

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

WEDNESDAY, JULY 21, 2021

I. Call to Order of the Regular Board Meeting

President Robert Cutshall called the Regular Meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, July 21, 2021. The meeting was conducted by web-based video conference, pursuant to Minnesota Statutes section 13D.021, after the president 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

Advisors Present: Janna Kieffer (Barr Engineering) and Michael Welch (Smith Partners)

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

II. Approval of Regular Meeting Agenda

Administrator Anhorn noted there won't be action tonight on the Shady Oak Lake Outlet permit, and the permit will be part of the Board's August 5th meeting. He stated he would like to add the Minnesota Association of Watershed Districts resolution packet under item 10 New Business.

Manager Olson moved, seconded by Manager Butler to approve the meeting agenda as modified. On a roll call vote, the motion was approved 5-0.

III. Reading and Approval of Minutes

a. Draft Minutes of the June 3, 2021, Workshop

Manager Hunker moved, seconded by Manager Kvam to approve the minutes of the District's June 3, 2021, workshop. On a roll call vote, the motion was approved 5-0.

b. Draft Minutes of the June 16, 2021, Meeting

Manager Olson moved, seconded by Manager Hunker to approve the minutes of the District's June 16, 2021, regular board meeting. On a roll call vote, the motion was approved 5-0.

IV. Public Open Forum

No one came forward to speak for the public open forum.

V. Consent Agenda

Administrator Anhorn provided information on the draft new position description for a natural resources project and planning manager and noted the plan to post the position in the end of August.

Administrator Anhorn said concept drawings were presented at the public meeting for the Lynmar Basin project [DATE?] and reported on feedback received at the meeting. He said the survey is still open.

a. Administratively Approved Permits

b. Permit Inspection Report

c. MAWD Resolution Report

d. Draft New Position Description

e. Lynmar Basin BMP Conceptual Designs for Public Stakeholder Meeting

f. Staff Reports

i. Permit and Water Resources Coordinator

ii. Education and Outreach Coordinator

iii. Program and Projects Manager

iv. Engineer's Report

The board accepted the consent agenda by unanimous consensus.

VI. Hearing of Permit Applications

a. Permit 2021-71 Shady Oak Outlet – Minnetonka

Administrator Anhorn said staff is still reviewing information the District recently received from city staff, which is why action on this item is moved to the Board's August 5th meeting.

The Board and staff discussed plans on how to conduct the August 5th meeting – in person or virtually – and decided to hold the meeting virtually at 6:00 p.m.

b. Permit 2017-43 Update on Performance Bond Cancellation Notice

Administrator Anhorn provided background on the notice and talked about working with the buyer and seller of the Doubletree Hotel property located at 7800 Normandale Boulevard in Bloomington, that is the subject of the permit. He said he has received reliable indication that the bond for the permit has been reinstated, eliminating the need for board action to authorize him to draw on the bond.

VII. Treasurer's Report and Minnesota Native Landscapes Pay Application for Discovery Point Raingarden and Phase 3 Restoration

Manager Olson highlighted items in the report. Administrator Anhorn added details about the pay application from Minnesota Native Landscapes. Administrator Anhorn noted a second escrow check that will be in the checks for signing, then will be reconciled with the treasurer's report. He said in the next couple of months he will be proposing a budget amendment to address a few issues.

Manager Kvam moved, seconded by Manager Hunker to accept the treasurer's report and approve paying the bills including the pay app to Minnesota Native Landscapes. On a roll call vote, the motion was approved 5-0.

VIII. Administrator's Report and Correspondence

Administrator Anhorn noted his report is in the meeting packet, and he highlighted items from the report. He noted the District received an environmental assessment worksheet from the City of Bloomington and comments are due August 19. Administrator Anhorn brought up the Interstate 494 linear project being planned by Minnesota Department of Transportation between the airport and Highway 169. He indicated that MNDOT hosted a meeting with various permitting entities on July 7, in which they provided an update on the tentative scope of the proposed drainage modifications for the corridor expansion project and potential phasing of the project. Administrator Anhorn discussed the challenges MNDOT may have in meeting some

of the District's rule requirements, based on preliminary information shared at the July 7, 2021 meeting. . He said he would like to arrange a presentation of the project by MNDOT to the Board ahead of receiving the permit application.

Administrator Anhorn reported the District is implementing its Harmful Algal Bloom (HAB) blue-green algal count protocol for Mirror Lake where recent blue-green algal counts fell within the World Health Organizations' threshold for low probability of adverse health risk for pets and humans. He said that staff posted a recreational advisory for the lake on the District's website and other social media outlets, has contacted the city staff to advise them to do the same, and contacted the Minnesota Pollution Control Agency and the Minnesota Department of Health. He said that the District will continue to follow its HAB monitoring and analysis protocol on the other lakes it is monitoring this year as part of its routine monitoring program.

Administrator Anhorn reminded the managers about the Minnesota Water Resources Conference registration. He reported about a goldfish box trap netting and seining session as well as an upcoming one. Administrator Anhorn talked about hiring the District's former GreenCorps member, Lizzie Boor, as a part-time intern to continue helping the District, particularly with social media.

IX. Unfinished Business

a. District Rules Revisions and Permit Fee Schedule Update

Administrator Anhorn thanked Permit and Water Resources Coordinator Foley, the engineers and attorney Welch for their work on the rules revisions. Permit and Water Resources Coordinator Foley went through the comments the District received on the proposed rules revisions. Attorney Welch that a proposed revision to rule 6.3.1a adds to the waterbody crossing rule the language "significantly adversely" to align the assessment of potential negative impacts with that in the floodplain rule.

Manager Butler moved, seconded by Manager Olson to adopt Resolution 21-01 adopting amendments to the NMCWD Rules . On a roll call vote, the motion was approved 5-0.

Permit and Water Resources Coordinator Foley commented the permit fee schedule changes were mostly formatting changes and a few other changes, which she described, including the \$100 fee being added for single-family home projects triggering the floodplain rule.

Manager Butler moved, seconded by Manager Hunker to adopt Resolution 21-02, updating the NMCWD permit fee schedule. On a roll call vote, the motion was approved 5-0.

b. Rosland Park Stormwater Filtration BMP Project Request for Bids

Administrator Anhorn noted the bids received for construction of the Rosland Park stormwater facility were quite a bit higher than the engineering estimate, and he commented on a general shortage of labor and materials in the area as a driver for the higher cost. Engineer Kieffer displayed a memo that reviewed the five bids and stated the low bid was \$1,213,660.95, and there was only \$28,000 difference between the two lowest bids. She indicated that the engineer's opinion of probable cost at the time of bid opening was approximately \$721,000. She said the planning-level cost estimate for the design concept developed in November 2020 was approximately \$1,200,000, with a minus-15% to plus-20% range of \$980,000 to \$1,400,000, and included a 30% construction contingency and an estimated 30% of construction cost for engineering and design.

There was discussion about the current construction environment and the potential impacts of high construction demand, material shortages, and labor shortages on construction costs. There was also discussion about the project's time constraints due to \$850,000 in grant funds awarded to the District, and the gap between the estimate and the bid. Administrator Anhorn explained that the District has funds in reserve to absorb the difference. Managers spoke in favor of moving forward with the project.

Manager Butler moved, seconded by Manager Hunker, to authorize the administrator, after determination with the engineer and counsel that the low bidder is responsible and that the bid is responsive, to award the contract to Pember Companies; to enter into a contract with Pember Companies on advice of legal counsel; and to delegate to the administrator the authority to approve change orders up to 10 percent in aggregate. On a roll call vote, the motion was approved 5-0.

c. South Fork NMC Restoration/Stabilization Project Request for Proposals

Administrator Anhorn reported the District received five proposals, which he and Barr Engineering reviewed and discussed. He stated he interviewed two of the companies, talked with references, and recommends the Board accept the bid from Emmons and Olivier Resources for the initial South Fork restoration/stabilization feasibility study.

President Cutshall stated that he would abstain from the vote on the matter because he is personal friends with one of the principals at EOR.

Manager Butler moved, seconded by Manager Olson, to authorize the administrator on advice of counsel to enter into an agreement with Emmons and Olivier Resources to complete phase I of the scope of work as detailed in

the request for qualifications and proposals for the assessment of the stabilization needs at an amount not to exceed \$18,048. On a roll call vote, the motion was approved 4-0-1, President Cutshall abstaining.

X. New Business

a. League of Minnesota Cities Insurance Trust Liability Waiver

Administrator Anhorn said the District needs to decide whether to waive the statutory limits on its tort liability. He explained the District has always made the decision to not to waive the limits.

Manager Hunker moved, seconded by Manager Olson to not waive the statutory liability limits. On a roll call vote, the motion was approved 5-0.

b. Draft 2022 Budget

Administrator Anhorn said he met with President Cutshall and Treasurer Olson a few weeks ago to put together a draft budget, and he wants to review the budget memo and spreadsheet this evening in advance of the discussion at the Board's August 5th budget workshop. He announced the draft 2022 budget is \$4,095,000, which is slightly higher than the District's 2021 budget of \$3,950,000. Administrator Anhorn presented the memo and spreadsheet, indicating the proposed areas that have increased budget or decreased budget compared to the District's previous year budget.

c. Minnesota Association of Watershed Districts Policy Statement on the Board of Water and Soil Resources Watershed-Based Implementation Funding Program

Administrator Anhorn mentioned the MAWD policy statement and explained that the MAWD president requested a letter of support for the policy. He went into the background behind MAWD developing the policy statement and the details of BWSR's watershed-based implementation funding program and how it affects the District. There was discussion about the funding program and the policy. Administrator Anhorn said this item can be informational unless the Board wants to take action to endorse MAWD's policy statement. The Board and staff agreed to put this topic on the Board's August 5th agenda, and Administrator Anhorn said he will find out if there is a deadline for letters of support.

d. MAWD Resolutions

Administrator Anhorn said that due to the hour, this item can go on the agenda for the Board's August 5th workshop.

XI. Attorney's Report

No items reported.

XII. Managers' Reports

There was discussion about drought conditions, lake levels, and low water flows. Manager Butler asked if at a future workshop or meeting Engineer Kieffer could present about historic flows.

Manager Olson reported he and Manager Kvam participated in the Nine Mile Creek Regional Trail Bike Tour and said it was great. He commended staff members Zembal and Boor on their work leading the tour, noting they shared their extensive knowledge about the watershed and ecosystem.

XIII. Adjournment

It was moved by Manager Butler, seconded by Manager Hunker to adjourn the meeting at 9:18 p.m. On a roll call vote, the motion was approved 5-0.

Respectfully Submitted,

Erin Hunker, Secretary