



## LNNLRCD Special & Exec. Mtg. September 24, 2013 - 7:00PM

- I. **Call to Order** – Glenn called the meeting to order at 7:02PM  
Board Members Present:  
Glenn Baldwin -President                      Marty Portner – Vice President                      John Harris – Secretary
  
- II. **Pledge of Allegiance**
  
- III. **Schings Park/Lot 16 Stabilization Bid Opening** – There were three bids submitted, one from Encap in the amount of \$63,542.00, one from Winterland Land Improvement for \$36,390.01, and one submitted by Fischer that could not be considered because they submitted it late.
  
- IV. **Adjourn to Executive Session** – Glenn motioned to adjourn to executive session at 7:11PM and Marty seconded the motion. The board approved the motion unanimously [09-24-13-01]
  - A. **Stabilization Bids**
  - B. **Building Usage & Rates**
  
- V. **Reconvene to Open Meeting** – Glenn reconvened the meeting at 7:58PM.
  
- VI. **Motion to Approve Bid Selection** - Marty motioned to accept the Winterland Land Improvement, LLC bid for \$36,390.01 to stabilize Schings Park and lot 16 and John seconded the motion. The board approved the motion unanimously by roll-call vote. [09-24-13-02]
  
- VII. **LLUD Issues that Affect the RCD** – Tom Wendling said that the LLUD cradled the water main in concrete and then had Jeff Winterland put some road rock on top of it and then stood the pieces of concrete up that were along the bank to give it some protection to prevent it from becoming exposed again in case a heavy rain comes in the fall or spring. Marty asked if Tom was comfortable with the way it is now that it is protected from flood waters and Tom said he was only 70% sure that it would be protected the way that it is now because there is a high point where the concrete was removed that water could come over – not to the degree that it did before but that entire bank is pure sand. If there is a big flood there is a possibility that it could get in behind the concrete. Glenn asked if the LLUD had an easement document for the pipe that was put in on RCD property. Tom said that the POA has a plat book that shows all of the easements but he can't say for sure if there is an easement document for that water main but there should have been. Glenn said that he hasn't heard of a case where a person owning a property and granting an easement to someone would be responsible for anything that happened to anything in that easement unless they did something intentionally to it. Tom said that under the Illinois Waterway act, because it was a man-made waterway, whoever created it has the liability to maintain that waterway and protect it. Glenn said that the waterway is working as it was planned and Tom countered that the RCD has probably lost 6' of their waterway in the area where the pipe is. Glenn said that it is fine in that it still flows into the creek from the overflow. They had engineers look at the spillway recently after the heavy rains they had a few months ago and it is working the way it is supposed to. Glenn looked at the correspondence sent by the LLUD's attorney and he had a question about the statute 70 ILCS 2105/10a that is quoted and he doesn't see anything in there that matches the attorney's following quote "*The RCD is required by its Act to operate any improvement so as not to unnecessarily interrupt or interfere with other public entities using the same land*". Glenn contends that it is not RCD and the LLUD using the same land; rather, it is the RCD's land that they have granted an easement to the LLUD to allow them to have their pipe there. Also where the attorney said that there was damage, Glenn said that the only thing that could have been damaged would have been the pipe and it didn't appear to have been damaged. Tom said that there was damage in that there was deflection of the pipe of an inch and a half down and to the left, however it not break. Marty asked if the LLUD has insurance that would have covered this and Tom said that they talked to their insurance company and if the pipe would have broke then they would have gotten some

help. Glenn said that if they can find the easement and see if it has language in there that states that the RCD is responsible for any damage caused to the pipe then maybe they would look at it. Tom said that the LLUD is not looking to the RCD to repair any damage caused to the pipe, rather, they are asking that the waterway be corrected and filled back to the point where it was originally at. Glenn said that the RCD has only so much money to take care of the lake and they protect that to make sure that as much money goes toward that. On the surface, based on his real estate experience, he'd like to look at the easement, being that they supplied the easement; he doesn't see that they have any responsibility for anything that happens there. Marty said that he doesn't know how Glenn can say that because it looks like prior to this pipe exposure, there looks to be an attempt, and Marty assumes it was by the RCD, to do something with the concrete that is down there, whether it was just dumped down there or they were trying to do some type of stabilization there. Dick told Marty that where that concrete was placed or ended up was the primary cause of the movement of the earth in the area that exposed the pipe. He feels that it could be considered negligence on the RCD's part if they didn't go down and clean up that mess and let anything take its natural course. Now that they know that that water action is causing the exposure of the pipe, he doesn't see how the RCD can say that they don't have any responsibility. If they know that it could happen again, he thinks that they should do something. Glenn doesn't understand why the entity who is issuing an easement in good faith would be responsible for the property of the entity granted that easement. Marty said that it is his understanding that the LLUD is not asking for payment of the concrete job that was done on the pipe and asked Tom is he was correct in assuming that. Tom said that the LLUD is going to pay a portion of the concrete job but as it was caused by the overall problem that was really not their (the LLUD's) problem so they are willing to pay for part of it but that situation has to be corrected and more work has to be done there – he thinks that the RCD will be surprised at how little it is going to cost. Glenn asked Steve what his opinion on it was – Steve said he isn't familiar enough with the situation and asked Tom how long the pipe has been exposed. Tom said that it became exposed this year as he walked down the spillway last year and it wasn't exposed at that time. Steve said that in his mind they would have to determine when the RCD put the spillway in and when the pipe was run underneath the spillway. If the pipe was run before the spillway was installed, then the engineering of the spillway would have included protecting that pipe. If the pipe was put in after the spillway then the liability shifts to the people who put the pipe in. If the pipe was put in before then the liability *may* (emphasis on may) shift to the RCD but then you're talking about an act of nature vs. not an act of nature. Tom is more focused on the erosion that occurred due to the large slabs of concrete that diverted the course water coming out of the spillway, causing the erosion of the land by the pipe, not the engineering the spillway itself. At this point, the RCD board doesn't even know how the concrete got there – it could have been dumped by a contractor after a job was done. Glenn asked John what he thought about it and John said that he viewed the photographs but apologized that he didn't get a chance to walk down and look at the area – he'd need to do that to understand more of what they are talking about before he can give his opinion. Glenn said that from what he has studied in the last couple of days he doesn't see where the RCD has any responsibility for the pipe that runs under their land there. Tom asked if they have the responsibility for the erosion that took place, they are not asking the RCD to repair the pipe, they are asking for the RCD to correct the erosion problem. Glenn said that erosion down there is fine, it has always been occurring for the past 30-40 years and right now it doesn't need any work done on it. Tom said that there is major erosion just past the spillway. John asked if soil just needs to be put there or riprap and Steve said that soil erodes. Marty said that it is his opinion that the shoreline has to be reestablished to the condition that it appears to have been before it was eroded and that it needs to be stabilized so that it doesn't happen again. Glenn suggested that maybe the pipe could be moved and Tom said that if the RCD stabilizes the situation and correct the channel to the way it originally was, the utility line will be fine. Marty said that they had Tim research the installation of a system to enable the boards to be lifted prior to a flood condition to allow the water to escape more quickly and he found that if they do anything to change the design of the dam they have to get the Army Corps of Engineers involved. He doesn't know if the same is true if they redirect the spillway's course. Marty asked if they do nothing to the spillway what could happen and Tom said that if they get another flood like they did this past spring, it's hard to tell how much erosion could occur, if there is no flooding, and then he feels pretty comfortable that the pipe will not become exposed. Marty is concerned with what will happen to the shoreline after the concrete because the shoreline is dramatically cut out there. He thinks that they should reestablish that so that it re-channels it away from where the LLUD's pipe is. Marty would like to know how much it will cost to reestablish the shoreline and if it is only a couple thousand dollars then they could just get it done without worrying about easements and lawyers and such. Jeff Winterland said that you could spend a lot of money if you were to change the channel, put in a gabion basket, and rip-rap the slopes. Otherwise, for less than what they would have to go out to bid they could dig out the high point where the concrete is piled up, give the water a chance to redirect

itself and take that material and cover the pipe. Then get some more recycled concrete to stabilize that bank and it should last another 40 years without any issues. Glenn said that he wants to be careful not to set a precedent since he has never seen a case where someone who grants an easement is responsible for anything that happens to that. Could this be something that could happen again in the future? Spending under \$2,500 seems like money well spent for the situation but he doesn't want to set a precedent for something that they may not be legally liable for. Marty said that he thinks that if they are concerned about setting a precedent then there needs to be enough detail in the decision that they make to distinguish it from general future events where people might draw a correlation between another situation in the future and this one. One of the distinguishing factors in this case is the big pile of concrete that nobody knows how it got into the position that it did. They don't know if someone trespassed and dumped it there or if a past board allowed the concrete to be dumped there. Glenn asked if Jeff could meet with him to take a look at the property and hopefully they will have a decision to bring before the board at their next meeting. Tom said that even if the pipe wasn't there, with the amount of erosion that occurred due to the concrete that deflected the flow of the water was major (probably 8 ft etched out) and it's a problem (that he thinks that the RCD should address). Steve said that the bank on the Orland's side is sandy soil and it's going to naturally erode no matter what. At the last flood event, Glenn went down and observed the dam and spillway and was pleased at how everything worked the way it was supposed to. Glenn asked Tom if he would be happy with what Jeff recommended for stabilizing the shoreline before the pipe and Tom said yes.

- VIII. Motion to Adjourn** – Marty motioned to adjourn the meeting at 8:32PM and John seconded the motion. The board approved the motion unanimously. [09-24-13-03]

#### **9/24/2013 Motion List**

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