

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

WEDNESDAY, DECEMBER 20, 2017

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 20, 2017, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Twele, Hunker, Kloiber, Sheely and Peterson

Managers Absent: None

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

Agenda

Manager Sheely moved, seconded by Manager Peterson, 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 15, 2017. Chair Kloiber noted that minor typo corrections have already been submitted to staff. Manager Twele noted on page 13, under the Engineer's Report, it should state, "Engineer Obermeyer stated that the District is continuing with Sunram on the Edina Creek Stabilization Project,..." Attorney Smith noted that he would pass his suggested changes to Administrator Anhorn for incorporation.

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

Correspondence

- Memorandum from Smith Partners on potential Manager training topics.

Hearing and Discussion of Matters of General Public Interest

There were none.

Consent Agenda

- A. **Permit #2017-116: Concierge Apartments Parking Expansion – 7620 Penn Avenue; Grading and land alteration permit: Richfield**
- B. **Permit #2017-117: Green Circle Drive Culvert Replacement – Across the street from 5643 Green Circle Drive; Grading and land alteration permit: Minnetonka**
- C. **Permit #2017-120: Creek Valley Elementary School Building Addition – 6401 Gleason Road; Grading and land alteration permit: Edina**

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

Manager Sheely referenced Item B and asked if the culvert degraded from the driveway use.

Jo Colleran, Minnetonka Natural Resources Manager, stated that she prepared the application on behalf of the city. She stated that the culverts have been slowly degrading and have been monitored. She stated that the culverts need to be replaced in order for the city to continue to have access to the building.

Hearing of Permit Applications

- A. **WCA Wetland Boundary and Type Concurrence – No Loss Determination: Willow Creek Road Embankment Regrading: Eden Prairie**

Engineer Obermeyer presented the notice of decision information and highlighted changes that were suggested by legal counsel. He stated that the Board approved a permit for this project at the last meeting and this action would formalize the delineation of the wetlands. He noted that the Technical Evaluation Panel (TEP) met onsite and recommended that the Board approve of the boundary and type determination and also approve a no net loss for the excavation of some material. He noted that the comment period has ended, and no comments were received.

Commissioner Sheely asked what she should be looking for as a new Manager.

Chair Kloiber explained that although the TEP signs off on the information, the Board (acting as the Local Governing Unit) would need to formally approve the information.

Manager Sheely moved, seconded by Manager Twele, to accept the notice of decision boundary and type and approve the no loss determination. Upon a vote, the motion carried.

- B. **WCA Wetland Boundary and Type Concurrence – No Loss Determination and WCA de minimis Exemption: Birch Island Woods Collection System: Eden Prairie**

Engineer Obermeyer presented the notice of decision information and the project details. He stated that this would allow an access to be created for the equipment to reach the necessary areas. He stated that the no loss determination relates to the removal of 400 square feet of accumulated sediment that will be removed as part of the overall project. He noted that this is a District project and advised that the TEP recommends approval of the wetland boundary and type determination as well as the no loss determination.

Manager Hunker moved, seconded by Manager Twele, to approve the notice of decision boundary and type and no loss determination. Upon a vote, the motion carried.

C. WCA Wetland No Loss Determination – Midwest Asphalt: Eden Prairie

Engineer Obermeyer provided details on the project. He stated that the TEP has been onsite and the removal of the material would fall under the no loss determination. He stated that due to the fact that work will be done by Midwest Asphalt and their contractor on the Tiller property, the applicant would need an access agreement with the adjacent property owner.

Chair Kloiber asked if something should be done to prevent the sediment discharge onto the adjacent site.

Engineer Obermeyer noted that the berm is outside of the wetland and that will minimize further degradation. He noted that he will bring that concern back to the city of Eden Prairie and the applicant.

Manager Sheely moved, seconded by Manager Peterson, to approve the no loss determination. 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.

Engineer Obermeyer provided details on the two pay requests, from Blackstone and Sunram, and recommended approval of both items.

Manager Twele moved, seconded by Manager Sheely, to approve the pay request Blackstone Contractors in the amount of \$500 and to Sunram in the amount of \$147,711.42. Upon a vote, the motion carried.

Manager Peterson moved, seconded by Manager Hunker, 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

Program and Project Manager Sniegowski provided an update on various education and outreach program activities. She stated that the year end annual report and calendars have been completed and printed. She noted that an electronic version of the annual report was also sent out the previous day. She stated that the second change order for the landscape restoration project has been completed. She stated that the state of the waters event was held the previous week and noted that about 70 people attended.

Manager Peterson referenced the interpretive signs and asked if there was discussion on signs around Normandale Lake.

Program and Project Manager Sniegowski stated that staff will be talking about that when they meet in the near future with the city of Bloomington.

Unfinished Business

A. Update – Phase I Nine Mile Creek Stabilization Project

Engineer Obermeyer provided an update on the project progress thus far, reviewing photographs at the various project reaches. He highlighted the work that has been completed and the work that still needs to be under taken, along with the timeline for that work to be done. He stated that there is a substantial completion date of March 1, 2018 for the work within the channel. He stated that this date was chosen because of the DNR's regulation that no work occurs between March 15th and June 15th because of fish spawning. He stated that the bypass channels have been excavated in reaches two and 11 and have been stabilized. He stated that the stabilization was done late enough in the year that germination of vegetation could not be completed and therefore the earth plugs keeping the flow out of the new channels could not be pulled to let water into the channels, which may impact the substantial completion date. He noted that the contract does include language for liquidated damages and noted that staff has had multiple discussions with the contractor, Sunram Construction. He presented a proposed change order that would extend the substantial completion date for reaches two and 11 to June 30th, which is ten working days after the DNR's June 15th end period for spawning. He stated that while the water could have been routed to the new channel now, because the new channels weren't able to fully establish a vegetative cover, there was a good chance that it could lead to issues with erosion and sediment in the spring, and staff thought the extension was the best alternative. He stated that staff does not tell the contractor what to do, but is there to ensure that the provisions of the contract are being met.

Administrator Anhorn stated that while they are not happy with this choice, this is the best option. He stated that he had promised some of the landowners that the work would be completed this year. He stated that staff has had conversation with legal counsel on the future phases to look at a value based bidding process that would provide the District with alternate options for accepting bids. He stated that in this case, staff would recommend this option.

Manager Peterson stated that she noticed the contractor requested the completion date to be July 31st and asked if there would be problems with the contractor meeting the June 30th end date.

Engineer Obermeyer noted that there is sufficient time for the contractor to plan and therefore the date should be feasible. He noted that there are circumstances that could impact that ability, such as weather conditions.

Administrator Anhorn noted that if there were an early spring, there was always a possibility of seeking a variance from the DNR, to allow us to work in those reaches between March 15th and June 15th to complete that work earlier.

Engineer Obermeyer stated that the Board will be able to enforce liquidated damages following the June 30th end date, if they choose to pursue that option.

Chair Kloiber stated that this sounds like the best course of action for this situation.

Manager Sheely asked if the negotiations have been friendly.

Administrator Anhorn stated that the District receives weekly updates and there is open communication.

Manager Sheely moved, seconded by Manager Hunker, to approve the change order recommendation to change the substantial completion date for reaches two and 11 to June 30, 2018. Upon a vote, the motion carried.

B. Rules

Administrator Anhorn stated that at the last meeting the Board reviewed and provided examples for the current stormwater management rule, and proposed options for restricted sites, unrestricted sites. He noted that as directed by the three Managers in attendance at the board's November meeting, staff sent the information from that meeting to the Managers that were unable to attend. He stated that the direction from the last meeting was leaning towards a tiered system for unrestricted sites. He noted that potential language was sent to the Board along with language regarding a slight policy change on chloride management.

Engineer Kieffer stated that there has been a change to the draft chloride policy and reviewed the proposed language. She confirmed the consensus of the Board with that language. She reviewed the proposed changes to the stormwater rule with the more tiered approach. She reviewed the current rules of the District and compared that to the proposed changes. She provided additional details on the restricted and unrestricted sites as well as the proposed tiered approach. She explained how this would apply to a regular permit site and how this would apply to the same site if the site had D soils.

Chair Kloiber asked how the judgement would be made that it would not be reasonable to do the 1.1-inch retention onsite.

Administrator Anhorn stated that the concurrence of the engineer would first be that it is a restricted site (contaminated or D soils) and then the tiered approach could be looked at.

Attorney Smith stated that under the current rules, one half inch would need to be provided onsite and there would be a contribution into the stormwater facilities fund.

Engineer Kieffer agreed that under the current rules, if you can only provide one half inch onsite, the other half inch needs to be provided in some other manner. She noted that in that case, the water quality elements are not being met onsite.

Administrator Anhorn stated that the Managers expressed the desire for the water quality elements to stay onsite to benefit the immediate receiving water resource and not go offsite.

Chair Kloiber agreed that is the main change in this process. He stated that in the past the District would get the one-half inch onsite and the majority of applicants would be paying into the stormwater facilities fund and therefore the watershed is going without the volume and water quality elements and just receiving money until a project is constructed at a later date. He further stated that as result, the water quality benefit would most likely be lost for the immediate water body receiving runoff from the permitted project.

Engineer Kieffer noted that there is some judgement as to what is a restricted site. She noted that sometimes only a portion of the site has D soils and therefore something can be done through site design to reach a higher level of volume/infiltration.

Chair Kloiber stated that it appears there is an adequate strategy to address that element.

Engineer Kieffer presented another scenario of how the proposed tiered system would apply to a permit request.

The Board and staff further discussed the Superfund area and options for that in the future.

Chair Kloiber noted that it would be rare for certain tiers to be triggered. He noted that regional treatment options are not going to be triggered by an applicant and will need to be encouraged by the District where it would make sense.

Chair Kloiber thanked staff for developing the flow chart and providing these examples as it helps to provide more clarity in how this would apply. He asked for input on the comments made by Attorney Smith in that this would be a tradeoff, with restricted sites in not receiving the full 1.1 inch of retention, but instead getting reduced onsite retention, but requiring full water quality onsite. He stated that he is okay with that tradeoff.

Manager Sheely stated that it was her recollection that this change was also made because the smaller projects were taking a lot of staff time for very little gain and this shift would put more focus on projects that would provide a bigger return.

Manager Peterson stated that her concern was that the focus on regional options would fall away. She stated that the District has a volume credit and has not yet found a location for a project and therefore perhaps that is not providing the best return. She agreed that this would be a good tradeoff if it were reducing staff time and also providing water quality onsite.

Engineer Kieffer noted that there is still another section in the rules which discusses regional treatment systems.

Manager Sheely noted that another reason for the change was to be more consistent with other watersheds.

Engineer Kieffer agreed that this language more follows the model of Riley Purgatory Bluff Creek Watershed District. She stated that if upon adoption, they find that the judgement process is too difficult, staff could then develop a guidance document that would provide further clarification.

Manager Sheely noted that this change could also force more large homes onto A soil property because of the implications on D soils. She stated that for the watershed, that would not make a difference, but there could be implications on land use.

Manager Sheely asked if Riley Purgatory Bluff Creek Watershed District has a different number of permits than this District because of the permit process or because of the development occurring in the member cities within the different watersheds.

Administrator Anhorn noted that the triggers that require permits are identical in both watersheds, either moving 50 cubic yards of material or disturbing 5,000 square feet or more of surface area or vegetation.

Engineer Kieffer provided additional details. She stated that a factor in the difference in permit numbers is the age of the communities and redevelopment/development that is occurring.

Chair Kloiber asked if the Managers are comfortable with the approach as presented. He confirmed the consensus of the Managers to move ahead with the tiered approach.

Administrator Anhorn noted that there was a tentative special meeting scheduled for the beginning of January, but it appears that will not be needed. He stated that legal counsel will prepare a Memorandum Supporting and Providing Explanation of Proposed Revisions of the Nine Mile Creek Watershed District Rules for the January Board meeting. He noted that following the January Board meeting, the managers could direct staff to put the draft rules and associated minor plan amendment to incorporate them into the Plan out for the required 45-day comment period, with a public hearing held at the February meeting and the potential adoption of the rules and associated minor plan amendment to occur at the March Board meeting.

Manager Hunker stated that she still has questions with the constructed stormwater basin language, which she found confusing. She noted that she did provide redline comments on her

copy that she could provide to staff. She stated that the intent is fine, but she believed that wordsmithing could occur to provide additional clarity. She highlighted some areas she found confusing and received clarification from staff.

Chair Kloiber confirmed the direction for staff to bring this back to the next meeting as discussed.

Manager Hunker noted that cities are preparing updates to their Comprehensive Plans and perhaps that is an opportunity identify options for regional treatment.

New Business

A. Education and Outreach Specialist Transition to Education and Outreach Coordinator Review

Administrator Anhorn confirmed that Education and Outreach Specialist Gael Zembal was comfortable with this review occurring in open session.

Administrator Anhorn stated that there has been previous discussion of evaluating workload, job description and overall organizational capacity to best optimize the goals of the 5th Generation Plan. This has resulted in the promotion of Erica to Program and Project Manager and setting steps to transition Gael from to Education and Outreach Specialist to Education and Outreach Coordinator. He stated that at the one-year performance review of Gael, they setup measurable goals and steps to reach that transition. He reported that she has done a great job meeting the goals that had been set six months ago and therefore staff recommends the promotion. He thanked Gael for the excellent work that she does for the District. He noted that the job description was included in the packet as was the salary table. He noted that he would recommend a ten percent promotion increase, because this is a full jump in position, retroactive to December 16, 2017.

Chair Kloiber stated that he would welcome the promotion as Gael continues to do great work for the District. He noted that this would be a good move for everyone. He stated that he likes to see staff developing, growing, and taking on new challenges and will also help the District grow as an organization.

Administrator Anhorn noted that this was included in the budget and does not include formal action from the Board but advised that he still wanted to provide this information to the Managers.

Administrator Anhorn further noted that he will also be attending a City of Eden Prairie public hearing to discuss the Districts request to amend the development agreement for Discovery Point to potentially increase the limit on the number of FTE's and evening Board meetings allowed for the District.

B. Eden Prairie Deer Management Request

Administrator Anhorn stated that Eden Prairie does have an active deer management program to maintain a safe deer population throughout different areas in the city. He stated that there have been safety and nuisance complaints from citizens on the number of deer in certain areas. He stated that the City likes the District property because of the size of the property and topography. He stated that the City would like permission to complete this activity on the District property and noted that if permission is given, staff would then work with the City to determine a plan. He noted that the high population of deer does provide a safety concern. He stated that the city has removed deer in the cardinal creek area in the past, but has done so in the city-owned trail to the north of the Discovery Point property. He further said that the City would go forth with the removal in the area with or without the use of the Discovery Point property, but thought the site would be much safer.

Chair Kloiber stated that the District is investing a lot into the landscaping restoration that is being eaten by the deer.

Manager Sheely noted that an important aspect would be that it be completed respectfully so that people that may be opposed to the activity do not have to witness the activity.

Manager Sheely moved, seconded by Manager Twele, to authorize the Administrator to enter into an agreement with Eden Prairie for deer management activity. Upon a vote, the motion carried.

C. 2018 Blue Cross Blue Shield Update

Administrator Anhorn stated that health insurance costs continue to rise. He provided background on the District coverage that has been provided in the past with Blue Cross Blue Shield and the proposed increases. He asked if there is an appetite to review the annual HSA contribution for employees.

Chair Kloiber stated that he has no recollection on why the reduction to the HSA contribution was made. He stated that he would be open to switching back to the previous contribution amount.

Manager Twele stated that she would be supportive of increasing the HSA contribution to \$2,200 for employees to be paid at the beginning of the year so employees have full access.

Chair Kloiber stated that he would also be supportive of that action.

Administrator Anhorn stated that he has a consultation setup to determine the other options that may be available as well. He noted that there have been discussions with MAWD to determine if a group rate could be gained by combining watershed employees together into one group.

Manager Sheely asked if having the HSA component raised would be the best option for the employees present tonight.

Chair Kloiber noted that contribution would help to decrease the out of pocket costs for employees.

Program and Project Manager Sniegowski commented that it is very helpful to have the HSA available for out of pocket costs.

Manager Twele noted that it would also provide flexibility for the employee. She noted that if an employee does not have a lot of medical expenses for appointment related activity, they could choose to use the HSA dollars for other items such as eyeglasses.

Manager Twele moved, seconded by Manager Hunker, to increase the HSA contribution to \$2,200 per employee to be available in January. 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. Normandale Lake Water Quality Improvement Project: Status Report**
- E. Pentagon Park Stormwater Management**
- F. Discovery Point Site Restoration**
- G. Status of Construction Projects**

Engineer Obermeyer had nothing further to report.

Attorney's Report

Attorney Smith stated that the main legal activities have center around the rules and the contractor for the Edina Stream Stabilization project.

Administrator's Report

Administrator Anhorn had nothing further to report.

Managers' Report

The Chair called for reports.

Chair Kloiber referenced the Memorandum from Smith Partners on potential Manager training topics, noting that the Wetland Conservation Act would stand out.

Manager Peterson stated that the history of the Nine Mile Creek and District would be helpful.

Manager Sheely stated that she felt she gained sufficient background information throughout the development of the District Plan.

Manager Hunker stated that she would find the funding, wetlands, bidding process, and capital process would be helpful.

Administrator Anhorn suggested that Managers provide him with the top three items. He stated that once the rule discussions simmer down, there would be additional time within meetings or special meetings to provide these training opportunities.

Chair Kloiber noted that some topics seem inter related and could be combined into one session. He used the example of bidding, funding, and capital projects into one presentation.

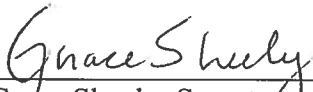
Task Summary Report & Manager's Calendar

The Managers reviewed and updated the task report.

Adjournment

It was moved by Manager Twele, seconded by Manager Sheely, to adjourn the meeting at 9:05 p.m. Upon a vote, the motion carried.

Respectfully submitted,



Grace Sheely, Secretary

ATTACHMENTS:
Treasurer's Report

