

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

WEDNESDAY, NOVEMBER 20, 2019

Call to Order

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

Managers Present: Bob Cutshall, Erin Hunker, Larry Olson, Grace Sheely and Jodi Peterson

Managers Absent: None.

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

Agenda

Administrator Anhorn requested to add Item A. Amendment to NMCWD's Development Agreement with the City of Eden Prairie to New Business.

Manager Sheely moved, seconded by Manager Cutshall, to approve the agenda as amended. Upon a vote, the motion carried 5-0.

Oath of Office

Attorney Welch administered the Oath of Office to newly appointed Manager Larry Olson.

Reading and Approval of Minutes

The Chair called for review of the minutes of the Regular Meeting of October 16, 2019. The Managers provided non-substantive grammatical changes to staff.

Manager Sheely moved, seconded by Manager Hunker, to approve the regular meeting minutes of October 16, 2019 subject to minor corrections. Upon a vote, the motion carried 5-0.

The Chair called for review of the minutes of the Special Meeting of October 30, 2019. Manager Sheely found an issue with clarity regarding which watershed district was being

discussed. Attorney Welch said a motion to table was not necessary; staff could clarify the references in each instance and add approval of the minutes to the agenda for the next meeting.

Public Open Forum

A. District's 2020 Budget and Levy

Administrator Anhorn noted this is the second opportunity to receive public input on the 2020 budget and levy.

There were no members of the public in attendance to comment.

B. General Interest

There were no members of the public in attendance to comment.

Consent Agenda

A. Administratively Approved Permits

B. Permit Inspection Report

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

Hearing of Permit Applications

A. Permit #2019-120: Bloomington Subaru Building Construction; 511 & 515 78th Street West, 500 American Blvd and 7801 Lyndale Avenue; Grading and land alteration permit: Bloomington

Engineer Obermeyer presented the permit application and proposed plans. He stated that the project proposed the removal of the buildings at 511 and 515 78th Street West and 500 American Boulevard in Bloomington. He said that the Bloomington Subaru building and associated lot would be developed on the three lots and that the existing Acura site would not be disturbed. He further said a portion of the site had previously been owned by Clarklift of Minnesota and had been used as a forklift dealership that generated hazardous substances and petroleum products, which has resulted in contaminated soils. He noted that trichloroethylene was detected in a groundwater sample at one of the wells on this site.

Engineer Obermeyer indicated that because more than 50% of the site impervious area will be disturbed, stormwater management will be required for the entire site. He said that the applicant proposed to meet the District's stormwater management rule through three underground infiltration systems. He stated that in order to determine that onsite infiltration would not propose a risk of mobilizing or exacerbating the mobilization of contamination, Landmark Environmental conducted an evaluation on behalf of the applicant consistent with the best management practices outlined in Minnesota Pollution Control Agency's screening assessment tool. He said that the groundwater mounding calculator used by Landmark Environmental indicated a minimum distance of 48 feet, which includes a safety factor of two,

was required between the location of infiltration facilities and the point of contamination. He said that the safety factor of two represents twice the necessary distance to ensure safe infiltration without risk of mobilization. He further stated that this distance is where it has been determined vertical mounding, or temporary rise in groundwater below the stormwater facility, of 0.25 feet resulting from the infiltration of surface water will not result in the mobilization of contaminate in the soils. He said the plans provide distances of 75 feet and 55 feet.

Engineer Obermeyer provided information on the 100-year flood elevation and low-floor elevation of both the existing and proposed buildings on the site. He recommended approval with the conditions provided in his report, as well as notification to the MPCA of the proposed infiltration at the site.

Manager Sheely said paragraph one in the report stated the site was 4.08 acres; however, further down the report listed the total site area as 7.66 acres.

Engineer Obermeyer explained Luther Company owned the entire site. The acreage difference was the Acura site.

Steven Sabraski, Landform Environmental, noted the applicant was unable to attend, but he was available to answer any questions.

Manager Cutshall asked about the substantial south discharge at the 100-year level.

Mr. Sabraski explained the discharge comes from the northwest to the southeast going through various facilities and ends at that main drainage point. He further explained they were treating all the properties as one and providing stormwater management for the entire property.

Manager Sheely moved, seconded by Manager Cutshall, to approve the permit subject to the recommended conditions. Upon a vote, the motion carried 5-0.

Administrator Anhorn provided an update on a recent meeting staff had with the MPCA at which agency staff provided the District direction on infiltration in the area around the Lyndale Avenue Superfund site called the “area of concern,” where MPCA recommends no infiltration occur. He said this is important because there had been little direction in the past on where projects in the area would exacerbate groundwater issues.

Administrator Anhorn mentioned that the meeting and direction were timely because staff has been working on another permit application to which MPCA’s input is relevant. He provided background on the project at 9001 Grand Avenue South and stated that it is located within Lyndale Avenue Superfund area with contaminated soil and groundwater concerns. He said that as a result of the direction from the MPCA, this site would fall into the District’s restricted site rule; while water quality and rate requirements will need to be met on site, no amount of infiltration at the site is feasible.

Administrator Anhorn said the permit application would need to be determined by the board, given the limitation on his delegated authority to projects providing at least 0.55 inches

of retention. He further stated that due to timing issues, the applicant will be asking for the board to hold a special meeting at a date prior to the Board's December 18, 2019, regular meeting to act on the permit. He reminded the managers that the applicant would have to pay a fee of \$750 for a special meeting during the week of December 9-13.

Manager Peterson asked if because similar situations will likely arise in the future, there may not be a regional alternative to still make up the lost volume. Administrator Anhorn stated that they have had the exact conversation with the city and will likely expand on those conversations in the future. He said, however, that that alternative will not be available for this case.

Attorney Welch stated the Subaru permit presented the more complicated issue, given the applicant's interest in infiltrating onsite notwithstanding contamination. He suggested that because the Walser application does not present the same liability concern, the managers could delegate specific authority to the administrator to approve the permit unless he determines it raises other policy issues.

Administrator Anhorn stated that beyond the restriction on infiltration, the project is very straightforward in complying with District rules through a lined detention basin.

Administrator Anhorn asked the board for further direction on when similar permits, within the vapor intrusion area of the Lyndale superfund area should come before the Board.

Manager Hunker moved, seconded by Manager Sheely, to delegate to the administrator the authority to approve Permit #2019-136: Walser Collision, notwithstanding its failure to provide 0.55 inches of retention. Upon a vote, the motion carried.

Treasurer's Report

Treasurer Bob Cutshall submitted the report. Manager Cutshall provided clarification on the amount in the investment account under the balance sheet shown on page 6. He said that after talking with the administrator and looking at the amounts in prior treasurer's reports, he believes the amount is a result of the timing of when certificates of deposit came due and are reinvested.

Administrator Anhorn discussed how items that were contained in a given budget carried over from one year to the next. He stated at the end of the year, staff would put together what was levied for projects, how much was in unassigned reserves for capital projects, and what was assigned. It will be on the agenda at the end of the year so staff can walk the Board through it.

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

Staff Reports

A. Permit and Water Resource Coordinator

Permit and Water Resource Coordinator Foley shared that she began using her recently created inspection triage system to prioritize inspections. She concluded it could only be used for approximately half of inspections due to two issues. One was the requirement to revisit places for follow-ups. The other issue was it made for an inefficient route. She was able to visit those that ranked as the highest priority or most sensitive permitted sites. She was planning to send out a pre-winter communication concerning maintenance for erosion, but decided to hold off because of the early freeze. She also began working with a graphic designer to design the guidance documents.

B. Education and Outreach Program Coordinator

Program and Project Manager Sniegowski mentioned that the District now had a stream table to be used as an outreach tool. Education and Outreach Program Coordinator Zembal was taking it to the International Spanish Language Academy at the end of November.

C. Program and Project Manager

Program and Project Manager Sniegowski shared that Carp Solutions began electrofishing to collect carp for aging analysis. She said that under the contract with Carp Solutions, 50 carp were to be collected, but only seven were caught. She said that Carp Solutions will go back out in the spring at no additional cost.

Program and Project Manager Sniegowski provided an update on the Non-Profit Best Management Practice Project and said that the 90% design plans would go out for review by partners in early December.

Program and Project Manager Sniegowski mentioned that she recently attended the Lawns to Legumes training and said it was an interesting program. She said that there were three components including demonstration neighborhood grants, individual grants, and public education.

D. Administrator

Administrator Anhorn asked if the Managers were interested in meeting for dinner on Thursday night during MAWD Annual Meeting. He further stated that the dinner time would not be used to discuss any watershed business. He asked the Managers to let him know and he would make a reservation.

Administrator Anhorn discussed the continued high water and suggested that there may be a need to undertake a snow melt analysis this year that is more robust than what NMCWD has

done in the past. He said they were planning on expanding the annual water quality monitoring report to include a section on lake levels long term.

Unfinished Business

A. MAWD Annual Meeting Delegation and Resolutions **i. 2019 MAWD Meeting Materials**

Administrator Anhorn stated the Board would need to decide which managers to appoint as voting delegates for the Minnesota Association of Watershed Districts' annual business meeting. The District was asked to select two official delegates and one alternate.

Manager Sheely mentioned the delegates would miss most of the morning presentations and indicated she was available to be a delegate again.

Manager Cutshall volunteered as the alternate.

Chair Peterson agreed to become the second delegate.

Manager Sheely moved, seconded by Manager Hunker, to appoint Manager Sheely and Chair Peterson as the delegates and Manager Cutshall as the alternate at the 2019 MAWD Annual Conference. Upon a vote, the motion carried.

Administrator Anhorn asked the managers to let him know if they were planning to leave from the MAWD meeting on Friday evening of Saturday morning so that he could update the hotel reservation. He proposed that all managers should indicate their thoughts regarding the proposed slate of resolutions so that the delegates could have a clear idea of their thinking prior to voting at the MAWD meeting.

Manager Sheely noted she was confused about Resolution No. 2, dealing with the declassification for water courses that serve as public drainage ditches. She thought that former Manager Steve Kloiber had previously implied that he was not sure he would like this change to the rules.

Manager Sheely asked Administrator Anhorn for more information on No. 2. She agreed with the rest of the recommendations as written.

Administrator Anhorn said that he would reach out to former Manager Kloiber to seek clarification on his thought on the defaulting classification for artificial watercourses.

B. HAB Contract Amendment (Cornelia Lake In-Lake Alum Treatment) **i. Final Executed Agreement** **ii. Amendment to Agreement**

Administrator Anhorn explained that because water temperatures were too low for the application of alum to be effective, work was called off for fall 2019. He explained that application in late May 2020 had been discussed with the contractor, HAB, and agreed on.

Manager Cutshall asked if the cost was increasing.

Attorney Welch stated that a contract amendment has been sent to the contract that changes the time, but not the cost of the contract.

Manager Sheely moved, seconded by Manager Hunker, to authorize the District Administrator, with the assistance of legal counsel, to amend the agreement to reflect a new completion date. Upon a vote, the motion carried.

New Business

A. Amendment to NMCWD's Development Agreement with the City of Eden Prairie

Administrator Anhorn provided an update on the recent Eden Prairie City Council Public Hearing on the District's proposed addition. He said that at the meeting the city council adopted a resolution to approve the first reading for the addition to the District's office and directed their staff to prepare a development agreement for the addition. We just recently received the draft development agreement from the city and Attorney Welch has reviewed the amendment and found nothing problematic. He further added that the District's project is scheduled to be on the consent agenda for the City Council's December 3, 2019 meeting.

Manager Sheely moved, seconded by Manager Cutshall, to authorize the District Administrator and President to sign the development agreement with the City of Eden Prairie for the new addition. Upon a vote, the motion carried.

B. Board Retreat Planning

Administrator Anhorn requested two managers to volunteer to help plan the retreat as an ad hoc group. The ad hoc planning group would discuss logistical needs and possible topics that would be brought back to the full Board for final direction.

Manager Cutshall and Manager Hunker indicated they were interested in being involved.

C. Cost Share Program Updates and Recommendations

Program and Project Manager Sniegowski shared that recent feedback from the Board, staff, and the Citizens Advisory Committee indicated the cost share application needed to be re-evaluated. She and Permit and Water Resources Coordinator Foley were working on how to lead applicants through the whole process with revised application that will be available for the 2020 application period. New ranking criteria are also being considered for 2020. To help determine criteria to rank applications on, buffer and restoration projects from 2012-2019 were considered

and numbers were pulled out of the applications; however, some were estimates. They also considered how to balance the education benefits.

Manager Hunker asked about buckthorn removal criteria.

Program and Project Manager Sniegowski replied a large percentage of the discussion was buckthorn removal criteria.

Permit and Water Resources Coordinator Foley stated they wanted to balance the education value and also the percentage of the property verse the actual size and water quality benefits. She talked about the evaluation worksheet.

Chair Peterson said she liked the concept, however, she wondered if the benefit and size of the proposed buffer was somewhat dependent on the size of thee property. She asked if the buffer would be weighted according to the size of the property.

Permit and Water Resources Coordinator Foley answered buffers were measured by width not length, which could still be dependent on the size of the property. She said they could include percentage of the property as a metric as well as total size

Program and Project Manager Sniegowski asked managers for feedback in December on whether they wanted to prioritize projects in this way. Staff recommended some sort of prioritization that included education and priority ranking.

Manager Cutshall asked if the Board had the authority to increase the reimbursement.

Program and Project Manager Sniegowski said that would be a policy discussion for the Board. Other districts have reimbursement ranges, but they typically range from 50-75%.

Program and Project Manager Sniegowski mentioned when districts have ranges it was usually dependent on higher priority watersheds. She said in the Cost Share Grant Evaluation Worksheet under Project Quality Part 1, there was a question concerning project visibility and education.

Chair Peterson said it was important that the new metrics were clear. She also thought areas, such as Hopkins, should get priority for the visibility piece. She recommended adding a metric that addressed maintenance.

Administrator Anhorn asked the Board to bring their calendars to the December meeting. He noted the meeting was at the two-hour mark and recommended tabling Items E and F.

The Board agreed to table agenda items E and F in the interest of time and providing adequate discussion for these topics, and move them to the next meeting.

D. Houston Engineering Proposal for Permit and Cost-Share Inspection Software – MS4Front
i. Houston Engineering Proposal

Administrator Anhorn stated staff had been looking for a comprehensive permit and cost-share inspection/tracking software package to make the inspection, tracking/data management, and reporting more comprehensive and efficient. Several neighboring districts were using Houston Engineering. The proposal was for \$31,000. He talked about what the cost included and stated that staff would be interested in adding a couple à la carte options such as a module for contact aggregation that would increase the cost slightly.

Chair Peterson asked how this affected the technology budget.

Administrator Anhorn explained that the office networking and managed services budget item would allow for the eventual annual subscription fee of \$4,000.

Manager Hunker asked if there were other companies that do this.

Administrator Anhorn said he did not go out for quotes, but did ask other districts for recommendations.

Attorney Welch stated Houston Engineering was the engineer for Rice Creek Watershed District and had developed this permitting software along the way that is being used by numerous metro watershed districts. He recommended the managers contract for the scope of services on terms provided by counsel and the administrator.

Manager Hunker moved, seconded by Manager Cutshall, to authorize the Administrator, on advice of counsel, to enter into an agreement with Houston Engineering Inc., to complete decided upon portions of the scope of work in an amount not to exceed \$37,000. Upon a vote, the motion carried.

Engineer's Report

Engineer Kieffer highlighted the findings and recommendations from the Normandale curly leaf pondweed turion study and the District's groundwater/surface water interaction study. She stated the turion survey identified only new (young) turions so that was a positive indication of drawdown success.

Engineer Kieffer gave mention to the groundwater/surface water interaction study and noted a few recommendations from the report were to continue and possibly expand the District's groundwater-monitoring network, to establish a more formal process for tracking groundwater and geologic data and to consider developing a fully coupled groundwater/surface water model.

Engineer Kieffer added the engineer has been working on the feasibility study for a stormwater best management practice in Rosland Park.

Attorney's Report

Attorney Welch discussed how a recent study on the Basset Creek Valley done overlaps with the complexities of Pentagon Park study NMCWD completed. He discussed taking a regional approach to stormwater management in such areas rather than permitting projects parcel by parcel.

Attorney Welch noted the passing of Ray Haik, the original attorney for NMCWD, died a week ago and recognized his contributions.

Managers' Report

Manager Sheely attended a Freshwater Society Moos series lecture. Her takeaway was to remain aware about airborne particles especially regarding fountains.

Adjournment

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

Respectfully submitted,

Erin Hunker, Secretary

ATTACHMENTS:
Treasurer's Report