

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

WEDNESDAY, APRIL 21, 2021

I. Call to Order

Chair 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, April 21, 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, and Peggy Kvam

Manager Absent: Larry Olson

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

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

Others Present: Joe Bahr, Mike Berndt, June Carbone, Joan Cornwell, Steve Gurney (City of Bloomington), Steve Kloiber, and Ted Lockhart

II. Approval of Regular Meeting Agenda

Manager Butler moved, seconded by Manager Kvam to approve the meeting agenda as presented. On a roll call vote, the motion was approved 4-0.

III. Reading and Approval of Minutes

a. Draft Minutes of the March 4, 2021, Workshop

Manager Butler moved, seconded by Manager Hunker to approve the minutes of the District's March 4, 2021, workshop as presented. On a roll call vote, the motion was approved 4-0.

b. Draft Minutes of the March 17, 2021, Regular Board Meeting

Manager Butler moved, seconded by Manager Hunker to approve the minutes of the District's March 17, 2021, regular board meeting as presented. On a roll call vote, the motion was approved 4-0.

c. Draft Minutes of the April 1, 2021, Workshop

Manager Butler moved, seconded by Manager Hunker to approve the minutes of the District's April 1, 2021, workshop as presented. On a roll call vote, the motion was approved 4-0.

IV. Public Open Forum

Chair Cutshall noted there will be time for public comments about Normandale Lake during that agenda item. No items were raised in the public open forum.

V. Consent Agenda

Administrator Anhorn noted he will need to submit the annual report and annual audit to the Minnesota Board of Water and Soil Resources (BWSR) by April 30th. Attorney Welch commented BWSR prefers to receive the audit directly from the auditor.

a. Administratively Approved Permits

b. Permit Inspection Report

c. 2020 Annual Report and Annual Audit

d. Staff Reports

i. Permit and Water Resources Coordinator

ii. Education and Outreach Coordinator

iii. Program and Projects Manager

iv. Engineer's Report

Manager Hunker moved, seconded by Manager Butler to approve the consent agenda and direct the administrator to facilitate the submission of the annual report and the annual audit to the necessary agencies. On a roll call vote, the motion was approved 4-0.

VI. Hearing of Permit Applications

No permit applications presented.

VII. Treasurer's Report and Minnesota Native Landscapes Pay Application – Discovery Point Phase 3 Landscaping Work

Administrator Anhorn noted the recommendation of the engineer to pay the Minnesota Native Landscapes pay application in the amount of \$26,280.

Manager Kvam moved, seconded by Manager Butler to accept the treasurer's report and pay the bills including the pay application to Minnesota Native Landscapes in the amount of \$26,280. On a roll call vote, the motion was approved 4-0.

VIII. Administrator's Report including Correspondence

Administrator Anhorn noted his report is in the meeting packet and said one correction to the report is that the presentation to the Eden Prairie Rotary occurred last month. Manager Butler asked for a brief update on the public meeting for the Lynmar Basin stormwater best-management practice project.

Administrator Anhorn reported that about 20 residents attended the public meeting at Lynmar Park and shared comments about how they use the park and any concerns regarding the project. He said the goal is to have project concepts in place by June to present to the public and gather feedback.

Administrator Anhorn listed items on the agenda for the Board's May 6th workshop, including a presentation by Barr of the 2020 monitoring report summary and the bullets from last month's discussion on the Board's goals and objectives for the upcoming wetland protection request for proposals. He said the City of Minnetonka plans to do a presentation either at the Board's May 6th workshop or May regular meeting about the Shady Oak Lake outlet and summarize the city's public outreach and project plans. Administrator Anhorn noted the city plans to do the presentation before the permit application comes into the District.

Administrator Anhorn noted that he and Jordan from WSB, in collaboration with Carver County, submitted an abstract on the goldfish study on Lake Cornelia for the Minnesota Water Resources Conference. He talked about funding the Bassett Creek Watershed Management Commission (BCWMC) has been awarded to research

and analyze potential chloride reduction BMPs around Parkers Lake in Plymouth. He said the BCWMC is putting together a group to discuss potential BMPs, then will go through the process of doing a capital improvement project and monitoring results. Administrator Anhorn said NMCWD along with other metro watershed districts is going to participate in the initial planning and review of potential BMPs and that hopefully the results will be able to be applied throughout the metro area to reduce chloride loading to our water resources.

Administrator Anhorn reported HAB will be hosting a virtual presentation on in-lake alum treatments for interested participants.

IX. Unfinished Business

Manager Butler moved, seconded by Manager Hunker to change the order of the agenda in the interest of having the Normandale Lake Community Stakeholder Meeting and Survey Results agenda item start closer to 7:45 p.m. and to move New Business in front of Unfinished Business until 7:45 p.m. On a roll call vote, the motion was approved 4-0.

X. New Business

a. Cost Share Grants

Program and Project Manager Sniegowski reminded the Board that this year the grants are split into two tracks: stewardship and restoration. She said the grants being presented tonight are the stewardship grants, which are for projects such as rain gardens, shoreline buffers, pervious pavers, and cisterns. The grants have an annual application deadline in March. She reminded the Board that the residential grants are reviewed by the Citizen Advisory Committee and staff, and the larger grants, including applications from associations, businesses, and cities, are reviewed by staff and Board representation.

Program and Project Manager Sniegowski displayed a summary of the recommendations from the review committees regarding the residential and business grants, noting no city or association grant applications came in this round. She pointed out the Board meeting packet contains summaries of the grant applications. Program and Project Manager Sniegowski described the application review process, and she displayed a table of cost-benefits of these projects. She stated staff recommends funding the projects per the details presented in the meeting packet.

Program and Project Manager Sniegowski noted that staff is including language in the project agreements that requires pro-rated reimbursement of NMCWD if the applicant elects to utilize a NMCWD-supported BMP for compliance. Attorney Welch stated the cost-recovery language is included in only the

agreements for larger projects, not for those on single-family properties, meaning of the grants reviewed tonight, only the two business cost share stewardship agreements including the cost-recovery provision. Attorney Welch noted that the managers directed last year that the language be included starting this year.

It was moved by Manager Hunker, seconded by Manager Butler, to authorize the administrator to enter into cost share agreements with property owners to provide reimbursement in the amounts as shown for each applicant in the table provided in the meeting packet, with five-year maintenance terms for residential projects and 10-year maintenance terms for business projects. On a roll call vote, the motion was approved 4-0.

b. Normandale Lake Herbicide Treatment Quotes

Program and Project Manager Sniegowski displayed a map showing the proposed curly-leaf pondweed herbicide treatment areas based on the data from last week's plant survey. She said the proposed treatment is to apply diquat on 11.5 acres, including 10.6 acres in Normandale Lake and 0.9 acres in Nine Mile Creek, upstream of Normandale Lake.

Chair Cutshall opened the floor for questions. Ted Lockhart asked for information on the difference between diquat and endothall and asked about the significance of not using endothall. Program and Project Manager Sniegowski responded the District uses endothall for full-lake treatments of curly-leaf pondweed and uses diquat for partial treatments. Engineer Kieffer said the Department of Natural Resources only allows diquat to be used on treatments that aren't whole lake treatments because diquat provides a greater risk to native plants.

Administrator Anhorn displayed the request for quotations summary included in the meeting packet. Program and Project Manager Sniegowski described the quotes received and said the District Engineer recommends the Board accept the quote from PLM for the partial lake treatment of Normandale Lake at a cost of \$2,160. She pointed out the City of Bloomington will pay 50% of the cost of the herbicide treatment. She asked the Board to include in its action on the RFQ a 20% contingency because the amount of diquat identified in the bid is an estimate.

It was moved by Manager Butler, seconded by Manager Hunker, to authorize the administrator to enter into an agreement with PLM for the partial lake treatment quote at a cost not to exceed \$2,160, and to authorize the administrator to approve change orders up to an aggregate of 20 percent of the contract price. On a roll call vote, the motion was approved 4-0.

XI. Unfinished Business - Continued

a. Normandale Lake Community Stakeholder Meeting/Survey: Survey Results Summary and Raw Data

Administrator Anhorn outlined the information to be presented as part of this agenda item, the order in which it will be presented, and when the floor will open for comments. He reported the District held a community meeting on Normandale Lake on February 18. He said thirteen residents attended the community meeting, and he summarized the major concerns the residents raised: the amount of filamentous algae, too many aquatic weeds, and the potential for toxic algal blooms. Administrator Anhorn talked about the non-scientific online survey the District conducted. He reported there were 55 responses, which were from 46 unique network ID codes. He presented the summary of the survey questions and the 55 survey responses. Chair Cutshall opened the floor for comments.

June Carbone said she lives right next to Normandale Lake and attended the public meeting at which she raised the question of what the lake will look like ten years from now. She said that from the response provided to her, it sounds like the problem isn't aquatic invasive species in the lake but the fact that water drains into the lake from the surrounding area and the runoff entering the lake contains pollutants that produce algae. She said there has been an improvement to the lake, particularly the smell, but she would like to know what the long-term health of the lake will look like.

Administrator Anhorn said the District is working upstream with projects designed to reduce lake nutrient loading, both phosphorous and nitrogen, to try to reduce algal blooms. He said these projects will slowly reduce loading to the lake. He noted the District's stormwater rules were adopted in 2008, and the District's annual report details the specific numbers the watershed has attained toward its phosphorous and nitrogen reduction goals through implementing projects and the regulatory program.

Engineer Kieffer talked about how Normandale Lake is a shallow lake, and the plants are very important for the lake. She explained the plants are what keeps the lake from being an algal-bloom dominated lake because the native plants compete with algae for nitrogen and phosphorus. Engineer Kieffer said the health of the plant community is threatened by the curly-leaf pondweed, and the herbicide treatment for curly-leaf pondweed is a defensive move to protect the native plants in Normandale Lake.

Manager Butler said sometimes there seems to be a disconnect between what people who aren't involved in managing the watershed envision as a long-term goal and the goals of the watershed district. She wondered specifically if Ms. Carbone's question was, will algae continue to form in the lake or will the lake be suitable for canoeing. Manager Butler said when Normandale Lake was created, it was created for flood control and storage of high flows.

Ms. Carbone asked if the curly-leaf pondweed is an ongoing issue and if the herbicide treatment will address the problem of the lake's smell. She said she feels the lake is an important asset to the community. She said she came away from the Normandale Lake public meeting not understanding the relationship between the control of the invasive species and the overall lake quality and whether there are other things that need to be done.

Administrator Anhorn summarized feedback the District received from the public on Normandale Lake. He noted some specific suggestions, such as that the District add toxicity testing in 10 specific locations on the lake. He noted the District hasn't ever done toxicity testing on the lake, but the District does have a cyanobacteria monitoring process and protocol that the managers have recently reviewed and, with some tweaks, directed staff to continue.

Ted Lockhart said someone said the retaining pond and lake aren't connected, but he has photos of the culvert that connects the two, and he believes the retaining pond is toxic all summer long and is a favorite recreation place for a lot of younger kids. Administrator Anhorn remarked that stormwater ponds aren't intended for recreation. Steve Gurney, representing the City of Bloomington, said the city doesn't test for toxicity and suggests to its residents not to have physical and recreational contact with areas not designed for recreational contact.

Administrator Anhorn reviewed Mr. Lockhart's reassertion that NMCWD's response to his data request is inconsistent with NMWD policy and the Minnesota Data Practices Act, in that NMCWD has required reimbursement of \$5,000 for the cost of the staff time to prepare the requested data. Administrator Anhorn described the data request and the information collected, including 30 gigabytes of data as well as paper files from before the District had an administrator and that aren't available electronically. He said Mr. Lockhart also called for an investigation by the managers of the response to the request for compliance with state statute. Legal counsel has advised that the District is fully compliant with Minnesota's statutes. He said the requested data have been available in the District's office for Mr. Lockhart to review for free or pick up on payment of the charge since fall 2020, but to date he has not come to pick the data up.

Chair Cutshall said he does not wish to create any perception that NMCWD is trying to hide information. He said the District spent more than \$10,000 compiling the requested data, and the information is just sitting there. He proposed the District allow Mr. Lockhart to come into the office with his thumb drives to download the data on the computer without charge. He said that this would be a one-time thing not intended to set a precedent that the District wouldn't seek reimbursement for similar requests in the future. He said that this issue has been going on for quite a while now, and he would like it to be put to bed. Manager Butler indicated she is concerned about NMCWD setting a precedent by waiving its policy and wondered if it needed further review from legal counsel. Attorney Welch said NMCWD's policy is supported by

state law, which allows local governments to recover costs of complying with data requests, but it is within the Board's discretion to invite Mr. Lockhart download the data or make his own copies of the requested data at no cost, and the Board's action would not set a binding precedent. Manager Hunker said she is in favor of President Cutshall's idea.

Manager Butler said that she thought if the District was allowing Mr. Lockhart to come in and download the data from the computer, then the District should extend that offer to anyone participating in the meeting tonight to be able to do the same.

Chair Cutshall moved, seconded by Manager Hunker to allow Mr. Lockhart or another party to download the data from the computer in the NMCWD office and make copies using his own device, noting that the District isn't waiving its statutory authority to charge for future data requests. On a roll call vote, the motion was approved 4-0.

Administrator Anhorn finished reviewing the survey results.

Mr. Joe Bahr said he is a civil engineer and has lived on Paola Circle for 20 years. He said he has heard a lot of talk at tonight's meeting regarding studies, surveys, monitoring, research, and analysis. He said as a resident he wants to know what tangible action can be taken. Mr. Bahr said in his consulting practice, he does a quick assessment, then designs the solution, and then the largest piece is the implementation, and he doesn't get paid unless he implements. He asked if there is any way to see how to take the remaining Normandale Lake funds and apply those to tangible solutions. Mr. Bahr listed potential tangible solutions such as algaeicide, herbicide, aeration, harvesting of lake-top algae and carp, as well as longer-term projects such as diverting the north inlet around the lake, raising the spillway level, and dredging the lake. He wanted to know if the District could look at some of the short-term projects and pilot them to measure their effectiveness.

Administrator Anhorn said the District is currently undertaking an herbicide treatment of curly-leaf pondweed and will continue as part of the long-term plan. He said aeration is also part of the District's long-term plan. Administrator Anhorn talked about the District's six-year process for Normandale Lake and the importance of monitoring the effectiveness of each initiative.

At the administrator's request, Engineer Kieffer stated that many of the short-term project ideas Mr. Bahr raised are items being discussed as potential projects. She said regarding the idea to dredge the lake to make it deeper, the Army Corps of Engineers permit for the construction of the lake prohibits such dredging in the western part of the lake. Engineer Kieffer said the typical benefits of dredging are recreation and navigation, which aren't closely tied to the District's goals for the lake

since the District's goals focus on water quality and ecosystem health. Engineer Kieffer said the lake was created as a flood control project in the late 1970s, and the primary goal was to reduce high flows to downstream portions of Nine Mile Creek in Bloomington. Engineer Kieffer said raising the spillway would impact downstream property owners by increasing flood risk. Similarly, diverting the north fork of Nine Mile Creek around Normandale Lake would diminish the flood-control benefits provided by Normandale Lake and would increase flood risk for downstream property owners.

Mr. Bahr said it would be nice to be able to at least zero in on algae blooms and use algaecides and pilot it in an area to demonstrate action toward long-term goals for the lake. He said he would like to keep in touch with this group. Administrator Anhorn said Mr. Bahr can reach out to him.

Manager Butler suggested the District relook at plant harvesting. Administrator Anhorn said the District's plan is in partnership with the City of Bloomington and within the boundaries of the Army Corps of Engineers permit. He said the city has harvested in the past. Manager Butler said she had never considered plant harvesting in terms of improving navigation of the lake, and she would be willing to do so with more information.

Mr. Mike Berndt said he isn't hearing that the viewpoint of all the Normandale Lake residents is being represented. He said he would like to make sure the District knows there are other viewpoints, and he will provide comments in writing to the District.

b. Nonprofit BMP Project Maintenance

Program and Project Manager Sniegowski said Sunram is maintaining the nonprofit BMP rain gardens through June 15th, after which the District needs to handle the maintenance for two years, and a contractor is needed to complete the work. Program and Project Manager Sniegowski stated Metro Blooms provided a proposal to do that maintenance work. She described the maintenance tasks and work included in Metro Blooms' proposal with work starting in 2021 and ending in 2022, for an estimated cost of \$20,280, plus additional work per rates provided in the proposal for replacing plants and mulch. Program and Project Manager Sniegowski reminded the board that the 2021 budget for the nonprofit BMP raingardens is \$20,000. She explained Sunram hasn't yet billed the District for the remaining \$6,900 in the contract, but the District has funds available for the rain garden maintenance Design .

Manager Hunker asked if the plants are under warranty, and Program and Project Manager Sniegowski replied yes, through the end of the agreement period

with Sunram. Attorney Welch said legal counsel will review Metro Blooms' scope of work to ensure the work doesn't include work included under contract with Sunram.

It was moved by Manager Hunker, seconded by Manager Butler, to authorize the administrator to enter into a contract with Metro Blooms Design + Build, with advice from legal counsel for not to exceed \$22,280. On a roll call vote, the motion was approved 4-0.

c. Edina Streambank Project Phase I Vegetation Maintenance Quote

Administrator Anhorn reminded the Board the project was divided into two phases, and phase one had the vegetation warranty through 2020, and phase two had it through 2021. He explained the phase one warranty is done, and the phase two warranty finishes this year, and all maintenance following the warranty period is the responsibility of the City of Edina. Administrator Anhorn said the District and City of Edina have an agreement to split the costs of the phase one maintenance until both phases are on the same schedule, at which point the city will contract for the work. He provided details about the quote submitted from Landbridge Ecological for a total cost of \$6,000, of which the City of Edina will pay half. Administrator Anhorn recommended the Board authorize him to enter into agreement with Landbridge Ecological, on advice and consent of legal counsel, to complete 2021 vegetative maintenance work of phase one of the Edina streambank project for an amount not to exceed \$6,000.

It was moved by Manager Butler, seconded by Manager Kvam to authorize Administrator Anhorn to enter into agreement with Landbridge Ecological, on advice and consent of legal counsel, to complete the 2021 phase one vegetative maintenance work of the Edina streambank project for an amount not to exceed \$6,000. On a roll call vote, the motion was approved 4-0.

d. Administrator's Annual Performance Review

Administrator Anhorn said this item can be discussed at the Board's May workshop.

XII. Attorney's Report

Attorney Welch announced the Metropolitan Council talked last night at the Metro Minnesota Association of Watershed Districts about the chloride project. Attorney Welch said he and Erica both have the capacity to administer fully authenticated electronic signatures, so he and Erica are routing documents

electronically for signature. He said he wanted to make sure the Board has no concerns. No concerns were raised.

XIII. Managers' Reports

No items raised.

XIV. Adjournment

It was moved by Manager Butler, seconded by Manager Hunker, to adjourn the meeting at 9:10 p.m. On a roll call vote, the motion was approved 4-0.

Respectfully Submitted,

Erin Hunker, Secretary