

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

THURSDAY, MARCH 19, 2020

Call to Order

Chair Peterson called the Regular Meeting of the Board of Managers of the Nine Mile Watershed District to order at 5:05 p.m., Thursday, March 19, 2020. The meeting was conducted remotely 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 to meet in person. Manager Bob Cutshall, Manager Larry Olson, Engineer Janna Kieffer, Program and Project Manager Erica Sniegowski and Administrator Randy Anhorn were present at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Bob Cutshall, Erin Hunker (remote), Larry Olson, Grace Sheely (remote), and Jodi Peterson, (remote)
Manager Absent: None
Advisors Present: Randy Anhorn, Lauren Foley (remote), Janna Kieffer, Erica Sniegowski, Michael Welch (remote), Gael Zembal (remote)
Others Present: Kent Bolson (remote), John Hanson (remote), Karen Kill (remote)

Approval of Regular Meeting Agenda

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

Reading and Approval of Minutes

A. Draft Minutes of the February 6, 2020, Special Board Meeting

Manager Sheely noted she had grammatical, non-substantive changes she will provide to staff.

Manager Sheely moved, seconded by Manager Olson to approve the minutes of the February 6, 2020, Special Board Meeting with grammatical changes. On a roll call vote, the motion was approved, 5-0.

B. Draft Minutes of the February 18, 2020, Regular Board Meeting

Manager Sheely noted she had grammatical, non-substantive changes she will provide to staff.

Manager Sheely moved, seconded by Manager Cutshall to approve the minutes of February 18, 2020, Regular Board Meeting with the nonsubstantive edits. On a roll call vote, the motion was approved, 5-0.

Public Open Forum

There were no items raised in the public open forum.

Consent Agenda

A. Administratively Approved Permits

Chair Peterson called for questions on the administratively approved permits. There were no questions raised.

B. Permit Inspection Report

No questions on the permit inspection report were raised.

Manager Olson moved, seconded by Manager Hunker to approve the Consent Agenda. On a roll call vote, the motion was approved, 5-0.

Hearing of Permit Applications

No permit applications were brought forward.

Treasurer's Report

Manager Cutshall provided additional details about several expenses listed in the report.

Manager Cutshall moved, seconded by Manager Sheely to accept the Treasurer's Report and pay all the bills. On a roll call vote, the motion was approved, 5-0.

Staff Reports

a) Permit and Water Resources Coordinator

Chair Peterson noted the Board's meeting packet contains the written Permit and Water Resources Coordinator staff report.

b) Education and Outreach Coordinator

Chair Peterson noted the Board's meeting packet contains the written Education and Outreach Coordinator written report.

c) Program and Project Manager

Chair Peterson noted the Board's meeting packet contains the written Program and Project Manager report.

d) Administrator

Administrator Anhorn reported that similar to other watersheds and businesses in the metro and based on information from the Minnesota Department of Health, the NMCWD offices are temporarily closed to the public because of the COVID-19 pandemic. Attorney Welch stated that President Peterson has determined that it is neither practical nor prudent to conduct in-person public meetings, and in accordance with state law applicable to meetings of the NMCWD managers and committees, all meeting will be conducted via electronic means – web-based videoconferencing – until the president determines otherwise.

Administrator Anhorn stated staff has completed the interviews for the District's summer internship, and he will bring more information about the summer internship at a future Board meeting. He updated the Board on the coordinating of his annual performance review and said he will set up a meeting with the District's personnel committee to figure out when and in what format to conduct his review.

Administrator Anhorn said the April meeting will include four permits, one of which is the District's permit for the building addition. He provided a few details about each of those permits.

Regarding the District's scheduled upcoming Board retreat in the District Office on Tuesday, April 7, Administrator Anhorn asked if the Board would like to act now to change it or wait to take action or direct the Chair and Administrator to postpone it if and when needed. The Board was in consensus to postpone the retreat indefinitely.

Unfinished Business

a) Landlocked Lake Inundation Study Update

Administrator Anhorn explained that the engineer's landlocked-lake inundation study update has been prepared for the managers' information, and the study also will be passed on to the watershed cities. Engineer Kieffer noted this study was part of the scope of work the Board approved in February. The study looked at runoff volume in terms of

how much snowmelt would it take to impact a structure. Engineer Kieffer briefly talked about the results, noting that the runoff amount required to impact the apparent lowest structures varies for each lake. She indicated that Shady Oak Lake has the greatest risk of flood impacts from spring snowmelt or rainfall on frozen ground; 4 inches of runoff from the watershed would impact the apparent lowest structure adjacent to the lake based on the observed water levels on February 28, 2020. Engineer Kieffer noted that the next step in the analysis is to develop high-level estimates for increases in water levels in the land-locked lakes throughout the remainder of 2020 based on average and above-average rainfall scenarios.

Administrator Anhorn added that with this analysis, the District plans to start a conversation with the City of Edina about Arrowhead Lake and Indianhead Lake regarding the lake level management plan and pumping. Engineer Kieffer responded to questions, including clarification that the apparent low structure elevations used in the analysis are estimates based on building footprint GIS datasets and the Minnesota Department of Natural Resources 2011 LiDAR elevation data.

b) Normandale Lake Herbicide Treatment Quotes

Program and Project Manager Sniegowski reported the District received three quotes for the Normandale Lake herbicide treatment. She explained staff reviewed the quotes and recommends Lake Restoration Inc., whose quote, in the amount of \$40,775, was not the lowest received. But the lowest quote, at \$39,650, was submitted by Clarke Aquatic Services, which did not submit qualifications despite a followup request from the engineer.

Engineer Kieffer addressed the uncertainty of how many gallons of herbicide will be applied because it is determined by input from the Department of Natural Resources as well as flow conditions at the time of application. She explained there will be some fluctuation with the cost compared to the quote due to this aspect of the project.

Attorney Welch explained that because this project will take place over two or three days, there is no point in authorizing the administrator to approve change orders as part of the board action on this step in the project, because there will be no time to process a request. He recommended the Board authorize the contractor per the engineer's recommendation at the unit rates Lake Restoration has provided. He said the unit rates will be locked in, and the quantities and areas will be determined in accordance to criteria specified in the project specifications.

Regarding the difference in the quote amount and the \$49,000 budget that staff recommends, Engineer Kieffer stated that she, Administrator Anhorn, and Program and Project Manager Sniegowski agree that 20% over the contract price is a prudent amount

of cost buffer to add to the budget request to prosecute the work without undue unexpected expense.

Manager Cutshall moved, seconded by Manger Sheely to authorize the administrator, on advice of counsel, to enter a contract with Lake Restoration Inc. for the 2020 Normandale Lake herbicide treatment in accordance with Lake Restoration's March 10, 2020, quote and the contract as may be further modified by counsel to effect the purposes of the project and this board action, establish an implementation budget not to exceed \$49,000, and direct the administrator to take such further action as deemed necessary to administer the contract for completion of the project. On a roll call vote, the motion was approved, 5-0.

c) **Discovery Point Addition Bids**

Administrator Anhorn referenced the memo he sent the Board and said the bid opening was held Tuesday, March 17. He reported the District received three bids. Administrator Anhorn noted that two of the three bids came in under the architect's estimate, and staff recommends the low bid, which was for \$199,700 by Dering Pierson Group LLC.

Attorney Welch explained that the District is required to accept the lowest bid from a responsible and responsive contractor. He noted that Dering Pierson did not include a list of first-tier subcontractors as required. He noted, though, that the managers may determine that the omission is an infirmity that can be rectified and does not provide the bidder with a material competitive advantage. He said the difference between the two lowest bids was approximately \$30,000, and that difference was not affected by the lowest bidder not including the first-tier subcontractor list. Attorney Welch said the lowest bidder provided the architect with the subcontractor list today, so that shortcoming in the submission has been repaired.

Attorney Welch explained the three options in front of the Board are to waive the now-rectified shortcoming of the lowest bid, and direct and authorize the Administrator to award that bid and enter into contract accordingly; take more time and conduct more review to reach a decision because the District has several weeks remaining before it needs to act on the bid, or start the bid process anew. He said he doesn't foresee the managers gaining anything from taking additional time to make a decision. Manager Cutshall agreed, and expressed support finding Dering to be the lowest responsible, responsive bidder.

Manager Hunker asked about the architect's cost estimate. Administrator Anhorn responded the lump sum estimate was \$375,000 to \$425,000.

Manager Olson moved, seconded by Manger Cutshall to authorize the administrator, on advice of counsel, to award the contract to the lowest bidder, Dering Pierson Group LLC, as general contractor to complete the addition of the NMCWD's office and to enter in to an agreement with Dering Pierson Group LLC at a cost not to exceed \$199,700 on the submission of all required documentation, including but not limited to signed statements of responsible contractor status from all subcontractors. On a roll call vote, the motion was approved, 5-0.

Attorney Welch asked if at this time the Board wanted to authorize the District Administrator to approve change orders and administer the contract.

Manager Olson moved and Manager Cutshall second to amended motion to also authorize the administrator to approve change orders up to an aggregate total of 10 percent of the contract amount. On a roll call vote, the amended motion was approved, 5-0.

New Business

a) 2019 Draft Annual Report and Annual Audit

i. Draft 2019 Annual Report and Draft 2019 Annual Communications

Administrator Anhorn noted this is an informational item. He reminded the Board that each year the District is required to submit its annual report, annual communication, and annual audit by the last day of April. Administrator Anhorn said typically staff distributes the drafts of these items at the March Board meeting, and the annual report, annual communications, and annual audit will be on the Consent Agenda at the Board's April meeting.

ii. Draft 2019 Annual Audit

Administrator Anhorn said he and Treasurer Cutshall met with the District's accountant and auditor regarding the District's 2019 audit. He reported that the District had a clean audit with no internal control findings, and no legal findings.

b) Biennial Solicitation for Professional Services Process

Administrator Anhorn reminded the Board the District is required to solicit interest for professional services every other year, including engineering, accounting, annual audit, and legal services. He shared the process and timeline and noted this year the District will solicit for a pool of engineering service providers for services in addition to the District's consulting engineer role.

c) **CAC Continuing Education Reimbursement Policy**

Administrator Anhorn explained the District's budget includes funds for reimbursing Citizens Advisory Committee members for continuing education. He said Education and Outreach Coordinator Zembal has been working on a draft CAC continuing education reimbursement policy.

Education and Outreach Coordinator Zembal talked about the draft policy. Administrator Anhorn said staff is looking for manager feedback on the draft policy and highlighted the Board doesn't need to act on the policy tonight.

Education and Outreach Coordinator Zembal said the April CAC meeting has been cancelled and the hope is the CAC will return to its normal schedule beginning with its May 28 meeting. There was discussion about the language in the draft policy and if the language allows for workshops such as communication workshops and pay-for-view and video conferences. Education and Outreach Coordinator Zembal agreed to add language into the draft policy to include video conferences under the list of things that are included, and work with Mr. Welch to ensure that the policy comports with the administrator's role.

Attorney Welch said his recommendation is that since the Board has provided direction, he and Education and Outreach Coordinator Zembal can add the language discussed to the draft policy, and then the draft policy can be on the Consent Agenda at the Board's next meeting. The Board agreed to Attorney Welch's recommendation.

d) **Minnesota GreenCorps Host Site Application and Resolution**

Program and Project Manager Sniegowski talked about the Minnesota GreenCorps program and the District's interest in becoming a host site in 2020. She explained the Minnesota GreenCorps member would be placed for an eleven-month assignment, from September to August. Program and Project Manager Sniegowski said the District would provide office space, a work plan, and supervision. She stated staff is asking the Board to adopt a resolution of support to apply to be a host site in 2020. She noted the application deadline was 5 p.m. on March 18, so the District submitted an application, which can be withdrawn if the Board does not support the application. Program and Project Manager Sniegowski described the type of work the Minnesota GreenCorps member would perform for the District, including chloride reduction initiatives. She answered questions. There was brief discussion about office space.

Manager Hunker moved, seconded by Manager Sheely the resolution prepared by the Minnesota Pollution Control Agency that the Nine Mile Creek Watershed District Board of Managers agrees to enter into and sign a host site agreement with the MPCA to carry out the activities specified therein and to comply

with all of the terms, conditions, and matching provisions of the host site agreement and authorizes and directs Randy Anhorn, District Administrator, to sign the grant agreement on its behalf. On a roll call vote, the motion was approved, 5-0.

Engineer's Report

Engineer Kieffer asked if managers had questions about the engineer's report they received today. Manager Sheely asked about a spill associated with the Southwest Light Rail Transit project. Engineer Kieffer said that beyond the reviewing of the restoration plans, she doesn't have additional information about self-reported, temporary impact, but she could get more information. Manager Sheely said at this time she doesn't need more information.

Attorney's Report

Attorney Welch had no additional information to report.

Manager's Reports

Manager Sheely reported the Minnesota Association of Watershed Districts' Legislative event scheduled for today was cancelled. She said she and Administrator Anhorn had prepared an email communication to send to legislators, but due to the strain on the legislative bodies due to Covid-19, she believes delaying the communication is the right decision.

Attorney Welch added that the MAWD Summer Tour has been cancelled as well.

Manager Sheely commended Administrator Anhorn and staff for the work to reconfigure this meeting to provide for remote access.

Adjournment

It was moved by Manager Olson, seconded by Manager Cutshall, to adjourn the meeting at 6:35 p.m. Upon a roll call vote, the motion was approved, 5-0.

Respectfully Submitted,

Erin Hunker, Secretary