

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

THURSDAY, NOVEMBER 2, 2017

Call to Order

Chair Kloiber called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 5:30 p.m., Thursday, November 2, 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, Michael Welch, and Bob Obermeyer,

Agenda

The agenda was approved as presented.

Discovery Point Phase 2 Landscape Restoration Update

Administrator Anhorn stated that there were quite a few ash trees identified when the foresters walked through the site and therefore those additional trees will be removed. He stated that the city also recommends removal of the ash trees. He was unsure if that action would reflect a change in the cost but noted that a more detailed report would be available at the regular Board meeting.

Normandale Lake

Administrator Anhorn stated that at the last regular Board meeting it was realized that a cost estimate was not included for the Engineer's Report. He stated that the cost estimate is \$65,000 and therefore the next step for the Board would be to direct the Engineer to complete the report.

Manager Twele moved, seconded by Manager Sheely, to direct the Engineer to complete an Engineer's Report for the Normandale Lake project at a cost not to exceed \$65,000. Upon a vote, the motion carried.

District Rule Review/Revision

Administrator Anhorn stated that the meeting minutes from the TAC meeting were included for the Board to review.

Manager Hunker asked why the District decided to keep the infiltration requirement for D soils.

Administrator Anhorn noted that element is included in the presentation tonight.

Attorney Welch stated that the team has gone back and forth on this issue. He noted that the item will be addressed in the presentation tonight and suggested that the discussion wait until the item arises in the presentation.

Administrator Anhorn reviewed the intent for tonight's meeting as well as future meetings. He stated that initially the goal was to have the rules in place and implemented by March 1, 2018 and noted that the schedule is getting tight to meet that date. He noted that the Statement of Need and Reasonableness (SONAR) still needs to be developed and therefore it is more realistic that the rules and associated SONAR could be brought back to the board at the December meeting. He noted that following that, the District would have to put the rules out for a 45-day review period.

Chair Kloiber stated that it would appear the March date could still be met with the comment period.

Attorney Welch noted that you would want to adopt the rules with a further out date to provide sufficient notice for applicants. He provided additional details on the SONAR, noting that it would capture the last eight months of deliberations. He reviewed the potential timeline following the review period. He stated that most likely the District would receive similar comments to those that have already been made. He noted that legally the District is not required to respond to the comments, unlike the District's plan, but stated that most likely the District would still acknowledge comments.

Administrator Anhorn reviewed the results of the meeting with the TAC and the comments that were made by the TAC.

Engineer Obermeyer provided additional details on the compensatory storage rule, noting that the rule is written for the 100-year storm event and not for the smaller events.

Attorney Welch stated that the issue the TAC had is that the one foot plus/minus would be more difficult with constructed facilities.

Chair Kloiber noted that to him, underground facilities would be a different animal.

Attorney Welch provided an example of what could be problematic with the rule interpretation as it would apply to constructed underground facilities.

Chair Kloiber stated that his intent was that the rule would apply to constructed stormwater basins and would not apply to underground facilities. He stated that floodplains really only exist for water bodies and constructed stormwater basins. He did acknowledge how issues could arise.

Engineer Obermeyer noted that it would not be common to run into the issue but advised that a variance could also be considered for those cases.

Attorney Welch provided additional development examples that could arise.

Manager Peterson stated that she is a little confused on whether this would be a just thing to do but noted that it would still seem to apply.

Attorney Welch noted that the word surface could be added to differentiate.

Administrator Anhorn noted that another option would be to remove the plus/minus one foot.

Engineer Obermeyer stated that staff had additional discussion and provided additional language that could be used to clarify the rule.

Chair Kloiber agreed that the plus/minus should only apply near the creek.

Attorney Welch agreed that the language proposed by Engineer Obermeyer would work and solve the problem identified by the TAC.

Chair Kloiber asked the scope the District would want to go with flood elevations; just the lakes and streams, adding in ponds, and adding infiltration basins.

Attorney Welch noted that adding in the word surface would help to alleviate confusion.

Administrator Anhorn noted that staff will add the clarifying term and then could also bring back development examples at the next meeting.

Manager Sheely stated that she would like to ensure that the rules remain understandable.

Attorney Welch noted that the draft revisions fix an inadvertent incentive in the Wetlands Management Rule whereby a property owner who proposes a de minimis impact to a wetland does not have to buffer the wetland but a property owner who proposes no impact to the same wetland must provide buffer. Bryan Gruidl from Bloomington pointed out that the fix in the draft rules would mean utility work and the like that does not cause permanent impact to or cause increased flow of pollutants to a wetland would trigger the buffer requirement. Mr. Gruidl proposed exempting municipal utility projects from the buffer requirement. Mr. Welch said that the exemption could be reinstated for projects proposing only temporary impacts to wetlands in tight areas where it is unlikely the proponent would have land rights to establish buffer anyway.

The managers concurred in restoration of the exemption from the buffer requirement for projects subject to a Wetland Conservation Act no-loss determination.

Administrator Anhorn noted that there was some concern from the TAC on the exemption for single-family homes under 20 percent. He stated that there is a provision in the rules on the common scheme of development. He stated that there was concern with people “playing the system” and phasing development. He noted that there is a permit tracking system that the District can use to track projects.

Administrator Anhorn stated that at the TAC meeting, BWSR Board Conservationist Steve Christopher asked if a new homeowner would be held responsible for a previous owners projects in determining a common scheme.

Attorney Welch stated that he would discourage permit review based upon ownership. He used the example of a homeowner that added a garage and then a patio, with both projects under the 20 percent limit, and then want to add a pool and then have to treat for all three elements.

Manager Hunker stated that could be an educational aspect for applicants that come in the first time, explaining that even though the first or second project may not trigger the threshold, additional projects could trigger that element.

Chair Kloiber agreed that it would be helpful for homeowners to know ahead of time so that they can plan for that treatment if they are planning longer range projects. He did not see a problem with potential people that want to work around the rules because of the common scheme of development. He noted that there is a strategy to handle those piecemeal requests.

Administrator Anhorn reviewed the comments from the TAC regarding D soils. He noted that there was discussion in extending the D soil requirements to all D soil development and not just single-family homes and the possibility of using biofiltration. He provided information on other watershed districts that allow biofiltration for D soils.

Engineer Obermeyer stated that the District did not extend the D soils requirement to all properties (commercial and industrial) is because those projects have not had a problem meeting the requirements and therefore it was only applied to single-family homes.

It was the consensus of the Board not to extend the lesser D soils requirement outside of single-family homes.

Attorney Welch provided additional details on the elements around allowing biofiltration, noting that would change the thought behind what the District focus has been. He explained that you would forgo volume in return for treatment.

Chair Kloiber stated that the focus of the Board has been onsite volume retention.

Manager Hunker noted that she was unaware of that and stated that she simply brought up biofiltration as an option but would be fine with the rule as written.

Chair Kloiber stated that perhaps it could be as simply as adding language stating that whenever there is a situation where funds would be paid to the facilities fund, onsite filtration could also occur.

Engineer Obermeyer noted that the 60 to 90 percent filtration would still be required.

Chair Kloiber noted that it would be an option to at least keep water quality onsite.

Administrator Anhorn stated that is just an option included for other watershed districts, noting that applicants often do not choose that option because the basin has to be oversized. He stated that it seems there is enough interest from the Board for staff to investigate the option further and bring back additional information.

Manager Sheely stated that she would want to see information that option would be cost advantageous.

Chair Kloiber noted that the options could be for paying into the stormwater fund, purchasing credits, or providing onsite filtration. He stated that he would still favor the credit for volume retention. He stated that at least that way the water quality could still be provided locally.

Administrator Anhorn reviewed the comments from the TAC regarding the chloride management plan. He noted that the municipalities believed that they should be exempt because of the MS4 permit requirements but staff noted that because the municipalities already have that information it would be very easy for them to send the information to the District. He noted that another comment was made that the permit applicant is often not the person that hires the chloride management person.

It was the consensus of the Board that example would be rare, and it would be easy for the applicant to make a phone call to gain the necessary information.

Chair Kloiber stated that it would be very easy for the municipalities to send in the information from their MS4 permit.

Administrator Anhorn noted that even if municipalities had multiple permits within the year, they would only need to provide the chloride management information the first time and then would be on file. He confirmed that there is consensus from the Board not to change the rules regarding chloride management.

Attorney Welch provided additional details. He noted that the District does not have the ability to license whereas a member city would have that ability. He discussed the pros and cons of the cities handling this item rather than the District.

Manager Sheely stated that she did have concern that this could be too progressive.

Chair Kloiber asked what is required other than providing a contact name.

Attorney Welch noted that the applicant would also have to have one person on staff complete the chloride application training.

Administrator Anhorn noted that once someone is certified, that certification would last for three years.

Manager Peterson stated that she can see that point but does not see a problem with adding this requirement.

Chair Kloiber agreed that chloride management elements should remain.

Administrator Anhorn noted that this is moving the ball forward. He noted that the Board would be able to discuss this again following the 45-day review period.

Manager Sheely stated that she has attended the training and did not find it very beneficial for all of the attendees. She stated that she would not be opposed to simply requiring the applicant to provide the contact name.

Administrator Anhorn discussed two other comments made by the TAC, one about requiring buffers on erosion control permits and another general comment that was more procedural on expanding administrative permit approval to Wetland Conservation Act Exemptions and no-loss determinations. He said the procedural comment was outside the actual rule itself and could be acted on outside the rulemaking process

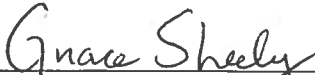
Kloiber stated that in the past, the District was interested in establishing buffers wherever they could. Following discussion, the Board consensus was to keep the requirement for buffers on erosion control permits and to discuss expanding the administrator approval authority on certain permits rules at a later date.

Administrator Anhorn confirmed the consensus of the Board on the discussion items tonight and direction for staff prior to the next meeting.

Adjournment

It was moved by Manager Sheely, seconded by Manager Twele, to adjourn the meeting at 7:30 p.m. Upon a vote, the motion carried.

Respectfully submitted,



Grace Sheely, Secretary