

**MINUTES OF THE REGULAR MEETING  
OF THE  
BOARD OF MANAGERS  
OF THE  
NINE MILE CREEK WATERSHED DISTRICT**

**WEDNESDAY, SEPTEMBER 17, 2014**

**Call to Order**

Chair Lynch called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, September 17, 2014, at the Nine Mile Creek Watershed District Office, 7710 Computer Avenue, Suite 135, Edina, MN 55435.

Managers Present: Lynch, Kloiber, Segreto and Peterson

Managers Absent: Twele

Advisors Present: Kevin Bigalke, Louis Smith, Robert Obermeyer, and Erica Sniegowski

**Agenda**

Administrator Bigalke noted that Item A, Permit #2014-95, on the Consent Agenda has been withdrawn and should therefore be removed from the agenda. He requested the addition of an Item 8J, Permit #2014-102, under Permit Hearings; an item Old Business titled Centennial Lakes Update; and an item under New Business titled Discussion of Administrator's Review.

Manager Segreto moved, seconded by Manager Peterson, to approve the agenda as amended. Upon a vote, the motion carried.

**Reading and Approval of Minutes**

The Chair called for review of the minutes of the Regular Meeting of August 20, 2014. Manager Peterson noted on page four, the first paragraph, the first sentence, it should state, "...this is essentially a..." On page three, item A, the fifth line, it should state, "...was not brought on..." Attorney Smith noted on page seven, item L, the first paragraph, it should state, "...to ~~accept~~ adopt the findings and recommendation of the Technical Evaluation Panel and issue the WCA Notice of Decision for..." Manager Kloiber noted on page four, under C, the fifth line, it should state, "...that were reviewed and ~~therefore met the minimis requirements were considered to be exempt~~ under the Wetland Conservation Act (WCA). On page five, under D, the fifth line, it should state, "...permit and noted that ~~no funds~~ a surety would not be required because this..." On page six, under F, it should state, "...applicant has submitted their plans but ~~have~~ has not provided..."

Manager Peterson moved, seconded by Manager Segreto, to approve the minutes with the noted corrections. Upon a vote, the motion carried.

**Correspondence**

- Lease Termination Notice that will be effective October 30, 2014

**Citizens Advisory Committee/Education & Outreach Report**

The Chair called for the report of the Citizens Advisory Committee.

**A. Calendar Design/Photo Contest Update**

Education and Outreach Coordinator Sneigowski reported that the photo contest deadline is this Friday and pictures from 15 people have been submitted. She advised that the CAC will help to select the photos and asked for the participation of two Managers as well.

**B. Branding/Marketing Project Management RFP Approval**

Education and Outreach Coordinator Sneigowski reported that the focus group met the previous week and advised that the information will be compiled and sent to the logo and marketing firm that the Board selects tonight. She advised that four proposals were received, noting that two proposals were eliminated because of the prices and the fact that their proposal did not meet the goals for the project. She recommended that the proposal from the MOD Group be selected, noting that the organization seems to understand what the District is looking for and also had the lowest price. She advised that the references have been checked and only positive responses were provided from previous clients. She reviewed the timeline that was proposed by the District and confirmed that the MAWD Group was comfortable meeting that timeline.

Manager Kloiber moved, seconded by Manager Segreto, to approve entering into a contract with the MOD Group for branding and marketing services in the amount of \$10,300. Upon a vote, the motion carried.

**Hearing and Discussion of Matters of General Public Interest**

There were none.

**Consent Agenda**

- A. ~~Permit #2014-95: Home Reconstruction — 6117 St. Johns Avenue; Grading and land alteration permit: Edina~~**
- B. Permit #2014-97: Tony’s Appliance – 8718 Lyndale Avenue; Grading and land alteration permit: Bloomington**
- C. Permit #2011-19 #2013-81: Penn-American Phase 2 Permit Extension**

Administrator Bigalke referenced item C under the Consent Agenda, noting that the permit number was listed incorrectly and rather than #2011-19 should be listed as #2013-81.

Manager Kloiber moved, seconded by Manager Peterson, to approve the Consent Agenda. Upon a vote, the motion carried.

### **Hearing of Permit Applications**

#### **A. Permit #2014-85: Sheraton Hotel Renovation – 5601 West 78<sup>th</sup> Street; Grading and land alteration permit: Bloomington**

Engineer Obermeyer presented the permit request and proposed plans. He explained that the applicant is requesting a variance from the District's volume retention requirements and instead pay into the storm water facilities fund. He advised that the project will meet the water quality requirements. He stated that if the Board approves of the variance he state a payment of \$3,196 would be required to be paid to the District's storm water facilities fund and a financial assurance in the amount of \$5,000.

Manager Segreto questioned why a Phase II Assessment is not being required.

Attorney Smith noted that type of assessment would be required if the District were requiring infiltration.

Administrator Bigalke stated that a Phase I Assessment would be completed, noting that soil borings identified potential petroleum contamination and that is why infiltration was not proposed for that site.

Chair Lynch noted that this would be a hardship that was not created by the property owner and advised that the project meets the other requirements for a variance.

Manager Kloiber moved, seconded by Manager Peterson, to grant a variance from the District's volume retention requirements finding that the conditions on the site are unique, the hardship was not created by the property owner, the project will not adversely affect water quality, and there is not feasible alternative; and also to approve the permit. Upon a vote, the motion carried.

#### **B. Permit #2014-96: OATI Proposed Office Building – NE corner of West 78<sup>th</sup> Street and Computer Avenue; Grading and land alteration permit: Bloomington**

Engineer Obermeyer provided background information regarding site preparation that previously occurred and the involvement of the District through previous approval. He explained the permit and proposed plans. He provided additional information on the soil borings taken on the site as well as the infiltration information. He advised that the water quality and treatment requirements are being met and also noted that the low floor requirement of the District is also being met. He recommended approval of the request subject to the conditions

listed in his report including financial assurance in the amount of \$76,300, submission of a maintenance declaration, and submission of a phase one or other assessment showing that there is no contamination.

Attorney Smith questioned if this permit contains two parcels that must be consolidated.

Administrator Bigalke advised that re-platting of the two parcels into one parcel has been approved by the City of Bloomington and has simply not been recorded with the County at this point.

Attorney Smith suggested that item be added as a condition.

Ben Grannon, a representative of the applicant, stated that they are going through the plat approval process and noted that a final approval of the Bloomington City Council would be needed. He advised that the item is already in process and will be completed but advised that the Bloomington Council had stricken that condition from their approval in order to allow the applicant to move forward with grading.

Attorney Smith stated that there are reasonable grounds to require that the condition be met prior to work beginning, but noted that another option would be that the applicant be required to submit the documentation of plat approval already issued by the City of Bloomington with final documentation to be presented once complete.

Manager Kloiber questioned if a permit could be revoked after issuance if that condition was not met.

Administrator Bigalke advised that the financial assurance could be held until the documentation is provided.

Mr. Grannon explained that grading must be completed before winter in order to let the area settle over the winter.

Administrator Bigalke stated that the condition could specify that the applicant provide documentation from Bloomington stating and showing that the final plat has been approved by the City Council and that it is being processed, with a second stipulation stating that documentation of finalization of the plat be submit after complete.

Manager Kloiber moved, seconded by Manager Segreto, to approve the permit, subject to the additional condition that the applicant provide documentation from the City of Bloomington stating and showing that the final plat has been approved by the City Council and that it is being processed, with a second stipulation stating that documentation of finalization of the plat be submit after complete. Upon a vote, the motion carried.

**C. Permit #2014-100: Home Reconstruction – 5808 Creek Valley Road; Grading and land alteration permit: Edina**

Engineer Obermeyer explained the permit and proposed plans. He provided additional information regarding low floor elevation requirements of the District and the ground floor elevation requirements of the City of Edina. He noted that the applicant is requesting a variance from the two feet of separation requirement of the District. Obermeyer stated that a high value wetland has been identified adjacent to the property and stated that if approved staff would recommend that a wetland boundary map be completed. He stated that if the Board approves the project he would recommend financial assurance in the amount of \$9,100, submission of a maintenance declaration regarding the storm water management facilities and the wetland buffer, submission of a phase one or other documentation indicating there is no contamination in areas of soil infiltration, and that the applicant provide documentation that indemnifies the District from any damage that may be caused by flooding.

Manager Kloiber advised that the numbers may be changing with the Atlas 14 information.

Engineering Obermeyer explained that the industry standard is to use the data regarding precipitation supplied through Technical Paper 40 (TP 40), which was developed in 1961. He explained that since that time additional monitoring stations have been created and precipitation information has been refined through Atlas 14. He advised that the District has not yet adopted new standards with this information, noting that some organizations have already adopted standards utilizing the new information.

Manager Segreto stated that the City of Edina could issue a variance to allow the home to be constructed higher, which would decrease the risk of flood damage.

Peter Jarvis, Wooddale Builders, asked for additional information regarding the difference between the FEMA flood maps and the Watershed flood maps. He stated that if a variance is not received from the District, a building permit cannot be received from the City. He stated that their calculations split the difference between the FEMA maps and the District maps. He explained that a variance will already be needed from Edina because the first floor elevation would already be six inches above the city requirements.

Engineer Obermeyer explained that the Watershed elevations have always been higher than the FEMA elevations because the District has based their information on ultimate development conditions for a member city. He advised that the FEMA maps have changed and continue to move in the direction of the District maps. He advised that FEMA is currently in the process of updating their maps and advised that the District has supplied FEMA with their information and that information will be reflected in the new FEMA maps.

Administrator Bigalke asked if the homeowner has discussed the requirements of the Watershed regarding flood elevations and the ramifications that could have on the home in terms of flood risk.

Steve Schwieters, the homeowner, provided additional information regarding the grading and elevation of the home related to the neighboring home and the effect that will have on the driveway. He stated that the Conditional Use Permit request has been submitted to the City of Edina but noted that item will move forward to the Planning Commission in October and City Council in November.

Administrator Bigalke advised that if preliminary review and approval from the member city Planning Commission or Council must be received prior to issuance of a permit from the Watershed.

Mr. Schwieters stated that there has been conversation with the city regarding elevations. He noted that staff believes that the variance will be approved but confirmed that approval has not been provided from the Planning Commission or City Council.

Manager Segreto questioned if this project is going to begin in spring of 2015.

Mr. Schwieters stated that they were hoping to begin work this month but acknowledged that the process with the City will not allow that.

Manager Kloiber referenced the condition suggested by staff regarding indemnification of the District, noting that is similar to what the District has required in similar projects. He stated that the existing home is already in the floodplain area and would not have an impact to the water resource. He stated that as long as the homeowner is aware of the flood risk, he would be okay with moving forward. He referenced the process that has been followed thus far, noting that City approval has not yet been given.

Administrator Bigalke stated that the District rules require that preliminary approval be given prior to the Watershed issuing a permit.

Mr. Jarvis stated that a proposal has been structured, with a variance request, from the District and they would need to know what the District will accept prior to meeting with the City in order to determine what would then be needed from the city in terms of a variance.

Manager Segreto stated that the District could just state that two feet of freeboard are required and the applicant could then go back to the City of Edina in order to gain a variance from the city in that regard.

Engineering Obermeyer agreed that could be an option.

Mr. Schwieters stated that the elevation has already been raised 1.6 feet above the existing elevation and advised that further increase in elevation would make the home stand out from the neighborhood significantly. He noted that in addition to this variance they are also requesting a variance from Edina in order to build six inches above their elevation.

Attorney Smith stated that the purpose of the rules of the District requiring preliminary approval is to ensure that the District is not going to interfere with the land use plans of the city.

He stated that it does appear that the applicant has been in conversation with the city and did not think the District would be stepping ahead of the city. He stated that the purpose of the freeboard requirement is for the protection of the homeowner and would not interfere with other properties. He stated that as long as the homeowner is fully aware of the risk and the indemnification clause is stated, he believed that the interest of the District would be protected.

Administrator Bigalke suggested adding a condition that the permit not be issued until the Edina City Council has approved the project.

Manager Kloiber noted that this proposed project would increase the elevation 1.6 feet from the elevation of the existing home.

Manager Kloiber moved, seconded by Manager Segreto, to grant a variance subject to the conditions outlined by staff and to approve the permit with an additional condition that the permit not be issued until the approval of the Edina City Council is received. Upon a vote, the motion carried.

**D. WCA Notice of Decision for Wetland Delineation – Berman Property: Edina**

Engineer Obermeyer explained that it has been concluded that there are no wetlands present on the Berman property and therefore recommends that the Board accept the determination and approve the Notice of Decision.

Manager Segreto, moved, seconded by Manager Peterson, to accept the wetland delineation determination on the Berman property and issue the Notice of Decision. Upon a vote, the motion carried.

**E. Permit #2014-16: Hampton Inn – American Boulevard and West 82<sup>nd</sup> Street; Grading and land alteration permit: Bloomington**

Engineer Obermeyer provided additional information on the project, noting that following phase one and phase two assessments contaminated material has been removed from the site. He stated that the Pollution Control Agency (PCA) has made the determination that this site could be used for infiltration. He explained the permit and proposed plans. He stated that staff recommends approval of the permit subject to the conditions noted in the staff report with financial assurance in the amount of \$75,900, and correspondence from the PCA stating that the infiltration is satisfactory.

Manager Kloiber, moved, seconded by Manager Segreto, to approve the permit. Upon a vote, the motion carried.

**F. Permit #2014-98: Margaret A. Cargill Philanthropies Building Expansion – 6889 Rowland Road; Grading and land alteration permit: Eden Prairie**

Administrator Bigalke recommended that this item be continued to the October meeting.

Manager Peterson moved, seconded by Manager Segreto, to continue the permit. Upon a vote, the motion carried.

**G. WCA Notice of Decision for Wetland De Minimum Exemption – MAC Philanthropies**

Administrator Bigalke noted that this item would be continued to the October meeting.

Manager Peterson moved, seconded by Manager Segreto, to continue the permit. Upon a vote, the motion carried.

**H. Permit #2014-99: TW Telecom Exterior Improvements – 5480 Feltl Road; Grading and land alteration permit: Minnetonka**

Engineer Obermeyer explained the permit and proposed plans. He recommended approval of the permit subject to general conditions including financial assurance in the amount of \$26,400, submission of a maintenance declaration, and a phase one assessment to show there is no contamination.

Manager Peterson moved, seconded by Manager Kloiber, to approve the permit. Upon a vote, the motion carried.

**I. Permit #2014-101: 5108 Edina Industrial Boulevard Building Reconstruction; Grading and land alteration permit: Edina**

Administrator Bigalke recommended that this item be continued to the October meeting.

Manager Kloiber moved, seconded by Manager Peterson, to continue the permit. Upon a vote, the motion carried.

**J. Permit #2014-102: 5121 Lake Ridge Road**

Administrator Bigalke advised that this item would normally be considered administratively. He stated that the property located at 5121 Lake Ridge Road has experienced shoreline slope failure largely due to the amount of rainfall. He explained that plans to restore the shoreline, similar as to what the District completed with the Hopkins project. He advised that the project will trigger the DNR protected waters permit and that is why he brought the item forward to the Board. He recommended approval of the permit.

Manager Kloiber moved, seconded by Manager Peterson, to approve the permit. Upon a vote, the motion carried.



## **Treasurer's Report**

### **A. Pay Request #3 – Synergy Builders**

Administrator Bigalke provided additional information regarding the pay request from Synergy Builders. He also provided additional information regarding a release of the retainage for Rachel Contracting.

Manager Peterson moved, seconded by Manager Kloiber, to approve the pay request to Northern Escrow/Synergy Builders in the amount of \$152,593.22. Upon a vote, the motion carried.

Manager Segreto moved, seconded by Manager Peterson, to approve the Treasurer's Report and pay the bills. Upon a vote, the motion carried.

## **Unfinished Business**

### **A. Water Resource Center Planning Update**

#### **i. Furniture Planning Update**

Administrator Bigalke stated that staff has met with a furniture vendor and provided the first draft for the recommendation for furniture. He stated that staff will visit the facility the following week to view the recommended furniture in person. He referenced the new meeting space and noted that the space as proposed could be setup in a classroom format and a more formal setting for the Board meetings. He noted that he will bring back pricing and color information. He advised that the outside of the building is currently being painted and the doors should be installed at the end of the week. He stated that process continues to move forward, noting that paint samples will be on the walls of the interior offices the following Monday. He noted that for the most part the exterior items should be complete the following week. He advised of damage that occurred on the site from a delivery driver but noted the work had already been completed.

## **Old Business**

### **A. Centennial Lakes Update**

Administrator Bigalke advised that the District had partnered with Edina in attempt to gain grant funds from Hennepin County for this project. He identified challenges that occurred and therefore the first two below ground infiltration cells had been eliminated. He stated that there is a clay layer that has been identified throughout the area of the project.

Kurt Leuthold, Barr Engineering, stated that the city has finished soil contamination analysis and would like to update the Board on the status and removal efficiencies. He stated that a lot has happened in the past year, which has changed the project, providing a copy of the

original plans as well as the modified plans. He provided additional information regarding the contamination on site and the progress that was made, noting that the next step would be to determine if this is acceptable to the Minnesota Pollution Control Agency. He stated that the plans for that area would be to provide clean cover and green space, estimating a total remediation cost between \$150,000 and \$200,000, noting that \$50,000 of that cost would be associated with the storm water component of the project.

Administrator Bigalke advised that an additional grant application is submitted to Hennepin County for remediation. The application would need to be submitted by the November 3 deadline, which is why he wanted to bring this forward to the Board today. He hoped that the grant funds would be obtained to cover most, if not all, of the remediation costs.

Mr. Leuthold stated that the Minnesota Pollution Control Agency would need to approve the proposed approach and then the grant application would need to be approved. He advised that infiltration rates were calculated and it was determined that the water would build up on the clay level in the first two cells and be above the ground level of the adjacent building, which is why that portion of the project has been eliminated. He provided information regarding the potential cost for the BMP and also provided comparison information of other projects completed within Edina.

Administrator Bigalke stated that the District staff will meet with staff from Edina to determine if the project is feasible. He stated that the purpose tonight was to update the Board on how the project direction has changed and staff will continue to work with Edina to determine if the project will be feasible.

Mr. Leathold stated that a presentation will be made to the Edina City Council the following week and following that up with a presentation to the Pollution Control Agency.

## **New Business**

### **A. Discussion of Administrator's Review**

Administrator Bigalke stated that in the past this process has begun in October with two Managers of the Board acting as a Subcommittee to review the input of the whole Board and the self-review that he also submits. He stated that if the Board is comfortable the same process will be followed this year. The Board concurred to follow the same process as in previous years.

### **Engineer's Report**

- A. Bush Lake Outlet Project: Status Report**
- B. Eden Prairie Lakes Water Quality Improvement Project: Status Report**
- C. Hopkins Creek Stabilization Project: Status Report**
- D. Southeast Anderson Lake Water Quality Improvement Project: Status Report**
- E. Normandale Lake Water Quality Improvement Project: Status Report**
- F. Wetlands Inventory: Status Report**
- G. Status of Construction Projects**

Administrator Bigalke noted that the Pollution Control Agency has signed off on phases one and two of the Hopkins project, which means that the clean up components of the project are now officially complete.

### **Attorney's Report**

Attorney Smith had nothing further to report.

### **Administrator's Report**

Administrator Bigalke stated that he will begin the review of Education and Outreach Coordinator Sneigowski, noting that the same process used in previous years would be followed. He stated that he would complete a review, along with her self-review, and he would make a recommendation to the Board. Bigalke stated that he has had discussions with Sneigowski regarding possibly updating her job description to reflect the new duties with the Water Resource Center in 2015.

### **Managers' Report**

The Chair called for reports. Chair Lynch noted that two Managers have been reappointed to the Board and the Oath of Office would be administered at the October meeting.

### **Task Summary Report & Manager's Calendar**

The Managers reviewed and updated the task report.

**Adjournment**

It was moved by Manager Peterson, seconded by Manager Segreto, to adjourn the meeting at 9:26 p.m. Upon a vote, the motion carried.

Respectfully submitted,

  
\_\_\_\_\_  
Jodi Peterson, Secretary

ATTACHMENTS:  
Treasurer's Report