

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

**WEDNESDAY, NOVEMBER 16, 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, November 16, 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, Erica Sniegowski, and Randy Anhorn

**Agenda**

Attorney Smith suggested electing a Secretary as there will be a vacancy for some time noting that the issue can be revisited when the Board is again full.

Chair Kloiber moved, seconded by Manager Peterson, to appoint Manager Lynch as Secretary. Upon a vote, the motion carried.

Chair Lynch moved, seconded by Manager Twele, to approve the agenda as presented. Upon a vote, the motion carried.

**Reading and Approval of Minutes**

The Chair called for review of the minutes of the Special Meeting of October 13, 2016. Administrator Anhorn suggested that unless there are substantial changes to the minutes, the Managers could submit grammatical changes to staff to make the process more efficient. It was the consensus of the Board to follow that process in the future. The Managers provided written grammatical changes to staff.

Manager Twele 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 Regular Meeting of October 19, 2016. Manager Twele noted on page three, under general updates, the fourth line, it should state, "...buckthorn removal event ~~bus tour~~. Attorney Smith noted on page four, under Permit #2016-

88, an additional condition was added to the second motion that specified, "The applicant must provide documentation to the District of the acquisition of the necessary property rights on any particular property prior to disturbance of wetlands on such property." Education and Outreach Manager Sniegowski stated that she provided written grammatically changes to Administrator Anhorn prior to the meeting.

Manager Peterson moved, seconded by Manager Twele, 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 November 2, 2016.

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

### **Correspondence**

There was none.

### **Education & Outreach Program Report**

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

#### **A. Discovery Point Restoration Update**

Education and Outreach Manager Sniegowski stated that staff will be meeting with the Minnesota Land Trust to go over the restoration plan for the site and are expecting to gain approval at that meeting. She stated that on December 7<sup>th</sup> staff will meet with Barr Engineering to review the 75 percent design plans and cost estimates, noting that the bidding documents will come forward to the Board at the December meeting.

#### **B. State of the Waters/Calendar Release Event**

Education and Outreach Manager Sniegowski reminded the Board of the upcoming event on December 14<sup>th</sup> from 6:00 to 8:00 p.m. at the Eden Prairie Community Center.

#### **C. Calendar Print Quote**

Education and Outreach Manager Sniegowski stated that the calendar was sent to the printer today but provided a preview to the Board. She stated that quotes were received from two different printers, noting that she included the lowest price in the Board packet with a total of \$5,559, noting that price does not include tax or shipping and therefore requested approval of the quote plus tax and shipping.

Manager Twele moved, seconded by Manager Peterson, to approve the calendar print quote with a cost not to exceed \$6,200. Upon a vote, the motion carried.

#### **D. District Apparel**

Education and Outreach Manager Sniegowski stated that staff will order the vests and polo shirts for staff and Managers. She provided examples of the ladies' and men's items. She stated that Board authorization is not required as the cost threshold will not be met. She stated that the sizes run typical for the vests and polos. She noted that the shirts can come in either color and advised that she will include a color option on the order form for the Managers. She noted that the vests will only come in black. She noted that the Nine Mile logo would be embroidered onto the vests and shirts.

#### **E. General Updates**

Education and Outreach Manager Sniegowski displayed photographs from the buckthorn removal event that the District hosted on Saturday October 29<sup>th</sup>. She stated that it was a great event with a great turnout. She stated that a District exhibit will be moving to the Eden Prairie library in January.

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

There were none.

#### **Consent Agenda**

- A. Permit #2015-107: FPA Bloomington, LLC, Permit Extension Request for the Bloomington Storage, 1240 West 98<sup>th</sup> Street, Bloomington**
- B. Permit #2016-134: Fiber Optic Cable Installation – West 65<sup>th</sup> Street and France Avenue to West 78<sup>th</sup> Street and Glenroy Road; Grading and land alteration permit: Edina/Bloomington**

Manager Peterson moved, seconded by Manager Twele, 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 and Minnetonka**

Engineer Obermeyer stated that this is just an update noting that the first 60-day comment period ends on December 18<sup>th</sup> and the regular Board meeting is December 21<sup>st</sup>. He stated that a 60-day extension has been requested and approved by the Metropolitan Council, noting that the item will be reviewed at the December meeting. It was determined that no action was needed from the Board.

- B. Permit #2016-135: Home Reconstruction – 6004 Tracy Avenue; Grading and land alteration permit: Edina**

Engineer Obermeyer presented the permit request and proposed plans. He identified a neighboring wetland and noted that staff requested that the applicant provide a boundary determination to determine the impact on the property. He advised that the boundary determination would require separate action by the Board. He recommended approval of the permit contingent upon the general conditions including financial assurance in the amount of \$10,500 and that a maintenance declaration be recorded on the property. He also recommended that the Board approve the boundary determination for the wetland on the adjacent school property.

Manager Lynch moved, seconded by Manager Peterson, to approve the wetland boundary determination. Upon a vote, the motion carried.

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

**C. Permit #2016-136: Single-Family Home Construction – Lot 3, Wyman Place; Warren Avenue and West 63<sup>rd</sup> Street; Grading and land alteration permit: Edina**

Engineer Obermeyer stated that the District issued approval for the subdivision in 2014 but noted that a new permit has been submitted to continue to build out the vacant lot in the development. He noted that information was requested and received regarding the size and functionality of the ponding facility. He noted that using that information it was determined that the necessary volume was provided but the surface area needed was short by about 140 square feet and therefore the applicant was asked to show how the adjustment could be made. He stated that construction has begun on the site prior to the approval of the permit. He stated that staff has had numerous conversations with the applicant. He stated that there are a couple options available to the District to meet the requirements of the District including expanding the pond or completing tests to determine if the infiltration rate exceeds the standard for clay type material. He stated that a permit is requested with the knowledge that work has begun on the property.

Administrator Anhorn stated that it is his understanding that construction has stopped on the site until this permit issue is resolved. He stated that he has spoken with the City of Edina staff to open lines of communication regarding the timing of permit issuance to ensure that Watershed permits have been issued prior to their issuance of a permit.

Manager Twele asked when the test information would be known.

Tom Bakritges, Homestead Partners LLC, stated that they would begin the testing as soon as possible.

Engineer Obermeyer stated that there would be some logistical issues to work out as they would need approval from the City to open the lines and receive the necessary amount of water. He noted that a timeline can be placed on the test results.

Manager Lynch noted that the approval could be issued contingent upon successful infiltration results.

Engineer Obermeyer recommended approval of the permit contingent upon the general conditions, including financial assurance and maintenance declaration.

Mr. Bakritges provided background information noting that the subdivision took place two years prior and this was the one remaining lot. He stated that they would like to get this lot built to get on the spring preview. He noted that a permit was applied for in October with the City and they received approval from the City and assumed that everything was okay and started construction. He stated that they then determined that there was an issue when their engineering staff spoke with Engineer Obermeyer. He stated that they are confident that they will pass the infiltration test and they will work cooperatively with staff. He stated that in most cases the City will not issue a permit unless everything is approved but noted that they will accept responsibility.

Chair Kloiber asked if a staff member could be onsite for the test.

Engineer Obermeyer confirmed that someone could be on site for the test.

Manager Twele asked how this could be approved without meeting the current rules of the District.

Attorney Smith stated that the rules can be applied in the scheme of the development.

Engineer Obermeyer stated that when the Board reviewed this in 2014 it was approved as a three-lot subdivision and if it was constructed in that timeline there would not have been a problem. He stated that nothing has changed with the exception of the District rules and explained that this application would be “grandfathered” in as the applicant met the requirements and it would not make sense to change things for a development that was already approved. He noted that if a new development comes forward, that would need to meet the new rules.

Attorney Smith noted that is one reasonable approach given the history of the site. He noted that it is also the case that the third home was not built and the permit expired and therefore the Board could require the new rules to be met but would need to determine if that could be done. He stated that the applicant has made statements to the fairness given the scheme of the development already approved.

Commissioner Lynch stated that she might feel stricter about applying the rules if it was the fault of the applicant but in this case, would give the benefit of the doubt.

Manager Lynch moved, seconded by Manager Twele, to approve the permit contingent upon successful infiltration test results. Upon a vote, the motion carried.

Attorney Smith noted that a maintenance declaration would have been submitted before with the original permit and asked if an additional maintenance declaration would be required.

Engineer Obermeyer stated that most likely the maintenance declaration would not need to be altered but simply verified to ensure the applicant recorded it with the original approval of the subdivision. He noted that surety would be required in the amount of \$5,000.

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

Manager Lynch moved, seconded by Manager Twele, to amend the permit approval to include surety in the amount of \$5,000 and verification that changes are not needed to the maintenance declaration was submit with the original permit. Upon a vote, the motion carried.

**D. Permit #2016-137: Edina Medical Office Building – 7700 France Avenue;  
Grading and land alteration permit: Edina**

Engineer Obermeyer presented the permit request and proposed plans. He stated that this is a large project with almost 30,000 square feet of area required for volume retention and therefore surety will be recommended in the amount of \$311,700. He noted that the applicant has requested a co-permittee. He recommended approval of the permit contingent upon the general conditions, including financial assurance \$311,700 and recording of a maintenance declaration.

Manager Peterson referenced the contaminated soils in the southwest corner and asked why there was not remediation in lieu of the liner.

Engineer Obermeyer stated that it would be too voluminous to remove the material. He stated that the material will be covered to prevent infiltration into the debris and contaminated area.

Manager Lynch moved, seconded by Manager Twele, to approve the permit including surety in the amount of \$311,700 and designation of DRF Edina Medical Building LLC as a co-applicant. Upon a vote, the motion carried.

**E. Preserve Boulevard – Wetland Boundary Determination and Type: Eden  
Prairie**

Engineer Obermeyer stated that staff recommends approval of the next three agenda items regarding wetland determinations. He noted that this project is for a road project, Item F is a pond clean-out, and Item G is regarding the land use update for Fred Richards Golf Course. He explained how the review is done and how coordination is made with the TEP.

Manager Peterson moved, seconded by Manager Lynch, to approve the wetland boundary determination and type for Preserve Boulevard. Upon a vote, the motion carried.

**F. Pointe Chase Pond Clean-Out – WCA No-Loss Determination: Eden Prairie**

Manager Lynch moved, seconded by Manager Twele, to accept the WCA no-loss determination for the Pointe Chase pond clean-out. Upon a vote, the motion carried.

**G. Fred Richards Golf Course – Wetland Boundary Determination and Type: Edina**

Manager Lynch moved, seconded by Manager Peterson, to approve the wetland boundary determination and type for Fred Richards Golf Course. 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.

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

Manager Twele moved, seconded by Manager Lynch, to proceed to issue a check to Veit in the amount of \$29,528.96 as a return of their retainage payable. Upon a vote, the motion carried.

**Unfinished Business**

**A. Update on Chamberlain-Cherokee Drainage Analysis Request from the City of Eden Prairie**

Administrator Anhorn stated that a memo was included in the Board packet which addresses the request from the City of Eden Prairie. He stated that a cost estimate was received for approximately \$7,500. He stated that Eden Prairie is willing to cost-share the item 50/50.

Manager Peterson moved, seconded by Manager Lynch, to direct and authorize the Administrator to execute an agreement with the City of Eden Prairie to complete the Chamberlain-Cherokee drainage analysis at a cost not to exceed \$4,000. Upon a vote, the motion carried.

**B. Proposed Scope of Work: Normandale Lake Water Quality and Nuisance Biota Evaluation**

Engineer Obermeyer stated that at the previous meeting staff provided an outline of the steps they would recommend for Normandale Lake. He stated that staff recommends a model that would deal with numerous aspects to provide a full ecological, holistic approach to how the lake functions. He stated that the process would also include meetings with the city, regulatory agencies and the public. He stated that based on the input of the residents and city of Bloomington has had staff would recommend that Managers consider this modeling.

Manager Peterson stated that the Board previously discussed that this modeling is newer and therefore includes aspects that were not included in the past.

Engineer Kieffer provided additional input on the modeling and what would be provided through that data. She explained that the model is a tool to understanding what the lake is doing and what the reaction should be.

Manager Lynch asked how far back the data would go.

Engineer Kieffer stated that she was unsure but noted that they would go back through the 2000's and would use as much data as they can.

Administrator Anhorn stated that this was talked about as part of the Water Management Plan, specifically regarding goals and shallow lakes, noting that this would be a great test case for the process.

Chair Kloiber asked, and received confirmation, that this would be a dynamic model. He stated that one conclusion may be that additional data is needed but agreed that this would be a good step.

Manager Lynch asked, and received confirmation, that this would result in a written document and presentation.

Engineer Kieffer reviewed the proposed schedule, noting that the timeline will be delayed by about a month because the timeline was based on approval being received the previous month.

Manager Peterson moved, seconded by Manager Twele, to approve the scope of work for the Normandale Lake Water Quality and Nuisance Biota Evaluation in the amount of \$48,000. Upon a vote, the motion carried.

### **C. Cell Phone Policy**

Administrator Anhorn stated that some options were presented for a cell phone policy at the previous meeting and direction was provided for staff to work with Smith Partners to draft a dual option plan. He stated that a draft policy was included in the Board packet and noted that the policy would be included in an upcoming personnel booklet. He stated that staff also researched price quotes for the tablet data plan and the two staff members that would like District cell phones and provided that information. He noted that an amount would also need to be set for the stipend for those staff members that choose to use their personal phone. He stated that \$50 to \$65 is fairly common.

Chair Kloiber stated that it seems that if the employee is using their own cell phone they are getting some value out of it and therefore the District should not be funding the entire cost.



Manager Twele stated that perhaps a dollar amount not be stipulated in the policy as costs can fluctuate.

Chair Kloiber stated that a guideline would need to be provided, such as half the cost of the plan or \$50. It was the consensus of the Board to authorize \$50 as the stipend.

Administrator Anhorn stated that language should be included in the policy that states that Managers will routinely review the stipend to determine an applicable amount. He believed that \$50 would be appropriate. He asked whether the Managers would like to include insurance for the mobile devices.

It was the consensus of the Board to forgo the insurance for the mobile phones.

Manager Twele moved, seconded by Manager Peterson, to authorize staff to purchase two smart phones and setup a service plan for the phone which also includes data plan for the tablets. Upon a vote, the motion carried.

Manager Twele moved, seconded by Manager Peterson, to approve the cell phone policy, subject to the amendments discussed tonight. Upon a vote, the motion carried.

Manager Peterson moved, seconded by Manager Lynch, to set the stipend for personal cell phone use for business purposes at \$50. Upon a vote, the motion carried.

#### **D. Financial Assurance Safe**

Administrator Anhorn stated that this was discussed at the last meeting and direction was provided for staff to research options for a fireproof safe to hold the bonds and letters of credit. He stated that he found a fireproof safe at Costco, noting that he verified with Attorney Welch that the model would be appropriate. He stated that the cost was \$250.

Manager Lynch moved, seconded by Manager Peterson, to approve the purchase of a fireproof safe. Upon a vote, the motion carried.

#### **E. Watershed Management Plan**

- i. Chapter 5 – Goals, Objectives, Policies and Resolutions**
- ii. Project – Prioritization Framework Recap**

Administrator Anhorn noted that an updated version of Chapter 5, which includes the revisions discussed, for the Managers to review.

Engineer Kieffer stated that staff simply wants the Board to review the revised language and provide input prior to sharing the information with the TAC the following month.

Chair Kloiber stated that if Managers have comments or questions, they should forward them to Administrator Anhorn by the following Tuesday before the Thanksgiving holiday.

Administrator Anhorn asked if January 5<sup>th</sup> would work for the next workshop with February 2<sup>nd</sup> as the next date. He confirmed the dates with the Board and it was noted the meetings would begin at 5:30 p.m.

### **New Business**

#### **A. MAWD Annual Meeting Delegation and Resolutions**

Chair Kloiber noted that Manager Twele is the only Manager attending.

Chair Kloiber moved, seconded by Manager Lynch, to appoint Manager Twele as the delegate at the MAWD Annual Meeting. Upon a vote, the motion carried.

Attorney Smith noted that perhaps some guidance should be given to Manager Twele prior to the Annual Meeting. He reviewed some of the items that will be discussed at the meeting, providing additional details and explanation.

#### **B. Education/Outreach Program Manager Annual Review**

Administrator Anhorn stated that he met with Education and Outreach Manager Sniegowski to conduct her annual review, noting that he obtained comments from previous Administrator Bigalke as well as members of the Board. He stated that she was instrumental in the transition out of Administrator Bigalke and the transition in for him. He stated that the vast majority of her review was outstanding and recommended a five percent merit increase as well as continually expanding her duties in the next year.

Chair Kloiber stated that Education and Outreach Manager Sniegowski has been doing a wonderful job, which was echoed by the other Managers. He stated that perhaps in conjunction with the annual review, a professional development plan could be created for staff to help them reach their goals.

Administrator Anhorn stated that element is included in the review and noted that she has completed many of the steps outlined in the 2015 plan.

Manager Lynch moved, seconded by Manager Twele, to approve the annual review of Education and Outreach Manager Sniegowski and authorize a five percent merit increase. Upon a vote, the motion carried.

#### **C. Creek Valley Pond Rock Riffle Dam Repair**

Administrator Anhorn provided an update, noting that the project is in disrepair. He stated that since the District constructed the project, staff feels it the responsibility of the District to fix the project. He noted that Three Rivers Park District is completing a project this winter and their contractor could most likely complete this work as well. He asked for direction from the Board to ask the contractor for a quote.

Engineer Obermeyer estimated the cost to be between \$5,000 and \$7,500.

Chair Kloiber stated that perhaps a not to exceed amount of \$10,000 be authorized.

Manager Lynch moved, seconded by Manager Peterson, to approve repairs to the Creek Valley pond rock riffle dam, at a cost not to exceed \$10,000. Upon a vote, the motion carried.

Administrator Anhorn asked Engineer Obermeyer, and received confirmation, that the \$10,000 would be sufficient to include any surveying work that is necessary by Barr Engineering. He noted that he received a call from a resident at 5225 Blake Road regarding culverts on their property that are out of the ground and separated because of the water and asked if that was a city issue or Watershed issue. He noted that the project was completed by the Watershed.

Engineer Obermeyer provided additional details on the original project and the conditions that caused the culverts to come out of the ground. He stated that staff just found about this within the last week to ten days and will look into it further to bring a recommendation back to the Board. He stated that the pipe may need to be relayed with soil anchors.

Manager Lynch asked if it is the responsibility of the District to maintain projects or whether that responsibility diverts back to the city.

Administrator Anhorn stated that staff is going to look into the matter and will provide more information to the Board at the next meeting.

### **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 noted that Barr Engineering is working with Smith Partners and Administrator Anhorn to get the Edina Creek stabilization project back on track and attempt to gain the necessary property easements.

**Attorney's Report**

Attorney Smith provided additional input on the District's responsibility to maintain their installed projects. He noted that unless delegated in the maintenance agreement, the project repair would fall under the responsibility of the District.

The Board further discussed maintenance responsibility of member cities.

**Administrator's Report**

Administrator Anhorn stated that there have been a few times in the past week or two where work has begun prior to issuance of a permit or permits expiring while work is still being done. He stated that he is leery that this is the tip of the iceberg and noted that he may ask Barr Engineering to develop a tracking system that would allow staff to have a better idea of progress and permits. He stated that he and Engineer Obermeyer met with the City of Hopkins regarding 8<sup>th</sup> Avenue. He stated that it would also be helpful to have a notary at the office and therefore Education and Outreach Manager Sniegowski is looking into becoming a notary.

**Managers' Report**

The Chair called for reports. Manager Lynch introduced Grace Sheehy, a potential applicant for the vacant position on the Board, noting that she is already a Master Water Steward.

Grace Sheehy introduced herself and provided some background information on her experience as a Master Water Steward and on water issues. She noted that a number of rain garden projects are located on senior citizen properties and they have found that the cost for maintenance is more than they can afford on a fixed income, noting that perhaps a bank could be created to help fund or complete those maintenance activities.

**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 9:12 p.m. Upon a vote, the motion carried.

Respectfully submitted,

  
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Corrine Lynch, Secretary

ATTACHMENTS:  
Treasurer's Report