

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

WEDNESDAY, JUNE 21, 2017

Call to Order

Chair Kloiber called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:04 p.m., Wednesday, June 21, 2017, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Kloiber, Sheely and Peterson

Managers Absent: Lynch and Twele

Advisors Present: Randy Anhorn, Michael Welch, Bob Obermeyer, Janna Kieffer, and Wes Leksell

Agenda

Administrator Anhorn requested to remove Phase I of the Edina Streambank Project from the Engineer's Report to be consider as Item C under Unfinished Business. He also requested to add an Item D, Trail Map Scope of Work, under the Education and Outreach Program Report.

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

Administrator Anhorn introduced the new District intern, Wes Leksell.

Reading and Approval of Minutes

The Chair called for review of the minutes of the Regular Meeting of May 17, 2017. Chair Kloiber noted on page four, the fourth paragraph, it should state, "...to ~~attempt to do~~ avoid meeting the infiltration standard because..." Attorney Welch noted on page nine, the third paragraph, it should state, "...to ~~authorization for~~ authorize the Administrator to enter into a contract with Blackstone Contractors in an amount not to exceed \$25,000 and ~~provided~~ provide the Administrator with the authority to authorize change orders in an aggregate amount of 10 percent of the contract cost." He noted that at the top of the minutes it should read "~~Special~~ Regular Meeting." He noted on page seven, Item B, the first paragraph, it should state, "...authorization to ~~go out for bids~~ seek quotes." He noted on page seven, Item B, the fourth paragraph, it should state, "...to ~~go out for bids~~ seek quotes." He noted on page seven, Item C, the second paragraph, it should state, "Attorney Welch noted that at first glance he thought that

~~there were no unexpected comments that raised new issues that there are only perhaps five comments that would require discussion from the Board, as the Board had not already discussed some of the topics at length previously.~~” He noted on page eight, Item A, it should reflect the actual roll call. He noted on page eight, Item B, the first paragraph, it should state, “...RFP request for bids...” Chair Kloiber noted on page six, the fourth paragraph, it should state, “...reimbursement, but then adding a requirement to submit the necessary information within the deadline ~~in the~~ for future grant contracts.”

Manager Sheely moved, seconded by Manager Peterson, 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 June 1, 2017. Manager Peterson noted on page one, Item A, the last sentence referring to the compiled comment table should either be revised to better clarify the difference between the comments which staff thought needed board direction and those that did not.

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

Correspondence

- MAWD Legislative Report

Hearing and Discussion of Matters of General Public Interest

There were none.

Consent Agenda

None.

Hearing of Permit Applications

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

Engineer Obermeyer noted that in his memorandum to the Board he recommended continuing action on this request. He advised that extension of the 60-day review period will be needed as the original 60-day review period will end prior to the July 19, 2017 meeting. He stated that staff has received information from the applicant’s environmental consultant regarding their analysis of the on-site conditions and potential contamination on the site. He stated that the consultant stated that infiltration would not cause a problem and did not say that infiltration should not occur on site. He stated that the next step in the process would be to continue to work with the City of Bloomington and the applicant to discuss the next steps. He stated that with the information he has now he would recommend erring on the conservative side and not approve infiltration on the site. He stated that if infiltration is not done and if another

method is not found for volume retention, the developer would need to follow the steps in Rule four to seek a variance and pay into the stormwater facilities fund. He noted that it is a five-acre site and the cost would be \$40,000 per acre.

Administrator Anhorn stated that they have had conversations with the MPCA and the City of Bloomington about this area of potential contamination. He agreed that there would be eight or nine permit applications coming in that are all in the same area.

Manager Peterson stated that this is a really important issue because of the large area being studied by the MPCA and numerous future projects in the area that will coming to us to be permitted there would a lot of untreated runoff if applicants can't infiltrate on-site and continue to choose to pay into the stormwater facilities fund.

Administrator Anhorn stated that even if, due to contamination, the stormwater volume retention rule cannot be met, the stormwater rate aspect would still need to be met on site.

Chair Kloiber stated that staff has already discussed possibilities for a regional facility and perhaps it needs to be more creative solution to find an area that could be used for regional treatment as close to the source of runoff as possible.

Administrator Anhorn stated that later in tonight's agenda the Board may approve the stormwater retention credit bank for One Southdale Place. He stated that perhaps that party would be interested in selling credits, first and foremost, to this developer. He noted that in the budget for next year he would suggest research funds to attempt to find regional solutions for water treatment.

Attorney Welch stated that it is difficult to clean up contamination at 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 at a contaminated property, it may be more efficient to explore a 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.

Chair Kloiber noted that perhaps further discussion of this topic would be better served on a future agenda or in a special meeting format.

Manager Peterson moved, seconded by Manager Sheely, to continue the permit and extend the 60-day review window by 60 days in order to provide sufficient time for the applicant and the engineer to work together on stormwater management. Upon a vote, the motion carried.

B. Permit #2017-72: Restoration Hardware – NE Corner of West 69th Street and France Avenue; Grading and land alteration permit: Edina

Engineer Obermeyer stated that this application is just beginning to go through the City approval process and therefore is considered incomplete until the City approvals have been gained. He noted that no action would be needed tonight.

Administrator Anhorn stated that while this site would be a good option for infiltration, the proximity to the water tower would not make it a good candidate.

Treasurer's Report

Administrator Anhorn submitted the report and provided clarification on certain items.

Manager Sheely 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

A. General Updates

Administrator Anhorn stated that Education and Outreach Program Manager Sniegowski drafted a report for the Board to review as she was not in attendance at the meeting.

B. Discovery Point Outdoor Seating Area Change Order No. 2

Administrator Anhorn provided additional information on the change order that was needed in the amount of \$168. He noted that the item is informational as Board approval is not required for the low amount.

C. Cost-Share Grant Updates

o City of Edina Cost Share Grant Application

Administrator Anhorn stated that the Board discussed this item the previous month. He stated that staff reviewed the application and recommend approval of the grant application for not to exceed \$25,000 and to authorize the Administrator to enter into an agreement which would include a ten-year maintenance agreement.

Attorney Welch noted that this is unique as this is work the District would like to have done but the work needs to comply with the District rules. He recommended that the motion include a condition that the project comply with the District's rules and Wetland Conservation Act as applicable. He confirmed that the City of Edina would need to come back with a permit request.

Administrator Anhorn stated that Edina initially wanted to piggyback on the District's streambank project but because the projects did not fit well together, this alternative was suggested.

Manager Sheely moved, seconded by Manager Peterson, to approve the cost-share grant application from the City of Edina for a not to exceed cost of \$25,000 and to authorize the Administrator to enter into an agreement with the City of Edina that would include a ten-year maintenance agreement and would also require the project to comply with the District's rules and the Wetland Conservation Act as applicable. Upon a vote, the motion carried.

D. Interpretive Signage Scope of Work

Administrator Anhorn stated that there is \$20,000 in the budget for 2017 for interpretive signage. He noted that the District has outdated signage that is not user friendly. He stated that staff would like new signage that would include designing more user-friendly content and highlighted the different areas staff would propose for new signage. He stated that staff received a quote for designing the content/signs, fabrication, and installation in the amount of \$15,000. He stated that staff seeks authorization for this amount.

Manager Sheely asked and received confirmation that the Board would see the proposed content before the signs are manufactured.

Manager Peterson asked if interactive aspects could be integrated into the signage.

Engineer Kieffer confirmed that a QR code could be integrated.

Manager Peterson moved, seconded by Manager Sheely, to direct staff to proceed with the scope of work as identified in the June 19, 2017 proposal from Barr Engineering. Upon a vote, the motion carried.

E. Trail Map Scope of Work

Administrator Anhorn stated that staff previously discussed updating the trail maps with the Board. He stated that staff spoke with a consultant the District has previously worked with to obtain a quote \$1,250 which would put the new map together with the educational pieces. He noted that the printing would come back to the Board for authorization.

Manager Sheely moved, seconded by Manager Peterson, to authorize an expenditure not to exceed \$1,500 to proceed with the development of the Nine Mile Creek Trail Map and to authorize the Administrator to enter into an agreement with the design company and any other agreements that may be needed. Upon a vote, the motion carried.

Chair Kloiber stated that he would like more information for the printing and the pricing for the different paper qualities.

Administrator Anhorn stated that there is a ceiling for the Administrator to spend up to \$1,000 without Board approval. He noted that other watersheds have a higher ceiling, such as \$5,000, which allows the Administrator to move forward on items the Board has already discussed in the past. He stated that perhaps in the future the Board would like to further discuss whether it would be appropriate to have a higher ceiling.

Unfinished Business

A. Southdale Place (NMCWD 2013-42) Stormwater Volume Retention Credit Bank

Engineer Obermeyer reviewed the development location noting that the project is in place and the stormwater facilities are functioning. He stated that as part of the original stormwater design it was determined that there would be 4,852 cubic feet of additional volume retention provided and there were conversations with staff as far as establishing a bank for the additional credits. He stated that this is a follow-up to discussions that staff had with the developer in 2013 to establish a bank on this site. He noted that as-builts have been provided for the on-site stormwater management facilities and staff agrees that what was proposed matches what was constructed and therefore recommends approval of the stormwater bank. He reviewed the amount of credits that would be available to use on future projects and recommended that the Board approve this bank.

Administrator Anhorn noted that there is a recorded stormwater maintenance declaration and performance monitoring on the facilities has been satisfactorily completed, but stated that the owner of the property is different than the permit applicant and therefore authorization would be needed from the property owner to specify the owner of the bank.

Attorney Welch noted that this is unique in that the volume is already established and therefore could be used as quickly as the next month.

Manager Sheely asked how this came about, whether the applicant approached the District about the credits.

Administrator Anhorn stated that the applicant approached the District.

Engineer Obermeyer noted that this was discussed early on in the process but then the ball may have been dropped and when they came back to collect unused surety this was further discussed.

Chair Kloiber stated that it would be rare to have this type of credit for a project. He stated that in most instances stormwater facilities may be oversized to support future phases of their own project but otherwise it is rare that someone would design more than they would actually need.

The Board and staff discussed options for tracking permit activity.

Chair Kloiber stated that perhaps if an application comes forward with very good soil for infiltration, perhaps the District would want to invest their own funds to credit their own bank of credits. He noted that there would also be options where the member city could partner with the applicant if they wanted to create their own credits.

Attorney Welch noted that the key to this would be for the idea to be brought up very early in the process.

Manager Peterson moved, seconded by Manager Sheely, to approve the establishment of One Southdale Place credit bank in the amount of 4,852 cubic feet of stormwater volume retention, upon confirmation of the party holding the credit. Upon a vote, the motion carried.

B. Project Maintenance and Repair 5225 Baker Road

Administrator Anhorn stated that the Board discussed this item at the May meeting for the repair of the culvert at 5225 Baker Road. He stated that staff solicited three quotes, which ranged between approximately \$22,000 to \$97,000. He recommended that the Board authorize the Administrator to enter into an agreement with advice of counsel with Blackstone Contractors to undertake the repairs of the culvert at 5225 Baker Road in a not to exceed amount of \$21,965 and to further authorize the Administrator to approve any change orders in aggregate not to exceed 10 percent of the contract amount.

Chair Kloiber stated that the District has worked with Blackstone before and confirmed that they are a qualified contractor.

Manager Peterson asked if there is input on the range of quotes.

Engineer Obermeyer noted that the high contractor may have simply submitted a quote without attempting to obtain the job.

Chair Kloiber noted that it does not seem like a hard job to fix the culvert.

Manager Sheely moved, seconded by Manager Peterson, to authorize the Administrator to enter into an agreement with Blackstone Contractors to undertake the repairs of the culvert at 5225 Baker Road in an amount not to exceed \$21,965, and to further authorize the Administrator to approve change orders in aggregate of 10 percent of the contract amount. Upon a vote, the motion carried.

C. Edina Creek Stabilization Project Phase I

Administrator Anhorn noted that the District received six bids for the project and advised that the correct bidding information was provided in the memorandum from Barr Engineering.

Engineer Obermeyer reported that Sunram was the low bidder with a bid of \$904,578, while the highest bidder was slightly over \$2,000,000. He stated that staff recommends

awarding the project to Sunram. He noted that the District has worked with Sunram in the past and the contractor actually worked on the Hopkins streambank project.

Manager Peterson stated that it seems there were several change orders on the Hopkins project, although she was unsure if those were related to Sunram and asked for additional information.

Engineer Obermeyer noted that a lot of the change orders are somewhat administrative activities. He stated that the overall quality of the work was good, although there was some hand holding along the way. He expected that Barr Engineering would be involved in the supervision of the construction activity because of the private property involved compared to the city owned property for the Hopkins project. He stated that staff has spent a lot of time with the private property owners to obtain the necessary easements and therefore staff will want to make sure that the project is done right. He noted that the price difference between the next bidder will leave room for the oversight that will be necessary. He explained that change orders relate to unforeseen circumstances in the field.

Chair Kloiber noted that in Hopkins there was contamination that was not known and it would have happened for any contractor doing the work.

Engineer Obermeyer stated that they do not anticipate running into the same problems with the Edina project.

Attorney Welch stated that staff spends a lot of time on the specifications for the project because the District has to accept the low bidder. He stated that if the District initiates a change, the District has to pay for that; while if the contractor did not adequately assess the project that would not result in a change order.

Engineer Obermeyer noted that three-year maintenance program would be in effect to ensure that the vegetation establishes itself.

Chair Kloiber agreed that there would be no way to argue that Sunram would not be qualified as the contractor did the work on the Hopkins project. He noted that the next bid is \$126,000 higher.

Administrator Anhorn stated that he will coordinate an on-site meeting between the contractor and landowners to discuss expectations and highlight other issues such as the location of irrigation systems.

Attorney Welch noted that there two bid alternates and the engineer is recommending that the Board accept both alternates which results in the lowest bid being \$926,478.

Chair Kloiber confirmed that the total amount would be \$926,478.

Manager Sheely moved, seconded by Manager Peterson, to authorize the Administrator on advice and consent of counsel, to enter into an agreement with Sunram

Construction for the implementation of Phase I of the Edina Streambank Stabilization Project for an amount not to exceed \$926,478, and to further authorize the administrator to approve change orders aggregate not to exceed ten percent of the contract amount and to take further action as deemed necessary to undertake the project. Upon a vote, the motion carried.

Attorney Welch noted that the contractor will need to provide the necessary insurance information within ten days and staff can then issue the notice to proceed.

D. Review Received Comments and Responses – Draft Water Management Plan

Administrator Anhorn noted that the table included in the Board packet and which he was displaying includes the proposed responses to the comments the District received. He stated that the goal for tonight's discussion is to finalize these responses, which will then be posted on the District website and he hoped that the public hearing would be held at the July meeting.

Chair Kloiber stated that because the Board has already reviewed the comments in detail at the workshop meeting, he did not think it would be necessary to review the responses one by one.

Administrator Anhorn agreed that the Board and staff discussed the comments in detail at the June 1st workshop and then the Board provided direction on the responses, noting that Attorney Welch drafted most of the response language.

Manager Peterson stated that she believed the proposed responses were good, supported what the Board had discussed and was satisfied with the language.

Chair Kloiber agreed. He provided an example of where additional details could be provided giving instances of where the District has incorporated native vegetation plantings and invasive control into its own projects.

Administrator Anhorn noted that the draft plan would also be posted to the District website.

Engineer Kieffer noted that the Board will also have the time before the next meeting to review the draft plan and make any additional comments/edits prior to the July meeting.

Chair Kloiber complimented staff on their hard work to get the District to this point.

Attorney Welch noted that the comments were very helpful and made the draft plan better. He noted that the public involvement prior to this point helped inform people who were able to make those comments.

Manager Peterson moved, seconded by Manager Sheely, to authorize staff to finalize the responses to comments, publish the responses and distribute to commenters,

and to notice and schedule the public hearing for the July Board of Managers meeting. Upon a vote, the motion carried.

New Business

A. Annual Employee Performance Review – Education Specialist

Administrator Anhorn stated that Gael is at the MAWD Summer Tour and he did not have the opportunity to ask her if she would like the review done in open or closed session and therefore after consulting with Attorney Welch the decision has been made to close that portion of the meeting.

Attorney Welch noted that this item could then be pushed to the end of the meeting as it would simply be the Board and essential staff involved in that closed discussion.

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

Administrator Anhorn stated that the District reviewed a mailing from the Metropolitan Council regarding the condemnation of easements that the District has that the District was unaware that they held.

Attorney Welch stated that this is an informational item and no action would be necessary from the Board. He stated that the properties are within the south Hopkins industrial park. He noted that Southwest Light Rail is going to build a maintenance facility on two properties adjacent to each other and the light rail will run south. He provided historical background on flooding and flowage easements that the District established. He stated that Engineer Obermeyer reviewed the plans on what will be done and the initial analysis is that the flood control rules are now more stringent than they had been. He noted that the Metropolitan Council has stated that they will do whatever the District requires. He stated that there will be a condemnation hearing, which he did not believe District staff would need to attend and noted that at the hearing the judge will assign assessors to determine a value for the easements.

C. 2018 Budget Process

Administrator Anhorn discussed the proposed timeline for developing and approving the 2018 budget and associated levy. He added that he has already met with Chair Kloiber and Treasurer Twele to have an initial discussion on what the 2018 budget may look like compared to 2017.

Administrator Anhorn noted that the budget will increase because of the Edina Streambank project, but the attempt will be to keep the levy amount the same or similar with the help of the reserve funds. He asked that the Managers bring their available schedules to the next meeting so that a workshop could be scheduled in late-July. He noted that the budget would need to be certified at the August meeting in order to forward the maximum levy amounts to the county auditor by mid-September as required.

Chair Kloiber stated that the District has a healthy reserve fund and perhaps staff could track the intent for the reserves to determine the portion that is encumbered for special projects.

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.

Attorney's Report

Attorney Welch stated that he received additional information today from the Bloomington Assistant Attorney on the cost share agreement with the city for the vegetation management work around Bush Lake.

Administrator's Report

Administrator Anhorn had nothing further to report.

New Business (Continued)

- D. **Annual Employee Performance Review – Education Specialist – CLOSED SESSION**

Administrator Anhorn stated that Gael was unable to attend due to participating in the MAWD summer tour, and that because he had not had an opportunity to ask her if she preferred for her review to be held in an open or closed session, he thought it best to that it be held in a closed session.

The Board agreed and entered closed session to discuss the performance review of the Education Specialist.

The Board returned to open session. Chair Kloiber provided a summary of the evaluation, stating that the Board authorized a salary increase for the Education Specialist of 4.5% retroactive to June 15, 2017.

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 Peterson, seconded by Manager Sheely, to adjourn the meeting at 9:22 p.m. Upon a vote, the motion carried.

Respectfully submitted,



Corrine Lynch, Secretary

ATTACHMENTS:
Treasurer's Report