

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

**THURSDAY, SEPTEMBER 6, 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., Thursday, September 6, 2018, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

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

Managers Absent:

Advisors Present: Randy Anhorn

**Agenda**

Administrator Anhorn noted that he would like to add an item to the agenda following the XP-SWMM discussion to get direction on a past permit that is requesting to go back to the conditional approval stage and have the cash escrow released.

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

**I. 2018 Budget/Levy Hearing**

Chair Kloiber opened the public hearing for the 2019 budget and levy. He introduced himself and the members of the Board and staff present at the meeting. He stated that the District is required by watershed law to notice and hold a public hearing each year on its annual budget and tax levy. He stated that as the hearing begins, he will call on the Administrator for a brief explanation and to review the proposed 2019 budget and levy. He stated that the Board will then accept any comments from the public. He noted that after receiving the comments, the Board will close the public hearing and the Board of Managers will deliberate and adopt the 2019 budget and tax levy. He then called upon Administrator Anhorn.

Administrator Anhorn stated that the public notice for the hearing was posted in the District's two official newspapers for the two weeks prior to the hearing date. He stated that the budget and levy presented are the same as presented to the Board at their regular August 15, 2018 meeting. He stated that while the proposed \$2,714,500 levy represents a 1.9 percent increase from 2018, due to the market value increase within the District, the estimated annual impact to property owners will decrease. He stated that the proposed 2019 budget is \$3,941,500.

He stated that the difference between the proposed budget and levy is made up using existing reserve funds.

Chair Kloiber invited any interested members of the public to come forward and comment on the proposed budget and tax levy or ask any questions. He stated that the public hearing is being tape recorded to preserve the record. He noted that when recognized, speakers should come forward, stating their name and address for the record. He asked that the comments be limited to three minutes.

No comments made.

There being no additional comments, Chair Kloiber closed the public hearing on the 2019 budget and levy and invited discussion among the Managers.

No additional input from the Board.

Chair Kloiber invited consideration by the Board of Managers of the 2019 budget. It was moved by Manager Sheely, seconded by Manager Twele to adopt Resolution 18-10 adopting the 2019 budget as distributed. Upon vote, the motion carried with 5 ayes and 0 nays as follows:

|                  | <u>AYE</u> | <u>NAY</u> | <u>ABSENT</u> |
|------------------|------------|------------|---------------|
| Manager Hunker   | X          |            |               |
| Manager Kloiber  | X          |            |               |
| Manager Peterson | X          |            |               |
| Manager Sheely   | X          |            |               |
| Manager Twele    | X          |            |               |

Upon a vote, Chair Kloiber declared the resolution adopted unanimously.

Chair Kloiber invited consideration by the Board of Manager of the 2019 Management Planning Fund Levy. It was moved by Manager Peterson, seconded by Manager Hunker, to adopt Resolution 18-11 adopting the 2019 Metropolitan Surface Water Management Act Levy. Upon a vote, the motion carried with 5 ayes and 0 nays as follows:

|                  | <u>AYE</u> | <u>NAY</u> | <u>ABSENT</u> |
|------------------|------------|------------|---------------|
| Manager Hunker   | X          |            |               |
| Manager Kloiber  | X          |            |               |
| Manager Peterson | X          |            |               |
| Manager Sheely   | X          |            |               |
| Manager Twele    | X          |            |               |

Upon vote, the Chair declared the resolution adopted unanimously.

Chair Kloiber recessed the meeting at 5:37 p.m.

Chair Kloiber reconvened the meeting at 5:40 p.m.

## **II. XP-SWMM hydrologic and hydraulic model requests**

Administrator Anhorn stated that the District has recently been receiving project-specific requests from the public for use of the District's XP-SWMM hydrologic and hydraulic model. He said that while it is public information that the District is obligated to provide it to those that request it, the District can request reimbursement for the time needed to gather, transfer and provide follow-up communications. He noted that the managers have previously made a policy decision authorizing use of its model, at no cost, for use by public entities such as the City of Minnetonka and the Metropolitan Council for use by them or their private consultant when working on public projects such as SWLRT. He said, however, that the managers have not officially made a policy decision on the licensing of the District's the XP-SWMM model for non-public entities or projects.

Manager Kloiber asked how many requests we generally get a year.

Administrator Anhorn stated that generally the District gets 2-4 requests a year, half of which may take a bit longer to gather, prepare the information to meet the requestors needs and then to provide follow-up communication.

Manager Sheely, said that her concern was how would the requester know how much we would charge.

Administrator Anhorn said that we would track time spent fulfilling the request and then charge at a hourly billable rate.

Manger Sheely asked how long it generally takes to prepare the data request.

Administrator Anhorn stated that if the request is straight forward and the requester has access to the full XP-SWMM license, it typically takes 1-2 hours to prepare and transfer the model, including communication with the consultant, clipping the model to the specific area or areas of interest, as well as preparing an authorized use license agreement. He said that in cases however, it may take a little more time if the model is being clipped in a tricky area, or if we need to clip the model to meet certain model user license limitations, or if the model user needs any follow-up assistance/explanation. He said that it is the latter situation where he thinks the District should consider seeking reimbursement for some of the time needed to prepare the information in a format that the requestor can use and providing follow-up communications. He suggested maybe seeking reimbursement for billable time after the more routine situations that generally take less than 2 hours. He said that he was seeking direction from the board for staff to draft a policy that will be brought back to the managers at a future date for them to discuss and possible act on. He said that basically the options were: providing the model free of charge to anyone that asks, providing the model free of charge for non-public projects/purposes if our time to fulfill the request is under a certain amount of time, maybe two hours and to seek

reimbursement for time spent over the set time limit, or to seek reimbursement for all time spent fulfilling model requests for non-public projects/purposes.

Manager Hunker said that the time-consuming part often is the follow-up time needed to help those requesters that have little experience with the models to help them run and interpret them. She said that the District doesn't need to be paying Barr to, in some cases, ultimately doing most of the work for them.

Manger Kloiber thought it made sense to put some sort of limit on the time and effort needed to fulfill these requests and then seek reimbursement for the time after that limit has been reached.

Manager Sheely said she still struggled with the requestor not really knowing what the cost may be.

Manager Hunker asked if other watersheds seek reimbursement for time spent to fulfill similar requests.

Administrator Anhorn stated that he didn't know, but he would guess that some probably do try to re-coup some of their costs. He said that he would find out.

Manager Twele said that maybe instead of an hour limit, we should set a dollar amount of \$400, which would be equal to 2 hours at \$200/hr.

Manager Sheely said that maybe it could say that after the 2-hour limit is reached, they would be billed at a billable rate of \$200/hr, or whatever it is.

Manager Kloiber said that maybe instead of specifying hours and/or billable rates, it is best to just set a flat dollar amount such once the District's cost exceed \$400 it may seek reimbursement of excess costs.

Administrator Anhorn said that staff will work on drafting a policy that will be brought back to the managers for discussion at an upcoming meeting.

**III. NMCWD Permit 2016-142: Site Improvements for the International Spanish Language Academy – 5959 Shady Oak Road: Minnetonka**

Administrator Anhorn stated that the District received a request from the International Spanish Language Academy to release the cash escrow for permit 2016-142, and to have the issued permit revoked and return to conditional approval status. He noted that the permit was conditionally approved in May, 2017 and issued in April, 2018 when the conditions were met. He mentioned that the permit has been extended once, and there has been no work started on the proposed project to date. He further stated that if the applicant would eventually decide to go forward with the project as it is currently proposed and conditionally approved, they would need to again meet the condition of providing the financial assurance to have the permit re-issued. He said that because this was a unique request, he was seeking board direction.

The managers discussed the possible reasons that the applicant may be putting the project on hold and requesting the release of the cash escrow and having the issued permit revoked and to go back to conditional approval status.

Manger Kloiber said that since no work has been started, he saw no reason not to approve the request.

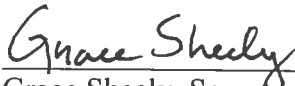
The other managers agreed.

**It was moved by Manager Sheely, seconded by Manager Twele, to allow permit 2016-142 International Spanish Language Academy to go back to conditional approval status and return the cash escrow. Upon a vote, the motion carried.**

**Adjournment**

**It was moved by Manager Sheely, seconded by Manager Peterson, to adjourn the meeting at 5:55 p.m. Upon a vote, the motion carried.**

Respectfully submitted,

  
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Grace Sheely, Secretary

