

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

**THURSDAY, OCTOBER 5, 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, October 5, 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 (term expired)

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

Also in Present: Erin Hunker

**Agenda**

**Manager Twele moved, seconded by Manager Sheely, to approve the agenda. Upon a vote, the motion carried.**

**Annual Communications Template Design Proposal**

Education and Outreach Program Manager Sniegowski stated that the District typically provides a year at a glance calendar with the annual communication on the back every other year. She stated that the annual communication no longer fits on the back and suggested instead highlighting programming events on the back. She proposed to work with the design company that designs the calendar to design the template for the newsletter, noting that the annual communication could then just be included as an insert. She stated that the cost estimate for the template is \$2,350 and noted that once the template is created, staff could then use that to create the newsletters. She stated that the year at a glance calendar would be created in-house.

Chair Kloiber asked and received confirmation that the year at a glance calendar would be separate from this request.

Education and Outreach Program Manager Sniegowski explained that staff has always created the year at a glance calendar in-house and has that document prepared for printing. She provided additional input on what would now be included on the back of the year at a glance

calendar. She confirmed that the cost estimate would include the design and production but would not include printing costs.

**Manager Twele moved, seconded by Manager Peterson, to approve an expenditure of \$2,350 for the design and production of a newsletter template. Upon a vote, the motion carried.**

### **District Rule Review/Revision**

Administrator Anhorn stated that the main reason for the meeting is the review the proposed revision of the District rules. He stated that staff will recap the previous discussion of the Managers and the proposed language that staff has drafted for review. He provided a summary of the discussion the Board had on September 20<sup>th</sup> regarding the possibility of requiring a chloride management plan, noting that the Board consensus was to require a contact from the permittee and that someone involved in the winter application of chloride participate in the Minnesota Pollution Control Agency (PCA) training. He stated that the consensus was that this chloride requirement would apply to commercial, industrial, and public entities and that single-family homes would be excluded.

Manager Sheely expressed concern that it may be difficult for some businesses to provide an adequate contact person.

Administrator Anhorn explained that the requirement would not be required before the permit is issued but would be required before the financial assurance is released.

Chair Kloiber stated that he would imagine that commercial, industrial, and public entities often have NPDES permits and that process requires the designation of a person of contact. He stated that this is not the only designation that one of those entities is required to provide.

Attorney Welch stated that after the discussion with the Managers it was determined that these two elements should be minimal requirements and not a requirement of an elaborate management plan because the element is innovative and new.

Administrator Anhorn stated that the Board has discussed single-family home permitting on multiple occasions and summarized that the Board consensus was not to eliminate single-family home permitting or simply require a stormwater best management practice (BMP). He summarized the discussion that has taken place thus far and the consensus that the District should focus on a tiered approach and focus on the larger projects rather than small additions. He reviewed the proposed language that all new homes would need to meet the 1.1 inch requirement but redevelopment would be tiered as follows: if the redevelopment adds less than 20 percent impervious surface the project would be exempt; if the project adds over 20 percent of impervious surface and disturbs less than 50 percent of the site, the applicant would be required to provide stormwater management for the new impervious; and if the project adds over 20 percent impervious and disturbs more than 50 percent of the site, the applicant would then need to provide stormwater management for the new and reconstructed impervious surface on the site.

Engineer Kieffer provided additional input on the data set, reviewing the ratio of single-family homes that would fall into each category of the tiered approach.

Administrator Anhorn explained that it would be difficult to fully review the permit requests from the past three years, as the District was using the current requirements and therefore some activities that may trigger under the tiered approach may have not triggered a stormwater permit in the past and may have simply required an erosion control permit. He noted that the majority of the single-family home permits occur in Edina.

Chair Kloiber asked if this approach has been run by the TAC.

Administrator Anhorn stated that staff is attempting to gain the input from the Board tonight and would then go before the TAC shortly after the Board's regular meeting on October 18th. He stated that when staff spoke with the TAC previously there seemed to be general consensus with just requiring some type of BMP.

Manager Twele stated that she believes that this would be a great opportunity for education.

Administrator Anhorn noted that the cost-share program could be publicized throughout the process in addition to other educational components and best management practices. He estimated that this would not reduce the amount of staff time used reviewing single-family homes but would instead focus staff time on the bigger projects. He noted that additional discussion can occur outside of the rules, if the attempt is to ease the workload on staff. He used the example of directing permittees to Barr Engineering, but noted that there would be an additional cost to that element.

Chair Kloiber stated that he did not see a lot of benefit to massively expanding the permit program to all single-family home projects and would rather see a focus on projects that have the most impact. He stated that there is a possibility to add staff in the future.

Administrator Anhorn confirmed that it was the consensus of the Board that staff should forward the tiered approach for the single-family home permitting on to the TAC. He stated that a caveat was added to single-family home permits for properties with type D (clay) soils, noting that the final calculations are still being determined but there seems to be consensus with requiring one half inch rather than 1.1 inch.

Engineer Kieffer discussed the possibility of expanding the definition of the 100-year flood elevation. She noted that currently the rule/definition does not apply to a constructed stormwater pond in terms of prohibition of fill. She asked if the definition should be expanded to include constructed basins and/or inundation areas.

Administrator Anhorn stated that most neighboring watershed Districts do not include constructed basins or inundation areas. He provided examples of a few Districts that do include those elements in their rule.

Ms. Hunker asked how staff would determine or define what an inundation area is.

Engineer Kieffer stated that would be carefully defined. She provided some examples of how that element could be designed and the implications that could come along with that.

Administrator Anhorn stated that staff supported the expansion of the definition to include constructed basin or constructed stormwater facility but was having difficulty with expanding to include inundation areas.

Chair Kloiber noted that there are some instances when an inundation area could be filled without causing impact to the downstream areas.

Administrator Anhorn confirmed the consensus of the Board was to add constructed stormwater facilities to the definition of the 100-year flood elevation rule.

Engineer Obermeyer provided additional information on how calculations are determined for permit applicants and used an example of what would occur under the current rules for certain applications.

Chair Kloiber asked where it would be important for the District to step in, noting that in some instances the member city rules are sufficient. He stated that in the Southdale/JCPenny site, the District could point out the low-lying area and that would then be up to the property owner. He stated that if the solution does not cause problems to the neighboring property owners it would simply be the problem of the property owner.

Manager Peterson stated that it was her opinion that people do not always do the right thing or think about future flooding possibilities. She agreed that it would be difficult to create a rule but believed that the District should also share the information they have.

Chair Kloiber stated that if the case only involved one property owner, he would not think the District would need to be involved, but noted that if the property backed up to multiple property owners, then perhaps the District should be involved.

Engineer Obermeyer again used the example of Southdale, noting that the constructed basin stores water and therefore has an impact downstream.

Chair Kloiber stated that if the property is holding water, it would then be the problem of the property owner and not the District.

Attorney Welch stated that if the language states constructed basin, that would then not apply to inundation areas. He stated that this issue came on the radar of staff with the discussion of the redevelopment in the upper watershed pushing more water downstream. He agreed that if someone wants to flood their own basement, that is not an issue the District should be involved in. He agreed that private property owner disputes would still not be the problem of the District.

He stated that flooding would be an issue of the District while building issues would be the responsibility of the member city.

Manager Peterson stated that perhaps there is a rule with language that makes someone think about the topic but also provides flexibility.

Attorney Welch used the example of a sport court that was constructed with the known possibility of flooding. He noted that in that case the District issued a variance to allow the property owner to construct the project knowing that it may flood..

Chair Kloiber stated that if someone is only harming their own property, then it would be their own issue. He stated that there is local flooding within the District that does not cross municipal boundaries and the policy in the past has been that the issue is the responsibility of the member city.

Manager Peterson stated that cities have asked for help or guidance with flooding.

Chair Kloiber noted that the District developed a strategy for reviewing those requests from member cities which includes prioritization criteria for when and how the District is involved.

Engineer Kieffer stated that is a managing flooding issue compared to preventing flooding. She explained that the rate control issue partially handles the issue but is not as prescriptive as it would if it were managed under the flood control element.

Engineer Obermeyer stated that there are real life cases that will soon come before the Board and the Board will need to decide the position of the District.

Chair Kloiber stated that he would lean towards including constructed basins and not push towards including all inundation areas. He stated that in his opinion the depression at Southdale would not be considered a constructed basin and would be considered as an inundation area.

Attorney Welch stated that the parking lot was built that way to hold water and therefore he would suggest not defining constructed basin and leaving that interpretation up to the engineer as to whether the area was constructed to hold water.

Manager Sheely asked why inundation areas are not being considered.

Engineer Obermeyer noted that inundation areas can be anything from a small area to a large area.

Chair Kloiber noted that including inundation areas would receive a lot of pushback as the District would then be regulating “puddles”. He used examples of property owners that fill their yard to create a more level yard and therefore flood other properties. He stated that in those instances the member city steps in for enforcement and the District does not become involved.

Administrator Anhorn again confirmed the consensus of the Board to add constructed basin, undefined, with the engineer to make the final determination.

Engineer Kieffer discussed the concept of regional or subwatershed stormwater treatment based systems. She noted that the District has been discussing this for some time and the concept is not new in general. She provided additional information on regional treatment plans and discussions within the District.

Attorney Welch provided additional details on regional plans, noting that a plan proposed to the District would come forward from a member city. He stated that the District would then review the plan, which would include a plan for permitting, and noted that individual properties would still come forward for permitting for each property.

Chair Kloiber noted that creation of the plan ahead of time should make for a more streamlined permitting process.

Attorney Welch noted that there is benefit to being the first in line for permits under a regional plan rather than the last. He noted that by the time the last permittee comes in, the capacity may have been used up by the previous applicants. He stated that it is not unusual for a District to have a regional concept but noted that the concept that Engineer Kieffer is going to discuss is pretty innovative.

Engineer Kieffer highlighted the Pentagon Park study area that the District is working on with the city of Edina. She noted that much of the study area is inundated under a 10 or 100-year flood event. She stated that the first phase of the study was to determine if something could be done with the elevation to bring the flooding down. She stated that was not an option because of the low-lying land and the elevation of the nearby creek. She stated that as the properties redevelop, there will be floodwater on these properties ranging from zero to 3.5 feet. She noted that causes problems for developers, noting that the properties would need to maintain flood storage as the water cannot be passed to the neighboring property owner.

Attorney Welch noted that upon seeing this presentation, the Edina HRA staff member acknowledged that the City would need to begin purchasing property.

Administrator Anhorn noted that could be one portion of the regional solution for that area.

Engineer Kieffer stated that there are additional redevelopment challenges in that area with the clay soils and the high groundwater level. She stated that the study considers all those constraints to determine if providing flexibility would also provide a higher return. She used the example of allowing less infiltration and volume retention in return for more rate reduction. She stated that some of the sites will need to be used for flood reduction and underground storage and provide water quality through a regional pond. She stated that language has been drafted for the rules that would attempt to allow people come in with a special plan that would provide reasonable tradeoffs when it is not reasonably feasible to meet the rules. She reviewed the

proposed minimum requirements. She stated that the idea would be to leave the language fairly non-prescriptive which allows for innovation.

Attorney Welch provided additional details on the study that was completed between the District, Edina and Bloomington. He noted that the member city could then use that data from the study to develop a regional plan that the District could review. He stated that there has to be flexibility in order to allow for the tradeoffs. He referenced the Superfund site where the District will continue to see variance after variance but noted that if the District instead works with the member cities to develop a plan, that would make this process easier to review and more efficient in the tradeoffs that will be received.

Engineer Kieffer noted that although the District might not be able to have all the criteria to be met, there would still be a benefit provided through this redevelopment over the current conditions.

Chair Kloiber stated that perhaps flexibility can be given with priority, ranking the methods the District would prefer higher on the list. He explained that perhaps more flexibility be given to certain rules and remain stricter on other rules.

Administrator Anhorn stated that initially this would be municipally driven, and the District would most likely be involved in the study.

Attorney Welch stated that it seems that the idea expressed by Chair Kloiber would be that if an alternative regional plan is approved and if there are available credits, those must be purchased first. He stated that his interpretation would be that credits would be better used on smaller sites, like a gas station site with contaminated soils.

Engineer Kieffer stated that the main concept is water protection and therefore credits may not be the best choice for all options and there may be an alternative method that would provide a better benefit.

Chair Kloiber stated that if this moves forward as a concept, regional plans would still need be reviewed by staff and approved by the Board.

Attorney Welch noted that it would still be a performance standard.

Chair Kloiber stated that this would create a normalized process for dealing with these difficult sites rather than constantly reviewing variances requests.

Manager Twele noted that it would encourage creativity.

Engineer Kieffer agreed that this could create opportunities for innovation and gets out of the concept of trying to “put a square peg in a round hole”.

Attorney Welch noted that this approach would provide the ability for redevelopment which provides a benefit to economic development while also improving the stormwater management.

Manager Sheely stated that perhaps because the regional plan concept would be less prescriptive, perhaps an additional informational sheet should be drafted that includes priorities of the District and available planning grant opportunities.

Chair Kloiber stated that if planning grant opportunities should be limited to municipalities. He stated that would be an amenity for the member cities because they are gaining assistance with the data, the ability to redevelop problem sites, and partnership with funding.

Attorney Welch noted that funds cannot be used to meet the regulations of the District.

Chair Kloiber provided examples in which the District contributed to the Pentagon Park study and the Centennial Lakes project.

Attorney Welch stated that as for the Pentagon Park study, the District led study analyzes the problem from which, staff anticipates that the city could propose a regional management plan from management options laid out in the study that the Board would then act on.. He noted that in regard to the Centennial Lakes project, the District was able to identify the capacity that was being provided above and beyond the requirements.

Engineer Kieffer noted that the intent was simply to introduce the idea and gain input.

Administrator Anhorn stated that if the Board is comfortable, staff would bring the draft language before the TAC to gain their input. He confirmed that there is another regular Board meeting prior to the TAC meeting, which allows the Board to further digest the information and provide input before staff meets with the TAC.

It was the consensus of the Board to allow all the pieces to move forward to the TAC to gain their input.

### **Adjournment**

**It was moved by Manager Sheely, seconded by Manager Twele, to adjourn the meeting at 7:37 p.m. Upon a vote, the motion carried.**

Respectfully submitted,

  
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Jodi Peterson, Acting Secretary