

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

WEDNESDAY, JULY 19, 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, July 19, 2017, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Twele, Kloiber, Sheely and Peterson

Managers Absent: Lynch

Advisors Present: Randy Anhorn, Louis Smith, Bob Obermeyer, Eric Lund, Erica Sniegowski, and Wes Leksell

Agenda

Administrator Anhorn noted that he would like to add an Item C, under New Business, for the execution of the 2017 Annual Audit Contract with Redpath.

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

Reading and Approval of Minutes

The Chair called for review of the minutes of the Regular Meeting of June 21, 2017. Attorney Smith noted on page three, the fifth paragraph, it should state, "Attorney Welch ~~provided additional information on infiltrating in a contaminated area because even if you clean up your site, the contamination can move from neighboring sites. He noted that rather than attempt to clean up this site, you would most likely prefer to look for a high value site nearby that you could attempt to create a regional treatment option. He noted that perhaps Hennepin County would be interested in participation as well as a pilot program~~ stated that it is difficult to clean up contamination on a site in a manner that allows for infiltration of stormwater because contamination, especially in groundwater, can be mobilized. He stated that rather than trying to infiltrate contaminated property, it may be more efficient to explore regional treatment option on a clean site. He stated that Hennepin County has an environmental response fund that could perhaps provide support for such an effort."

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

Correspondence

- Governor Dayton's 25BY25 Townhall Meetings

Hearing and Discussion of Matters of General Public Interest

There were none.

Consent Agenda

None.

Hearing of Permit Applications

- A. Permit #2017-77: Bloomington Storm Sewer Maintenance Project – West 91st Street and Nord Myr Marsh; Grading and land alteration permit: Bloomington**

Engineer Obermeyer resented the permit request and proposed plans. He recommended approval of the permit contingent upon the general conditions including submission of a stormwater maintenance agreement for the future maintenance of the water quality basin.

Chair Kloiber asked and received confirmation that the channel to be constructed from the storm sewer outfall would divert low flows to the water quality areas being constructed

Manager Twele asked for additional information.

Engineer Obermeyer explained that floodplain volume will be provided through excavating material in order to lower the existing elevation in order to compensate for the filled area of the Normandale Boulevard reconstruction.

Chair Kloiber noted that because they filled into the 100-year frequency floodplain of the creek with the Normandale Boulevard road project, they are creating the compensatory storage volume with this project.

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

- B. Permit #2017-79: Lone Lake Park Pickleball Courts; Grading and land alteration permit: Minnetonka**

Engineer Obermeyer recommended that this item be continued as staff is still awaiting soils information so that the applicant's engineer can finalize the design.

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

C. Permit #2017-89: Trail Spurs at Edina High School Connecting to the Three Rivers Regional Trail; Grading and land alteration permit: Edina

Engineer Obermeyer presented the permit request and proposed plans. He noted that a financial assurance would not be required. He recommended approval of the permit contingent upon the general conditions including submission of a stormwater maintenance agreement for the maintenance of the swale areas.

Attorney Smith provided a suggestion for condition three, to state that stormwater maintenance agreement prepared for approval by the District Administrator and executed by the both parties.

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

D. Permit #2017-61: Wentworth Storage Lot – 8824, 8860, and 8870 Wentworth Avenue; Grading and land alteration permit: Bloomington

Administrator Anhorn stated that while he initially had thought there would be a representative from Luther or their environmental consultant present this evening to present their analysis and answer questions, there had been a mix up and there would not be anyone in attendance. He noted that staff met with the applicant one week ago and they were aware that the District would not take action on the application until the August regular Board meeting. He further stated that if the managers were interested, we could potentially include this topic as a informational/discussion item on the agenda for the yet to be scheduled budget workshop next week.

Engineer Obermeyer introduced Eric Lund from Barr Engineering who is assisting with the District's environmental review and analysis of the applicants provided information. He stated that this industrial/commercial area has been brought up and discussed at previous board meetings due to the known contamination of the area. The MPCA has identified the Lyndale Avenue Corridor area as a superfund site.

Eric Lund provided additional details on the contamination associated with the superfund site.

Administrator Anhorn provided additional details on the contamination identified in relation to this site.

Eric Lund noted that although property owned by Hitchcock Industries was the principal supplier of the contamination, environmental reports that were provided to Barr by the applicant state that there were other contributors as well.

Chair Kloiber asked if it is mostly shallow contamination.

Eric Lund noted that there is both shallow and deep groundwater contamination.

Engineer Obermeyer noted that Luther would like to have an impervious surface to allow for parking which would use an underground system that would retain the water and allow the water to infiltrate into the subsoil to comply with the District's stormwater requirements. He stated that the concern is that infiltration of stormwater could mobilize the contamination and cause a larger problem for the area. He stated that part of the submittal included a soil investigation/infiltration review letter (dated June 5, 2017) provided by Landmark Environmental regarding the contamination and potential for infiltration in the area. After staff's review of their presented information, additional information and clarification was requested. He mentioned that the applicant sent a supplemental documentation, dated July 14, 2017, that provided much of the additional information and clarification staff had requested. He stated that the applicant is using the requirements of the Minnesota Stormwater Manual for setbacks from a contamination source and the conclusion of the applicant's consultant was that infiltration would not cause any additional mobilization of the pollutants. He noted that there were a few on-site groundwater samples not included in analysis presented in the follow-up submittal. Staff recommends that the applicant incorporate that data into their conclusions.

Eric Lund noted that the existing monitoring well data is part of the area-wide study and identified the location of the wells. He noted that there is onsite groundwater data for the area close to the infiltration feature identified in the information submitted and therefore he would like to know how that information was incorporated.

Attorney Smith noted that the Board would face a challenging situation as the applicant believes, through the assistance and advice of an expert, that it is safe for them to infiltrate and they won't be exacerbating the situation and would be interested in pursuing that option rather than complying in the District's rules in another way. He stated that Barr Engineering will be cautious in their professional review and determination, but will likely be very reluctant to say that no matter what all this information presents, there will absolutely be no risk of any future mobilization of contaminants with infiltration. He further said, that for that reason, the Board will need a record of factual information and data including the Engineer's opinion on whether the analysis presented meets the current best practices and professional standards and how the District analyzes these risks. He stated that while the applicant is contending that the site is safe for infiltration, while Barr Engineering may not be able to guarantee that there is no risk, the Board will need to evaluate the information to determine if compliance of the District's Rules is achieved through the process on-site and how it deals with the contamination issue or what the alternatives are. He stated that it may be appropriate that in the time that this is discussed, the exploration of alternatives should also be investigated.

Engineer Obermeyer stated that volume retention is a requirement of the District and while infiltration is one option to meet that, there are other methods to meet that requirement.

Chair Kloiber confirmed that the rules provide alternatives to infiltration. He stated that the applicant does not seem to believe that it is too risky and therefore it is the risk of the applicant. He stated that the Board would balance protecting the surface water quality, by upholding the volume retention standard, but also need be interested in protecting the groundwater quality.

Manager Sheely asked if they have thought bigger, in terms of regional treatment. She noted that perhaps the District could partner in order continually monitor after the infiltration is installed.

Engineer Obermeyer noted that it would likely be too late at that point to cease infiltration practices if it was discovered a problem did occur.

Manager Sheely noted that it would be contained to that site though, and would provide the information for the other sites in that area.

Chair Kloiber noted that when looking at the contaminated site, even nearby, one parcel cannot be compared to the other because each will have different conditions resulting in different calculations resulting in different conclusions on how best to meet the stormwater retention requirement. He noted that payment into the stormwater facilities fund can be made in lieu of infiltration and the District could use that to construct a regional treatment solution. He noted that the information gained from this site would not transfer to the other sites as each of the site conditions are different. He noted that a decision would need to be made at the August 16, 2017 meeting.

Administrator Anhorn agreed that the review window would be expiring after the August meeting and therefore a decision would need to be made. He noted that if both parties agreed, an additional extension could be given.

Engineer Obermeyer reviewed the timeframe of the applicant, in that they would like to have this constructed prior to the end of the year.

Manager Peterson noted that Barr would like more information on the groundwater data but asked if there were additional items that Barr would like.

Eric Lund confirmed that he would like information on the groundwater data and would also like some information on the inputs to their model. He noted that the stormwater manual is very clear that infiltration should not be used for vehicle maintenance and to confirm that would not be a part of this use.

Chair Kloiber asked if the City of Bloomington has concerns about infiltration being proposed on a site like this, as it is their water supply.

Steve Segar, City of Bloomington, thanked the District for their assistance on the project. He stated that Bloomington is concerned that the City's MS4 permit is not violated by allowing infiltration features. He stated that although the applicant is showing that, they are not certain on the level of confidence. He stated that in regard to mobilizing contamination, it seems that this would be a low-level risk. He stated that this is not included in the drinking water supply area for the city.

Engineer Obermeyer stated that if the Managers would like staff to request any additional information to please let staff know.

Administrator Anhorn stated that he can print the entire copy of the July 14, 2017 information for the Managers to review, although he did email the information.

Manager Peterson noted that alternatives mentioned have included payment into the stormwater facilities fund or regional treatment and asked if there are any other alternatives.

Engineer Obermeyer replied that onsite retention would be another option, although it is an expensive methodology.

Manager Peterson asked and received confirmation that infiltration is the least expensive option.

Chair Kloiber noted that onsite retention can sometimes be used for irrigation but that would not work on this site because of the impervious surface. He noted that the information requested should be sufficient but if the applicant's consultant would like to appear at the meeting to provide a presentation and answer questions that could be helpful as well.

Manager Peterson moved, seconded by Manager Twele, to continue the permit. 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 Peterson, to approve the pay request to Blackstone in the amount of \$24,800. Upon a vote, the motion carried.

Manager Sheely moved, seconded by Manager Twele, 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 Program Manager Sniegowski was excited that the pop-up education cart has been completed and will be ready for the upcoming event at the park. She stated that there is a new adopt-a-dock program, where lakeshore owners can obtain a kit for zebra mussel monitoring which can be installed and checked once a month for zebra mussels. She noted that a few have been installed and the District has 14 additional kits. She noted that an online forum is then used to communicate results and if zebra mussels are found they would pass that information to the DNR.

Manager Sheely asked if there are other lakes being targeted.

Education and Outreach Program Manager Sniegowski stated that lakes with public access and lakes that have boat activity. She stated that she would prepare a list and send that to the Managers in the case they may know a homeowner on that lake.

B. Cost-Share Grant Project Map

Education and Outreach Program Manager Sniegowski presented the proposal from Barr Engineering which would use iPad mobile mapping and GIS to track the cost-share projects from 2008 through current. She noted that the idea would be that this would allow staff to better track the projects and enter inspection information. She stated that in the first-year staff would inspect all the cost-share projects and then use that information to determine the inspection schedule for the future. She noted that this would create great efficiency for tracking cost-share projects. She noted that this scope of work would include creation of the mobile base and data mapping, training for staff, access to the GIS program, and system updates. She stated that the total cost would be \$8,900.

Administrator Anhorn noted that in the future the developed tracking system could be tweaked, and used internally for our own permit inspection program should the District obtain an inspection staff person.

Manager Peterson asked if there are ongoing costs for the software.

Education and Outreach Program Manager Sniegowski stated that this would be setup through 2018 and after that time there would be costs for the software.

Manager Peterson moved, seconded by Manager Sheely, to authorize a not to exceed amount of \$10,000 and direct staff to develop a work agreement with Barr Engineering to develop the cost-share grant project monitoring system. Upon a vote, the motion carried.

Unfinished Business

A. Metropolitan Council Condemnation of Certain Lands for Public Transit Purposes

Administrator Anhorn noted that Attorney Welch submitted a second draft for the agreement in the packet.

Attorney Smith stated that the Metropolitan Council is obtaining right-of-way for their light rail project which impacts two District easements. He stated that they are flowage easements and because Met Council intends to construct a maintenance facility, this was evaluated before approving their permit. He stated that the intent of the District would be if the District is going to be impacted or whether the legal interests of the District will be impacted. He stated that whatever interest the District had in obtaining the flowage easements would also be served in the review of the permit for the maintenance facility, as the permit requirements will be met. He stated that staff feels that it would not be in the best interest of the District to continue to pay legal fees for the condemnation process because the District's interest would still be protected.

Engineer Obermeyer provided historical information on how the District reviewed permits in the past, noting that easements were often provided to ensure that further fill would not be allowed in the floodplain of the creek. He stated that with the review of the Southwest Light Rail project and other projects in the area, the District's rights would be protected and there is no reason to have any further easements on the property.

Attorney Smith stated that the requested action would be to authorize counsel to have the District dismissed from the condemnation procedure.

Manager Peterson moved, seconded by Manager Sheely, to authorize legal counsel to have the District dismissed from the condemnation procedure. Upon a vote, the motion carried.

B. 2018 Budget

Administrator Anhorn reviewed the proposed budget, and while the proposed 2018 levy would essentially be the same as that in 2017, the overall all budget would increase by roughly 25% increase from the previous year. He stated that although there is a big difference in the budget, the levy would only be proposed to be increased by two percent but noted that with the increased tax capacity the actual amount for property owners would actually decrease. He noted that reserve funds and funds previous levied for to implement capital projects would also be used to make up the difference between the 2018 proposed budget and the proposed levy. He noted that additional discussion will occur in the at the upcoming budget workshop regarding reserves and the goal for the District. He presented and provided a general overview of the proposed budget spreadsheet and noted that proposed changes have been highlighted in yellow and provided a brief summary of some of the proposed increases/decreases. He noted that additional details will be reviewed in depth at the budget workshop.

Manager Sheely stated that she found the associated notes on the proposed budget spreadsheet from staff very helpful in detailing where reserves would be used.

Chair Kloiber asked if the proposed budget/levy are posted.

Administrator Anhorn noted that the proposed information will be posted prior to the public hearing.

Attorney Smith stated that both the proposed budget and proposed levy would be noticed prior to the public hearing.

Chair Kloiber stated that perhaps the tax impact numbers can also be included. He suggested that perhaps the District lead with that and then explain that reserve funds would be used as well to avoid a negative public perception. He stated that he would like to avoid a negative perceived perception since the actual impact to property owners will be less than they are currently paying. He suggested that “donations” be changed to “collaborative grant funding”.

Manager Sheely stated that she was unclear on the status of the restoration landscaping for Discovery Point.

Education and Outreach Program Manager Sniegowski replied that the Board would need to decide whether they would like to move forward with phase two and that will be a part of the discussion.

Manager Peterson noted the increase in the overall budget over the past few years and asked if future budgets will likely continue to increase in this manner.

Chair Kloiber noted that some of the items had been under budgeted in the past and this budget corrects those items to bring them closer to the actual amount spent each year. He noted that the District is in the middle of a large capital improvement project and therefore that could taper down as the project moves on, but noted that in the future hopefully there would be additional capital projects.

Administrator Anhorn stated that staff would like to schedule a budget worksession, perhaps the following week on July 24th.

It was the consensus of the Board to hold the budget workshop on Tuesday, July 25th at 5:00 p.m.

Administrator Anhorn noted that he would also alert the Luther group, in the case they would like to make a presentation or be present to discuss the infiltration/contamination issue as it pertains to their permit application.

New Business

A. Rule Review/Revision

Administrator Anhorn stated that since the last special meeting on rules, the District has had the first TAC meeting on the rules. He noted that the draft minutes from that meeting were included in the Board packet and highlighted some of the discussion items.

The Board further discussed some of the elements around single-family homes that were discussed at the TAC meeting. It was clarified that whichever of the discussed single-family home options eventually adopted, the requirement would only apply to new permits for single-family homes and not every home in the District.

**B. Bloomington Public Schools-Westwood Elementary (NMCWD 2017-75)
Stormwater Volume Retention Credit Bank Application**

Engineer Obermeyer noted that a permit was submitted for a rain garden at Westwood Elementary School. He noted that this was a good opportunity to provide additional treatment, not in conjunction with a project, and therefore 2,745 cubic feet of volume banking would be available for future projects on the school property. He noted that the bank would not be provided for credits until the as-built drawings are provided and execution of a maintenance agreement.

Chair Kloiber asked and received confirmation of the overall annual volume and pollutant load removal numbers.

Manager Sheely moved, seconded by Manager Peterson, to approve the volume retention credit bank application in an amount up to 2,745 cubic feet contingent upon the execution of a maintenance agreement and submission of as-built drawings confirming that amount. Upon a vote, the motion carried.

C. Contract with Redpath and Co.

Administrator Anhorn stated that the amount for the audit would be \$13,700 with an additional \$500 for the pension work for a total amount of \$14,200. He stated that they need approval for the execution.

Manager Sheely moved, seconded by Manager Peterson, to authorize an expenditure of \$14,200 for the 2016 audit and authorize Chair Kloiber to execute the agreement. 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. Discovery Point Phase I Site Restoration**
- F. Pentagon Park Storm Water Management**
- G. Lake Cornelia**
- H. Minnetonka Storm Sewer Repair – 5225 Baker Road: Minnetonka**
- I. Cherokee-Chamberlain Drainage Analysis**
- J. Status of Construction Projects**

Engineer Obermeyer updated the Board on the above listed projects.

Engineer Obermeyer provided an update on the Normandale Lake Study including; a recent meeting with the Army Corp of Engineers (ACOE) to discuss modeling results and potential remediation alternatives, a meeting with Mike Berndt to similarly discuss findings and potential projects, the ACOE permit and the scheduling of an upcoming stakeholder meeting to present to the public. He stated that the modeling showed high internally nutrient loading issues, low oxygen conditions and as a result of the lack of mixing due to the thick plant growth.

Administrator Anhorn further mentioned that while staff would present the findings of the modeling and potential remediation options to the Board at their August 16th meeting, the treatment options included a winter drawdown with spot treatment of curly pond weed, in-lake alum treatment, aeration, and potentially a test of selective weed harvesting of the top foot of aquatic vegetation which would also harvest the filamentous algae. He said that staff's meeting with the ACOE revealed that they were in favor of anything that would help enhance the diversity of the native vegetation, but any vegetation control using dredging in the western end of the lake would be in violation of the permit and a modification would need to be requested.

Administrator Anhorn also mentioned that the 5525 Baker Road culvert repair repair and maintenance project would be starting soon. He said that staff was having a pre-construction meeting the following day with Sunram construction to discuss schedule, timing and the importance of addressing private property owner concerns for the first phase of the Edina Stream Stabilization/Restoration project.

Attorney's Report

Attorney Smith had nothing further to report.

Administrator's Report

Administrator Anhorn mentioned that he was going to be on vacation from August 6th through the 10th, but would be back in the office on Friday, August 11th.

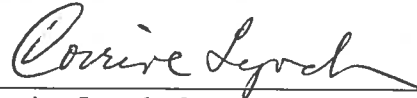
Managers' Report & Calendar

The Chair called for reports the managers reviewed and updated the task report.

Adjournment

It was moved by Manager Twele, seconded by Manager Peterson, to adjourn the meeting at 9:02 p.m. Upon a vote, the motion carried.

Respectfully submitted,



Corrine Lynch, Secretary

ATTACHMENTS:
Treasurer's Report