

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

TUESDAY, APRIL 10, 2018

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., Tuesday, April 10, 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, and Janna Kieffer

Agenda

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

District Rule Amendment

Administrator Anhorn reviewed the purpose and intent of the meeting. He stated that staff has provided draft responses to the comments received for the managers' consideration. A goal this evening, he noted, is to finalize responses to comments.

Manager Peterson stated that she reviewed the draft responses and did not have any recommended changes.

Chair Kloiber stated that he reviewed the draft responses and they are in keeping with direction from the Board at the last meeting.

Administrator Anhorn noted that the response to comment number 62 had been left blank in the table sent out to the managers as part of their meeting packet because staff was still working on a response. He asked the board to review the draft response.

Manager Sheely stated that she found the draft responses to be good and in line with the discussion from the previous Board meeting and noted that she does have a few typographical suggestions.

Manager Twele asked if the commenters will be responded to individually.

Attorney Welch noted that each of the responders will receive a copy of all comments and responses; the information will also be posted on the District website.

Administrator Anhorn noted that staff will incorporate the typographical changes.

Manager Twele referenced the second line in comment number 62 and suggested a grammatical change.

Attorney Welch noted that as a general matter staff did not correct text in comments, presenting them as submitted.

Manager Peterson suggested that the term “linear project” needed to be defined for clarification.

Attorney Welch explained that originally, the specific stormwater-management provisions for linear projects applied only to projects within right-of-way. But members of the Technical Advisory Committee noted at one point that some of the road projects take place within narrow corridors, triggering the need for the particular considerations in the linear projects section of the rule, even though the corridor was not technically right of way. Therefore the term ‘linear corridor’ is used to allow for the flexibility the TAC was looking for.

Manager Hunker referenced comment number 36 and the draft response. She did not feel that the draft response fully addressed the second part of the comment.

Administrator Anhorn noted that the comments from the city of Bloomington were submitted prior to the official 45-day review period and some of their comments were addressed prior to the 45-day comment period.

Attorney Welch noted that a table included a footnote that states that the Bloomington comments were received early and advised that the issue has been resolved.

Attorney Welch suggested that the Board review the draft rules section by section to ensure that there are no additional comments.

Manager Hunker asked when the guidance documents will be available.

Administrator Anhorn noted that staff would begin working on the guidance documents immediately, and would try to have the important ones completed prior to the effective date that the new rules will go into effect.

Attorney Welch noted that the template for the chloride management plan is completed.

The Board and staff continued to review the draft rules section by section to ensure there were no additional comments.

Manager Sheely noted that she would like to have additional information on the wetlands within the District and how that can be protected from development. She said that in the future, maybe Rule 3.0, wetland management, could be bolstered.

Engineer Obermeyer noted that the District completed an analysis in the past and he could bring that information back for the Managers to review.

Administrator Anhorn noted that there will be additional opportunity on future agendas and stated that the Board could hold a workshop, perhaps in conjunction with a neighboring watershed district, to further discuss the Wetland Conservation Act and wetland issues.

The Board continued to review the Rule 4.0 stormwater management and, provided grammatical suggestions. Staff provided clarification.

Manager Sheely provided details on a situation which recently occurred near her home where the County spilled a large amount of salt that she herself cleaned up.

Chair Kloiber asked for additional clarification on the District's role in enforcement for chloride application issues.

Attorney Welch noted that spills could constitute an considered illicit discharge that would violate city ordinance.

Chair Kloiber state that in general he was struggling with following the referential logic of the rule where for example subsection 4.3.1 is referenced in various areas of the rule, such as provisions for restricted sites, unrestricted sites and regional management plans.

Manager Hunker said that it is her understanding that 4.3.1 is what the applicant needs to start with before going to either the restricted site or regional management plan options.

Attorney Welch stated that subsection 4.3.1 contains the baseline criteria for the rule. Anytime an applicant argues that the criteria cannot be met on site, the applicant must demonstrate that the site has constraints that reasonably preclude compliance. From there, an applicant can follow the sequencing under 4.3.2 or apply for approval of the regional management plan option under 4.3.6.

Chair Kloiber concurred in the functionality of the rule.

Attorney Welch said that staff will look at terminology and headings, and will makes changes to improve clarity without changing function or substance.

Attorney Welch stated that perhaps a flow chart showing how the rule works would be helpful.

Engineer Kieffer explained that the regional stormwater language was created before the restricted sequencing discussion occurred.

Chair Kloiber stated that perhaps a flow chart could be part of the guidance documentation. He moved the discussion to erosion and sediment control, noting that there was not much change to the section. He moved the discussion to Rule 6.0 regarding water body crossings and structures.

Chair Kloiber moved on to Rules 7.0, 8.0, 9.0 and 10.0. There were no comments made.

Administrator Anhorn referenced Rule 11.0 and 12.0 for permit fees and financial assurances and noted that the updated schedules will be incorporated.

Manager Hunker referenced language regarding the ability to recoup the cost for permit review and stated that it was her understanding that the District does not fully recoup the costs for permit review.

Attorney Welch noted that the District cannot charge for public projects and explained that the District receives a lot of public projects. He stated that appendix 4a, low floor elevation assessment, is the same framework developed in 2008, it was not changed as part of this amendment.

The Board took a short recess at 6:45 p.m.

The Board reconvened at 6:55 p.m.

Chair Kloiber moved on to review of the memorandum supporting the rule revision. He noted that this version has been significantly revised since the memo was issued to support the draft amendments.

Attorney Welch suggested the addition of further information on the regional framework.

Chair Kloiber noted that the memorandum was well written and easy to follow.

Chair Kloiber stated that this is a very good introduction to the rules.

Manager Peterson noted that the memorandum also addresses some of the comments that were received.

Attorney Welch confirmed the consensus of the Board with the two changes discussed.

Manager Sheely suggested bolding the subheadings to make them stand out further.

Attorney Welch provided additional details on the items included in the proposed resolutions before the Board. He stated that the Board should set an effective date for the amended rules.

Chair Kloiber noted that 45 days would be June 1 while 60 days would be mid-June.

Administrator Anhorn noted that setting the date for the middle of month would align with the deadline for applications that would be reviewed at the next regular Board meeting and therefore it would make sense to align with that deadline. He suggested using mid-May as an effective date.

Engineer Obermeyer noted that there are a few applicants that are awaiting the new rules because they are restricted sites and would prefer to come in under the new rules.

Chair Kloiber stated that he would like to be done reviewing permits under the old rules by the June meeting and would not want to see old rule permit submissions in July. He suggested setting the effective date as 20 business days prior to the June 20th Board meeting and confirmed the consensus of the Board.

Attorney Welch noted that May 22nd would be 20 business days before the June Board meeting. He confirmed that the rules will be adopted but not effective until the date set by the Board. He explained that applicants between now and the effective date can choose to have their application reviewed under the new rules.

It was the consensus of the Board to set the effective date for the new rules as May 21st.

Chair Kloiber confirmed the consensus of the Board to waive reading aloud the whereas statements of the resolution.

Manager Hunker moved, seconded by Manager Twele, to Adopt Resolution #18-02 Adopting Amendments to the Nine Mile Creek Water Management Plan.

Administrator Anhorn conducted a roll call vote:

Manager Hunker	aye
Manger Kloiber	aye
Manager Peterson	aye
Manager Sheely	aye
Chair Twele	aye

The motion carried.

Administrator Anhorn asked if there are any comments to the updated permit fee schedule. He noted some typographical changes but advised that the Board has discussed updating the fees on multiple occasions. He confirmed that the updated fees would become effective on the same date as the new rules.

Chair Kloiber confirmed the consensus of the Board to waive reading aloud the whereas statements of the resolution.

Manager Peterson moved, seconded by Manager Twele, to Adopt Resolution #18-03 Adopting an Updated Permit Fee Schedule.

Administrator Anhorn conducted a roll call vote:

Manager Hunker	aye
Manger Kloiber	aye
Manager Peterson	aye
Manager Sheely	aye
Chair Twele	aye

The motion carried.

Administrator Anhorn noted that the updated schedule of financial assurance rates has also been discussed on multiple occasions. He highlighted some of the changes proposed. He noted that this effective date would also be May 21, 2018.

Chair Kloiber confirmed the consensus of the Board to waive reading aloud the whereas statements of the resolution.

Manager Sheely moved, seconded by Manager Hunker, to Adopt Resolution #18-04 Adopting an Updated Permit Financial Assurance Schedule.

Administrator Anhorn conducted a roll call vote:

Manager Hunker	aye
Manger Kloiber	aye
Manager Peterson	aye
Manager Sheely	aye
Chair Twele	aye

The motion carried.

Phase 2 of the Edina Streambank Stabilization Project

Administrator Anhorn stated that Phase I is almost complete, at least for the work that can be completed in the winter months. He stated that staff is still working with some of the corporations that own property where the Phase II work is to take place, and he anticipates that the necessary agreements will be in place to allow the District to go out for bid on Phase II in May or June. He stated that the phase I contractor has done a good job, with the exception of the one issue of timing. He said that staff had considered whether to recommend utilizing best-value contracting for phase II, but that he is comfortable utilizing standard low-bid contracting with a

tighter timeframe for performance. Staff is seeking direction from the managers on how to contract for the phase II work.

Manager Peterson stated that she raised an issue before because this is not the first time the District has been frustrated by delays on construction projects. She noted that this sounds like a next step that would include being more diligent with timelines and therefore that seems reasonable.

Chair Kloiber stated that the District has uniformly used lowest responsible bidder contracting in the past. He stated that in the best value method there is more than just the cost being evaluated.

Attorney Welch stated that the main difference is that in best value contracting you do not have to accept the lowest price; instead, price becomes one of several factors that are analyzed. He stated that the District would need to develop an analytical system that would rank other elements along with price. He stated experience is a factor, but state law gives the District flexibility to say that the contractor must have past experience in a similar project even under the low-bid framework. He stated that best value bidding is more complicated and requires more structure and upfront preparation. He stated that staff feels that there are mechanisms within the standard bidding process that could be set more rigorously to address the problems rather than moving to the best value method. He stated that the timeframe is specified in the contract and staff can insert a liquidated damage clause to ensure the contractor begins on or before that date.

Chair Kloiber stated that it seems there is a point that the Managers should weigh in on, in that there is a trade-off in values in any project regarding scope, schedule and budget. He stated that if something has to give, he would be willing to give some on the schedule to ensure that the work is done right and remains on budget. He stated that he does not feel that the schedule was excessively drawn out, but acknowledged that the schedule was longer than desired.

Manager Sheely suggested perhaps including a requirement for weekly reporting.

It was the consensus of the Board to continue with the standard bidding process, but more clearly outlining the schedule and ability for the District to charge liquidated damages.

Adjournment

It was moved by Manager Sheely, seconded by Manager Peterson, to adjourn the meeting at 7:48 p.m. Upon a vote, the motion carried.

Respectfully submitted,

Grace Sheely, Secretary