

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

THURSDAY, JANUARY 3, 2019

Call to Order

Chair Kloiber called the special meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 5:30 p.m., Thursday, January 3, 2019, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Bob Cutshall, Erin Hunker, Steve Kloiber, Grace Sheely and Jodi Peterson

Managers Absent: None

Advisors Present: Randy Anhorn, Michael Welch, Bob Obermeyer, Janna Kieffer, Erica Sniegowski and Lauren Foley

Agenda

No changes noted.

Discovery Point Office Space

Administrator Anhorn stated that the District hired LHB architects to look at options to add onto the building to provide additional office space. He said LHB also reviewed what would be required from the City of Eden Prairie as far as City approvals, and prepared cost estimates for the various design options. He briefly reviewed the three options, which have been presented previously to the Board. He explained that the development agreement precludes expansion of the original building footprint by more than 50 percent. He noted that the proposed addition would not exceed that condition but explained that because the building was approved as a PUD, an expansion would likely require applying to the City Planning Commission and a public hearing in front of the City Council. He stated that the employee limit has been raised from three to five and because the building footprint limitation is not being exceeded, he did not see a reason that a request would be denied, but approval will not be as simple as a homeowner adding onto their home. He provided cost estimates for the three different options. He said that LHB engaged a contractor to provide an estimate on construction the preferred option and the contractor estimate was \$233,000, which didn't include "soft costs" or contingencies.

Manager Cutshall stated that this would be a wonderful volunteer project that he would be happy to lead, as for all practical purposes this is a 500 square foot home addition. He

recognized that the city will require a commercial contractor and therefore there will be a higher cost involved.

Administrator Anhorn stated that he spoke with the assistant city planner and is awaiting a meeting with the city planner to obtain additional information on the city approval process. He stated that with contingencies the cost would most likely be around \$300,000 to add two offices. He stated that he is simply wanting input from the Board on whether to continue to explore the addition option. He noted that the additional office space is needed and is not available in the existing building.

Administrator Anhorn stated that while he likes the idea of utilizing volunteers, as suggested by Manager Cutshall, the city will require a commercially licensed contractor.

Chair Kloiber stated that the additional office space is needed to support the future plans of the District and the staff needed to accomplish the District's goals.

Manager Cutshall stated that the District should ensure that the addition is sufficient to support all the future space needs. He noted that the majority of the cost for small projects is mobilization and therefore this addition should be constructed to the maximum size the District anticipates needing. He stated that the cost to add some additional square footage would not be much more, compared to adding that additional space in the future.

Administrator Anhorn stated that the additional offices would bring the total number of staff offices to five.

Manager Sheely asked how this was budgeted as she did not recall seeing this in the 10-year plan.

Administrator Anhorn stated that the plan would be to use unassigned reserve funds for this project.

A suggestion was made to add one additional space for additional storage and/or possible intern use in the future.

Chair Kloiber stated that he would be interested in determining the cost estimate to add one more space in addition to just the two offices.

Administrator Anhorn stated that he will continue to gather information on the planning process that will be required by the city as well as additional cost estimate information.

Manager Sheely stated that she would prefer for the first office to be closer to the front and to have a glass door, which would allow greeting of visitors. She noted that perhaps the first office should be someone who is responsible for welcoming visitors rather than the most senior person on staff.

Manager Peterson stated that originally the thought was that the receptionist area would have the staff member that greets visitors, but that hasn't panned out.

Chair Kloiber stated that perhaps there should be discussion on whether the reception area should be something different.

Administrator Anhorn stated that the reception area is used for interns in the summer time and he anticipates it continuing to be so used. He stated that he will continue to work on this on the planning side and will also have discussions on the reception area to perhaps make that more multipurpose.

District's Floodplain Rule

Administrator Anhorn stated that at the last meeting the managers adopted an interpretive policy providing that, under the floodplain rule, dead storage need not be mitigated for; compensatory storage need be provided only for live storage. With regard to the agenda this evening, staff is not looking for additional action, but rather simply direction from the managers.

Engineer Kieffer began discussing riprap and compensatory storage. She reviewed the current rule section 2.3, which includes criteria for floodplain and drainage alterations. She stated that the cities are getting older and have aging infrastructure, which results in more repair work to stormwater outfalls, and therefore it will not be uncommon for NMCWD to see permit requests for municipal repair projects in the future. She provided additional information on how riprap is incorporated into such projects. She reviewed Minnesota Department of Transportation details and specifications for riprap at outlets and the amount of riprap needed for different outfall-stabilization projects. She asked if the District should be expending the time and expense necessary to analyze such projects against the floodplain criteria, as opposed to simply recognizing that such work presents minimal floodplain encroachment while providing the benefits of bank stabilization.

Chair Kloiber stated that as a general matter the District disfavors hard armoring certain projects that do not need to be hard armored. He stated that perhaps that added language could limit the use of riprap to these outfall-replacement projects. He noted that this would be a fairly specific application for storm sewer outfalls rather than for use in private property shoreline projects.

Engineer Kieffer confirmed that for private shoreline projects there are a number of criteria that must be reviewed prior to requesting to use riprap. She agreed that the District could limit the scope of an exemption to culvert outfalls.

Manager Hunker asked if there is an existing exemption if the project is a repair and maintenance project for existing riprap.

Engineer Kieffer stated that currently there is no exemption for repair and maintenance projects.

Manager Cutshall asked if material is being excavated to install the riprap.

Engineer Obermeyer stated that with the placement of new riprap there is some excavation but then that is filled back in with granular material and riprap.

Chair Kloiber stated that this is a fairly specific example of where riprap would be used. He stated that adding up each culvert in the creek area, the percentage of compensatory storage that would be lost through these projects would be very small and there is a water quality benefit and erosion control being provided in return.

Manager Peterson stated that it seems reasonable not to require compensatory storage for municipal projects of this type. She confirmed that the scope of the exemption could be limited to preclude indiscriminate use of riprap by private shoreline owners.

Chair Kloiber stated that a categorical exemption could be given just for outfalls. He noted that the use of riprap for outfalls assists with erosion control and dissipation.

Manager Peterson agreed that could help to avoid confusion.

Attorney Welch said it would not be challenging to distinguish outfall projects to prevent indiscriminate use of riprap in shoreline projects.

Engineer Kieffer provided another scenario, using as an example Normandale Lake. She explained that because the lake has been drawn down, Bloomington has been able to assess the shoreline and would like to do repair and maintenance work. She stated that there are three areas in which Bloomington would like to replace/install riprap, estimating 37 to 63 cubic yards of riprap in total. She reviewed the total flood storage provided by the lake, which is approximately 790,000 cubic yards. She stated that the riprap would fill 0.008 percent of the available flood storage. She stated that the rules would require compensatory storage for the fill or that an exception be obtained from the District. She stated that staff is wondering how much time should be spent working on these requests and how much the applicant should be pushed rather than moving towards an exception. She stated that the small amount of .008 percent would be outside the accuracy of modeling. She stated that staff is attempting to find the right balance of being true to the rule of no net reduction in flood storage but also not going overboard on reviews that may not be productive.

Administrator Anhorn stated that the comment has been made in the past that the Board does not want to see a lot of variances coming forward but stated that as more repair projects come forward this will continue to be an issue. He asked if the Board would like to continue to see the variance or exception requests or whether these small amounts should be adjusted for in the rules.

Chair Kloiber asked why bio-log is not used in this instance.

Engineer Obermeyer replied that this is replacement of existing riprap. He stated that the riprap was first installed in the late-1970s, when the District created the lake.

Manager Hunker stated that for a bigger area it could be easier to find storage in another area, but that could mean that you are disturbing the bank in another area that does not need disturbance. She stated that it would make sense to not be permitting things like this, as this is simply repair of material that is already in existence.

Chair Kloiber agreed that additional permits may be needed for wetland disturbance/replacement if additional flood storage is required.

Manager Peterson asked if these types of variances or exceptions could be granted administratively. She stated that perhaps for larger projects, those would come before the Board as there may be a desire for compensatory storage on larger projects.

Manager Sheely stated that if there are repair projects that require additional riprap each year, then perhaps the Board would want to see that to determine if another protective measure would be more efficient.

Engineer Obermeyer stated that if the request continued to come in on a yearly basis, staff would then recommend that something else be looked at for control. He stated that in this instance it has been 40 years since the installation of the original riprap.

Administrator Anhorn noted that if the lake were not drawn down, the repair may have not even been requested at this time.

Chair Kloiber stated that if the stabilization is warranted in a general sense, the District is happy to see stabilization but that also fills floodplain and the District is then requiring compensatory storage, therefore it seems like conflicting rules.

Manager Hunker asked if people would be required to model this or whether it would be shown that 50 cubic yards of storage is being removed and replaced in another area.

Engineer Obermeyer stated that the District is not seeing that many requests.

Attorney Welch noted that engineered drawings are required but the modeling is not required.

Chair Kloiber stated that the primary question would be whether riprap would be the appropriate solution before the issue of floodplain storage comes forward. He noted that in some instances riprap will be the right solution and therefore input is needed on the floodplain storage impacts.

Attorney Welch stated that the two rules operate independently and he does not see conflict. He agreed that first an applicant would need to show that riprap is necessary for shoreline stabilization and to handle the erosive forces at work. He stated that the compensatory storage issue would then be analyzed.

Chair Kloiber agreed that the rules are not in conflict. He stated that from a policy standpoint the District has an interest in reducing the impacts of erosion, and therefore an erosion control measure will likely include fill of floodplain.

Attorney Welch stated that compensatory storage is measured under the current conditions, not what existed in the past. He stated that Engineer Kieffer's memo asks whether the fill should be considered an incidental impact in certain circumstances. He stated that the circumstances would need to be carefully described. He noted that is similar to the rule that states that riprap cannot be used unless there are significant erosive forces at work.

Manager Hunker asked if there are examples of when that would be incidental.

Attorney Welch provided an example of the calculation used by another watershed district, under which an incremental amount of fill can be permitted if the engineer determines that the same amount of fill applied around the entirety of the waterbody would not cause a cognizable increase in flood risk.

Engineer Kieffer stated this could be a good option for the waterbodies, though it would not apply to watercourses.

Manager Hunker asked how that would be applied to a small pond.

Chair Kloiber stated that the District would need to be careful if it were to create an exemption that would allow every shoreline owner to fill.

Manager Peterson stated that it has been said that the situation at Normandale Lake is not a common issue that the District sees. She stated that perhaps the rule should be left alone for the rare occurrences and language added allowing administrative approval of the exceptions.

Engineer Kieffer stated that there was an exception of this nature reviewed at the last meeting and another request will come forward at the next meeting, therefore staff thought it would be a good time to have the discussion as additional requests may come forward.

Administrator Anhorn confirmed the consensus of the Board direction for language that would allow for an exemption from the compensatory storage requirement for installation of riprap at outfalls. He stated that riprap along the shoreline of lakes may be trickier, and streams would be even more so difficult because of the linear nature.

Manager Cutshall stated that this does not seem like an outrageous requirement to require compensatory storage.

Manager Sheely stated that in some instances the erosion has already removed some of the available space that could be excavated to provide additional compensatory storage.

Engineer Obermeyer provided an example from the project and exception approved by the Board the previous month where there simply was not any room for additional compensatory storage.

Chair Kloiber stated that in that instance there was a water quality benefit being provided in return. He stated that in the case of the Normandale Lake project, it is simply a trail that is being protected.

Engineer Kieffer stated that both instances are maintenance requests of varying nature. She stated that the first request was a shoreline maintenance repair project to stabilize the bank and prevent further channel movement, whereas the Normandale Lake project is replacing riprap to maintain the current function of the shoreline protection measure.”

Attorney Welch noted that the rules may not address every situation that comes forward and that is why the variance provision exists.

Manager Sheely stated that for outfalls using riprap, she does not believe that needs managerial approval and should be allowed to gain approval administratively. She stated that in the case of lake projects, she believes that those should continue to come forward to the Board.

Engineer Kieffer confirmed the consensus of the Board to draft language to allow an exemption or administrative approval for outfall projects using riprap.

Manager Sheely stated that in her opinion there will be more droughts and dead storage may be needed for flows from extreme rain events.

Engineer Kieffer stated that drought storage is useful and she has not advocated for or endorsed allowing all dead storage to be filled. She explained that when compensatory storage is calculated, dead storage is not included in the calculation.

Manager Cutshall asked if criteria should be in place to allow administrative approval of floodplain storage, using the example that if the impact reduced the storage by less than one tenth of a percent, that could be approved administratively.

Attorney Welch provided additional input on how delegation to the administrator would occur. He stated that the decision should be technical and should not be left to the judgement of the administrator.

Chair Kloiber stated that if he were setting a threshold, he would not necessarily use a percentage of fill and would instead perhaps use an elevation mark.

Administrator Anhorn stated that it is his perception that the Board would like administrative review or an exemption for the culvert outfalls but would like to continue to see requests for the other categories discussed as variances or exceptions.

Engineer Kieffer moved to a big-picture discussion of Atlas 14 rainfall amounts and flood planning and management. She provided a brief history of the District beginning in 1961 related to flood management and protection and the creation of District-wide modeling, which was created using Technical Paper 40 (TP 40) rainfall amounts. She stated that the Atlas 14 results were then released and during the comparison there were some instances where the results from Atlas 14 were higher than the original District flood management elevations and or TP 40 modeling results in some areas and lower in other areas, noting that the higher results were used for updating flood management elevations, whether those flood elevations were from the original District modeling or Atlas 14. She noted that many municipalities have also adopted or plan to adopt the Atlas 14 rainfall amounts, and are attempting to tackle some of the issue of potential flooding. She reviewed some of the options available to resolve the potential flooding issues. She asked the managers to provide guidance on the role the District should play in assisting local municipalities to address potential flooding issues. She stated that the District will continue to implement the floodplain rule but asked whether the District would like to assist in a prevention/planning capacity. She provided an example in Edina where there are flooding issues that have been identified in analyzing the application of Atlas 14 rainfall amounts to the city. She described a city project recently brought to the engineers' attention that involved increasing the size of a stormwater conveyance to reduce upstream local flooding risk by conveying more flow to a downstream pond. The project did not trigger the District flood-protection requirements because it did not involve work in the floodplain. She asked the managers if there isn't perhaps a role for the District in working with cities to determine where there is additional capacity to manage such increased large-event flows.

Administrator Anhorn stated that in the instance described, Edina was not aware of the impact that this would cause downstream. He stated that the District would be an appropriate entity to help coordinate and plan between different communities.

Attorney Welch noted that the Board has previously directed that the District become more involved in planning for stormwater management with the cities.

Engineer Kieffer stated that there may be additional options for the District in addition to the regulatory role.

Manager Peterson stated that she would agree with the expanded role of the District.

Engineer Obermeyer stated that the first step would be to bring the question to the Technical Advisory Committee, then possibly enter into a cooperative venture with the cities.

Attorney Welch stated that NMCWD has already taken on this role in the past with its advanced modeling. He stated that NMCWD remains positioned to bring all the cities together to buy in on this idea early on.

Engineer Kieffer stated that the first step would be to get the models back from the cities that have invested planning and funds on to sew those back together and understand the overall system.

Adjournment

It was moved by Manager Sheely, seconded by Manager Hunker, to adjourn the meeting at 7:40 p.m. Upon a vote, the motion carried.

Respectfully submitted,

Grace Sheely, Secretary