



MINUTES OF THE BOARD OF DIRECTORS
 October 25, 2017

Attendance		Present	Absent
Dan Jones, Chair	City of White Bear Lake	X	
Jim Lindner, Vice Chair	City of Gem Lake	X	
Rob Rafferty, Secretary-Treasurer	City of Lino Lakes		X
Ed Prudhon	White Bear Township	X	
Rick Kingston - alternate	City of North Oaks	X	
Terry Nyblom	City of Vadnais Heights	X	
Stephanie McNamara	Administrator	X	
Kristine Jenson	Program Mgr.	X	
Brian Corcoran	Water Resources Mgr.	X	
Nick Voss	Education & Outreach Cord.	X	
Tyler Thompson	Water Resource Tech.	X	

Others in attendance: Margaret Behrens (Ramsey Conservation District), Mark Graham (City of Vadnais Heights Engineer & TEC Chair); Paul Duxbury (White Bear Township TEC representative); Troy Gilchrist, VLAWMO legal counsel (Kennedy & Graven Ltd)

I. Call to Order

The meeting was called to order at 7:02 pm by Chair Jones. A quorum is present for the meeting.

II. Approval of Agenda

A motion was made by Nyblom and seconded by Lindner to approve the agenda as presented. Vote: all aye. Motion passed.

III. Approval of Minutes from August 23, 2017

Nyblom stated that on Page 7, it says the 2018 budget has \$30,000 for ditch maintenance but the July minutes said \$35,000 was to be in the budget. Nyblom asked for clarification. Stephanie said we budgeted \$30,000 and that is what we approved for the 2018 budget.

A motion was made by Prudhon and seconded by Lindner to approve the minutes from the August 23, 2017 Board of Directors Meeting. Vote: all aye. Motion passed.

IV. Visitors and Presentations

V. New Business

VI. Old Business

A. Storm Sewer Utility Certification to the Counties – Resolution 03-2017

This is the final step in our annual process to complete the Storm Sewer Utility for 2018. The budget, with its anticipated income from the SSU was set in July that drove the rates for residential and non-residential properties which were approved in August. Staff has been working with our SSU consultant and the counties to review property divisions and other updates since then. The charges to each non-exempt parcel are now ready to be certified as we do each October.

RESOLUTION 03-2017

A RESOLUTION CERTIFYING STORM SEWER UTILITY CHARGES TO THE COUNTY AUDITOR TO BE ASSESSED ON REAL ESTATE TAXES PAYABLE IN 2018.

WHEREAS, Minnesota Law 2008, Chapter 366, Article 6, Section 47 provides that the Vadnais Lake Area Water Management Organization may certify to the County Auditors the amounts of storm sewer utility charges to be collected on said premises the ensuing year; and

WHEREAS, the Storm Sewer Utility (SSU) Rule of the Vadnais Lake Area Water Management Organization, provides that the watershed may certify to the County Auditors the amounts of unpaid utility charges to be collected as part of the tax levy/special assessments on said premises the ensuing year;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE VADNAIS LAKE AREA WATER MANAGEMENT ORGANIZATION, AS FOLLOWS:

1. Attachments 1 and 2 attached hereto and made a part thereof by reference is a list of parcels of real property lying within the VLAWMO limits of which have surface water runoff and on which there are service charges payable in 2018.
2. The Board hereby certifies said list and requests the Ramsey County Auditor and Anoka County Auditor to include in the real estate taxes/assessments due the amount set forth in Attachments 1 and 2 with taxes/assessments due and payable in 2018.
3. The VLAWMO Administrator is directed to tender a certified copy of this Resolution to the Ramsey and Anoka County Departments of Property Records and Revenue.

Director Lindner introduced the resolution and moved its adoption. The motion for adoption of the foregoing resolution was duly seconded by member Director Prudhon and upon vote being taken thereon, the following voted in favor thereof:

Directors: Lindner, Kingston, Nyblom, Jones and Prudhon

and the following voted against the same: *None*

Whereupon the resolution was declared passed and adopted.

B. Consideration of Local Plan Approval

Last year at this time VLAWMO finished its 10-year Comprehensive Water Plan with approval from BWSR. Under State statute all of the local (municipal) governments have until December 31, 2018 to update their local water plans to be consistent with the watershed plans. It has the positive effect of insisting cities and watersheds talk to each other about water management, clarifying priorities and setting implementation steps and timelines for reaching our common goals. As VLAWMO, a non-permitting watershed, looks to our municipalities to enforce our standards, it provides a chance to talk about where we have updated our standards and how they are going to ensure those protections are in place. VLAWMO is charged with reviewing all six local water plans of the communities within VLAWMO for consistency with the VLAWMO plan. If they are found to be consistent, then the VLAWMO Board will approve them. The first two plans have come in. By statute, a 60 day clock started for VLAWMO action. November 4th is the deadline.

Staff has reviewed both the Gem Lake and Vadnais Heights plans for consistency with the VLAWMO plan. Preliminary comments have been provided to both cities. The Metropolitan County and Ramsey County have an opportunity to comment and VLAWMO is required to consider their comments. Met Council has found the Capital Improvement portion of the implementation plan to fully meet the requirements set out in MN Rules Ch. 8410: “a capital improvement program that sets forth, by year, details of each contemplated capital improvement that includes the schedule, estimated cost, and funding source.” The communities have not had an opportunity to respond and possibly make changes. VLAWMO has not seen the updated Water Plans for either community.

Recommendation: Staff will request both communities allow an extension of time to allow changes to be made to the local water plans, VLAWMO to review the updated Plans and make a recommendation at an upcoming Board meeting.

The communities have asked for an extension and staff requests we table this agenda item until the next meeting.

It was moved by Lindner and seconded by Nyblom to table the approval of Local Water Plans until the December VLAWMO Board meeting or when the plans are available. Vote: all aye. Motion passed.

C. Lambert Creek

Background: The following is the question discussed at the August Board meeting: does being the ditch authority mean VLAWMO is also responsible for paying for maintenance or improvement projects? Here is the response from Troy Gilchrist who will be attending our meeting to facilitate Board discussion of this question and others.

“My view is that the WMO is more directly responsible for the repair and maintenance of the accepted ditch system than it is over other waterways in its area. As such, I recommend the WMO work to program some funds into its Plan for future work as it determines is appropriate. That is really in the best interests of the WMO since it has a duty related to this ditch system that does not exist with respect to other waterways in the area. With the more direct duty comes a greater risk of liability if an alleged failure by the WMO to maintain the ditch results in damage to property.

That is not to say the city in which the ditch is located cannot, or should not, assist with keeping the ditch maintained. The maintenance and improvement of ditches managed under Minnesota Statutes, Chapter 103E contemplates those benefited (including local governments) from such work need to pay their share of that work. While the WMO is not operating under Chapter 103E, the policy concept of paying for a project that benefits the local government and its residents is as valid in this situation as it is under Chapter 103E.

It strikes me that a conversation should occur between the WMO and the city as part of developing a future amendment to the Plan to provide funding for ditch projects on ways the WMO and city can cooperate to get the work done. I have not been directly involved in how your WMO handles its projects, but I suspect it is like my other WMOs in that the member communities typically undertake projects with funding support from the WMO. The same process can be developed for funding and completing projects on this ditch.”

Board Discussion:

Gilchrist gave an introduction to the process thus far for the ditch authority question including which portion of State Statutes that may be used manage the creek/ditch. There are 3 options under which a WMO may manage a ditch: 103B.205-255 (WMO authority), 103D (watershed district authority), 103E (traditional drainage ditch authority – typically used with agricultural fields). 103B, watershed law, says we can accept ditches and that we can decide which authority we want to operate them under.

This was discussed before the adoption of the current JPA because it says we can accept ditches and will operate them under 103B. Gilchrist thinks that is the best choice – is less cumbersome. 103B means we program the work in like we program other work (CIP, monitoring, etc.). It doesn't give much direction/rules in regards to how we determine what to do and how to pay for it. It says we need to operate under our Water Plan. VLAWMO has been operating under 103B.

Prudhon asked who owns the ditch and who is responsible for taking care of the ditch. Gilchrist responded that the buck stops here with the watershed. Prudhon asked if the watershed has recourse to go to the SPRWS to ask them to pay for repairs. Gilchrist offered the opinion that ‘they should be partners. Those who benefit from the project should pay but we don't have the authority to require it, we can only ask for it. The ditch is yours and therefore the WMO has liability if it isn't maintained.’

Jones asked if getting a survey and assessment of the creek would help VLAWMO determine more exactly what we need to do. He asked the Board if they should acknowledge that VLAWMO is the ditch authority, with the responsibility to determine what the issues are on the creek.

Kingston asked how the ditches are managed in other places so how have they done it. Gilchrist responded he hasn't had to deal with this before but he spoke with another lawyer who had a similar issue and the authority took it over under 103E. He thinks we ARE on the right track if we follow what he described. Gilchrist wishes we hadn't taken on the ditch authority in 1986 but it's too late to change that now.

Prudhon noted that in the township their Public Works just goes in to clean up public land. Gilchrist indicated that ditch maintenance costs may be budgeted just like we do for other CIP projects. Our JPA gives the intention that our member communities will work together to do these projects. He said it doesn't mean that everyone pays the same amount.

Nyblom agreed that the City should take care of branch 5A, even though it is technically VLAWMO's responsibility. The City of VH has stepped up to pay to pay for maintenance of 5A however to then ask the city to pay 66% of main stem of Cty Ditch 14 cleaning is offensive. He asked if a City could sue VLAWMO for negligent ditch maintenance. Gilchrist said if it damaged a city road or property, then yes. He said if we are approaching the 4th decade of not maintaining the ditch, then we run the risk of being considered negligent.

Stephanie noted the sub-watershed map shows all the drainage areas that contribute to the creek. The subwatershed could be considered as benefiting. When we re-did Whitaker Pond, the 3 involved governments (Ramsey Co, City of WBL and WB Township) analyzed how much area they contribute to that pond and assessed their maintenance shares accordingly. Gilchrist said it is up to the VLAWMO Board to determine who gets assessed.

Nyblom noted we need to make sure that people shouldn't have their basements flooded but we don't need to change things on a large scale. Jones said the 1986 survey isn't up to date due to how it the land has changed over the years. Lindner stated that the area used to be a large lake and was drained by the ditch. We have a legal responsibility to maintain these ditches and we need to determine as a board what level of improvement and maintenance. But what the lawyer is saying that if we don't do something, we could be negligent. Lindner also noted that VLAWMO is doing our due diligence to understand the situation and determine how we need to proceed. Kingston said we need to have a standardized approach that the communities need to be part of it. He says all the communities should pay for it rather than just VLAWMO's bill.

Corcoran clarified the idea that we haven't done anything isn't correct. We installed Lambert Lake, installed weirs, etc. and those addressed water quality and flooding. Gilchrist – yes the work that has been done shows that VLAWMO hasn't been negligent and has been working on maintaining the creek/ditch.

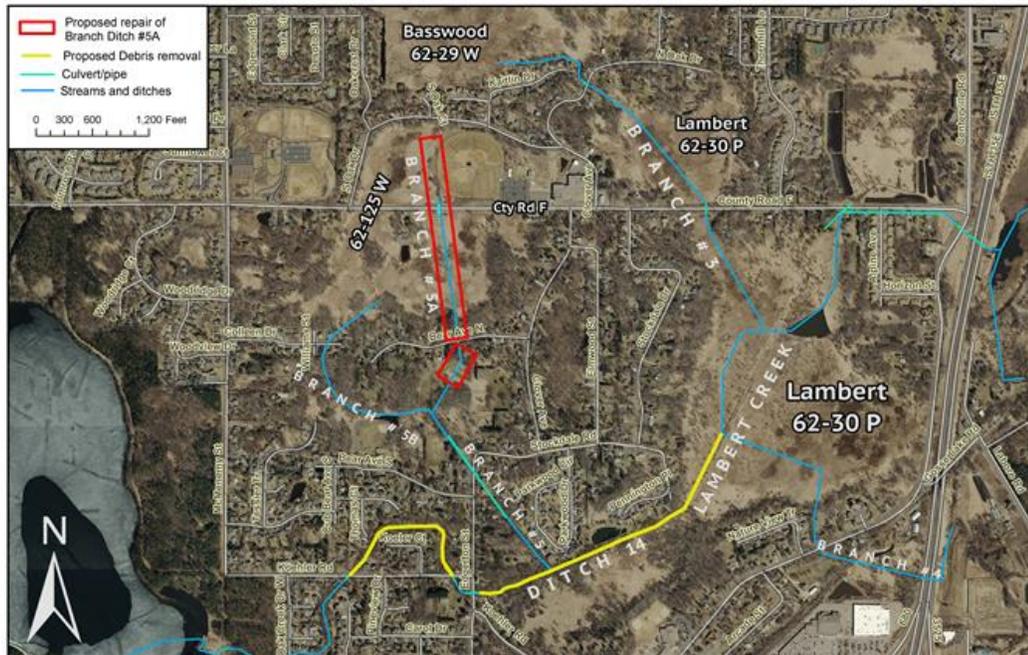
Gilchrist – your two immediate steps should be:

1. figure out what you've got – do the survey and develop short term and long term plans
2. determine how are you are going to pay for it – don't think of it differently than you do a CIP

Nyblom asked Graham about the work to be done on Branch 5A and if it has been determined if the material taken from the creek has to be trucked out or not. Nyblom was concerned because the costs were double if it had to be trucked out. Graham thinks we should truck it out – the DNR says that, the Corps of Engineers will require a permit if we truck it out. The City is paying \$96,000 towards this and he thinks it is a good project and we should be doing it.

1. Consideration of survey of targeted portions of Lambert Creek; Engineers RFP

Background: Estimates for survey work from the Koehler flume to Lambert Lake have been received. VLAWMO received 3 estimates for the survey work with E.G Rud being the lowest at \$4,490. This is for work to survey the creek stretch in yellow on the below map, including cross-sections, creek elevations and pipe inverts.



Estimates received:

<u>Survey Work</u>	<u>Cost</u>
Lake & Land Surveying	\$6,000
E.G Rud	\$4,490
Wenck	\$12,100-\$15,300*

*\$15,300 includes optional “Task 1” from Wenck Survey Scope (\$3,200 on top of \$12,100) to compile collected survey data and comparing it with historical data to show ditch aggradation, erosion, and how it compares to the ditch’s condition after the last time the ditch was maintained and surveyed in the 1980s. Essentially, the Wenck survey would give us a more useable engineer’s technical memo disseminating exactly how much the ditch has filled in and where, as well as recommendations for repair and restoration that are consistent with BWSR Drainage Database requirements.

The Wenck proposal came in at packet publication time but we wanted to include it for your consideration as it does take us another step in the direction the Watershed may want to go. Comparing it to the other straight survey proposals is a bit like comparing apples and oranges. The basic engineers report provides the additional information in the previous paragraph and the survey information is in a format that can be entered into the state BWSR database. There is a third step the Board may wish to consider in 2018. This would utilize the above information and put it into a hydraulic model to really understand the capacity of the creek and its branches. This would allow us to understand why high water levels are happening in certain places and what could be done to respond to it. It would probably allow VLAWMO to do more long term planning.

The following options are offered for Board consideration:

- Option 1 No action
- Option 2 Approve the lowest survey proposal for implementation within the next few months.

Option 3 Approve the highest survey proposal to get all the information needed and beyond for moving forward in the future. This would produce a basic engineering report consistent with 103E.

Option 4 Send a Request for Proposal (RFP) and advertise as appropriate to secure bids for engineer services. The engineer would utilize existing information to model the capacity of the creek, the as-built profiles, and recommend a future maintenance schedule. The engineer could also potentially inspect existing structures for upcoming maintenance needs.

An RFP for engineering services may include the following scope:

- Reviewing records of the ditch to establish original ditch profile and capacity to the extent possible.
- Review records of the ditch cleaning in 1987 to establish ditch profile and capacity to the extent possible.
- Review area where high water concerns have been identified.
- Utilize available information to produce a updated hydraulic model of Lambert creek and updated current profile information for the creek
- Identify potential areas of maintenance needs and potential improvement practices
- Recommend plan of routine ditch assessment including evaluation of existing structures along the creek. This would be used to identify and schedule future maintenance needs.

Proposed action:

It was moved by Prudhon and seconded by Nyblom to publish/distribute a RFP for engineering services – scope to include reviewing existing information to model the original capacity of the creek, generate as-built profiles of the creek, model the current flow capacity and recommend a future maintenance schedule. The work would include the survey of the targeted area of the creek. The engineer could also potentially inspect existing structures for upcoming maintenance needs. Proposals will be brought back to the December meeting.

Vote: all aye. Motion passed.

Board Discussion:

Stephanie noted that using an engineering firm to do the survey and modeling can provide VLAWMO with maintenance needs, project and the information necessary in order to obtain permits and funding to properly maintain the ditch for the future.

Lindner asked if the other two surveyors could do all this. Stephanie they would survey only, with no analysis, modeling and project identification. Jones said there is a benefit to having it done by one place.

Nyblom expressed concerned that if we go for the larger project, it might take money away from the clearing of the ditch. Stephanie explained the survey work was coming out of different budget lines than the cleaning so it wouldn't affect that budget item.

2. Lambert Creek main stem – Consideration of Maintenance Funding

Estimates for maintenance work from the Koehler flume to Lambert Lake have been received. VLAWMO received 2 estimates for the maintenance work with Outdoor Labs being the lowest at \$32,250. This is for work to remove logs and debris within the creek and truck out for the stretch in yellow on the Lambert Creek map, approx. 1 mile.

<u>Maintenance Work</u>	<u>Cost</u>
Bolander	\$53,530
Outdoor Labs	\$32,250

The Board discussed how best to accomplish this work and possible options below. As larger maintenance projects on the creek are identified, the projects will need to be added to the VLAWMO Water Plan through the plan amendment process. They will also need to be added to the budget. Larger CIP maintenance projects are at least 2 years out to accommodate plan amendment and budgeting.

Below are options for Board consideration:

Option 1 **No action**

Option 2 **Request a funding partnership from the City of Vadnais Heights**

With current funds in the VLAWMO maintenance budget, VLAWMO could pay for a portion of this effort. You might consider VLAWMO paying one third of the cost (\$10,650) in this request. Advantage – VLAWMO stays within budget. Disadvantage – Vadnais Height must agree for this to move forward.

Option 3 **Delay work until 2018 maintenance work until 2018**

Advantage - there is funding available in 2018. Disadvantage – work is delayed and bids will expire. The costs may go up in 2018. The Board may want to use the 2018 Lambert funds to do an engineering study, see discussion below.

Also, the Board may want to use 2018 funding to hire engineering help to model the hydraulic capacity of the whole system, establish profile elevations that could be used for future work and start to develop a maintenance schedule.

It could be noted that VLAWMO has secured proposals for the work but does not have enough funding for the project to proceed without a fiscal partner. It might also be noted that all of the work in this portion of Lambert Creek would be done on City Property.

Board Discussion

Kingston – how imminent is the need to clear this out? If it is an emergency, then that is one thing. But can this wait until next season so that we can have a plan in place? He thinks we should go with Option 3 and determine how these costs should be divided among the cities. Jones agrees that we need to develop a policy. And also noted that branch 5A is the City's responsibility – only Vadnais Heights flows into it. But Lambert Creek is different because more than one community feeds into it.

Nyblom noted there was cost sharing set up when the ditch was dredged in 1987 so why can't we use that now. Stephanie said that was a County-led project so it isn't the same scenario as we are facing now. The VLAWMO allows for assessing the subwatershed area but we don't have a collection method set up so we'd assess the Cities and then the Cities would collect the money from their residents. Jones noted the other option is that VLAWMO pays for everything and we raise our SSU rates considerably in order to get the work done.

Nyblom felt we should hire Outdoor Labs for this project and VLAWMO pays for it all and then we move ahead with the survey and engineering work. Kingston doesn't think that is the way to go – it is setting a precedent that would put VLAWMO in a bad place in the future. Unless there was some imminent risk to not doing it right now, then we should do this in a planned way. He said that residents are going to come to the City with these complaints first and they bear responsibility in this situation. Kingston thinks the whole city should be assessed rather than specific areas. He thinks all residents benefit.

Jones feels the subwatershed area should be assessed with the City billed for it and handling funds collection. And then we could go to the State at some point to determine how to put it in with the regular VLAWMO SSU.

Kingston thinks this is an important project but he wants to be sure it is done fairly. Jones said we could defer actual work because there isn't imminent danger and plan for this work to be done in 2019 so we can budget for it and determine how we should pay for it.

Stephanie noted that staff has found the creek to be currently flowing freely. Staff agrees that it needs to be cleaned out but that there isn't critical danger right now. Lindner - no action is an option so that we can properly and fairly figure out what to do. Does it matter if it has been 29 years or 31 years? If we get the work done in 2019, is it going to make that big of a difference? At least if we wait until then, we can have a proper procedure in place that makes sense and is fair rather than setting a precedent that we can't keep up with.

Prudhon suggested one more bid source for the clean, the Community corrections work crew. He said the Township had used them in their parks for a variety of outdoor work and had been very happy with the results.

Jones - we should hold off to do the planning. He said he acknowledges and respects Nyblom's concerns and that Nyblom represents people who have issues with water from the ditch. Nyblom said their yards are flooding and thinks work should be done now rather than later.

It was moved by Jones and seconded by Lindner to direct staff to form a policy team to develop a ditch maintenance and funding policy and procedure and have it ready for the Board to officially review by June 1, 2018. Vote: all aye. Motion passed.

VII. Operations and Administration - Reports

A. TEC Report

Jones asked how the alum/lime research has been going. Tyler was out with a Barr engineer today to collect sediment samples which will be used to develop dosing treatment levels for alum and lime.

VIII. Discussion

A. Agenda

Jones wants the Board knows that when the agenda is considered at a meeting, a Board member may request to add an item at that time. He will also be moving up staff reports to earlier in the meeting so that they don't feel so rushed when they try to deliver their reports later in the meeting when people are wanting to go home. Jones also added that the Discussion subject on the agenda is for items that Board members would like to discuss but not necessarily vote on. They can be a vote item IF it is necessary.

IX. Administration Communication

Stephanie will be convening a policy and personnel committee in the near future.

X. Public Comment

XI. Adjourn

A motion was made by Nyblom and seconded by Prudhon to adjourn at 8:33pm. Vote: all aye. Motion passed.

Minutes compiled and submitted by Kristine Jenson.