

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

WEDNESDAY, JULY 15, 2020

1. 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, July 15, 2020. 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: Bob Cutshall, Erin Hunker, Larry Olson, Grace Sheely, and Jodi Peterson

Managers Absent: None

Advisors Present: Randy Anhorn, Lauren Foley, Megan Jester, Janna Kieffer, Bob Obermeyer, Erica Sniegowski, Michael Welch, Gael Zembal

Other Attendees: Stu Grubb, Maureen Hackett, Carol Hejlstone, Bev Lonsbury, John Mirocha, Linda Russell, Tom Stockert, Mike Walton, Leslie Yetka

2. Approval of Regular Meeting Agenda

Administrator Anhorn added an item to follow the Managers' Reports: an overview of the Board's June 17, 2020, closed session for the Administrator's performance review.

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

3. Reading and Approval of Minutes

a) Draft Minutes of the June 17, 2020, Regular Board Meeting

Manager Sheely commented that the meeting minutes have greatly approved, and she appreciates it.

Manager Olson moved, seconded by Manager Sheely to approve the minutes of the District's June 17, 2020, Regular Board Meeting. On a roll call vote, the motion was approved 5-0.

4. Public Open Forum

There were no comments raised during the public open forum.

5. Consent Agenda

a) Administratively Approved Permits

No comments or questions on the administratively approved permits were raised.

b) Permit Inspection Report

No comments or questions on the permit inspection report were raised.

c) Staff Reports

- i. Permit and Water Resources Coordinator
- ii. Education and Outreach Coordinator
- iii. Program and Project Manager

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

6. Hearing of Permit Applications

a) Permit #2020-74: Lone Lake Mountain Bike Trail; Lone Lake Park; Minnetonka

Administrator Anhorn noted that approval of the permit is within his delegated authority, but he elected to bring it to the Board because of the public interest in the project.

Engineer Obermeyer explained there are three District rules that are applicable for this project: wetland management (rule 3), stormwater rule (Rule 4), and erosion and sediment control (rule 5). He summarized the proposed project, which is construction of 2,600 linear feet of 18-inch-wide trail through Lone Lake Park to be used for mountain biking. He provided details about his review as included in the Engineer's memo in the meeting packet.

Manager Peterson asked about the width of the trail versus the width of the machine that makes the trail, and whether it is realistic to expect that only an 18-inch-wide path will be disturbed. Engineer Obermeyer said the construction plans specify that the trail will be 18-inches. He stated it is the contractor's responsibility to comply with the requirements of the construction specifications.

Manager Sheely asked if the amount of compaction and impervious surface is based on 18-inches width of impervious surface. She asked whether the permit application would meet the District's requirements if a width of 36 inches is used in the review, to account for the width of compaction during construction of the trail. Manager Sheely remarked that in 2016 this project received a significant WCA Technical Evaluation Panel (TEP) review. She said it may help the public to understand which entities have reviewed this project. She also asked if the impervious surface calculations included the pickleball courts that were built in the park some years ago.

Attorney Welch said the application is for an 18-inch wide path, and if the application is approved by the managers, that is exactly what the city can built – not a possibly wider trail. He stated that it is the city's responsibility to ensure that the contractor's work meets the design specifications. Manager Sheely commented she has noticed erosion issues in the pickleball court area. Attorney Welch said that given that there is no construction on the pickleball courts as part of this permit, the District may need to follow up on the erosion there independently of this permit application.

Manager Sheely asked for more information about vegetative logs and how there might be better options for erosion and sedimentation control. Engineer Obermeyer said the construction plans submitted only included a silt fence. He described how sediment logs work and their benefit of being a permanent erosion-control facility, even though some are set up to deteriorate over time. Manager Sheely raised her concerns about a Dingo machine being used to create the trail, and she said she is uncomfortable with and relying on a five-year-old wetland delineation and doesn't want to be off with the delineation.

Engineer Obermeyer explained the wetland delineation was done in October 2019 by Bolton & Menk, not 2016 as listed in the engineer's memo. He talked about the Dingo terminology and said it was his terminology and his assumption because Dingo-type equipment has been used in similar projects in

the state. Engineer Obermeyer reiterated that the City of Minnetonka would be required to meet the 18-inch construction specification.

Manager Sheely said she received a comment from a member of the public who could not attend tonight's meeting about the discrepancy between the City of Minnetonka's map and the plans submitted to the District for review. . She explained that the City's map indicates that the trail would cross Nine Mile Creek and would connect trail on the east and west sides of the creek. Engineer Obermeyer said the plans Barr Engineering reviewed did not show a creek crossing, and she asked the City to clarify. Attorney Welch clarified that if there is a crossing, it would not be approved as it was not part of the submittal the engineer reviewed for this permit application.

Ms. Carol Hejlstone of the City of Minnetonka stated 18-inches is the finished width of the trail. She said the City has identified equipment that would be within the construction parameters, and the City will monitor the trail to make sure the trail width remains 18 inches. Ms. Hejlstone said this project proposes no new crossings of Nine Mile Creek. She said there is an existing culvert that crosses under an existing gravel trail that provides access for vehicles for maintenance activity as well as pedestrians and bikes. Manager Sheely asked if the project will or will not compact an area broader than 18 inches. Ms. Hejlstone said the equipment the City has identified will compact a width wider than 18-inches during construction, but the finished width of the trail will be 18-inches after project completion. Manager Sheely clarified for the record that the City is stating it will take equipment wider than 18 inches to construct the trail that likely will compact an area wider than 18 inches, but the City will remediate the soil so the compacted soil remains a width of 18 inches. Ms. Hejlstone said that is correct.

Administrator Anhorn opened the floor for public comments.

Mr. Tom Stockert, 5524 Dominick Drive, Minnetonka, commented the last time he attended a NMCWD meeting was in 2014 while he was applying for a permit to build his house. He stated that at that meeting an individual was present to seek a variance, and that individual made the point that the wetland would be better off than it would be if the variance was not approved. Mr. Stockert said that should be the benchmark for any application, and the City of Minnetonka has not requested a variance for this project; however, he said, it appears the project proposes to build within the wetland buffer. He asked the Board to consider whether the wetland would be improved by this project, and if not, please deny the request to build a trail in the wetland buffer and require the trail design, including construction disturbance, to avoid the buffer. Mr. Stockert said it is likely the trail design could be revised from its current 4.9-mile design, approved as 4.7 miles by the City Council, to a distance that would still meet the four miles in the concept plan design criteria. He added that he believes the

development of his lot improved the water quality of the pond on his property. Mr. Stockert said there is quite a bit of wildlife activity at Lone Lake Park, and he hopes this project will have minimum impacts on Lone Lake.

Ms. Maureen Hackett of 4919 Arlington Drive, Minnetonka, shared her concerns that the trail plans appear to indicate the construction trail will go through wetland buffers through 50% of what the District considers wetland buffers and 15% through what the City of Minnetonka's rules consider buffers, without prior approval. She commented that the final trail width is to be 18 inches, but she said everyone knows the width of a bicycle plus a rider is greater than 18 inches and so it doesn't seem possible for bikers to ride and have only an eighteen-inch-wide impact. Ms. Hackett asked why the District would approve this plan that would require at least 36-inches-in-width equipment for construction and knowing that it would be impossible to revegetate, meaning trail users would be tearing up revegetation. She said the plan is completely unrealistic and asked why the District would consider the plan feasible. Ms. Hackett said an 18-inch trail is fiction. She remarked that regarding non-motorized vehicles, the grooming equipment in the winter would be motorized. Ms. Hackett said the City has not put in place any way to limit motorized bicycles. She commented the map reviewed by Barr Engineering is not the map on the City of Minnetonka's website. Ms. Hackett said there is a crossing over the creek. She said the sand and pebbles are constantly being spilled into the creek now, and just because the map doesn't show a crossing doesn't mean bicyclists won't use the crossing. Ms. Hackett asked Barr Engineering to evaluate the ramification of the trail going across the creek, because she thinks the crossing is lower than the flood elevation. She added that the impervious surface of the pickle ball courts has increased, and will continue to increase, the amount of water going into Lone Lake Park.

Mr. Stu Grubb of Emmons and Olivier Resources, 1919 University Avenue N., St. Paul, said he has been working with Protect Our Minnetonka Parks for the past two years on concerns about this project. He commented that the map presented tonight with the Engineer's memo is new to him and is not the same map he has been looking at for the past two years. He highlighted details about the map that were new to him and remarked he is not sure when these changes occurred. Mr. Grubb stated that the Minnetonka City Council voted not to require an Environmental Impact Statement. He said it should not be assumed that the City of Minnetonka has reviewed the map presented tonight. Mr. Grubb commented that the Engineer's memo refers to section 3.4.6 of the District's rules, and said section 3.4.6 requires the board to approve a trail through buffer area for it to be allowed, and because the Board hasn't yet approved such actions, the Barr memo is incorrect in saying such actions are allowed. Mr. Grubb stated the current crossing is in the floodplain. He speculated that because the trail design is split into two sections, east and west, the crossing will need to be altered. He said the crossing will be used by mountain bikers and pedestrians. Mr.

Grubb referenced hydrology studies undertaken that show an increase in stormwater runoff due to additional impervious surface. He said the additional runoff will increase the lake level.

Ms. Linda Russell said she represents the Friends of Lone Lake Park. She said the health of the creek and the lake are very important to the Friends of Lone Lake Park, and the group is concerned because there are matters not explained well enough for the group to be sure this project will be safe and healthy for the creek and the lake. She asked the Board to keep in mind that the health of the creek and the lake are paramount, and the construction could cause problems.

Administrator Anhorn called for any additional public comments. There were no additional comments. Manager Peterson asked to hear more about the buffers considering the public comments received. Manager Sheely asked Mr. Obermeyer to point out on the project map the wetland buffers and the location of the trail. Mr. Obermeyer displayed the map and answered the managers' questions.

Attorney Welch commented that the watershed district must review and apply its rules to the project that was proposed, and that the District cannot deny the application because the District thinks the project won't be constructed per the specifications submitted unless there is evidence to indicate as much. And if the application is approved, the City needs to build the project as proposed. He said that in front of the Board tonight for approval are the project maps displayed and reviewed by Barr Engineering. Attorney Welch explained that the historical record of the proposed project isn't part of this permit review process, and if the City changed its project to meet District requirements, then the District's requirements are doing their job.

Attorney Welch stated the District's buffer rule does allow for non-motorized travel, trails, and boardwalks in the buffer. He noted that Mr. Grubb's statement regarding the engineer's representation in his memo on this point is incorrect as a matter of both law and fact. Attorney Welch pointed out that the project and the boardwalk and trail for non-motorized use in the buffer is in front of the Board for approval tonight. Attorney Welch stated if the Board is concerned about non-compliant use of the trail, the managers could consider condition approval on the City's either placing appropriate signs on the project and/or be advised by the District that only non-motorized use of the trail is allowed and any non-motorized use would be a violation. Attorney Welch noted that under this permit, the District is not approving construction of any new crossing over the creek.

Manager Olson spoke in favor of approving this permit. He said the project is well planned and thought out and can be carefully implemented with no harm to the watershed. He said he looks forward to the project's implementation.

Manager Sheely noted that the elevation of Lone Lake by the parking lot is currently way above its parameters and the dock was under water. She said she is concerned because there is erosion from the pickleball court that hasn't been resolved. She asked what recourse the District has if this project isn't built as planned. Manager Sheely commented she is concerned about erosion due to the site's steep slopes and the fact there is already erosion occurring due to the pickleball courts' impervious nature. She asked if the City plans to have a motorized vehicle clear the pathway in the winter. She asked the Board to clarify if it envisions electric bikes as nonmotorized. Manager Sheely said that when the District wrote its rules, it probably hadn't considered mountain bike trails. She asked Administrator Anhorn to note this issue to the list of rules to review. She said she thinks the District needs to develop stronger measures of protection for the District's high-value wetlands.

Ms. Leslie Yetka responded that the City is aware of the issue of erosion in the pickleball court area and will be taking steps to correct it. She said trail construction and use is disconnected from any erosion coming from the pickleball courts area.

Ms. Carol Hejlstone said the City of Minnetonka determined e-bikes do not meet the definition of motorized vehicles. She said there is an upcoming City meeting on that topic. Ms. Hejlstone remarked that regarding routine maintenance, the City has entered into an agreement with the Minnesota Off-Road Cyclists to do that work. Ms. Hejlstone said winter maintenance has not been determined, but there would be no motorized winter grooming this coming winter, and this is an issue the City would address in the future.

Manager Sheely said e-bikes have a motor, and she asked Administrator Anhorn to note for a future District rules review the issue of e-bikes and their designation as motorized or non-motorized vehicles. She said she would like the District to add a permit condition that the City cannot do motorized maintenance on the trail without permission from the District and an understanding on why it needs to happen.

Attorney Welch asked Mr. Obermeyer if this trail or the use of this trail raises any concerns about water resources or wetland impacts that are contrary to the idea of the exemption the District has had in its rules since 2008. Mr. Obermeyer said if an e-bike stays within the trail parameter, the impacts would be the same as those of a bike. He said if the bike leaves the trail, potential impacts could develop, but that would be irrespective of the type of bike.

Manager Sheely reiterated her point that she would like the District to put in place strong language to protect its high-value wetlands.

Manager Olson moved, seconded by Manager Hunker to approve Permit #2020-74: Lone Lake Mountain Bike Trail; Lone Lake Park; Minnetonka. Upon a roll call vote, the motion carried unanimously.

7. Treasurers Report

a) Dering Person Group Pay App

Treasurer Olson highlighted the pay application from Dering Person for building addition work. Administrator Anhorn noted details about several of the invoices including one for the phones in the amount of \$360.00, which wasn't listed on the report. He stated the Dering Person Group pay app is for the amount \$24,551.50.

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

Manager Sheely moved, seconded by Manger Hunker to approve the pay application for Dering Pierson Group in the amount of \$24,551.50. On a roll call vote, the motion was approved 5-0.

8. Administrator's Report

Administrator Anhorn noted his report is in the packet, and he provided a brief update on the status of the building addition project. He said the District's COVID preparedness plan is posted on the District's website. Administrator Anhorn stated he would like the Board to hold a budget workshop on August 6th at 5:30 p.m. He said one of the items to be discussed is a line item for groundwater conservation. He added that the Board will talk at its regular monthly meeting in August about setting up a public hearing for the first Thursday in September to discuss the Board's proposed 2021 budget and levy. Administrator Anhorn noted the Riley Purgatory Bluff Creek Watershed District is working with the City of Bloomington on a flood-risk analysis and asked if NMCWD would participate at a cost of \$2,000 to extend the study into the NMCWD but still within the City of Bloomington. The managers agreed with participating. Administrator Anhorn reported he put in an opportunity grant application for the Rosland Park project for \$100,000, and he will also submit for a Board of Water and Soil Resources Clean Water Fund grant.

Administrator Anhorn noted that he and Manager Sheely will be meeting with a resident who lives near Normandale Lake to discuss his concerns. The managers and staff discussed the project at Normandale Lake, and Administrator Anhorn suggested the District consider hosting a public webinar about the project at the end of the year or early 2021 after the 2020 water quality data for the lake has been analyzed.

Manager Sheely asked staff to consider having the recorded presentations on NMCWD projects from the Board's meetings posted on the website as individual clips.

9. Unfinished Business

a) Transfer of Edina Streambank Restoration Project Maintenance Easements/Agreement to City of Edina

Administrator Anhorn reported the Edina Streambank Project is essentially complete, with inspections in progress as well as warranty work and cleanup of a few areas. He said the District's next step is to act on the maintenance easements and agreement. Administrator Anhorn said the District's legal counsel prepared Resolution 20-04 for this agenda item. Attorney Welch said the action in front of the Board in the resolution is a non-exclusive assignment of the easements and rights to access and use the property for maintenance, as opposed to a transfer of rights.

Manager Peterson moved, seconded by Manager Olson to adopt Resolution 20-04. On a roll call vote, the motion was approved 5-0.

10. New Business

a) League of Minnesota Cities Insurance Trust Liability Waiver

Administrator Anhorn stated that this is reviewed each year as part of the renewal with the League of Minnesota Cities. He stated that the District has always chosen not to waive the tort liability limits.

Attorney Welch stated that counsel recommends not to waive the liability limits.

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

b) 2021 Draft Budget

Administrator Anhorn provided an overview of the District's draft 2021 budget. He explained the District is looking at a 16% budget increase over the 2020 amended budget, to reach a proposed 2021 budget of \$3,941,000.

Administrator Anhorn said that if the District follows its practice of using its previously levied/unassigned capital reserves for capital projects first then levying only for needs beyond that amount, the levy for 2021 would be \$2,250,000, which is approximately 17% lower than NMCWD's 2020 levy. He remarked that the District has followed the practice of keeping its levy request flat year-over-year, so the Board

should discuss at its August 6 workshop the potential decrease in its 2021 levy request and any issues such a fluctuation could cause.

c) **Aquatic Invasive Species Management Strategy**

Administrator Anhorn summarized the information in the memo included the meeting packet. He described the District's process of identifying where the District should lead, just be involved, or not be involved in primary aquatic invasive species objectives. He explained the District defined and categorized streams, deep lakes, and shallow lakes into priority levels. Administrator Anhorn highlighted flow charts that indicate how and where the District could be involved in AIS prevention and management processes. He asked the managers to look at the flow charts included in the meeting packet and said this item can be on the Board's August 6th special meeting agenda. Manager Sheely noted the Board and staff should consider budget implications of the activities documented in the AIS management strategy, meaning the cost of the activities should be part of the Board's budget discussion.

11. Engineer's Report

Engineer Kieffer mentioned that in the section on the Rosland Park best management practice, the Engineer's Report indicated a summary of the project would be presented at the City Council meeting on July 21. She said the City has revised that plan due to the large number of items on that meeting agenda, and the City thought it would be better to add a summary of the information onto the City Council's July consent agenda and handle the presentation and the cooperative agreement at the council's August 5th meeting.

Manager Sheely noted she doesn't know how to use the data sharing web map and asked Engineer Kieffer to provide some training.

12. Attorney's Report

Attorney Welch reported the District and Barr Engineering received a subpoena earlier in July for records about high water, slush, and property damage associated with a project the District permitted in 2014. He said that counsel for the plaintiff has agreed to set aside the subpoena while he seeks the subject information from the city. Attorney Welch stated Minnesota Association of Watershed District legislative resolutions are due in the beginning of September, so if the Board has any items to send to MAWD for consideration on its legislative agenda, the Board could discuss the items at its August regular meeting.

13. Managers' Reports

Manager Sheely commented that as the Board's representative to the citizens advisory committee, she is sharing that the CAC desires to be more involved.

14. Summary of June 17, 2020, Closed Session – Administrator's Annual Performance Review

Manager Cutshall reported that on June 17, 2020, the Board of Managers met in closed session to review the performance of the Nine Mile Creek Watershed District administrator. Manager Cutshall stated that Administrator Anhorn, the managers, and the legal counsel participated in the closed session, held via the Zoom platform. Manager Cutshall said the Board found the administrator's performance to be a combination of exceeding expectations and outstanding, and voted to approve a 5% pay increase, retroactive to March 26, 2020.

15. Adjournment

It was moved by Manager Peterson, seconded by Manager Hunker to adjourn the meeting at 9:12 p.m. Upon a roll call vote, the motion was approved 5-0.

Respectfully Submitted,

Erin Hunker, Secretary