

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

WEDNESDAY, DECEMBER 21, 2016

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, December 21, 2016, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Twele, Lynch, Kloiber, and Peterson

Managers Absent: Segreto (term expired)

Advisors Present: Louis Smith, Bob Obermeyer, Janna Kieffer, Randy Anhorn, Erica Sniegowski, and Gael Zembal

Agenda

Engineer Obermeyer referenced the sediment removal project for Xerxes Pond and noted that the permit should be 2016-145 rather than 2016-144.

Manager Peterson 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 November 16, 2016. The Board handed written grammatical/typo changes to staff.

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

Correspondence

- Hennepin County Emergency Management Memorandum
- Eden Prairie City Newsletter Article regarding water governance
- MAWD Annual Report

Public Comment Forum on District's 2016 Budget and Levy

Administrator Anhorn stated that a second public comment opportunity is required by the legislature regarding the District's budget and levy.

Chair Kloiber opened the floor for public comments.

No comments were made.

Administrator Anhorn stated that he will certify the final levy.

Hearing and Discussion of Matters of General Public Interest

There were none.

Consent Agenda

- A. Permit #2016-142: International Spanish Language Academy Parking Lot and Playground Additions – 5959 Shady Oak Road; Grading and land alteration permit: Minnetonka (*to be continued to January 18, 2017 meeting*)**
- B. Permit #2016-143: Cornelia Elementary School Building Additions – 7000 Cornelia Drive; Grading and land alteration permit: Edina**
- C. Permit #2016-145: Sediment Removal from Xerxes Pond – 10910 Xerxes Avenue; Grading and land alteration permit: Bloomington**

Manager Peterson asked if sediment contamination is common and where it comes from.

Engineer Obermeyer stated that the material comes from the roadway and is common, noting that the material must be disposed of in a landfill. He referenced Permit #145 and noted that his letter includes an analysis for rule eight (sediment removal), noting that rule eight does not apply in this instance.

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

Hearing of Permit Applications

- A. Permit #2016-88: Southwest Light Rail Transit; Grading and land alteration permit: Eden Prairie, Hopkins, Minnetonka**

Engineer Obermeyer stated that this is the biggest project that he has been part of reviewing in his years with the Nine Mile Creek Watershed District. He stated that Barr has developed a series of slides to go through.

Mr. Bojan Mistic, Met Council, thanked Engineer Obermeyer for working with them for the past four years. He provided an overview on the path the project will take through the District, the different crossings, station and parking facilities.

Engineer Obermeyer reviewed the District's rules that would apply to this project, noting that the project going through the District is about 5.5 miles of track. He described how the wetland crossings would be done and how mitigation would be completed. He stated that the storm water management would be provided by both existing municipal and proposed storm water basins, noting existing drainage and utility easements for the municipal basins will be utilized and expanded as necessary. Drainage and utility easements for proposed storm water basins will be obtained as required. He noted that the WCA permit was approved by the Board at the October meeting, noting that MnRAMs were prepared for all the wetlands within the project corridor and two high value wetlands were determined with the remaining identified as medium value wetlands; reviewing the buffer requirements for each value. He noted that a variance would be required for buffers as the buffers are being provided to the maximum allowed under the public land ownership. He noted that another variance would be required as there will be a permanent structure within a buffer area. He reviewed the stormwater management elements of the project, noting that there are numerous discharge points within the project area. He stated that another variance would be requested asking the District to consider looking at the net result of the discharge onto the receiving body and outflow from the BMP and whether that exceeds the rule. He noted that the BMPs also provide water quality treatment. He displayed a table which identifies the discharges to the 13 BMPs that are located throughout the project area, which includes the BMPs that deal with runoff adjacent to the tracks, and provided additional details. He discussed the District's requirements for volume retention and how that applies to the project as proposed.

Manager Peterson asked what would happen to the water from the site where they are washing the trains and the soils are contaminated.

Engineer Obermeyer replied that the water would discharge into the sanitary sewer. He continued to review details of the project specific to water quality and the minimum flood elevation levels. He noted that in all instances the water treatment and ground water levels have a separation of more than three feet. He stated that a SWPPP has been provided but the final erosion and sediment control plans have not been included and therefore that would be a requirement. He noted that there is a total of four variance requests for buffer widths, permanent structures within the buffer, rate control at each individual discharge point be reviewed on an aggregate scale, and volume retention. He stated that staff recommends approval of the requests with the submittal of the additional information. He noted that the final construction plans are being completed and staff wants to see the final construction documents to ensure that they comply with the preliminary documents in addition to the erosion and sediment control plans which have not been received.

Attorney Smith stated that there are two procedural issues, staff anticipates that there will be revisions to the details of the plans and therefore a condition be added allowing the administrator and engineer to review the revisions and if there is a significant change those plans be brought back but otherwise that review and approval can be delegated to the administrator.

He provided specific language recommended for the submittal of the additional documents and revisions. He noted that the term of the permit and allowed construction should also be considered, noting that the project will not be complete in 18 months and therefore the applicant can keep coming back for extensions or a longer term could be allotted.

Manager Lynch asked if a longer term could be allowed under the permit.

Chair Kloiber stated that it would make sense to extend the term of the permit to perhaps 36 months, as there is the additional condition that would require alterations to come before the administrator and perhaps the Board.

Engineer Obermeyer stated that with an extended term for the permit perhaps a representative from the applicant would provide an annual update on the project status.

Mr. Mistic stated that they expect construction to begin in July 2017 and believed that about three years would be needed for construction with plans to open in 2021.

Manager Lynch asked if the variances would have to be considered separately.

Attorney Smith replied that given the amount of detail it would be appropriate to consider each request one by one given the scale of the project and range of impacts.

Chair Kloiber asked if all runoff would be treated through a BMP before discharge.

Ms. Earth Evans from WSB Engineering replied that not every single drop but noted that the majority of the water would be treated through BMPs but because this is a linear project that is not possible in every single location.

Manager Peterson asked what the plan was to protect against the infiltration of storm water in areas with contaminated soils.

Ms. Evans replied that the ponds would be lined to hold the water and explained how the other water would be drained to the sanitary sewer.

Engineer Obermeyer stated that two MnDOT seed mixes are proposed for the wetland buffers that would be used for restoration.

Attorney Smith noted that the table refers to 14 BMPs while the report mentions 10 BMPs.

Engineer Obermeyer stated that 13 BMPs were shown but a few of those are in areas of contamination and that is why only 10 are mentioned in the report.

Attorney Smith noted that the permit application had been reviewed extensively, given the scale of the project, and this review should provide the District with a good record to support the decision.

Engineer Obermeyer stated that he has a few other conditions noting that maintenance agreements would be needed for stormwater management and buffer maintenance, the Met Council would need to submit documents showing that they have obtained the private property rights needed, and no work takes place until documentation has been provided showing the property rights have been obtained and provided to the District. He recommended approval of the requests as discussed.

Manager Lynch moved, seconded by Manager Peterson, to approve the variance for buffer widths as this is an urbanized area therefore there is a limited amount of space available to provide buffers because of existing structures and roadways, there is not an adverse impact on the resource, and the total buffer provided exceeds the minimum required. Upon a vote, the motion carried.

Manager Peterson moved, seconded by Manager Twele, to approve the variance for permanent structures within the buffer as this option provides the minimum amount of impact to the wetland, the hardship was not created by the applicant and alternatives would have additional impact to the resource. Upon a vote, the motion carried.

Manager Lynch moved, seconded by Manager Twele, to approve the variance for rate control to consider rate control in a systematic method rather than at each point of discharge. Upon a vote, the motion carried.

Manager Peterson moved, seconded by Manager Twele, to approve the variance for the onsite volume retention as the soils are contaminated, the hardship was not due to the applicant, and this is the best solution. Upon a vote, the motion carried.

Manager Lynch moved, seconded by Manager Twele, to approve the permit subject to the conditions specified by staff and extending the permit term to 48 months. Upon a vote, the motion carried.

Treasurer's Report

The Treasurer submitted the report. Manager Twele provided clarification on certain items included in the report.

Administrator Anhorn provided additional details on a restoration contract.

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

Education & Outreach Program Report

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

A. General Updates

Education and Outreach Coordinator Sniegowski stated that the Nonpoint Education for Municipal Officials (NEMO) schedule and annual waters report were included in the packet for review. She stated that the State of the Waters event was held the previous week and over 50 people attended. She stated that people are interested in finding out what the District is doing and she would like to continue to do events of this nature.

Manager Lynch stated that it was a great event that provided good information and thanked people and volunteers that have been involved.

Education and Outreach Coordinator Sniegowski stated that calendars have been distributed. She reported that the District has been awarded the Clean Water Fund Grant from BWSR and those funds should be available in February. She stated that the goal of the grant is to implement a project to get non-profit organizations shovel ready for projects. She stated that the District applied for \$83,339 and will be awarded the full amount.

Administrator Anhorn stated that the education and outreach staff did a great job preparing for the event, spent less money than in previous years while increasing attendance, even with the bitter cold weather temperatures.

B. Discovery Point Restoration Update

Education and Outreach Coordinator Sniegowski stated that the engineer's estimate and costs for phase one of the restoration were included in the packet. She stated that the goal is to authorize the administrator to initiate the request for quotes and authorize the contract for the project. She reviewed the elements of the project that would be included in phase one of the project which would include buckthorn removal in a section of the property as well as removal of about 49 trees. She explained that this would remove invasive trees and would also provide more light penetration for growth of other elements. She noted that forest management is also a concern with Oak Wilt and Emerald Ash Borer. She stated that the City Forester has been involved and does support the proposed tree removal. She stated that staff met with the Minnesota Land Trust to discuss the phase one plan and overall site plan and they would issue a letter of approval for phase one once the Board approves the project.

Chair Kloiber asked if neighbors would object to the tree removal.

Education and Outreach Coordinator Sniegowski stated that there are reasons for the tree removal and there will be a step to reach out to neighbors to inform them of the reasons for the tree removal through the CAC. She noted that planting and aesthetic work is planned for the exterior border of the property in attempt to buffer from the tree removal. She provided a brief overview of the different restoration techniques, which can give examples of two different restoration techniques.

Manager Twele asked if chemicals must be used to remove the turf.

Matt Kumka, Barr Engineering, replied that is the most cost effective method and would also provide the most stable base to start the seeding.

Chair Kloiber stated that is pretty much the only practical way to do that on bigger sites, noting that the DNR also follows that path.

Education and Outreach Coordinator Sniegowski reviewed the other elements that would be included in phase one.

Matt Kumka provided additional details on the two seeding techniques proposed and the plans for phase one. He confirmed that this is within the budget allocated by the Board. He stated that he has spoken with contractors that state they are looking to be competitive right now.

Chair Kloiber stated that he would want to see the execution of the contract contingent upon meeting with the neighbors.

Education and Outreach Coordinator Sniegowski stated that will be a part of the process and would not begin until those discussions occur. She stated that several neighbors are on the CAC and excited about the project.

Matt Kumka stated that there is a lot of flexibility in the plantings used for screening and the neighbors could provide input.

Chair Kloiber agreed that this project should be a net improvement for neighbors.

Attorney Smith suggested proposed language.

Manager Twele moved, seconded by Manager Peterson, to one, authorize the administrator to issue the request for quotes for the first phase of the Discovery Point restoration project; two, execute, on advice and consent of counsel, a contract for work with the qualified contractor submitting the lowest price quote (not to exceed the engineer's estimate by more than 10 percent); three, issue notice to proceed to the selected contractor upon satisfactory completion of an engagement process with neighbors; and four execute change orders amounting to, in aggregate, no more than 10% of the contract price. Upon a vote, the motion carried.

Unfinished Business

A. Update on FSLA Overtime Rule

Administrator Anhorn noted that the raised salary ceiling for the FSLA overtime rule that was supposed to go into effect on December 1, 2016, but there has been a nationwide injunction due to a legal appeal in Texas.

Chair Kloiber stated that perhaps a special meeting be held at some point to discuss HR items.

Administrator Anhorn agreed, noting that eventually he would have a proposed Personal Policy Manual that the Board could use as a baseline for discussions.

Chair Kloiber agreed that many HR items have crept up over time and the best fit would perhaps be to hold a special meeting.

Attorney Smith asked if the Board took action authorizing the earlier anticipated FSLA overtime change.

Administrator Anhorn stated that direction was provided as to the use of compensation time. He stated that the Board never took action on who would be qualified to do so.

B. Watershed Management Plan

Administrator Anhorn stated that there has been much discussion on Chapter 5 and noted that another special meeting will be held on January 5th to begin discussion on Chapter 6. He stated that he would distribute Chapter 6 to allow the Board time to review the information prior to the January 5th meeting.

i. Chapter 5 – Goals, Objectives, Policies, and Actions TAC Recap

Engineer Kieffer stated that a TAC meeting was held on November 29th, noting that the items highlighted in yellow were discussed more thoroughly. She provided an overview of the comments that were received.

Chair Kloiber noted that the connection to groundwater recharge could still be promoted, even if the specifics are not spelled out.

Engineer Kieffer agreed that the new language would still promote groundwater recharge.

ii. Chapter 6 – Implementation

Engineer Kieffer provided a brief overview of the table included in Chapter 6, noting that essentially all of the goals and activities from Chapter 5 have been transported into the table. She noted that the costs are simply rough estimates at this point. She noted that this would be a good tool for the District to use to determine what has been accomplished.

iii. Project Prioritization Framework Recap

Administrator Anhorn reviewed the upcoming schedule of meetings.

Chair Kloiber asked if there has been any mention from Hennepin County on a anyone applying for the watershed's empty seat.

Administrator Anhorn stated that there has at least one person that has applied.

Manager Lynch noted that she was contacted by former Manager Tolliver who stated that her son, who is an engineer, may be interested in applying for the open position.

Administrator Anhorn noted that the position closes on the December 31st, therefore the County Board will likely interview the applicant(s) and then appoint a new watershed manager at upcoming County Board meetings in January.

New Business

A. MN Buffer Law

Administrator Anhorn stated that he sent out a memorandum that highlighted background information on the State's new buffer law and provided a brief overview. He further highlighted a provision in the legislation where watershed districts and counties have the option to assume the role of enforcement authority, and that the District had until March 31, 2017 to notify BWSR if it chooses to exercise jurisdiction for enforcement. If not, the enforcement role within the boundaries of the watershed would fall to BWSR.

The Board discussed the benefits and disincentives of taking on the enforcement role and Chair Kloiber stated that this seems to be a non-issue as there are not many areas in the District that would apply and therefore would support having BWSR take the enforcement role.

Manager Lynch agreed.

Manager Lynch moved, seconded by Manager Twele, to direct the administrator to contact BWSR to let them know that the District is going to defer enforcement of buffer law to their organization. Upon a vote, the motion carried.

B. Cost-Estimate: Development of Permit Tracking Process

Administrator Anhorn stated that there had been previous Board discussion on the need for a better permit and surety tracking system which he followed up on and investigated options. He suggested part-time assistance to help the District get up to speed to eventually take over, with an amount not to exceed \$3,600.

Manager Twele moved, seconded by Manager Peterson, to approve part-time assistance for the development of a permit tracking process with a cost not to exceed \$3,600. 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. Edina 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. Lower Valley: Status Report**
- G. Pentagon Park Storm Water Management**
- H. Lake Cornelia**
- I. Status of Construction Projects**

Engineer Obermeyer updated the Board on the above listed projects. He referenced a letter from the contractor for the Highway 169 project. He provided details on a datum calculation error and noted that additional floodplain storage would be needed. Following Board discussion, it was determined that the proposed compensatory storage approach was satisfactory.

Administrator Anhorn stated that staff is continuing their attempt to obtain easements for about 20 properties along the Edina Streambank project. He stated that a letter was sent out and about 12 out of the 20 property owners are in a good spot to provide easements. He noted that meetings are being set with landowners that have specific questions. He stated that there are two landowners that he has had trouble contacting.

Chair Kloiber stated that there was a story recently on Lake Cornelia and stated that there seems like there is a potential for misinformation or misunderstanding.

Administrator Anhorn provided additional details on a public meeting that was held, noting that the City of Edina has taken the lead on the project.

Chair Kloiber stated that he was potentially concerned that the District would come under fire for not doing anything.

Administrator Anhorn stated that load reduction is the main emphasis for the District and noted that there are projects of that nature included in the Water Management Plan.

Attorney's Report

Attorney Smith had nothing further to report.

Administrator's Report

Administrator Anhorn referenced an article from Eden Prairie in which they are looking for legislative support in reducing the amount of regulatory organizations.

Attorney Smith provided additional details on consolidation of water management organizations discussed in the legislation. He noted that a majority of the Hennepin County Board does not support that legislation, but that does not stop the legislation from moving forward. He stated that the District has a good working relationship with Eden Prairie and the Hennepin County Board members and perhaps should emphasize those good working relationships. He noted that there will be a new Board Member for Hennepin County and thought it would be worthwhile for the person to attend a meeting. He encouraged the District to continue to do the things they are doing and the relationships they have built.

Managers' Report

The Chair called for reports.

Task Summary Report & Manager's Calendar

The Managers reviewed and updated the task report.

Adjournment

It was moved by Manager Twele, seconded by Manager Lynch, to adjourn the meeting at 9:38 p.m. Upon a vote, the motion carried.

Respectfully submitted,



Corrine Lynch, Secretary

ATTACHMENTS:
Treasurer's Report

