

August 5, 2019

To: Morrison County Board of Commissioners
Deb Gruber, County Administrator

From: Lake Shamineau Lake Improvement District (LSLID) Board of Directors

Attachment: Letter from J. Brad Person, Breen and Person, Attorneys at Law

RE: Comments on Petition to Terminate the Lake Shamineau Lake Improvement District

The LID Board of Directors respectively would like to provide comments regarding the Petition to Terminate the Lake Shamineau Lake Improvement District. We have many concerns regarding the process that was used to gather signatures and verify the petition. We believe that MN Statute was not followed in the petition process and we note our concerns below.

According to statute, the County may only terminate the Lake Improvement District if the County determines that the existence of the district is no longer in the public welfare or public interest and it is not needed to accomplish the purpose of the Lake Improvement District Act Law. We would like to remind you that the establishment of the LID on June 9, 2015 included the following statement that we believe that still holds true today:

“The Lake Improvement District is a necessary component in helping to preserve Lake Shamineau as a viable natural resource in the County. Efforts made to date to control aquatic invasive species (i.e Eurasian water milfoil, purple loosestrife, curly leaf pondweed, zebra mussels, and others) and other non-native or native species whether known or unknown, fund boat and trailer inspections, cleaning and decontamination and other prevention methods, study high water levels and no lake outlet problems, and to monitor water quality have been unsuccessful and/or unfair because they have relied on voluntary contributions of interested individuals...The Lake Improvement District will promote the public welfare by improving the quality of the lake.”

We would also like to point out that no private organization would be able to manage the high-water project, receive grant funds, and attain permits for the long-term high water outlet solution. We understand that many have been told that a private group or groups could manage these activities but these statements are not true. As you know, the DNR has confirmed that only a governmental organization, such as the LID, can attain permits for a long-term solution and receive DNR grant funds.

Some have argued that the Lake Association could handle some of the tasks of the LID. The Lake Association is a volunteer membership organization with approximately 180 members, while the LID is made up of about 300 property owners. A letter from the Lake Shamineau Association (LSA) stated in part, “...The LSA was not designed for, nor is it capable of taking on these tasks. The LSLID can apply for and secure well needed funding. The LSA cannot. The cost of battling aquatic invasive species is already beyond the capabilities of our nonprofit Lake Shamineau Association voluntary membership.”

There have been issues raised about the processes administered by the LID Board of Directors. Over the past year, the Directors have initiated new initiatives to ensure transparency, improve communications and improve election processes. Many of these issues have been addressed within the proposed language in the revisions to the Establishment Order, and property owners were able to provide written and oral comments in the review of these changes. While many of these revisions will not take effect until the revised Establishment Order is approved, the Directors took the initiative to adopt them prior to the final approval of the Establishment Order.

If the LID were to be terminated the important functions of managing water quality, managing the control of Invasive Species, and most importantly trying to find a solution to the high-water problem on

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the lake would have to fall on other governmental jurisdictions. We are not aware of any other governmental unit that has the desire, staffing, funding or motivation to absorb these functions. In addition, there is a risk that up to \$1 million dollars in DNR grant funds may be lost for the high-water outlet project.

Following are the concerns regarding the process that was used to gather signatures and verify the petition. We believe that MN Statute was not followed in the petition process and we note our concerns below.

1. We believe that the 30 day time limit for collecting signatures for a petition to terminate a LID included in MN Statute 103B.581 was not followed by the petitioner and by the County in verifying the petition. The statute clearly states the requirements for the termination of a Lake Improvement District, including the 30 day time limit. Subdivision 1 states, *“Termination of a district may be initiated by petition requesting the termination of the district. The petition must be signed by a majority of the property owners in a district within 30 days after receiving a petition. The county board or joint county authority must set a time and place for a hearing on termination the district.”* As you will recall, we raised this issue several times beginning with an email on February 4, 2019, and in subsequent emails and phone conversations.

We understand that you have been advised from counsel that there is a typo in the statute. However, as we reported to you on February 18, 2019, the LSLID Board learned from Cindy Maxwell, an attorney in the Minnesota Office of the Revisor of Statutes that drafts the statutes for Water and Environmental issues, the statute is correct. As noted in the attached letter from Attorney J. Brad Person, *“The statute is clear and the County’s interpretation is simply contrary to state law.”* Ironically, even the letter from Mike Wilhelmson and Herb Bloomquist announcing the petition stated that, *“State law requires that these petitions be returned in 30 days from being sent out”*, and in an email from Deb Gruber, County Administrator dated February 4, 2019 the 30 day limit is also noted.

We would also like to point out that the earliest signature date on a petition is January 8, 2019 and the latest signature date is July 5, 2019. We actually found two petitions signed several days after the petition was presented by Mike Wilhelmson and Herb Bloomquist on June 20, 2019. Additionally, we could find no 30 day period which included a significant number of property owners. The long 6 month time period for collecting signatures caused confusion over the motive and purpose of the petition resulting in large number of property owners trying to rescind their signature on the petition.

2. We believe that the determination of a majority of signatures also did not follow the statute. As noted above, the statute states that the petition must be signed by “a majority of property owners”. According to the cover letter for the petition and the verification of the petitions by the County, the determination of the majority was determined by parcels and not by property owners. That resulted in many property owners that were able to submit multiple petitions according to the number of parcels that are owned. With a cursory review, we found over 30 cases of multiple parcels. As noted in the attorney letter, *“Said statute clearly references property owners, not parcels and many owners own multiple lots. This is a clear misinterpretation of the statute.”*
3. Minnesota Data Practices provides that information in the petition, including signatures, is public information. The petition nor the letter sent with petition, stated that the information would be public. This has had the unfortunate consequence of embarrassment and confusion for some that signed the petition.

We would also like to note that the petition caused much confusion and bad feelings among lake owners and neighbors. There were instances of incorrect statements and mis-information included in the letter

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sent out with the petition, in meetings about the petition, and in face-to-face communication. Following are some examples of the incorrect statements and *the corresponding true information*:

- It was noted in the letter with the petition, in meetings and in conversations urging property owners to sign the petition that, "Terminating the LID does not mean that we cannot continue to address the high water problem. There is already a group that has made encouraging process on siphoning water out of Lake Shamineau..."

The fact is that the DNR has informed the LID and Morrison County that permitting for a permanent high-water outlet solution must be sponsored by a local governmental unit, such as the Lake Shamineau Lake Improvement District. A private group will not be directly granted permits for a permanent high water solution.

In addition, the DNR grant dollars through the DNR Flood Hazard Mitigation grant program cannot be awarded to individuals or independent organizations; these funds can only be awarded to local government units, such as the Lake Shamineau Lake Improvement District.

- Many were told in a meeting held by Herb Bloomquist and Mike Wilhelmson as well in private conversations with property owners that the LSLID Board modified or added to the approved High-Water Project budget.

This is untrue. As we have reported in communications to property owners, the 2019 High-Water approved budget of \$100,000 and DNR grant amount of \$65,000 will not be exceeded. In addition funds from the 2019 non-project budget for the High-Water project will not be used for the High-Water budget. The 2019 LID budget was approved at the LID 2019 Annual Meeting and by the County Board. The budget is posted on the LID website and monthly expenses are reported at LID Board meetings and included in Board meeting minutes. The agreement with WSN for High-Water tasks is also posted on the LID website.

- The LID Board is not transparent.

This is not true. There has been several letters mailed out to the property owners. In February we initiated a monthly electronic newsletter. Board meetings are announced on our website and each meeting has had several attendees. The board meetings are open to the public, and notes are posted on the website. The LID website includes information on all Board and LID meetings, engineering reports, RFP information, financial information and reports, and other information that may be of interest to property owners. All minutes are posted on our website.

In summary, we strongly urge you to vote "No" to terminate the Lake Improvement District. If you review the facts, the County will determine that the **existence of the district is in the public welfare or public interest and it is needed to accomplish the purpose of the Lake Improvement District Act Law.**

In addition, as stated above, we continue to have concerns about the process for acquiring signatures for the petition.

Thank you for the opportunity to provide input. We look forward to your continued support of the Lake Improvement District.

Respectively,

Bob Koll, Rick Rosar, Cindy Kevern, Fred Comb, Don Ogilvie

Lake Shamineau Lake Improvement District

Board of Directors

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