

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

WEDNESDAY, MAY 16, 2018

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, May 16, 2018, 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, Bob Obermeyer, Erica Sniegowski, and Nick Atherton

Agenda

Administrator Anhorn requested to add action on the League of Minnesota Cities Insurance Trust liability waiver at the end of New Business.

Manager Twele 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 Special Meeting of April 10, 2018. Administrator Anhorn stated that he received changes from the Attorney Welch today to be incorporated and therefore noted that the adoption of the minutes could be postponed.

Mr. Welch suggested that the managers discussion and provide direction on minutes at some point. The minutes should either include important detail regarding managers' comments, direction and input, or the minutes should be reduced to agenda items and board actions, which is viable but not as useful as detailed minutes.

Manager Sheely suggested adding that item to the end of tonight's agenda for discussion.

Chair Kloiber noted that if there is time at the end of the meeting, that topic could be discussed. He stated that perhaps the topic should be postponed until the next meeting so that the Board has sufficient time to digest the input from the attorney.

Manager Sheely moved, seconded by Manager Peterson, to add an item to the end of the agenda to further discuss the topic of minutes, or defer that discussion to the next meeting dependent upon time. Upon a vote, the motion carried.

The Chair called for review of the minutes of the Regular Meeting of April 18, 2018. The Managers provided non-substantive grammatical changes to staff.

Manager Twele moved, seconded by Manager Sheely, to approve the minutes with the non-substantive corrections provided to the administrator. Upon a vote, the motion carried.

Hearing and Discussion of Matters of General Public Interest

There were none.

Consent Agenda

- A. Permit #2018-29: McDonald’s Parking Lot/Drive Thru Improvements – 3220 Southdale Circle; Grading and land alteration permit: Edina**
- B. Permit #2018-40: Glen Lake Elementary School Parking Lot Reconstruction – 4801 Woodridge Road; Grading and land alteration permit: Minnetonka**
- C. Permit #2018-41: Acorn Mini Storage Building Additions and Associated Parking Lot Improvements – 9100 West Bloomington Freeway; Grading and land alteration permit: Bloomington**

Manager Peterson moved, seconded by Manager Hunker, to approve the Consent Agenda. Upon a vote, the motion carried.

Hearing of Permit Applications

- A. Permit #2018-42: Drury Hotel – Northwest Quadrant of France Avenue and Minnesota Drive; Grading and land alteration permit: Bloomington**

Engineer Obermeyer presented the permit request and proposed plans. He stated that the development is within the limits of the old France Avenue landfill site and therefore using infiltration to meet the District stormwater volume retention requirements presents risk of causing contamination to migrate into groundwater. He stated that under the recent amendments to the rules, this is considered a restricted site where the retention requirement is 0.55 inches of runoff from impervious areas, as opposed to 1.1 inches. He stated that the applicant proposes to reuse stormwater for irrigation to meet the retention requirement. However, the redevelopment plan provides only 0.9 acres of green space such that the applicant cannot meet the 0.55-inch standard, but rather the maximum extent practicable is 0.30 inches of volume retention onsite. He said nonetheless, the proposed stormwater-management system will provide the required rate control and water-quality treatment. He stated that an underground stormwater management facility system, including a storage tank, isolation row and water quality treatment sump and manhole called a Jellyfish, would be used to meet the District’s water quality requirement of 60

and 90 percent removal efficiency for phosphorus and suspended solids. He said the Jellyfish manhole is a filtration system that removes pollutants through a series of membrane cartridges.

Engineer Obermeyer said that while the resulting stormwater retention is less than the 0.55 inches to meet the first-tier requirement for a restricted site, it is the engineer's opinion that given the extent of the development approved by the city, the applicant is making the best use of the area for volume retention. He further stated that the underground storage tank for the irrigation system will have sufficient volume for three weeks of irrigation at 1 inch per week. He recommended approval of the permit conditional on the standard conditions with an additional condition of providing a detailed reuse plan to irrigate the green space be submitted for approval. He stated that a chloride management plan must be provided and financial assurance in the amount of \$80,600 would be required, noting that \$5,000 of that amount is for the chloride management plan.

Manager Hunker asked for clarification on the proposed retention 0.30 inches stormwater.

Engineer Obermeyer explained that the retention calculation uses 1 inch per week of irrigation rate on the 0.9 acres of green space from the captured stormwater.

Manager Peterson asked if there is concern with snowmelt in the winter and whether that would go through the system and discharge.

Engineer Obermeyer noted that the system would be drained in the fall and therefore the storage area of 10,000 gallons would be used in the winter until irrigation begins in the spring.

Manager Peterson asked what would happen if that reaches capacity.

Engineer Obermeyer stated that the system would discharge to the sanitary sewer system.

Mr. Welch noted that under the old rules, while the onsite volume retention shortage could have been met through payment into the District's stormwater facilities fund, the associated water quality benefits would have been pushed off site as well.

Chair Kloiber asked if there has been third party testing of the Jellyfish manhole.

Engineer Obermeyer stated that he is not aware of anything of that nature. He stated that this has been accepted by six or seven states as meeting water-quality requirements.

Chair Kloiber asked if there are any other implementations of this in the metro area.

Engineer Obermeyer replied that he is not aware of any others.

Mr. Welch stated that any maintenance specifications from the manufacturer would be incorporated into the maintenance declaration.

Engineer Obermeyer stated that the majority of the water-quality treatment occurs before reaching the last manhole.

Chair Kloiber stated that the University of Minnesota has done some testing on best management practices and perhaps this would be a candidate to have analysis done to confirm the performance.

Mr. Welch stated that if a system was submitted that did not have data to back it up, it would be within the Engineer's purview to determine whether it would provide the necessary stormwater management. He stated that a performance requirement could be added to the permit terms if the engineer determined that field performance of the proposed practice needed to be shown.

Manager Sheely stated that she is concerned with what would be running off this site and impacting another site.

Engineer Obermeyer noted that nothing would drain off this site to impact another site.

Manager Peterson referenced a statement in the permit report regarding potential groundwater effects on the proposed stormwater storage tanks.

Engineer Obermeyer said that if groundwater rose to a certain level and the tank was dry, it could become buoyant. He stated that it is not a compliance issue, but he simply wanted to bring it to the attention of the applicant.

Mr. Welch noted that the chloride management plan would be required for the first time. He stated that the future construction of a restaurant on the property site would not add hard surface or resulting runoff, so would not require an amendment to the permit.

Engineer Obermeyer noted that the cost for the irrigation system is \$500,000.

Mr. Welch referenced the request for the detailed irrigation plan and asked if the desire is to incorporate that into the maintenance declaration.

Engineer Obermeyer stated that he would like to review the plan before recommending approval of the maintenance declaration and that the irrigation schedule should be included in the declaration.

Mr. Welch noted that condition five in the permit report should be amended accordingly, adding the language "and incorporation for approval by the administrator into the maintenance declaration."

Chair Kloiber stated that he appreciates that under the new rules this does not require a variance.

Manager Hunker moved, seconded by Manager Sheely, to approve the permit subject to the conditions as amended. 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 Sheely, to approve the Treasurer's Report and pay the bills. Upon a vote, the motion carried.

Education & Outreach Program Report

A. Education and Outreach Program Report

Program and Project Manager Sniegowski stated that Education and Outreach Coordinator Gael Zembal's report is included in the packet.

Manager Sheely stated that it was great the District was able to obtain 50 participants for the Hopkins stream cleanup and asked for details on how staff conducted outreach for the event.

Program and Project Manager Sniegowski replied that staff used flyers, while the police department also used traffic signs that guided walkers to participate. She stated that event was a partnership with the City of Hopkins and the police department, and they were a significant help. She stated that it was also a gorgeous day, which tends to increase participation. She stated that 26 bags of trashed were collected.

Ms. Sniegowski stated that the District has a new aquatic invasive species book that was prepared in a partnership with Riley Purgatory Bluff Creek Watershed District that will result in the District's being reimbursed 25 percent of the cost. She noted that the guide will be used for the adopt-a-dock program and with other education activities, such as the pop-up cart. She stated that the District, in partnership with the City of Edina, has received an AIS prevention grant, and therefore the books will also be used for that outreach. She stated that the District will be reimbursed half of the cost for the watershed sandbox by Riley Purgatory Bluff Creek Watershed District, as well.

B. Program and Project Manager Report

Program and Project Manager Sniegowski stated that staff has been working with legal counsel and Barr Engineering to develop a term sheet for the cooperative agreement with the City of Bloomington for the Normandale Lake project. She stated that Bloomington is reviewing the terms. She advised of an education open house that the District held on the Normandale project, noting that over 40 people attended – many providing positive comments. She stated that staff were able to have one-on-one conversations with attendees to address comments and questions. She stated that on Thursday, May 24, there will be a presentation at Hyland Hills Ski

Chalet to provide additional project information to attendees. She noted that the public hearing for the project will be held June 12 at the Bloomington City Council Chambers.

Mr. Welch said that staff met with staff from Bloomington early in the month to review the term sheets and general consensus was achieved.

In response to a question from Manager Sheely, Ms. Sniegowski and Mr. Welch described the plan for the public hearing, noting that Engineer Kieffer will make a brief review of the engineer's report, followed by an opportunity for the public to comment on the project or on the environmental assessment worksheet prepared for it.

Engineer Obermeyer provided additional information on the presentation, noting that it is an overview and would allow for manager questions.

Manager Sheely stated that at the open house there should be discussion of the two benches near the lake and whether there would be excavation near the old pipe. She noted that people are concerned about the benches. She stated that people also want to understand what is happening with the upstream ponding.

Ms. Sniegowski provided an update on permitting for the project. She stated that there has been more clarification on the United States Army Corps of Engineers permit, noting that the project will be able to proceed under a nationwide general permit, which should reduce turnaround time to 30 to 45 days.

Ms. Sniegowski presented two cost-share grants proposals to the Board, noting that she recommends funding both projects. She provided additional details on the proposed project, noting that the project will be valuable and is supported by the Citizens Advisory Committee and city staff in each case.

Mr. Welch referenced the five-year maintenance requirement. He clarified that the intent is to provide funds and the grantees would still need to obtain a permit for the propose shoreline-stabilization work from the District. He suggested that the managers may wish to include delegation of authority to approve those specific permits to the administrator.

Chair Kloiber stated that he would support that delegation.

Administrator Anhorn stated that perhaps for cost-share grants, staff and counsel will develop a proposal to bring forward for board approval a standing delegation of regulatory approval authority, because the District would not approve a cost-share grant if the underlying work did not meet the rules.

Manager Sheely moved, seconded by Manager Twele, to approve the two cost-share grant proposals in the total amount of \$3,359.64 and delegate permit authority for the shoreline permit to the Administrator. Upon a vote, the motion carried.

Program and Project Manager Sniegowski stated that the District is going to apply for a BWSR Clean Water Fund (CWF) grant this summer in attempt to fund six projects that were identified as part of an earlier CWF grant.

C. Administrator's Report

Administrator Anhorn introduced the new District Intern, Nick Atherton.

He reminded managers of the upcoming Minnesota Association of Watershed Districts summer tour.

He noted that there would not be a fee for Managers to attend any of the events and asked interested Managers to let him know if they would like to attend.

He referred managers to the proposed new agenda format in the packet, which could make for an easier transition to digital format. He stated that staff will attempt to work out the details on that transition and bring it forward to the Board at a future meeting. Manager Sheely stated that perhaps when the agenda is emailed, the administrator could provide some indication of when additional items that are not yet available will be available. Chair Kloiber stated that he likes the proposed format as it seems more concise. He stated that the addresses for the permit applications on the agenda and consent agenda could be hyperlinked through Google Maps, which would allow people to see where the property is located.

Manager Hunker noted that first night of the MAWD summer tour coincides with the regular Board meeting.

Administrator Anhorn stated that the Board could make the decision to change the regular meeting date. After discussion, the managers agreed to keep the regular meeting as scheduled.

Administrator Anhorn stated that he attended a watershed-based funding meeting today and the decision had to be made today for Hennepin County to submit the funding plan. He noted that because consensus could not be reached at this go around for the allocation of funds on a river basin basis as discussed at the last meeting, it appears that 10 percent of the funds will be used countywide for chloride initiatives and the remaining funds will be split among the watershed districts. He stated that there is still interest among some of the organizations within the Minnesota River basin in working together and therefore those groups will continue to meet to discuss options.

He stated that there has been discussion on Managers training, noting that wetland law and roles and processes were the two highest-ranked items. He asked if Managers would prefer to have a special meeting for the education workshop or come to the regular meeting early to conduct that training. He stated that the education session could begin prior to the June meeting or a workshop could be held in July. There was discussion on possibly partnering with another watershed district for the training. Mr. Welch noted that there could be some conflict as one Board would be meeting out of jurisdiction. Manager Sheely suggested inviting the Master Water Stewards. It was the consensus of the Managers to schedule the training for a separate

meeting, rather than trying to add it to a regular meeting night. After discussion, the special education/training meeting on wetland law was scheduled for 5:30 p.m., July 12.

Unfinished Business

A. Delegate Authorization of Certain WCA Determination Approval Authority of the Administrator

Administrator Anhorn noted that the Board has talked about streamlining meetings by delegating authority to the administrator make certain regulatory decisions. The resolution before the managers delegates to the administrator to make Wetland Conservation Act boundary and type, no-loss and exemption decisions.

Chair Kloiber noted that if the Board were ever going to disagree with a WCA decision, the Board would need to have strong reasons to disagree with the recommendation of the Technical Evaluation Panel, who are trained wetland specialists. He stated that he is not aware of any WCA recommendation that the Board has not approved as recommended. He stated that from an efficiency standpoint, it would make sense to delegate authority when it makes sense.

Manager Twele stated that she always struggles to provide comments on these requests but usually does not think of anything because the panel of experts have already consulted and provided their recommendation.

Mr. Welch noted that the resolution before the managers is an elaborate one because the delegation framework in WCA is very specific. He stated that the resolution provides for an appeal process that allows an applicant to bring the decision of the administrator to the Board.

Manager Sheely asked for staff to consider how reports on WCA decisions made by the administrator will be presented to the Board, perhaps as part of the administrator's monthly permit memo.

Mr. Welch noted that the resolution provides for annual reporting but the Board could direct monthly reporting.

Manager Peterson moved, seconded by Manager Twele, to adopt Resolution #18-06 Delegating Authority to Approve Certain Wetland Conservation Act Applications to the Administrator, amended to require monthly reporting. The Administrator conducted a roll call vote:

	<u>Yay</u>	<u>Nay</u>
HUNKER	X	
KLOIBER	X	
PETERSON	X	
SHEELY	X	
TWELE	X	

The motion carried, 5-0.

B. Edina Streambank Project (Phase 2) Update

Administrator Anhorn provided background information on the Edina Streambank Project, which was split into two phases. He explained that he has not been able to make progress on obtaining land-use rights to work on property along 70th Street except one owned by Judith Martin, who has informed him that she will not consent to the work. He explained that the engineers have redesigned the project to avoid Ms. Martin's property. The administrator explained that the District could exercise eminent domain to obtain the property, but the engineers have advised that leaving the creek on Ms. Martin's property and adjusting the design upstream and downstream will not substantially diminish the effectiveness of the project for purposes of both flood storage and creek stabilization. He stated that he recommends sending a letter to Ms. Martin explaining that the District will bypass her property.

In response to a question from Chair Kloiber, Administrator Anhorn stated that the original plan was to move the creek off of Ms. Martin's property.

Engineer Obermeyer identified a sanitary sewer manhole on the Wolff property adjacent to Ms. Martin's property that the project will protect. He stated that he still feels confident that the area will be protected.

Administrator Anhorn stated that he has obtained or is confident in obtaining all of the other temporary access and maintenance easement agreements needed for the project. He stated that he would like to go out for bid at the end of May.

Chair Kloiber stated that he likes listening to landowners and working with them to the extent possible, but that does not seem to be an option in this instance. He stated that this proposal makes sense and not completing that small section will not significantly adversely impact the project.

Mr. Welch stated that in some cases where the District is working with commercial property owners, adjustments to the land-use agreement terms have been requested. He asked whether the Board would be comfortable with Administrator Anhorn continuing to sign the necessary agreements on behalf of the District with such adjustments, on advice of counsel, to ensure that the project can move forward. Any agreement requiring a material change that would affect the District would, at the administrator's discretion, be brought to the managers for review and approval.

Chair Kloiber stated that he would be fine proceeding as described by staff and counsel.

Manager Sheely stated that it would be helpful to have educational signage for people passing by who are curious.

Ms. Sniegowski referenced signs that are being developed for a kiosk at Valley Park for the Nine Mile Creek streambank restoration that was completed in 2012 and noted that perhaps those signs could be reused on this project.

New Business

A. Approval of Professional Services

Administrator Anhorn noted that the District received one proposal for each of the following services: engineering, legal and annual audit. He stated that two proposals were received for general accounting.

- i. Engineering**
- ii. Legal**
- iii. Annual Audit**

He noted that for Barr Engineering, Engineer Kieffer would be the lead contact with Engineer Obermeyer continuing as the permit review lead but taking support role in other areas.

Manager Peterson moved, seconded by Manager Twele, to select Barr Engineer, Smith Partners and Redpath as the providers of engineering, legal and annual audit services and authorize the Administrator to enter into the necessary agreements on advice of counsel. Upon a vote, the motion carried.

iv. Accounting

Administrator Anhorn provided a comparison table that was created to compare the two proposals that were received. He stated that he sat down with two Managers to discuss the proposals. He stated that although the costs are similar, JMSC does provide a few more services that are not included in the Redpath proposal. He discussed the District's findings from the 2017 annual audit and noted that with the recent turnover at JMSC, staff has gotten better.

Manager Twele stated that when they got together to discuss this, she was leaning toward making a change from JMSC. She stated that after reviewing and comparing treasurer reports prepared by Redpath for other watersheds, she believes that the District's current financial reports are pretty good. She stated that the end product might be similar, but her concern with changing from JMSC would be that could place more burden on the Administrator.

Administrator Anhorn stated that the monthly invoices from JMSC (not during annual audit time) are for between \$2,000 and \$2,100.

Manager Twele stated that JMSC does maintain detail that she likes to have on record for such things as bank reconciliation, investment fund reconciliation, a listing of all transactions, and a spreadsheet that contains detail on permit escrows, stormwater facilities fund and sureties.

Mr. Welch stated that if a change were made to Redpath, there would need to be a firewall set up to ensure that the audit and accounting services are kept separate.

Administrator Anhorn noted that has been made clear and stated that the proposals for annual audit and accounting were submitted by different staff members. He noted that Redpath does handle accounting and audit services for other watershed districts.

Chair Kloiber stated that there does not appear to be differences in cost between JMSC and Redpath. He stated that although there are differences in service, he would not consider those major. He stated that there have been some communication issues with JMSC in the past. He stated that Redpath does have more watershed-district clients but acknowledged that JMSC has been handling the accounting for the District for many years.

Administrator Anhorn agreed that there would be more initially for him to manage with a change to Redpath. He stated that he has recently been spending additional time ensuring that the deposits and deductions are correctly handled by JMSC.

Manager Peterson asked if staff received input from other watersheds that use Redpath.

Manager Peterson stated that she prefers Redpath.

Chair Kloiber noted that the systems should not be that different.

Manager Hunker asked if staff believes that this would cause additional work.

Administrator Anhorn noted that initially there would be more staff work. He stated that the required filing system would be a staff time element but noted that change can also be good. He noted that the costs are very similar. He stated that another option would be to hire a part-time administrative assistant who could handle some of the filing and depositing.

Chair Kloiber asked if Administrative Anhorn has a preference, as he will be most impacted.

Manager Twele noted that there is not an administrative assistant in place and therefore she also wants to know the preference of staff.

Administrator Anhorn noted that there have been some small issues with JMSC that add up. He stated that after speaking with the other organizations that use Redpath, they have not had those issues with Redpath.

Chair Kloiber noted that this is updated every two years and therefore if the switch is made and they do not like it, they could switch it back.

Administrator Anhorn stated that the neighboring organization that made the switch had both services running concurrently during the transition and then made the payroll switch at the end of a quarter.

Chair Kloiber stated that it seems that there is a split decision.

Mr. Welch suggested that the managers may be more comfortable continuing the current relationship for just one more year to see if some of the recent hiccups can be worked out. Manager Sheely said that would give staff some time to get through these large projects and then revisit the issue at the end of the year.

Manager Peterson moved, seconded by Manager Sheely, to extend the contract with JMISC as the provider of general accounting services for one year and authorize the Administrator to enter into the necessary agreement upon advice of counsel. Upon a vote, the motion carried.

B. Noah and Associates Salary Survey Proposal

Administrator Anhorn stated that during his performance review it was determined that the salary ranges used by the District may not be in line with the metro averages. Sarah Noah, a consultant with extensive experience in governmental compensation, suggested that a salary survey review be done.

Manager Hunker moved, seconded by Manager Peterson, to authorize the Administrator to enter into a contract with Sarah Noah to provide a salary survey update for the District at a cost not to exceed \$3,750. Upon a vote, the motion carried.

C. Liability Waiver

Administrator Anhorn stated that annually the District must decide whether to waive the tort liability limits.

Chair Kloiber stated that he always wondered why this is asked because the District never chooses to waive the limits.

Manager Peterson moved, seconded by Manager Twele, to approve the decision not to waive the tort liability limits. 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. Pentagon Park Storm Water Management**
- F. Lake Cornelia: Status Report**
- G. Regional Stormwater Volume Reduction Opportunity Study: Status Report**
- H. Status of Construction Projects**

Engineer Obermeyer stated that a copy of the written report was included in the packet.

In response to a question from Manager Sheely, Engineer Obermeyer stated that he would provide additional information on the [??????] to her.

Manager Peterson asked whether there would be additional steps to take with Edina and Bloomington to address issues analyzed in the Pentagon Park area. Administrator Anhorn noted that staff will have additional follow up discussions with Edina and Bloomington staff. Mr. Welch noted that now that the new rules have been implemented, it would be a good time to revisit options for Pentagon Park.

Administrator Anhorn noted that the discussion on the minutes will be placed on the June agenda for lack of time tonight.

Manager Sheely stated that the Engineer's Report is a lot of paper and perhaps she would prefer it in digital format instead.

Chair Kloiber noted that perhaps as part of the minutes discussion, there could also be discussion on the formatting for the agenda and changes that could be made.

Attorney's Report

Mr. Welch had nothing further to report.

Managers' Report

The Chair called for reports. No manager offered a report.

Task Summary Report & Manager's Calendar

The Managers reviewed and updated the task report.

Adjournment

It was moved by Manager Twele, seconded by Manager Peterson, to adjourn the meeting at 9:20 p.m. Upon a vote, the motion carried.

Respectfully submitted,

Grace Sheely, Secretary