

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

WEDNESDAY, MAY 20, 2015

Call to Order

Chair Kloiber called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, May 20, 2015, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Twele, Lynch, Kloiber, Segreto and Peterson

Managers Absent: None.

Advisors Present: Kevin Bigalke, Michael Welch, Robert Obermeyer, and Erica Sneigowski

Agenda

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

Reading and Approval of Minutes

The Chair called for review of the minutes of the Regular Meeting of April 15, 2015.

Administrator Bigalke stated the April 15th minutes did not capture the discussion regarding the Education and Outreach Specialist position and requested that the Board take action this evening to accurately reflect the discussion and action taken by the Board.

Chair Kloiber requested this item be stricken from the April 15, 2015, minutes.

Manager Lynch requested that the second line of the second paragraph under the Engineer's Report on page 8 be revised to state "permit application for the ~~Eden~~ Edina Creek Stabilization project to the regulatory agencies. Upon a ..."

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

The Chair called for review of the minutes of the Special Meeting of May 8, 2015.

Manager Twele moved, seconded by Manager Peterson, to approve the minutes as presented. Upon a vote, the motion carried.

Correspondence

- MAWD Summer Tour

Special Guest – Commissioner Jan Callison

Commissioner Callison stated that Hennepin County's Natural Resources Strategic Plan was prepared in consultation with the District and the first goal is that Hennepin County waters be clean and healthy, both surface water and wetlands. She indicated the County will engage in community input around the goals this summer followed by adoption of the goals by the County Board. She discussed the Hennepin County Home School and stated they have been speaking with Ramsey County about joining together and having a new shared facility for juveniles. The Commissioner state that the District will be involved in the discussions about the future use of the Home School property. She stated a task force was formed as a result of the recent high profile failures in the Department of Health and Human Services and the net impact to the County means there will be more children placed into protective services resulting in a need for more County staff, as well as more law enforcement and legal staff, and a likely property tax increase of 1-2% to accommodate the State mandates. She stated there was a meeting today regarding Southwest LRT to discuss cost-cutting measures, adding this is an important project for the region to accomplish. She also discussed the aging population of the County workforce and substantial turnover expected to occur in the next 5-7 years and stated the County is working with its community partners and has identified areas where the County is going to need more workers, e.g., qualifying people for assistance, and the County has developed a model that other counties can use.

Administrator Bigalke referenced the legislation that was recently introduced regarding consolidation of the eleven county water management organizations into three organizations and requested that Commissioner Callison follow-up on this legislation.

Chair Kloiber thanked Commissioner Callison for the update.

Citizens Advisory Committee/Education & Outreach Report

A. Floor Map Update

Education and Outreach Coordinator Sneigowski presented a paper version of the floor map and stated the map will be installed in the lobby in the next couple of weeks. She stated the creek was difficult to pick out on the map so they have added a small blue line to highlight this area. She stated the map is approximately 10' x 13' and will be waxed onto the floor and should last approximately ten years, adding if there are any significant boundary changes, the map can be easily pulled off the floor and reprinted.

Manager Segreto asked if the map would include a dot indicating "you are here."

Education and Outreach Coordinator Sneigowski replied that staff decided not to print the “you are here” dot on the map and would like to put a map on the wall that includes a “you are here” dot with additional labels of roads, etc., adding that staff believes not including these items on the floor map will give visitors a chance to further explore the floor map.

B. Neighborhood Open House Date Discussion

Education and Outreach Coordinator Sneigowski suggested holding the open house on Monday, June 15th, from 5:30-7:30 p.m. She stated that suggested dates for the grand opening celebration are September 21, 22, 23, or 24 from 4:30-7:30 p.m.

It was the consensus of the Board to schedule the open house on Monday, June 15, 2015, and the grand opening celebration on Thursday, September 24, 2015.

C. Master Water Stewards Program

Education and Outreach Coordinator Sneigowski reported that staff is waiting for further details from the Freshwater Society and would like to wait until June to provide further information to the Board regarding this program.

D. Interpretive Signs for Nine Mile Creek Discovery Point

Education and Outreach Coordinator Sneigowski presented several mock-ups of the proposed signs and requested feedback from the Board.

Manager Lynch asked if the trees could be depicted as green instead of white.

Manager Segreto asked if the signs would direct visitors to the wetland features.

Education and Outreach Coordinator Sneigowski stated there is a plan to have a sign for the wetland.

Administrator Bigalke stated the intent of the signs is to showcase the various highlights on the property itself and agreed to see if the trail locations could be added.

Chair Kloiber suggested adding a small label that directs visitors to the trail.

E. Events Updates

Education and Outreach Coordinator Sneigowski stated that the Lake Minnetonka workshop on water is on Thursday, July 23rd; the workshop on green infrastructure for clean water is being held in conjunction with the Clean Water Summit on Monday, September 14th at

the Arboretum; and the workshop on chloride and winter road management is on Wednesday, October 7th. She stated the summer education series begins on June 14 with a shoreline restoration and maintenance workshop at Riley, Purgatory, Bluff Creek Watershed District and other dates include July 8th (planting for pollinators) and August 2nd (family fishing program) followed by the District's grand opening celebration in September.

F. Education/Outreach Specialist Position

Administrator Bigalke stated the field of candidates has been narrowed to two candidates who will come in for second interviews on Thursday, May 28th. He requested the Board authorize staff to make an offer and hire the Education & Outreach Specialist position.

Manager Segreto moved, seconded by Manager Twele, to authorize staff to make an offer to a candidate and hire the Education & Outreach Specialist position. Upon a vote, the motion carried.

Hearing and Discussion of Requests for District Action or Matters of General Public Interest

There were none.

Consent Agenda

- A. Permit #2015-34: Building Addition and Parking Lot Reconstruction for Hayden Murphy Equipment – 9301 East Bloomington Freeway; Grading and land alteration permit: Bloomington**
- B. Permit #2015-55: Home Reconstruction – 6240 Brookview Avenue; Grading and land alteration permit: Edina**
- C. Permit #2015-56: Home Reconstruction – 5516 Benton Avenue; Grading and land alteration permit: Edina**

Attorney Welch noted that the Board approved Permit #2015-34 last month but the applicant wanted to make further changes and the action by the Board vacates the prior approval and replaces it with approval of the new proposal.

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

Hearing of Permit Applications

- A. Permit #2015-53: Three Rivers Park District – Nine Mile Creek Regional Trail; Grading and land alteration permit and Wetland Conservation Act Permit Application; East and West Segments: Edina**

Administrator Bigalke introduced Mr. Eric Nelson from Three Rivers Park District.

Mr. Nelson described the proposed alignment of the regional trail and stated that the proposed boardwalks are built above the 100 year flood elevation and pointed out this elevation coincides with Atlas 14 to make sure the most current flood elevations are used. He stated the paved trails are designed at or below existing grade and Three Rivers has provided the required compensatory storage in those locations where the boardwalks and paved trails do not meet. He stated Three Rivers is asking for a variance in three locations and explained that in order to get the boardwalks above the 100 year elevation, Three Rivers has to make up that elevation with fill and must mitigate for that fill and provide compensatory storage somewhere else. He noted that SEH studied the hydraulics and found zero impact on flood elevations and there would be no negative impact to the resource or adjacent properties. He discussed Rule 3 regarding wetlands management and indicated Three Rivers is mitigating by purchasing wetland credits of approximately \$56,000. He discussed Rule 4 regarding storm water management and stated Three Rivers is adding 2.8 acres of impervious area and 1" of volume reduction is proposed to be accomplished through onsite retention of runoff from the trail surface. He explained Three Rivers' variance request due to pollutants found in the soil from a nearby dry cleaning facility and discussed the provision in Rule 4 regarding volume credits. He stated Three Rivers is asking to purchase credits for the additional volume needed or .45". He advised that Three Rivers complies with Rule 5 regarding erosion control and stated the contractor will have a full time erosion control supervisor on site. He stated that Three Rivers also complies with Rule 6 regarding water body crossings and structures.

Engineer Obermeyer referenced Barr Engineering's summary of the wetland impacts and proposed mitigation along with a copy of the permit application with findings and notice of decision. He provided a detailed explanation of the variance requests submitted by Three Rivers and the Board action required this evening.

Chair Kloiber stated he agreed with the recommendations of Engineer Obermeyer and was pleased there was only 1/10 of an acre of wetland impact in this large corridor and he was not surprised that the floodplain encroachments do not have a significant impact. He stated it is clear this trail will have a significant public benefit and there does not appear to be any adverse impact on the water resource. He stated there is a side inlet near Gleason Road that is creating significant erosion leading up to the creek and requested that this be addressed.

Manager Segreto requested further information about how the value of credits is determined.

Administrator Bigalke explained that the District's formula for paying into storm water facilities is \$40,000 per acre multiplied by the amount of area not treated and in this case, 1.29 acres does not meet the requirements, or approximately \$51,000.

Attorney Welch stated the Managers published a schedule in 2008 that included this formula and the 9:1 high value wetland replacement ratio contained in the rules is stricter than the Wetland Conservation Act.

Manager Segreto noted the trail as presented is being built in segments and asked if the timing of the different segments affects the District's approach to the project. She also asked if the entire project has been financed.

Administrator Bigalke acknowledged the project is being done in phases but the District looks at the end result and whether Three Rivers is achieving everything proposed to be achieved and whether Three Rivers is meeting all of the District's requirements.

Mr. Nelson stated the project has been broken down into two segments in order to qualify for Federal funds. He stated they will begin the east segment in fall 2015 and have applied for Federal funding for the west segment and if received, Three Rivers would begin construction after the east segment is done so the project is built as one construction project. He stated if Three Rivers does not receive funding the Board will have to fund the project in some other manner, adding that at this time, given the amount of work done and enthusiasm for the project on the part of Edina, Three Rivers believes the project will be fully funded.

Administrator Bigalke stated Three Rivers is proposing permits for the whole project and if the project gets to a point where Three Rivers does not get its funding and their permits expire, Three Rivers would have to reapply and resubmit their materials.

Chair Kloiber stated there is some risk if the funding does not come through but felt there were enough pieces in place that the District would be able to make sure the stream was protected in terms of wetland mitigation.

Mr. Robert Lubar, 6619 Londonderry Drive, stated his property backs up to the proposed trail and asked if the engineering studies took into consideration the boardwalk being built on an elevated path and whether the studies considered what would happen if debris gathers around the pilings and how it may or may not impact floodplain levels.

Engineer Obermeyer stated that debris is always a consideration with any type of stream activity and there is always the potential for debris getting caught. He stated the District rules require structures to be 2' above flood elevation and that would take into account unforeseen circumstances of plugging. He added that Atlas 14 revised the previous precipitation totals for storm events from 6" to 7.5" and the engineering studies found no impacts at that measure.

Mr. Bill Westerdahl, 5912 Walnut Drive, asked who would be responsible for maintenance.

Mr. Nelson replied that Three Rivers will own the trail and will be fully responsible for maintaining the trail corridor.

Attorney Welch stated the Nine Mile Creek Watershed District has no obligation for maintenance of the trail and the District is acting in a regulatory capacity only and has no ownership interest in any of the property or the trail. He asked Mr. Nelson to confirm that Three Rivers submitted an application on April 18, 2015, withdrew the application on April 25, 2015, and Three Rivers has requested that the application be reconsidered this evening.

Mr. Nelson confirmed that this was correct.

Variance for floodplain impacts:

Manager Lynch moved, seconded by Manager Segreto, to grant the variance request based upon the finding of fact that the modeling has shown no impact to the creek, that there are unique conditions that are not a result of the applicant, and that there is no feasible alternative. Upon a vote, the motion carried.

Variance for onsite volume retention:

Manager Lynch moved, seconded by Manager Peterson, to grant the variance request based upon the finding of fact that there are unique conditions, that the hardship was not created by the landowner and is unique to the property, that the activity for which the variance is sought will not adversely affect the water resource, that there is no feasible alternative, and that the applicant will be paying into the storm water facilities fund in the amount of \$51,681. Upon a vote, the motion carried.

Wetland notice of decision for impacts:

Manager Peterson moved, seconded by Manager Twele, to approve the Wetland Notice of Decision contingent upon the applicant providing the District with the signed Purchase Agreement. Upon a vote, the motion carried.

Permit approval:

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

B. Permit #2015-54: West 70th Street Construction from Flying Cloud Drive East to existing West 70th Street; Grading and land alteration permit: Eden Prairie

Engineer Obermeyer presented the permit request and proposed plans and stated there will be some coordination with Southwest LRT for part of the roadway.

Chair Kloiber stated he did not have a problem with this, but found it troubling from a policy perspective because this essentially forces the District to give variances on buffer requirements because if a variance is not granted they can fill the wetland as long as they are meeting the sequencing requirements of WCA.

Administrator Bigalke stated that staff has had lengthy discussions with MnDOT about this issue and the fact that the wetland buffer requirements will never be met. He added that without having a standing exemption for linear projects, the District's only alternative is to grant the variance.

Chair Kloiber stated this issue has come up in the past and requested that the Board consider this issue when doing its planning and rulemaking to see if there is a way to come up with something more logical.

Manager Lynch moved, seconded by Manager Peterson, to grant the variance request based to the minimum wetland buffer requirement upon the finding of fact that there is no feasible alternative, the average wetland buffer is being provided, and that the variance will not result in an adverse impact on the resource. Upon a vote, the motion carried.

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

**C. Permit #2015-57: All Saint's Lutheran Church/Excelsior Boulevard
Drainage Improvements – Excelsior Boulevard and Wing Lake Drive;
Grading and land alteration permit: Minnetonka**

Engineer Obermeyer presented the permit request and proposed plans. He explained there is a ponding basin on the Church property and a large portion of the parking lot is inundated during heavy rainfall and snow events. He stated the Church has worked with the City of Minnetonka on the plan and the project will expand the ponding basin by taking nine parking stalls to provide additional storage before draining to the outlet. He noted the project does not propose any new impervious area and recommended approval of the permit with the condition that authorization from the applicant is provided to the District indicating they are allowed to work on the Church property.

Manager Lynch moved, seconded by Manager Twele, to approve the permit. Upon a vote, the motion carried.

**D. Wetland Boundary Determination and MnRAM Assessment – 6117 St. Johns
Avenue: Edina**

Engineer Obermeyer advised that staff is in agreement with the wetland boundary determination and MnRAM and recommended that the Board approve the wetland boundary determination and accept the MnRAM assessment.

Manager Lynch, moved, seconded by Manager Segreto, to approve the wetland boundary determination and accept the MnRAM Assessment. Upon a vote, the motion carried.

Treasurer's Report

The Treasurer submitted the report and noted the pay request from Veit in the amount of \$21,992.59.

Manager Segreto moved, seconded by Manager Twele, to approve the pay request from Veit in the amount of \$21,992.59. Upon a vote, the motion carried.

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

Unfinished Business

A. Watershed District Office Update

Administrator Bigalke provided an update on construction of the District office.

New Business

A. Liability Insurance Coverage

Administrator Bigalke explained if the Board does not waive the tort liability limits, an individual claimant can recover no more than \$500,000 on any claim and if these limits are waived, an individual claimant can recover up to \$2 million and the District must purchase excess liability coverage. He stated the Board has always chosen to not waive its limits.

Manager Lynch moved, seconded by Manager Peterson, to not waive the District's tort liability limits. Upon a vote, the motion carried.

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. Atlas 14: Status Report**
- G. Lower Valley – Bloomington: Status Report**
- H. Status of Construction Projects**

Engineer Obermeyer updated the Board on the above listed projects. He stated the wetland permit for the Edina stream project has been submitted to the Corps of Engineers for review. He referenced the memo included with item F regarding Atlas 14 and stated the memo includes background and figures to document the calculated flood elevations using Atlas 14.

Attorney's Report

Attorney Welch advised that the planning rules for watershed planning are expected to be out in mid-June and agreed to provide a report to the Board at an upcoming meeting. He also advised that the Corps of Engineers and EPA rules defining waters in the United States and the Corps' jurisdiction is due soon and agreed to provide a further report to the Board.

Administrator's Report

Administrator Bigalke requested that the Board let him know if they plan to attend the MAWD Summer Tour and if they would like staff to register them. He stated the buffer initiative was passed in the Legislature and the effective date was changed to 2017 and 2018 and includes some unfunded mandate requirements for local governments. He advised that he has been putting together a benefits package for the Education/Outreach Specialist position and hopes to be able to make an offer next Friday and have the position filled by mid-June.

Managers' Report

None.

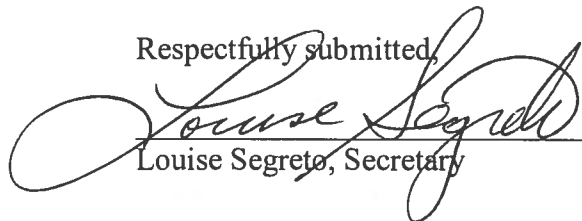
Task Summary Report & Manager's Calendar

The Managers reviewed and updated the task report.

Adjournment

It was moved by Manager Lynch, seconded by Manager Peterson, to adjourn the meeting at 9:07 p.m. Upon a vote, the motion carried.

Respectfully submitted,



Louise Segreto, Secretary

ATTACHMENTS:
Treasurer's Report