

**MINUTES OF THE WORKSHOP  
OF THE  
BOARD OF MANAGERS  
OF THE  
NINE MILE CREEK WATERSHED DISTRICT**

**THURSDAY, MARCH 4, 2021**

**I. Call to Order**

Chair Cutshall called the Workshop of the Board of Managers of the Nine Mile Creek Watershed District to order at 5:00 p.m., Thursday, March 4, 2021. The meeting was conducted by web-based video conference, pursuant to Minnesota Statutes section 13D.021, after the Chair determined that because of the COVID-19 pandemic, it was not prudent for the Board of Managers, or any committee thereof, to meet in person.

Managers Present: Grace Butler, Bob Cutshall, Erin Hunker, Peggy Kvam, and Larry Olson

Manager Absent: None

Advisors Present: Louise Heffernan, Bob Obermeyer (Barr Engineering), and Michael Welch (Smith Partners)

Staff Present: Randy Anhorn, Lauren Foley, and Erica Sniegowski

Other Attendees: Robbi Latta (Civil Site Group)

Administrator Anhorn noted he will forward to the managers a link to the Minnesota Association of Watershed Districts' virtual legislative event. He provided details about the event. Administrator Anhorn said he sent his performance review information to Managers Hunker and Olson.

**II. Permit #2020-123: Three-Story Multi-Family Building: 4425 Valley View Road, Edina**

Engineer Obermeyer explained the project is a redevelopment project that is approximately 0.75 acres. A wetland regulated under the Wetland Conservation Act

is located to the south of the site. He said the project proposes to raze the existing building. A 22-unit 50,000-square-foot apartment building, three stories above ground and one-story underground for parking, is to be constructed. Engineer Obermeyer site plans and discussed the existing wetland on the south side of the property, the assumed wetland boundary, the existing on-site wetland buffer, and the related District rules. Engineer Obermeyer discussed the applicant's request for a variance from the wetland buffer provisions, which apply to require buffer to the top of the slope that runs away from the building site, just outside the building footprint to the wetland. He stated that the applicant asserts that buffer to the top of the slope unreasonably impinges on the buildable area of the property, and that by removing buckthorn from the buffer area and seeding with native species, the buffer will protect the wetland. He stated that the project meets the District's stormwater management requirements.

Engineer Obermeyer discussed the District's requirement for the preparation and filing of a maintenance declaration on the property title. He recommended expanding the permit conditions to require the applicant to provide written documentation of a 5-year maintenance plan for the establishment of the wetland buffer.

Engineer Obermeyer discussed the wetland's classification as a medium-value wetland based on a desktop review by Barr Engineering, and said he is seeking additional information, a Minnesota Routine Assessment Method review from the applicant. He said if the additional information shows the wetland is determined to be a high-value wetland, the application will need to come back in front of the board for reconsideration. Engineer Obermeyer went through the recommended conditions of approval

Manager Butler asked about project timing. Mr. Robbi Latta of Civil Site Group said May 1 would be the earliest for starting project construction. Manager Butler said she agreed that the District needs to see from the applicant a five-year plan for establishing and maintaining the buffer.

**Manager Butler moved, seconded by Manager Hunker to approve the variance from the requirement in the section 3.4.2 of the wetland rule that buffer run to the top of a slope and a shortfall in total buffer area provided of 2,108 sq. ft., subject to confirmation of the classification of a medium value wetland and submission and implementation of a five-year buffer-establishment plan. On a roll call vote, the motion was approved 5-0.**

**Manager Hunker moved, seconded by Manager Olson to approve permit #2020-123 with the conditions recommended by staff. On a roll call vote, the motion was approved 5-0.**

Manager Butler noted District staff should talk with Edina staff regarding the city's ownership of the adjacent property south of the site. Administrator Anhorn

said staff will talk with city staff and remind them of the District's cost-share grant program.

**III. Governance Manual: Draft NMCWD 2021 Per Diem Schedule and Guidance**

Administrator Anhorn reminded the Board that at its last meeting the Board reviewed a draft Governance Manual showing the proposed changes and the Board supported most of the proposed changes. He summarized the information added to the Governance Manual based on discussion at the last meeting, noting that the per-diem provision in the bylaws has been greatly simplified and supplemented by a proposed new per diem guidance and schedule. Attorney Welch stated that, in light of the proposed simplified per-diem provision in the bylaws, the guidance and schedule provide specifics on the types of meetings and duties managers can receive per diems for. He said that if the Board adopts this guidance and schedule, can revise the schedule and per diems without needing to revise the Governance Manual.

Manager Butler recommended putting an effective date in any motion to adopt the per diem guidance and schedule, if there is any such motion, and suggested April 1<sup>st</sup> and suggested including an "up to" provision for the per-diem amounts. The managers discussed the suggestion.

Attorney Welch said he hears managers requesting revision of the per diem for meeting preparation to \$50. Administrator Anhorn said he and Attorney Welch will make the revisions suggested by the managers this evening and the updated documents will be on the consent agenda for the Board's March meeting.

**Manager Butler moved, seconded by Manager Kvam to adopt the District's Bylaws and Governance Policies and approve the Governance Manual. On a roll call vote, the motion was approved 5-0 .**

**IV. District Rule Revisions: Proposed Change Matrix and Strikeout Version of Proposed Changes**

Administrator Anhorn introduced the proposed change matrix and the proposed draft changes to the rules, which were first provided to the managers for this month's workshop. The managers and staff discussed items highlighted in the proposed change matrix, and Attorney Welch, Permit and Water Resources Coordinator Foley, and Ms. Louise Heffernan went through the proposed housekeeping rule changes items.

There was a discussion about District Rule 3.4.6 and trails in buffers. Administrator Anhorn said the District's Rule 3.4.6 can stay as it is if the managers think it's fine as it is, or this rule can be flagged for further conversation regarding non-motorized land use. Manager Butler asked the District to look at any potential

change regarding this rule one year from now and consider it while considering either a wetland study or another review of the Lone Lake bike trail or another project with a bike trail through a buffer. She said she feels like she didn't understand the Lone Lake bike trail project enough at the time of approval to understand potential impacts of the bike trail. Manger Butler said she isn't ready to change the rule right now and thinks the Board needs to have further conversation about where there is water erosion risk or risks of damage to a wetland or a waterway.

Attorney Welch said that the current language in District Rule 3.4.6 provides the District with sufficient legal basis for staff and engineers to enforce the permit requirements. He said the District has the tools it needs without prescribing the additional requirement of submitting a maintenance plan.

Administrator Anhorn said this review of proposed rule changes will be picked up at the next meeting and will start with the stormwater rules. He said staff will have an updated matrix for the next meeting. Administrator Anhorn reminded the Board that once the Board finalizes its proposed changes, the proposed rules revisions will go out for public comment.

V. **Adjournment**

**It was moved by Manager Olson, seconded by Manager Butler, to adjourn the meeting at 6:58 p.m. On a roll call vote, the motion was approved unanimously.**

Respectfully Submitted,

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Erin Hunker, Secretary