

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

WEDNESDAY, DECEMBER 19, 2018

Call to Order

Acting Chair Peterson called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, December 19, 2018, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Cutshall, Hunker, Sheely and Peterson

Managers Absent: Kloiber.

Advisors Present: Randy Anhorn, Louis Smith, Jana Kieffer, Erica Sniegowski, and Lauren Foley

Agenda

Administrator Anhorn stated that he did receive a deer management request from the city of Eden Prairie, similar to the request from the previous year and requested to add that to the agenda under New Business, as Item D.

Manager Hunker moved, seconded by Manager Cutshall, 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 November 13, 2018. The Managers provided minor grammatical changes to staff.

Manager Sheely moved, seconded by Manager Hunker, to approve the November 13, 2018 minutes subject to minor corrections. Upon a vote, the motion carried.

Public Open Forum

There were none.

Permitting Coordinator Position Update

Administrator Anhorn introduced the newest member of the staff, Permit and Water Resources Coordinator Lauren Foley. He noted that she began with the District 1.5 weeks ago

those conservation methods. She noted that water reuse will be one of the most efficient methods of water conservation, providing the example of reusing stormwater for irrigation purposes. She stated that water pricing could also be an effective method of incentivizing water conservation. She stated that irrigation is also a big concern in terms of conservation. She stated that the city currently uses an odd/even watering ban with no watering allowed during the mid-day. She stated that lawns require one inch of water per week, and perhaps the odd/even ban is encouraging residents to water on their day. She stated that the purpose of the ban is to ensure an adequate water supply.

Ms. Wilson stated that information does not lead to action. She stated that money does not lead to sustainable action, and therefore you must motivate and inspire people to make the change towards conservation. She stated that conservation efforts are working and increasing the capacity in the system and therefore there is possible growth available in the water utility. She stated that the largest opportunity for conservation is with the largest water users. She stated that as the infrastructure investments are reviewed in the future, the technology may be available to assist in enforcement for lawn irrigation. She stated that the city is already working to determine if turf could be replaced with alternate materials that require less watering in public spaces. She stated that the water conservation pricing tiers could also be reviewed for possible modifications. She noted that the primary focus would be to amend the tier for those using the water for non-essential outdoor uses. She reviewed some other possible actions that can assist with future water conservation efforts.

Manager Cutshall asked if the city is doing anything now with residents to encourage a reduced use of turf grass and instead use native plants. He asked if there are ordinances in place that would prohibit a resident from replacing turf in their yard with native plants.

Ms. Wilson replied that the city hosts Metro Blooms workshops each year, which have been well attended. She stated that they also share the cost-share options available through the Watershed District. She noted that when new homes are constructed, the ground must be covered to receive a certificate of occupancy and therefore turf is the cheapest and quickest option for the builder to turn around that property for sale which means that it would be up to the homeowner if they wanted to replace a portion with native plants. She stated that in terms of the code, there is a weed ordinance but stated that there is not a case where a well-maintained native plant bed has been flagged under the weed ordinance.

Administrator Anhorn thanked Ms. Wilson for sharing the information with the Board tonight.

Consent Agenda

will then own the common area. He asked the Board for direction on whether a chloride management plan should be required or whether this should be seen as an exemption because of the single-family homes.

Attorney Smith stated that this may not be considered a single-family project, as this is a subdivision of the property with a common area and therefore, he believed would fall under the chloride management plan requirement. He agreed that it would be a judgement call for the Board.

Manager Cutshall stated that although this is technically single-family homes, the subdivision does feel more like a townhome development.

Acting Chair Peterson noted that the rule requiring a chloride management plan does apply to townhome developments.

Manager Sheely stated that she would want the District to remain consistent when similar requests come forward.

It was the consensus of the Board to find that the project reflects a subdivision of multiple homes and a common area, and therefore to require a chloride management plan for the property.

Engineer Kieffer stated that staff is recommending approval of the permit, subject to the conditions noted in the packet. She noted that in the packet the numbers are reversed and should state the surety amount as \$13,900 and then an additional \$5,000 required for the chloride management aspect for the total amount of \$18,900.

Manager Hunker moved, seconded by Manager Sheely, to approve the permit subject to the noted conditions, including a chloride management plan. Upon a vote, the motion carried.

B. Permit #2018-129: Stream Channel Stabilization; 7808 CreekrIDGE Circle – Bloomington

Engineer Kieffer presented the permit request and proposed plans. She provided details on the maintenance/repair project proposed by the City of Bloomington, which includes a vegetative reinforced soil slope. She stated that the project triggers several of the District's rules and noted that the design meets the rules with the exception of rule two, floodplain management. She stated that the design includes 82 cubic yards of boulders and riprap which will be installed below the 100-year flood elevation of the creek, which requires compensatory storage elsewhere under the rule. She stated that the small amount of fill has a very small impact on the flood elevation of the creek. She stated that staff recommends that the Board consider an exception in this case as the work being done is necessary to prevent further degradation and instability in the embankment. She stated that the benefits outweigh the very minor impact on flood storage.

Engineer Kieffer recommended approval of the pay request submitted by Rachel Contracting.

Manager Sheely moved, seconded by Manager Hunker, to approve the pay request from Rachel Contracting in the amount of \$47,955.50. Upon a vote, the motion carried.

Engineer Kieffer recommended approval of the pay request submitted by Sunram Construction.

Manager Hunker moved, seconded by Manager Sheely, to approve the pay request from Sunram Construction in the amount of \$6,816.90. Upon a vote, the motion carried.

Manager Sheely moved, seconded by Manager Cutshall, to approve the Treasurer's Report and pay the bills. Upon a vote, the motion carried.

Staff Reports

A. Education and Outreach Program Coordinator

Program and Project Manager Sniegowski noted that a written report was included in the packet.

B. Program and Project Manager

Program and Project Manager Sniegowski highlighted that the District received a 40 percent disbursement on the Clean Water Fund grant from BWSR to cover the costs the District has incurred. She stated that the State of the Waters event was well attended, and staff received great feedback. She stated that the BWSR Clean Water Fund grant applied for to fund the installation of the seven BMPs with the six churches the District has been working with was not awarded. She stated that she did submit to Hennepin County for an opportunity grant, noting that those results should be known soon. She stated that there are commitments from the churches that they would like the BMPs in the ground and staff will continue to research options for funding.

C. Administrator

Administrator Anhorn stated that his written report was included in the packet.

i. Correspondence

Administrator Anhorn highlighted some recent correspondence that the District has received.

Administrator Anhorn noted that the MAWD legislative day at the capital is scheduled for February 20th and 21st. He provided updates on per diem and reimbursement request deadlines.

A. District's Floodplain Rule

Administrator Anhorn stated that staff would like to schedule a workshop for perhaps the first Thursday in January, depending upon availability. He stated that action is proposed tonight on the proposed resolution and additional discussion will continue on the floodplain rule at the workshop. He confirmed the consensus of the Board to hold the workshop at 5:30 p.m. on January 3, 2019.

i. Draft Resolution #18-13

Engineer Kieffer stated that the discussion tonight will consider the difference between storage and flood storage. She noted that a more permanent revision to the rules will be done after further discussion at the workshop. She explained the difference between dead storage and live storage. She stated that staff would like to document, through the resolution, that although the rules state that filling below the 100-year elevation would require compensatory storage, what is really meant is filling live storage as filling dead storage will not have an impact on flood storage.

Manager Cutshall asked how the 100-year flood elevation is set.

Engineer Kieffer provided additional clarification on how the calculation is done to determine the elevation.

Acting Chair Peterson asked what would happen if a large amount of the dead storage was filled.

Engineer Kieffer replied that from a flood control perspective, that would not change anything and therefore the floodplain rule is not the right place to regulate that activity. She stated that if it were a pond on private property and that was constructed as part of a previous permit through the District for water quality purposes, filling would not be allowed, unless an equivalent BMP is provided.

Acting Chair Peterson asked if sediment from upstream accumulating would impact flood storage.

Engineer Kieffer stated that sediment does accumulate in some water bodies and if that area is considered dead storage, the sediment is not impacting the flood storage available but is impacting the functionality of the water quality treatment and therefore again, the floodplain rule would not be the proper place to address that issue. She stated that the proposed resolution is a clarification to the rule. She noted that additional modifications to the rule could be considered during the workshop discussion when further revisions to the rule are discussed.

Attorney Smith noted that the proposed resolution provides a tight clarification on the language. He stated that in a flood sensitive watershed perhaps from a policy basis, would the District want to take a protective stance that even though the floodplain calculations do not count

Administrator Anhorn stated that staff met with the cities and Southwest Light Rail on the Shady Oak property. He noted that the pond cannot be used for infiltration because of contamination and therefore the pond will be used to meet the District's water quality and rate control standards only. He stated that excess volume control will still be offered in another area of the corridor, even though that will not be required because of the contamination.

New Business (Continued)

A. Hennepin County Update Pictometry Imagery Contract Renewal

Administrator Anhorn stated that the County has been providing free aerial photography and the updated images will also be free. He stated that proof of authorization is required and therefore the contract is required.

Manager Hunker moved, seconded by Manager Cutshall, to authorize the Administrator to work with legal counsel on the documents and execute renewal of the Hennepin County Updated Pictometry Imagery Contract. Upon a vote, the motion carried.

B. City of Minnetonka's Request for Partial Release of a Restricted Covenant

Administrator Anhorn stated that this came before the Board recently and includes an outlot that was preserved as part of a previous development, prior to the District's rules. He stated that now that the new rules have been implemented the easement is not needed as development of that area would need to meet the requirements of the District floodplain rule. He explained that the District rules take the place of the easement, which means that the easement is no longer needed.

Manager Sheely moved, seconded by Manager Cutshall, to authorize the Chair to execute the Partial Release of Reversionary Interest and of Declaration of Restrictive Covenant. Upon a vote, the motion carried.

D. Consider Deer Management Request

Administrator Anhorn stated that the District had this request the previous year. He stated that the city would like to use the District property to strategically bait and take out five to ten deer to manage the issue. He stated that there have been some complaints from the neighbors on the deer. He explained that police sharp shooters are used, and it is a clean process. He stated that although the District approved the request the previous year, the city did not go forward with the action.

Manager Sheely moved, seconded by Manager Hunker, to authorize staff to execute an agreement with the city to under take deer management activities on the Discovery Point Property. Upon a vote, the motion carried.

Engineer's Report

Anhorn has authority from the Board to approve change orders up to ten percent. She stated that with this change order the total would reach 11.6 percent of the total cost and would exceed the administrative authority. She stated that the change order has not been received as of yet, but staff would like the Board to provide authority to the Administrator to sign the change order once received.

Administrator Anhorn stated that Rachel Contracting has asked how soon the change order could be signed and also asked for half of the amount. He stated that the staff discussion has been to attempt to gain approval from the Board to approve the change order in the amount of \$18,125.50 once received.

Manager Sheely stated that she is impressed with the negotiation of staff but stated that it was not clear that rain was unexpected and therefore the contractor did not plan for this rainfall nor would any contractor plan for that amount of rain.

Manager Hunker stated that she agrees with the way staff negotiated the items the District is willing to reimburse.

Engineer Kieffer agreed that there is a balance of the risk. She stated that the contract language was written to put that risk on the contractor, but the District staff is willing to be fair and therefore offer to reimburse some of the costs because of the unforeseen rain amounts. She stated that it would be helpful for Rachel Contracting to know about the amount the Board is comfortable with before the end of the year.

Program and Project Manager Sniegowski explained that this number is reflective of changes to the contract rather than the fact that the District feels bad because there was bad weather and therefore is something fair and reasonable that the District can offer.

Manager Cutshall asked if there is language included in the contract that addresses extreme weather conditions. He stated that it hard to make the contractor responsible for any conceivable weather condition that could occur.

Acting Chair Peterson stated that the contract language was setup in a way to address the timeline specified by the contractor in their bid. She noted that there were different timelines provided in the bids of other contractors and this contractor was chosen because of their timeline proposed.

Program and Project Manager Sniegowski stated that the contractor was given additional time to install the pipe, as the original date specified October 21st. She stated that the first half of the pipe was installed prior to that date but the second half of the pipe was not installed until the beginning of November and the contractor was not penalized for that. She stated that they went into the project with the expectation that there would be lake level bounces throughout the project.

Manager Sheely stated that she trusts the negotiation of staff that this is a fair offer.