

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

TUESDAY, NOVEMBER 13, 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., Tuesday, November 13, 2018, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Cutshall, Hunker, Kloiber, Sheely and Peterson

Managers Absent: None.

Advisors Present: Randy Anhorn, Janna Kieffer, and Erica Sniegowski

Agenda

Administrator Anhorn requested to add an item to discuss cost-share grants for innovative chloride projects under the Program and Project Manager report.

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

Oath of Office

Attorney Smith administered the Oath of Office to newly appointed Manager Bob Cutshall.

Reading and Approval of Minutes

The Chair called for review of the minutes of the Regular Meeting of October 17, 2018.

Manager Sheely moved, seconded by Manager Cutshall, to approve the minutes of the October 17, 2018 regular meeting as presented. Upon a vote, the motion carried.

Public Open Forum

A. District's 2019 Budget and Levy

Administrator Anhorn noted that this is the second opportunity to receive public input on the 2019 budget and levy.

No comments made.

B. General Interest

No comments made.

Consent Agenda

A. Administratively Approved Permits

B. Permit Inspection Report

Chair Kloiber noted that these items are informational and do not require action.

Manager Sheely said that she liked the shortened version of the inspection report, but asked if the total number of inspection taken over the past month could be included.

Engineer Kieffer noted that is included in the Engineer's Report but agreed that figure could also be included in this dashboard.

Hearing of Permit Applications

A. Permit #2018-113: HOM Furniture – 7800 & 7850 Dupont Avenue South: Bloomington

Engineer Kieffer presented the permit request and proposed plans. She stated that it will be phased into two parts within one construction season. She stated that under the District's rules, the stormwater requirements will apply only to the disturbed area rather than the entire site. She provided details on the underground system that will provide volume retention and water quality treatment. She stated that the reduction in impervious surface will meet the District's requirement for rate control. She stated that the District asked the applicant to use the screening tool for infiltration on a site that had prior contamination and through that tool the separation distance required would be 120 feet, noting that the stormwater feature is over 400 feet from that site. She recommended financial surety in the amount of \$76,300 and a condition in which the applicant would acknowledge and accept responsibility if the contamination area were to spread as a result of this action.

Manager Cutshall referenced a bermed area and asked how that would become a drainage area.

Engineer Kieffer explained the path that drainage would take along the site. She provided additional information on other proposed drainage areas on the site.

Manager Hunker moved, seconded by Manager Sheely, to approve the permit subject to the recommended conditions. Upon a vote, the motion carried.

Election of Temporary Treasurer

Administrator Anhorn stated that the full slate of officers will be reappointed in January, but the Board still needs a temporary Treasurer to fill in.

Manager Cutshall stated that he does have background in accounting and would be happy to fill in.

Chair Kloiber moved, seconded by Manager Hunker, to nominate and appoint Manager Cutshall as the Temporary Treasurer. Upon a vote, the motion carried.

Treasurer's Report

The Board of Managers reviewed the Treasurer's report. Administrator Anhorn provided clarification on certain items included in the report.

A. Rachel Contracting and Sunram Pay Requests

Engineer Kieffer stated that Barr Engineering has reviewed the pay requests and recommend payment of both.

Manager Peterson moved, seconded by Manager Sheely, to approve the pay request to Rachel Contracting in the amount of \$77,490.15. Upon a vote, the motion carried.

Manager Hunker moved, seconded by Manager Sheely, to approve the pay request to Sunram Construction in the amount of \$279,570.85. Upon a vote, the motion carried.

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

Staff Reports

A. Education and Outreach Coordinator

Program and Project Manager Sniegowski stated that she could answer any questions on the report included in the packet. She noted that the State of the Waters Event is scheduled for December 12th and the registration is beginning to fill up. She encouraged the Board to register and attend if possible.

B. Program and Project Manager

Program and Project Manager Sniegowski stated that her written report was included in the packet. She stated that there were two change orders that were administratively approved for the Normandale Lake project and provided details on those elements for the Board.

i. Normandale Lake Project Update

Administrator Anhorn stated that staff received an email from the DNR with concerns regarding potential turtle mortality. He stated that District staff contacted the area hydrologist to ensure that the District is in compliance with its permit for the lake drawdown. He said that the area hydrologist indicated that we were in compliance due to our meeting the condition of the lake drawdown permit for the work to be sufficiently completed by September 15, 2018, and indicated that by doing so, it signaled to the turtles that they should look elsewhere to overwinter.

Administrator Anhorn said that unfortunately we received heavier than expected rains in late-September and early-October which resulted in the lake filling back up. He stated that the email from the DNR's non-game wildlife biologist raised concerns as to the refilling of the lake could have confused the turtles, resulting in their returning to the lake. He stated that the email also included a few options for the District to consider to help reduce potential turtle mortality if that was the case. He further stated that the District and the City of Bloomington initially consulted with the DNR to incorporate measures to protect turtles and reduce potential mortality at the start of the project. He indicated that District and Barr Engineering staff have seen turtles moving out of the lake in different directions and was not sure if the DNR concern was based on DNR observations or resident concern. He stated that staff has since been working with the City of Bloomington and is attempting to setup a meeting with the DNR.

Chair Kloiber stated that his guess would be that it would be difficult to get a meeting with the DNR this week and if a meeting is not obtained this week, it would be difficult next week with the holiday.

Administrator Anhorn stated that there is potential for a meeting on Thursday or Friday. He stated that it will be important to find out the information the DNR is basing their comments on. He stated that if the DNR tells the District to stop the drawdown and to start refilling the lake, the District will allow the lake to refill but noted that if the DNR does not tell the District to do so, then he believes that the District should continue with the project. He noted that it would be a waste of a significant portion of public funds that have been dedicated to the water quality project if the project would be put-on hold for unsubstantiated concerns. He said there could likely be a public perception problem for the District either way, if they choose to put the project on hold, or if they decide to continue. He stated that depending on what staff learns from the meeting with the DNR, there is a possibility that the Board may need to hold a special meeting to discuss next steps.

Attorney Smith stated that staff has looked at the legal consequences of the taking of wildlife. He stated that the District has not touched any turtles and has simply proceeded under the DNR permit to lower the level of the lake.

Chair Kloiber stated that he does work for the DNR and wanted to ensure that was on record in the case it is determined there would be a conflict of interest.

Manager Hunker asked how this arose.

Administrator Anhorn stated that there was a call from a citizen that asked if the District was in compliance with the permit because the water level rose with the rain event. He stated that District staff confirmed compliance with the permit on October 25th and did not hear anything until staff received an emailmessage from the DNR this past week.

Program and Project Manager Sniegowski provided additional details on the resident concern regarding the turtles and the steps that staff took after that time.

Administrator Anhorn re-stated that the District is in compliance with the permit and the DNR email did not state that the District needs to stop work.

Attorney Smith stated that the District has been in steady and frequent communication with the DNR and the District has been told that it is in compliance with the permit. He stated that the District met the drawdown date, but a late rain event occurred which increased the water level and confused the turtles. He stated that unless the permitting authority is telling the District to stop and refill the lake, the District does not have to do that.

Manager Sheely stated that she has struggled with this issue. She acknowledged that this is a complicated project and realistically there will be some turtle mortality. She stated that there were forces of nature beyond the control of the District that occurred, and costs have been expended. She was unsure that pausing this action and trying again next year would provide further benefit. She stated that the turtles found in this lake could be repopulated from other nearby lakes if needed. She believed that the District did everything that it could, and this project will create a better habitat for turtles in the future. She believed that the project should continue to move forward unless told to stop by the DNR. She noted that additional funds could be budgeted for relocation of turtles to repopulate the lake if needed.

Chair Kloiber stated that the District does not know whether there is an issue, there has simply been an indication. He stated that part of the process will be to meet with the DNR to obtain more information and clarity on their position. He stated that a biologist could also go out to the site to evaluate. He stated that it would be hard to base a decision where a large amount of public dollars is being spent based on anecdotal comments. He stated that the level of the lake has already been back below the necessary mark for the past three weeks and the conditions are now freezing.

Engineer Kieffer stated that if the issue is that the turtles are in the deep spots, the water could possibly be raised one foot. She stated that if turtles did not make it to the deep spots, it may be too late. She noted that it would be hard to make a decision without the firm evidence.

Manager Peterson moved, seconded by Manager Sheely, that absent new information or clear direction from the DNR to refill the lake, staff is directed to proceed with the project according to the plan. Upon a vote, the motion carried.

Program and Project Manager Sniegowski stated that she met with staff from the City of Bloomington and communication will be an important aspect of the project.

ii. Cost-Share Projects

Program and Project Manager Sniegowski stated that there have been two chloride reduction cost-share applications received. She stated that funds are set aside each year to fund cost-share applications for this purpose. She stated that both entities would like to implement these projects before the end of the month, which is why she brought the requests forward tonight. She stated that the District does have the available budget to approve these projects. She provided details on the City of Edina request, noting that the City has been working on a research project with the University of Minnesota which created this chloride reduction strategy and request. She stated that staff would like to fund this as it is a new and innovative approach that could perhaps be used in other cities if successful. She stated that the Edina request is in the amount of \$33,000 and recommended funding in that amount. She provided details on a property management firm that services Childrens Minnesota. She stated that because patients are coming and going, they apply a lot of salt to this location. She stated that the request would install an anti-icing system for a portion of the pavement. She noted that over 1,000 pounds of salt was applied to the site last winter without even counting November and December. She stated that this new request would use a non-chloride compound and if successful could also be applied to other sites. She stated that this project request is in the amount of \$50,000 and recommended funding in the amount of \$17,000. She explained that the Edina project would not move forward without the funding from the District while the second request is likely to move forward with or without the funding from the District.

Chair Kloiber asked the potential impacts of potassium acetate.

Program and Project Manager Sniegowski replied that the compound tends to act similar to a fertilizer.

Chair Kloiber noted the proximity to the stream.

Engineer Kieffer stated that there is a TMDL analysis that was done, and issues were identified in the downstream wetlands rather than the water quality of the stream portion.

Program and Project Manager Sniegowski stated that the anti-icing tends to use less because it is liquid. She stated that if there is a concern, the District does not have to contribute funds. She stated that there is always a question of how to balance chloride and the other anti-icing compounds.

Chair Kloiber stated that the Edina request would obviously be an approval because it does not involve chemicals. He stated that MnDOT uses the anti-icing compound on bridge decks and perhaps it would be helpful for staff to review the MnDOT information. He stated that he did not see a problem funding the request unless a red flag arises.

Program and Project Manager Sniegowski stated that the District would require monitoring and reporting, which would provide the District with additional data.

Administrator Anhorn asked the current winter maintenance group and whether that group is certified. He stated that perhaps the staff become certified as part of this request as well.

Manager Cutshall asked if this is a capital equipment funding request or whether the District would be funding the chemical.

Program and Project Manager Sniegowski stated that the total project cost would be \$81,000 and therefore the District cost would be contributing towards the overall cost. She explained that the equipment necessary would be installed onsite and could not be relocated. She stated that there are also ten-year maintenance requirements that come with cost-share approvals.

Manager Peterson asked if the District will receive additional plow blade requests following this approval and whether that would be a good thing.

Program and Project Manager Sniegowski stated that data will be gained from this request and if successful, it could be helpful for other cities to use similar equipment.

Manager Cutshall moved, seconded by Manager Hunker, to approve a total cost-share amount of \$50,000, designating \$33,000 to the City of Edina and \$17,000 to FFIV MN Edina. Upon a vote, the motion carried.

C. Administrator

Administrator Anhorn stated that his written report was included in the packet. He stated that the previous year there were discussions about the per diem requests. He asked that all per diem and reimbursement requests be received prior to the January meeting for 2018. He stated that the District recently met with MnDOT on an upcoming 494 project between the airport and TH 169 to identify potential issues.

Engineer Kieffer stated that the meeting was attended by a number of cities and watershed organizations. She stated that there was not a clear answer on how the items would be addressed. She stated that there was a strong message from the cities.

Administrator Anhorn noted that there is opportunity to store water but there are budget constraints as well. He noted that this is the beginning of the process and hopefully some of those opportunities can be explored.

Engineer Kieffer stated that MnDOT will need to do stormwater management for portions of the project and have already recognized that there will be a lack of space in some areas. She noted that MnDOT has requested models from the watershed and from the city of Bloomington and there was discussion that MnDOT should ensure that they are using the most up to date models.

Administrator Anhorn reviewed some of the options that would be available for the project, which could include a collaborate effort between municipalities and watersheds.

i. Correspondence

Administrator Anhorn provided information on correspondence with the City of Edina regarding the toxicity testing of blue-green algae. He explained that the Lake Cornelia Lake Association believes that the lake should be monitored for toxicity regularly. He stated there is not much of a benefit for the District to include toxicity monitoring as a regular part of the lake monitoring program. He stated that the District currently monitors the lakes on a rotating basis to track water quality and analyze potential trends. He said that annual monitoring frequency is increased when the District is either developing or updating a lake's UAA study and/or determining nutrient loading to the lake and identifying potential projects to reduce loads in an effort for the lake to meet its determined water quality goal and reduce algal blooms, as was the case recently for Lake Cornelia. He said that staff does not see the need to, nor the value of, annually monitor any of our lakes to support the surface water management goal, objectives, policies and actions in our Water Management Plan.

Manager Peterson agreed that the District's role should be to implement projects to reduce the frequency of algal blooms as opposed to testing for toxicity.

Administrator Anhorn stated that there is not a great degree of accuracy for the toxicity monitoring equipment available. He detailed the process for determining the presence of a potential algal bloom, determining the presence and enumeration of blue-green algae, sending a sample to the lab for analysis and then getting results back. He said that there is a roughly 2-week lag time from seeing a potential problem and getting results back to see if toxicity level exceed health standards or not. He said, it may be best to inform the public of the potential hazard once a potential bloom is noticed.

Chair Kloiber stated that if this were to become the standard to do this on Lake Cornelia every year, all the time, then there would be a risk that this would need to be done on every lake, all the time. He stated that lag time would also be an issue. He stated that not all blue-green blooms are toxic. He stated that the best measure would most likely be education.

Manager Peterson stated that perhaps education can be offered to the Lake Association.

Administrator Anhorn stated that the city has offered the Lake Association the testing strips, but the Lake Association does not believe it is their responsibility to do the testing.

Manager Sheely stated that it seems to be an issue of whose responsibility this would be.

Administrator Anhorn stated that not all lakes are monitored each year.

Administrator Anhorn stated that each entity has some role in water management, above and beyond the three entities that have been mentioned in this discussion.

Chair Kloiber stated that people want to know if its safe to go in the water today and the District would not have a method to tell people that because of the lag time in the test results.

Administrator Anhorn stated that the role of the District is to reduce the loads within the lake which will ultimately reduce the blue-green blooms.

Manager Peterson stated that perhaps a better communication could be provided to the Lake Association explaining the role of the District and the reason that this could not be done by the District.

Unfinished Business

A. Permitting Coordinator Position Update

Administrator Anhorn stated that the second round of interviews occurred, and a position will most likely be offered in the next few days.

B. MAWD Annual Meeting Delegation and Resolutions

Administrator Anhorn stated that he was able to find a room at the lodge for Manager Sheely, as she will be on crutches and confirmed the dates she would like to stay. He confirmed the rooms available and Managers that will be staying at the lodge. He stated that it appears that the Board will have one Manager staying through Saturday. He stated that most of the issues that arise for votes are rural and provided a summary of the other issues that will be considered at the meeting.

Attorney Smith noted that one of the proposed resolutions would specifically add the DNR to existing statutory language that makes clear that MnDOT must obtain watershed district permits. He stated that the District does not typically have the DNR applying for permits but that does occur in more rural areas. He stated that his sense would be to leave that statute alone and continue to work with the DNR the best the watershed district is able rather than specifically adding only the DNR and not other State agencies.

The Board provided input on their positions on the different resolutions that will be considered.

Manager Hunker moved, seconded by Manager Peterson, to appoint Manager Sheely as the delegate for the MAWD Annual Meeting. Upon a vote, the motion carried.

Administrator Anhorn confirmed the consensus of the Board for him to schedule a dinner for those members of the Board and staff that will be in attendance on Thursday night.

i. 2018 MAWD Convention Packet

Noted.

C. 60th Anniversary Storymap

Attorney Smith stated that there is a growing legal question of accessibility to websites in both the private and public sectors. He stated that there are broad guidelines on how to make websites accessible. He stated that the general trend is best efforts. He stated that it would obviously be difficult to make a map accessible to visually impaired individuals. He did not think that any website would be fully and truly accessible.

Program and Project Manager Sniegowski stated that major updates were made in the past couple of years to make the storymaps more accessible. She stated that she has been looking at templates that can be incorporated to make the storymaps more accessible.

Chair Kloiber stated that he also did some research and the DNR actually contracted with an outside consultant to test the storymaps and they failed, but he was unsure which portions were tested. He stated that having an alternative available would be a good approach.

Program and Project Manager Sniegowski asked if there are questions on the scope of work that was attached in the packet.

Manager Sheely asked how Barr was selected for this project.

Program and Project Manager Sniegowski stated that she talked to other watershed districts when she started researching storymaps, one used Barr and another used a different consultant. She stated that because Barr Engineering has the necessary data from the District, it would save a lot of time and effort of staff to use Barr Engineering. She explained that if a different consultant were used, she would need to spend her time pulling the necessary information and that would be a lot of additional work for her.

Manager Sheely moved, seconded by Manager Peterson, to authorize an expenditure for the 60th anniversary Storymap, not to exceed \$28,000 and direct staff to enter into the necessary agreements. Upon a vote, the motion carried.

Administrator Anhorn stated that staff would be looking for Manager volunteers to assist in the planning process for the 60th anniversary celebration.

Manager Peterson volunteered.

Manager Sheely noted that she could most likely assist once she is more mobile.

New Business

A. Minnetonka Local Water Resources Management Plan

i. Review Letter

Administrator Anhorn stated that the plan was reviewed by the engineers, legal staff and Administrator Anhorn to ensure that the basic requirements of Minnesota Rule 8410 have been met. He stated that the city has potentially mentioned taking over permitting from the District

but in other areas the plan states that the District would continue to handle permitting. He stated that Minnetonka staff has stated that they do not intend to take over permitting in the near future, but agreed to spell out the steps that would be necessary to take over that responsibility if desired in the future. He mentioned areas where certain goals and policies should be further identified. He provided input on the response letter from the Metropolitan Council. He stated that staff recommends conditional approval.

Manager Sheely stated that she wanted to ensure which elements were conditionally approved.

Chair Kloiber provided additional detail noting that the memorandum outlines the items.

Administrator Anhorn noted that the underlined areas in the memorandum would be conditionally approved while the others would be simply for consideration.

ii. Draft Resolution #18-12 – Conditionally Approving the City of Minnetonka Local Water Resources Management Plan

Chair Kloiber confirmed the consensus of the Board to waive reading the whereas statements and read the remaining portion of the Resolution aloud.

Manager Peterson moved, seconded by Manager Cutshall, to adopt Resolution #18-12 Conditionally Approving the City of Minnetonka Local Water Resources Management Plan in accordance with the underlined items in the District memorandum. The Administrator conducted a roll call vote:

	<u>Yea</u>	<u>Nay</u>
CUTSHALL	X	
HUNKER	X	
KLOIBER	X	
PETERSON	X	
SHEELY	X	

The motion carried.

B. MN Stormwater Research Council Contribution Request

i. Supporting Documents

Administrator Anhorn stated that the District received a request from the MN Stormwater Research Council the previous year, but there was not available District budget last year. He stated that there was discussion that this would be a good idea in the future and therefore a line item was included for collaborative research in the 2019 budget. He stated that the District did once again receive a funding request and there have been funds budgeted for this purpose. He

stated that the District does have \$25,000 available and noted that most watersheds contribute \$15,000 to \$20,000. He suggested contributing \$15,000.

Chair Kloiber agreed that there would be a benefit to receiving the results from the research.

Attorney Smith stated that legal counsel suggests that when reviewing funding requests, the request should be reviewed against the plan and policies and would receive certain information in return to provide a tangible benefit.

Chair Kloiber stated that this has been budgeted for following the discussion the previous year.

Manager Peterson stated that the areas of study would align with many of the District rules.

Chair Kloiber stated that the Stormwater Council has an RFP for the actual research process.

Manager Hunker moved, seconded by Manager Sheely, to approve a contribution of \$15,000 to the MN Stormwater Research Council and direct staff to work with Smith Partners to draft sufficient documentation. Upon a vote, the motion carried.

C. Minnetonka and Hopkins Regional Stormwater Management Request

Administrator Anhorn stated that as part of the SW Light Rail project there was a plan to catch the stormwater and reuse that to wash the trucks. He stated that the location for that facility has been changed but there is still a potential for reuse of stormwater. He stated that there has been contamination identified and therefore infiltration would not be recommended. He stated that there were initial thoughts of increasing the stormwater pond to include what may be needed as part of this redevelopment on the contaminated soils. He stated that this is more informational at this time and this seems to make sense as water quality, volume and rate would be provided. He stated that staff would continue to work with the application partners to gather the necessary information to provide a regional management plan for the Board to review. He explained that the regional plan would provide the volume, water quality and rate downstream from the site. He stated that if the Board agrees with this action, staff can continue to work with the cities and SW Light Rail on this solution.

Chair Kloiber asked the owner of the other parcel identified in green.

Nate Stanley, City of Hopkins, replied that those areas will be redeveloped. He stated that this would be an opportunity to upsize the pipe and stormwater pond and charge that back to the developers. He stated that they would want to ensure agreement from the District before going forward with the expenditure which would then be constructed by SW Light Rail and ultimately reimbursed through redevelopment fees. He stated that this would also provide assurance to the developers on what the costs would be to develop those parcels.

Engineer Kieffer asked who the owner of the pond would be.

Mr. Stanley replied that would need to be worked out. He stated that an option would be for SW Light Rail or a combination of that entity and the municipalities.

Administrator Anhorn noted that staff would continue to work out those details.

Chair Kloiber stated that conceptually this seems to make a lot of sense and agreed that staff could continue to work with the parties to further work out the details. He confirmed the consensus of staff to continue to work with the parties to bring forward a proposal to the Board in the future.

D. Toro Stormwater Volume Retention Credit Bank Application (#18-01)

Administrator Anhorn provided background information on the Toro site and previous permits which created excess volume on the site. He stated that staff was directed to formalize the amount of excess volume available on the site. He stated that before the Board tonight is the formal volume retention credit bank application and provided the details of excess volume that were provided through the different projects for a total of 9,614 cubic feet, contingent on receipt of performance monitoring for Permit #2016-118.

Manager Hunker moved, seconded by Manager Sheely, to approve the Toro Stormwater Volume Retention Credit Bank #18-01 in the amount of 9,614 cubic feet, contingent upon receipt of performance monitoring for Permit #2016-118. Upon a vote, the motion carried.

E. District's Floodplain Rule

Administrator Anhorn stated that there are some things coming forward in the floodplain rule, which could include adoption of an interpretive policy on how the District would consider filling in the floodplain when below the outlet.

Engineer Kieffer provided further explanation on dead storage.

Administrator Anhorn provided additional input on city infrastructure requests that will trigger variances and come forward at a special meeting in January. He stated that the floodplain rule can be further discussed in December.

It was the consensus of the Board to continue the floodplain discussion at the next meeting.

Chair Kloiber noted that perhaps a special meeting would be needed to discuss the topic in further detail.

Administrator Anhorn noted that the low hanging fruit can be addressed in December and then a workshop could be scheduled to delve into more detail.

Engineer's Report

Engineer Kieffer stated that although the equipment for the Normandale Project would have been removed; the big equipment remains onsite until further information is gained from the DNR.

Attorney's Report

Attorney Smith had nothing further to report.

Managers' Report

Manager Sheely stated that she met with previous Manager Twele and the City Public Works Director for Minnetonka and believed that it was a helpful conversation to increase collaboration.

Adjournment

It was moved by Manager Peterson, seconded by Manager Hunker, to adjourn the meeting at 9:10 p.m. Upon a vote, the motion carried.

Respectfully submitted,



Grace Sheely, Secretary

ATTACHMENTS:
Treasurer's Report