of District staff. He added that Dale Homuth of the DNR recently provided an opinion that the channel is a part of Lake Minnetonka.

Manager Fisher stated that he does not believe there is a basis to deny all three permits and force the City to pursue the process further. To his observation, staff has done careful work and its recommendation is well founded. He stated he would consider

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accompanying permit approval with the District's suggestion that the City further consider whether there is another, preferable approach. He believes that based on the District's rules, the approval of Option B is appropriate. Manager Blixt concurred, stating that the City has the flexibility whether or not to proceed, but the District must make decisions on the permit application pursuant to its rules.

Manager Calkins asked how the sanitary sewer work will reduce the environmental risk. Mr. Cook replied that two lift stations would be replaced with deep gravity tunnels; one of the stations is within the drainage area of a different tributary in the City and the second is tributary to Lake Minnetonka. He also noted that the design oversizes the tunnels, which provides more storage and more time to react to a problem. The design also includes a number of gates that in the event of a problem allows for a greater ability to protect downstream lift stations.

***It was moved by Manager Keeley, seconded by Manager Miller to approve the permit for Option B and deny the permits for Options A and C in accordance with staff recommendations.*** Manager Miller noted the importance of balancing what individual residents want, what the City wishes and what is necessary and in the best interest of the watershed. Mr. Holtman suggested that the Board consider a condition authorizing staff to accept, if offered by the City and MCES, a revised design with a lowered culvert bottom elevation provided there were no other change in the dimensions or elevations of the structures. Manager Fisher also suggested that the District communicate that it wishes to see the storm sewer discharge be directed outside the culvert. ***The Board accepted the two proposed amendments by unanimous consent.*** Manager Calkins stated that it is important for the District and others to take these issues into account comprehensively in planning but that the present applications are before the Board and the staff recommendation is the appropriate one. ***Upon vote, the motion carried.***

Check Register

Mr. Evenson wished to add a check to Park Construction Company in the amount of \$37,237.15 for work at Gideon Glen, pursuant to a pay request just received from the District engineer, increasing the check register total to \$197,502.87.

***It was moved by Manager Miller, seconded by Manager Blixt to approve the check register as amended, consisting of check numbers 26366 through 26431 and the additional check as presented by the Administrator. Upon vote, the motion carried.***

Habitat Restoration Contracts

Mr. Pressman presented a revised Request for Board Action to the Board authorizing the Administrator, with counsel review, to enter into agreements with Joseph Weiland, Henry Vanderlinde, Jack Wahlfors and Charles Dimler for installation and maintenance of best

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practices and to make payments pursuant to contract terms. Mr. Pressman noted that Ed Mucilevicz of the Natural Resource Conservation Service was present to answer any questions.

***It was moved by Manager Miller, seconded by Manager Fisher to adopt Resolution 06-022 authorizing staff to proceed. Upon vote, the motion carried.***

#### CAC Expense Reimbursement

Mr. Evenson asked the board to consider establishing a policy reimbursing Citizens' Advisory Committee members for mileage for travel to and from CAC meetings.

***After discussion, it was moved by Manager Blixt, seconded by Manager Fisher to adopt a policy reimbursing CAC members at the federal mileage rate for travel to and from events as authorized by the Administrator. Upon vote, the motion carried 5-1 (Manager Miller opposed).***

#### ADJOURNMENT

There being no further business, the regular meeting of the Minnehaha Creek Watershed District Board of Managers was adjourned at 10:55 pm.

Respectfully submitted,

Lee Keeley, Secretary