

**Prior Lake-Spring Lake Watershed District
Special Meeting
May 9, 2006 10:00 AM
Conference Room, Shepherd of the Lake Lutheran Church**

Board Members Present: William Schmokel, William Kallberg, Craig Gontarek, Larry Mueller, Roger Wahl

Staff Members Present: Dean Gavin, District Attorney
Ed Matthiesen, District Engineer
Jim Eggen, District Technician
Shannon Lotthammer, District Administrator
Yolanda Coleman, Office Assistant

Others Present: Mick Borke, Eugene Berens, Dennis Thom, Joseph Kinney, Chuck Pavlish, Larry Poppler, Ross Bintner, Lynn Kvidera, Tim Kvidera, Art Kalmes, Todd Bodem, Todd Rapp, James Strauss, Steven Mattson

1. CALL TO ORDER: Meeting called to order by President William Schmokel at 10:00 AM.
2. DEVELOPMENT UPSTREAM OF RURAL DRAINAGE SYSTEMS.

Shannon Lotthammer introduced the topic and said Attorney Dean Gavin will report on his research and then the Board will discuss questions or comments. She noted that the intent is not to discuss any specific project, but rather to discuss general questions.

A) Attorney's Report. Dean Gavin summarized his memo to the Board dated May 5, 2006. Dean referred to the "reasonable use" discussion in his memo and noted that that each situation must be addressed individually. He recommended that the PLSLWD Board consider adopting a rule that will provide a standard or baseline to use for analysis of such situations in the future.

B) Discussion: Prior to the start of the discussion, Attorney Gavin said that questions and discussion specific to the application for the Maple Glen 3rd Addition should be held for the regular Board meeting that evening, since that application was noticed for at the Regular meeting and not the special meeting.

Manager Kallberg asked if a downstream property owner must agree to new or increased drainage prior to a project being commenced. Shannon Lotthammer said her interpretation of Attorney Gavin's research is that the use needs to be reasonable, but permission from the downstream landowner is not required. Attorney Gavin said that is correct and that each situation must be considered individually.

The Board asked Attorney Gavin's opinion on the District's susceptibility to a lawsuit if a downstream party pursues litigation. Attorney Gavin said he feels the best the Board can do is rely on their engineer's report and direction regarding technical and scientific data, the District's rules and the Board members' own knowledge and understanding of the issues.

The Board asked if changing the natural flow or drainage would be part of a reasonable use argument. Attorney Gavin said this was an issue in most of the cases he reviewed, and the Court looked at factors such as creating ditches, channeling the drainage, using swales and creating gullies in its determination of reasonableness. He said if there is an increase in volume or velocity and it has an impact on downstream users it may be an unreasonable use. Attorney Gavin cited different scenarios and courses of action that may be considered in each individual case, including flooding of property, how the property is being used and location of buildings. Attorney Gavin also cited some cases that were determined by the courts to be a reasonable use.

The Board also asked Attorney Gavin about additional factors to consider when multiple local governing units are involved. He said one item to consider is the District's notice requirements. He said the District's rules should be reviewed to determine if a modification to vary the extent of the notification area, depending on the urban or rural nature of the development and the downstream drainage system, would be beneficial.

President Schmokel asked if there were any questions from the audience. Gene Berens of Spring Lake Township asked about developments that impact subsurface tile lines. Attorney Gavin said he thinks that if a property owner's rights are being affected, the owners of the development must address it. However, attorney Gavin advised that the Township would have to get advice on a specific matter from its own attorney. Larry Poppler of the City of Prior Lake stated the City feels that they, the PLSLWD and the township are doing some of the things being suggested. President Schmokel said this should be presented at the Board meeting as a factor in helping the PLSLWD make a decision as to whether the plan meets a reasonable use. Shannon Lotthammer said there is a letter from the City in the packets for the Board meeting on their analysis of why they feel one of the two options is reasonable. President Schmokel said they need to determine if there has been a reasonable search for additional tile lines and what affect that has downstream. Ross Bintner of the City of Prior Lake asked how to differentiate between public and private drainage when a development may go through both. Attorney Gavin suggested he refer to the drainage provisions of Minnesota Statutes Section 103 E and to consult with the City Attorney.

3. OULET CHANNEL PRIVATE DRIVEWAY CROSSINGS (STRAUSS, PAVLISH). Shannon Lotthammer summarized the status of two private driveway crossings of the Prior Lake Outlet Channel near Pike Lake. She said the culvert on the Strauss property downstream of Pike Lake has failed, and the Pavlish culvert upstream of Pike Lake has developed a hole in the culvert and overlying driveway. Shannon referred to the letters in the Board packets, which were recently sent to Mr. Strauss and Mr. Pavlish noting the District's policy not to maintain private crossings of the Outlet Channel. Shannon said District staff has met with Mr. Strauss and spoken with Mr. Pavlish and has offered technical assistance to help resolve the situation. She said permits are required in both situations and she has spoken with Mr. Strauss and Mr. Pavlish to explain that this is so the District can be assured the crossing is reconstructed in a way that avoids upstream or downstream impacts. She said she feels the permit fees can be waived and the permits expedited if the Board agrees.

President Schmokel asked if it was the Board's consensus to waive fees and expedite the permits by allowing staff approval provided that the District Engineer approve the repair or replacement plan. The Board agreed.

Vice President Kallberg asked if either of these driveways were permitted by the District in the past. Shannon said the Strauss culvert predated the original Outlet Channel project and she thinks that culvert was replaced when the channel was constructed, and also perhaps once since then, the second time not by the PLSLWD. She said the Pavlish crossing was permitted by the PLSLWD in the late 1980's following the original Outlet Channel project. She also noted that the PLSLWD has easements over the Outlet Channel through both the Strauss and Pavlish property which were purchased at the time of the channel project, and that the stream itself is a DNR-protected stream that existed prior to the original Outlet Channel project.

Shannon Lotthammer introduced Chuck Pavlish, Joe Kinney and Jim Strauss and asked if they had any comments. Chuck Pavlish referred to an article from the *Prior Lake American* from April 1, 1985 regarding the outlet channel project, and also detailed the changes he has seen in the outlet channel during the last nearly 20 years of use. Mr. Pavlish noted that the District has replaced some culverts in the past. He reviewed the original easement, what was paid to landowners and what it averages out to per landowner per year. He said that based on comments made by former PLSLWD Board members in the 1985 article, the use of the channel by the PLSLWD and past culvert replacement he feels that the PLSLWD has some responsibility for culvert maintenance. Mr. Pavlish also asked if the PLSLWD is levying what they can to provide funds to handle problems of downstream landowners.

Shannon Lotthammer explained that the PLSLWD is in the process of restoring and enhancing the seven mile channel from Prior Lake to the Minnesota River. She said the engineer's estimate for the PLSLWD share of the cost of the project is \$2,500,000.00, and the total engineer's estimate is \$4,500,000.00 for the project. Shannon said the PLSLWD is considering a combination of levying and bonding as the funding source. She said a key element of the project is to stabilize the channel banks and control erosion now and into the future. Mr. Pavlish asked for a time frame for the project. Shannon said the project is occurring in channel segments, and the current timeframe for the segments between County Road 42 and Pike Lake (Segment 2) and from the Pike Lake outlet to Pike Lake Trail (Segment 3) is to complete the detailed design next year and the construction during the winter of 2007-2008.

Mr. Pavlish read from the original easement regarding the rights of the PLSLWD to construct, maintain and improve the channel. He said he feels there are ambiguities that allow the easement to be interpreted in different ways. Attorney Gavin said that the easement language allows the District to construct and repair improvements within the easement, but it does not obligate the District to maintain private crossings of the District's easement.

President Schmokel asked the District Engineer if the culvert repair will be the correct size. Ed Matthiesen said that for both the Strauss and Pavlish crossings, any replacement culvert needs to be the same size and at the same elevation as the existing culvert.

The Board, staff and landowners discussed driveway accesses, capability of getting to and from their properties, responsibilities by landowners and PLSLWD and possibility of doing some of the channel work to coincide with the culvert replacement and driveway repairs. Mr. Pavlish said that if the bank repair were made now it would direct the flow to the culvert and would eliminate the erosion problem. Ed Matthiesen said that channel restoration a couple hundred feet upstream and down stream of the culvert at the same time as the culvert installation would be worthwhile in that it

would center the flow into the pipe and leave the pipe in the center of the channel. He said this will also help maintain water quality. Shannon Lotthammer said the only reason this section was scheduled for 2007-08 is staff capacity. President Schmokel asked if the Board would consider acceleration of channel stabilization for 100 feet both up stream and downstream of the Pavlish crossing. Manager Kallberg said the question is whether this can be done quickly enough for Mr. Pavlish to get his driveway repaired. He said the District will need time for design, contracting, bidding, etc. Shannon Lotthammer said one thing to keep in mind is that the City of Prior Lake and the Sioux Community are cost share partners in this section on the channel, and the District can do this now, but they will not receive the cost share until 2007-08. The Board instructed staff to work with the landowners to develop a working plan and report at the June Board Meeting.

4. **OVERVIEW OF BONDING PROCESS.** Shannon Lotthammer overviewed the costs of the first 10 years of the Outlet Project and the funds currently on hand for the PLSLWD's share of the project. She said based on the District's overall cost-share commitment and the funds on hand, the District needs to consider financing 2 to 2.5 million dollars of the project costs. She then introduced Steve Mattson of Northland Securities, the District's financial advisor.

Mr. Mattson gave a brief description of the bonding process. He explained that metro watershed districts can issue bonds on their own or through the county, and he explained how each option works. Mr. Mattson distributed a summary spreadsheet of a hypothetical bond issuance by the District and explained each of the elements. Mr. Mattson also explained the public sale and negotiated sale bonding options. Following his presentation, Mr. Mattson asked if the Board had any questions.

Manager Kallberg noted that the District will likely need to have two bond issuances to cover the full project period, and asked what effect that will have on interest rates. Mr. Mattson said the rates will not be affected other than they will vary based on the market and issuance costs will need to be each time. He said the three-year timeframe for spending the bond proceeds is the result of federal arbitrage regulations.

President Schmokel asked if there were any more questions for Mr. Mattson or Shannon. There were none, and President Schmokel thanked Mr. Mattson for his presentation.

Shannon Lotthammer said that the next step in the bonding process is for the District to decide how much it needs to finance through the first bond issuance. She said she will meet with Mr. Mattson in June and report to the Board at the June or July meeting.

Meeting adjourned at 12:30 PM.

William Schmokel, President

Craig Gontarek, Secretary