

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

WEDNESDAY, FEBRUARY 20, 2019

Call to Order

Acting Chair Sheely called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, February 20, 2019, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

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

Managers Absent: Jodi Peterson

Advisors Present: Randy Anhorn, Michael Welch, Bob Obermeyer, and Erica Sniegowski

Agenda

Administrator Anhorn requested to remove Item 10b and Item 6d from the agenda.

Manager Kloiber moved, seconded by Manager Hunker, 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 January 3, 2019 and Regular Meeting of January 16, 2019. She noted that nonsubstantive typographical edits had been submitted to the Administrator.

Manager Cutshall moved, seconded by Manager Hunker, to approve the minutes from the special meeting minutes of January 3, 2019 and the Regular Meeting of January 16, 2019 subject to the nonsubstantive typographical corrections. Upon a vote, the motion carried.

Public Open Forum

There were none.

Consent Agenda

- A. **Administratively Approved Permits**
- B. **Permit Inspection Report**

The managers accepted the Consent Agenda.

Hearing of Permit Applications

- A. **Permit #2018-108: The Mariner; 10400 Bren Road; Grading and land alteration permit: Minnetonka**

Engineer Obermeyer presented the permit request and proposed plans. He stated that this project will be constructed in conjunction with the Southwest Light Rail. He described the grading that will be conducted by the developer along with stormwater management. He requested that the board delay its decision on the full permit application, which include the required stormwater management components. He asked that the Managers consider issuing an erosion control only permit for the demolition of the buildings on site, as the developer may we like to demolish buildings prior to the March meeting.

Manager Hunker moved, seconded by Manager Kloiber, to extend the review period timeframe for 60 days. Upon a vote, the motion carried.

Attorney Welch noted that the demolition request would fall under NMCWD Rule 5.0 , which would ensure that erosion and sediment control measures are in place prior to demolition. He noted that no other land disturbance would be allowed.

Acting Chair Sheely confirmed that the full project and pond would come before the Board the following month.

Manager Kloiber asked whether the request next month would be for a new permit, or an amendment to this permit. Administrator Anhorn clarified that this permit would be amended to include the remaining elements.

Manager Kloiber moved, seconded by Manager Cutshall, to approve an erosion and sediment control permit for demolition only on the site. Upon a vote, the motion carried.

- B. **Permit #2018-14: France Avenue Trail Construction; along the west side of France Avenue from West 84th Street to Old Shakopee Road; Grading and land alteration permit: Bloomington**

Engineer Obermeyer presented the permit request and proposed plans. He explained that this would be a multi-use trail for pedestrian and non-motorized bicycle traffic. He noted that this trail would replace the existing three miles of trail along France Avenue. He identified the location proposed for floodplain replacement as well as a wetland that triggers the District's buffer requirements. He stated that a variance will be necessary from the minimum buffer width

in some areas of the trail. He advised that the 40-foot average would be met along the entire length of the trail system, with a net increase in overall buffer provided. He stated that the amount of impervious area added for trail construction would be less than an acre and therefore stormwater management is not required. He recommended approval of the permit if the managers approve the variance from the minimum buffer requirement, on condition of submission of a document that states the City will maintain the buffer area.

Manager Hunker disclosed that she works for the firm representing the City of Bloomington but did not work on this project.

Attorney Welch asked for details on the wetland identified in the engineer's review as wetland 1C, and whether there was a delineation of the wetlands complex, even though the complex appears to be part of the lake.

Engineer Obermeyer stated that there are wetlands within the public water designation made by the DNR. He stated that the variance request references wetlands 1A and 1C, but because these wetlands are within a designated public water, the buffer is not required.

Manager Kloiber stated that historically there are inconsistencies within the category of public waters.

Manager Hunker asked why a variance is required if a trail is an allowed use within a wetland buffer.

Engineer Obermeyer explained that there is still a minimum buffer required from the wetland boundary.

Attorney Welch commented that this is a good conservative application of the District's rules.

Manager Kloiber asked why buffers are not required on public waters.

Attorney Welch stated that in the last rulemaking process, the decision was made to retain the buffer provisions as established, and not expanded. He stated that some other agencies have attempted to enact buffers on public waters, but it was not well accepted.

Manager Kloiber noted that state buffer laws would still apply to public waters, but that is not the same type of buffer required by the District.

Manager Kloiber moved, seconded by Manager Hunker, to approve the variance from the minimum buffer requirement for the project, on the basis that these are unique conditions that do not exist elsewhere, the hardship was not created by the landowner, a net gain of buffer area will be provided along with a minor increase in impervious surface and therefore there will no material impact on the water resource. Upon a vote, the motion carried.

Manager Cutshall moved, seconded by Manager Kloiber, to approve the permit subject to the conditions in the review memorandum. Upon a vote, the motion carried.

C. Permit #2018-143: Old Apostolic Lutheran Church Building Addition; 5617 Rowland Road; Grading and land alteration permit: Minnetonka

Engineer Obermeyer presented the permit request and proposed plans. He stated that the church and parking lot area are surrounded by wetland and that part of the area is within creek floodplain. He stated that a 3,000 square foot building addition is proposed. He explained that there would not be a change in impervious area as the addition would be constructed on the existing parking lot and sidewalk area. He stated that there will be no work outside the pad area that has already been constructed. He stated that the applicant is requesting that this be considered as a restricted site because the infiltration capabilities of the compacted soils are similar to clay soils. He advised that stormwater management would be provided for the area that would meet volume retention, water quality, and rate control. He stated that there would be no impacts to the wetland buffer or wetland and therefore from a stormwater management standpoint, this would be a net improvement. He stated that a variance has been request from the minimum wetland buffer requirement because of the limits of the existing facility. He recommended approval of the variance and permit subject to the condition that financial surety in the amount of \$17,000 be posted, submission of documentation regarding the drainage easement, recording of the maintenance agreement, and submission of as-built drawings with buffer markings. He stated that the 100-year flood elevation of the creek is 900 feet and the existing building elevation is 903 feet, which meets the two-foot freeboard requirement. He noted that the flood elevation of the stormwater management facility would provide 1.2 feet of separation, when the District requires two feet. He noted that the grading is such that the water would run away from the church facility and therefore he also recommends the Board approve a variance for that element as well.

Attorney Welch asked if that would present an off-site risk.

Engineer Obermeyer stated that from a surface water standpoint, there would be less volume and improved water quality of stormwater entering the wetlands then under existing conditions.

Attorney Welch stated that the District has run into instances in the past where the only potentially affected area would be on the applicant's own property. He stated that the applicant would be taking on its own risk. He noted that a statement could be added requiring the applicant to affirmatively accept the risk and that could, if the managers' deem necessary to protect potential buyers, be recorded on the deed.

Engineer Obermeyer stated that if there would be any change in the drainage patterns on the property, that would need to come back to the Board for consideration.

Manager Cutshall stated that it appears that the stormwater facility only provides volume retention and water quality rather than infiltration.

Engineer Obermeyer stated that due to the site be considered restricted because of the compacted soils, it will not be able to infiltrate the full 1.1-inch off the new impervious, however, he said it will meet the restricted site standard by infiltrating 0.55-inches

Manager Hunker asked if there would be a drain tile at the bottom.

Engineer Obermeyer identified the location of the drain tile. He confirmed that a mixture of sand and peat would be used to help infiltration prior to the water reaching the compacted soils.

Manager Sheely stated that this was built before the Wetland Conservation Act and therefore would not be allowed under the current rules. She asked how much the District would be pushed into accepting a variance when the property is basically grandfathered in. She stated that in her opinion this does not appear to improve the wetland and the District is asked to give a variance for something it typically would not issue a variance for.

Attorney Welch stated that the proposed work would not trigger WCA because no draining or filling of a wetland is proposed, therefore the only variance relevant to wetland issues is from the District buffer requirement. He stated that the only options would be to have the applicant fill the wetland to create additional buffer, which would not be an improvement, or to require the applicant to remove existing impervious area. He explained that typically the Board has not asked applicants to tear up existing impervious area to create additional buffer.

Acting Chair Sheely stated that she is struggling with the second point in the variance, in that the hardship was not created by the landowner and is unique to the property. She agreed that she would not want wetland filled to create additional buffer. She stated that perhaps a statement could be made by the applicant stating that if they were to redo the parking lot, a strip of permeable pavers would be used.

Manager Kloiber stated that the building was built in a legal fashion and the laws changed after that time, therefore it was not the fault of the property owner. He stated that he would not be ready to ask someone to tear up existing impervious surface to create buffer. He noted that the parking lot area is not proposed to be expanded, and the footprint of the impervious area is not changing. He stated that increased stormwater treatment and flood protection will be provided, therefore there will still be a net benefit from the project.

Acting Chair Sheely recognized that realistically even if permeable pavers were used in a future parking lot improvement, there would not be much gain because of the compacted soils.

Manager Cutshall stated that if the parking lot were reduced, the City of Minnetonka would have issues because of their requirements for parking. He noted that this is a building addition and therefore a reduction in parking would most likely not be approved by the city.

Greg Halling, Halling Engineering, stated that he is a member of the church and a civil engineer. He stated that the church needs additional space for Sunday school rooms. He stated that there is a small amount of green area that will become impervious, for a sidewalk. He stated

that the water that currently runs off the parking lot will now be captured by the raingarden/stormwater facility, which will be a benefit to the wetland. He noted that the site has not had any treatment prior to this because it was not required when the church was built. He provided information on the elevation of the site and stated that there is not room to have a stormwater facility in an area that would provide two feet of freeboard and capture the runoff at the same time. He noted that as proposed, the water will be taken away from the church. He stated that the site is about 40 feet from the railroad tracks and identified buffer that would be provided in that area in excess of 40 feet.

Manager Kloiber asked for clarification on the statement that there would be a small increase in impervious.

Engineer Obermeyer stated that there will be 3,050 square feet of impervious area being disturbed. He confirmed that the 700 square feet is included in the calculation. Mr. Halling indicated that the 3050 square feet of impervious area referenced actually included an increase of 700 square feet of new impervious area resulting from the project.

Kim Herzog, resident from Lake Forest Townhomes adjacent to the church property, stated that she understands that this is a great church and understands the desire for additional classroom space. She stated that her concern is the proximity to the townhomes. She noted that over the years the water levels have increased and therefore the townhome owners are concerned with the drainage. She wanted to ensure that the District reviews the plan to ensure that not only the church is in good standing but also the homes adjacent to the church. She asked if there is a way to mitigate this an increase in water levels adjacent to the townhomes would be dangerous.

Mr. Halling provided additional details on the drainage path.

Ms. Herzog stated that she just wants to ensure that they will not be flooded.

Administrator Anhorn stated that as things set now, there is no stormwater treatment because the site was developed before the District had stormwater rules. By now meeting the District's stormwater rule for the new impervious area, conditions will be better as far as stormwater volume and water quality.

Engineer Obermeyer agreed that the surface water discharge going to the wetland would be reduced. He explained that because the creek is an open drainage way, susceptible to sedimentation, there is maintenance that is needed over time. He stated that the townhome residents could talk to the public works staff at the city regarding maintenance.

Ms. Herzog stated that she has gone to the city and has been frustrated.

Mr. Halling stated that he would be willing to work with the townhome residents to determine whether further improvement to protect the townhomes could be accommodated.

Administrator Anhorn noted that staff from the District and Minnetonka walked the site in 2017 and did not see any blockage in the creek.

Manager Kloiber stated that it would be appropriate to provide direction to staff to assist Ms. Herzog in her efforts to address water levels near her townhome.

Manager Cutshall moved, seconded by Manager Hunker, to approve the variances for the buffer requirement and the freeboard requirement, based on the findings in the engineer's report. Upon a vote, the motion carried.

Manager Kloiber moved, seconded by Manager Cutshall, to approve the permit subject to the conditions in the review memorandum. Upon a vote, the motion carried.

~~D. Permit #2019-01: Pentagon North; 4510-4660 West 77th Street; Grading and land alteration permit: Edina~~

Treasurer's Report

The Treasurer submitted the report.

Manager Hunker moved, seconded by Manager Kloiber, to accept the Treasurer's Report. Upon a vote, the motion carried.

Manager Kloiber moved, seconded by Manager Cutshall, to pay the bills. Upon a vote, the motion carried.

Staff Reports

A. Permit and Water Resources Coordinator

Administrator Anhorn noted the report in the packet from Permit and Water Resources Coordinator Lauren Foley.

B. Education and Outreach Program Coordinator

Program and Project Manager Sniegowski stated that a written report was included in the packet from Education and Outreach Coordinator Zembal.

C. Program and Project Manager

Program and Project Manager Sniegowski stated that her report was also included in the packet. She stated that the District has been working with Carp Solutions in an attempt to coordinate tagging of carp as soon as the ice thaws, which will provide the District will information on the movement of the carp for development of a management plan.

Manager Kloiber stated that he would be interested in the process for the tagging and tracking.

Program and Project Manager Sniegowski provided information on the potential timeline, noting that the hope would be to have the data back later in the summer to potentially allow for management this fall.

D. Administrator

Administrator Anhorn stated that the workshop schedule for tonight was canceled and suggested holding a workshop on March 7th at 5:30 p.m. He reported that there were 32 applicants for the summer intern position and staff will review those applications for interviews. He stated that his performance review is due at the end of March.

Manager Kloiber suggested that the review forms be sent to the Managers to allow comments to be submitted.

Manager Kloiber and Manager Hunker volunteered to tabulate the comments for the review.

i. Correspondence

No additional comments.

Unfinished Business

A. Normandale Lake Project – In-Lake Alum Treatment

Program and Project Manager Sniegowski stated that Board authorization is not required for the RFQ process, but staff is asking the Board to authorize the administrator to execute a contract for the alum work once quotes are received. She noted that the cost for alum has increased since the time of the last cost estimate. She noted that engineering suggests adding 10 percent to the estimate amount to allow for variability in the quotes that might be received. She believed that the District would receive two to three quotes because of the limited number of contractors that do this type of work.

Manager Kloiber moved, seconded by Manager Hunker, to authorize the Administrator to execute a contract or contracts for the alum treatment of Normandale Lake at a cost not to exceed \$157,000 and to execute change orders in aggregate of 10 percent of that amount. Upon a vote, the motion carried.

New Business

A. Master Water Steward Projects

Program and Project Manager Sniegowski stated that staff is attempting to establish a funding mechanism to get the projects completed. She stated that there are six partnerships developed with six sites. She stated that the projects need to be in the watershed plan for the District to construct, and staff is requesting that the managers authorize release of a minor plan

amendment for review and comment, and notice of a public hearing for the April regular meeting. She noted that there would be adequate funding within the current budget for three projects this year, but that would require a budget amendment.

Manager Cutshall asked if the projects provide significant infiltration.

Program and Project Manager Sniegowski stated that there are varying amounts for the different projects, and that the information could be provided to the managers but she does not have it on hand at the moment.

Acting Chair Sheely stated that she does support this program.. She asked how the three projects to be implemented in 2019 would be chosen. She also asked why a budget amendment would be necessary.

Administrator Anhorn stated that this program has an educational component, in addition to the phosphorus, suspended solid removal, and volume removal, rather than a strict focus on pollutant removal alone.

Manager Cutshall stated that he would want to ensure that there is a cost-benefit analysis being completed.

Acting Chair Sheely stated that she would also want to consider the estimated audience that would be exposed to the project.

Manager Kloiber stated that there could be other site elements considered in the review to prioritize which three projects move forward first.

Acting Chair Sheely stated that she would like to see more information on the cost-benefit before making a decision on the projects.

Manager Cutshall asked if these projects are identified through geographic location, in attempt to find a site with ideal soil conditions.

Program and Project Manager Sniegowski explained that nonprofit sites in the District were reviewed, which included a review of the site conditions as well as feasibility of a best management project. She stated that once those potential sites were identified, a site visit was conducted, and the sites were prioritized, outreach began to determine which nonprofits would be agreeable to having, and maintaining, a BMP. She reviewed the top three priorities to be implemented in 2019 and the three slated for implementation in 2020.

Administrator Anhorn highlighted the process of being able to implement the projects, including preparing a minor plan amendment to add the projects to the District's Capital Improvement Plan, going out for public comment on the proposed amendment, holding a public hearing to consider collected comments, act on the minor plan amendment and potentially order the projects and amending the 2019 budget.

Manager Kloiber stated that he would support the minor plan amendment and the budget amendment.

Manager Hunker stated that she would also support those actions.

Manager Kloiber moved, seconded by Manager Hunker, to distribute a minor plan amendment adding the construction of the projects developed under the accelerated implementation grant to the capital improvement program and shift funding for those projects in the budget in the table to the CIP table, to issue notice of a public hearing. Upon a vote, the motion carried.

~~B. District Office Addition LHB Scope of Work~~

Engineer's Report

Engineer Obermeyer provided details on a potential flood analysis related to the heavy snowfall. He stated that the original analysis was done and could be updated quickly with the data from this year. He stated that this request may come forward to the Board in the near future, depending upon continued snowfall. He noted that there are funds in the budgeted, allotted to Atlas 14, that could be used.

Attorney's Report

Attorney Welch had nothing further to report.

Managers' Report

The Chair called for reports from the managers. There were none

Adjournment

It was moved by Manager Hunker, seconded by Manager Kloiber, to adjourn the meeting at 9:30 p.m. Upon a vote, the motion carried.

Respectfully submitted,

Erin Hunker, Secretary

ATTACHMENTS:
Treasurer's Report