

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

WEDNESDAY, MAY 20, 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, May 20, 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, Kurt Leuthold, Bob Obermeyer, Erica Sniegowski, Michael Welch, Gael Zembal

Other Attendees: Peter Allen (Stantec Consulting) and Lucas Youngsma (Department of Natural Resources Area Hydrologist)

2. Approval of Regular Meeting Agenda

Administrator Anhorn removed item 10c – Administrator performance review update. He said Manager Hunker has received the requested feedback but needs time to compile it.

Manager Peterson 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 April 2, 2020, Special Board Meeting

Manager Hunker moved, seconded by Manager Olson to approve the minutes of the April 2, 2020, Special Board Meeting. On a roll call vote, the motion was approved, 5-0.

b) Draft Minutes of the April 15, 2020, Regular Board Meeting

Administrator Anhorn stated that Manager Peterson has provided him with some spelling corrections.

Manager Olson moved, seconded by Manager Sheely to approve the minutes of the April 15, 2020, Regular Board Meeting with the non-substantive edits submitted by Manager Peterson. On a roll call vote, the motion was approved, 5-0.

4. Public Open Forum

Mr. Lucas Youngsma introduced himself as the new Department of Natural Resources hydrologist covering Hennepin and Anoka counties. Mr. Peter Allen of Stantec introduced himself.

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

6. Hearing of Permit Applications

a) Permit #2020-26: Amundson Flats: 7075 Amundson Avenue, Edina

Engineer Obermeyer described the location of the proposed project, noting this project is the first in a series of redevelopments in that area. He explained the project includes removal of a building and construction of an apartment building.

Engineer Obermeyer summarized the Engineer's review of the project and permit application and the Engineer's recommendations and conditions. He specifically addressed contaminants on the site, as indicated by soil testing, and explained that infiltration on the site would exacerbate movement of the contaminants. Engineer Obermeyer stated that the contamination supports a determination that the site is 'restricted' under the NMCWD stormwater rule such that volume control needs to be provided only to the maximum extent practicable while the water-quality and rate-control standards must be met, as described in the report in the packet for this evening's meeting. Engineer Obermeyer stated the District Engineer recommends approval of the permit with the conditions and stipulations specified in the report. He talked about the financial assurance, noting that the assurance for the filtration facility of \$104,000 is derived from the rate of 125 percent of construction cost, as stated for stormwater-management facilities in the NMCWD financial-assurance rate schedule. He reported that the total financial assurance for the project is \$162,400, of which \$157,400 is for stormwater management and \$5,000 is for chloride management.

Manager Hunker moved, seconded by Manager Olson to approve Permit #2020-26: Affordable Housing: 7075 Amundson Avenue, Edina, with the conditions and stipulations recommended in the Engineer's report. On a roll call vote, the motion was approved, 5-0.

b) Permit #2020-52: Hyland Temporary Boardwalk: 9098 Bush Lake Road East: Bloomington

Engineer Obermeyer explained that the application was submitted by the Three Rivers Park District for the construction of a temporary boardwalk for a section of trail being inundated by high water in Goose Nest Pond. He described the project and went through the Engineer's review of the project and permit application, highlighting the applicant's variance request to allow 1.3 cubic feet of flood-storage volume reduction. Mr. Obermeyer noted that no structures or properties will be at increased risk of flooding because of the loss of flood storage.

Engineer Obermeyer said the District Engineer recommends the Board consider approving the variance and putting a condition on the permit that a plan

be submitted to the District by June 2022 for a permanent solution for pedestrian use of the trail adjacent to the wetland area during high water conditions.

Chair Cutshall recommended that the District look at whether such a small amount of fill in the floodplain can be accounted for next time the District reviews its rules. Administrator Anhorn noted that he will add this topic to a running list he is keeping for future Board discussion about District rules.

Manager Olson moved, seconded by Manager Hunker to approve the variance based on the findings in the Engineer's report. On a roll call vote, the motion was approved, 5-0.

Manager Hunker moved, seconded by Manager Olson to approve Permit #2020-52: Hyland Temporary Boardwalk: 9098 Bush Lake Road East: Bloomington. On a roll call vote, the motion was approved, 5-0.

7. Treasurer's Report

Manager Olson and the administrator presented the expenses.

Manager Peterson asked for clarification on the bill for Tabor LLC. Administrator Anhorn explained that the payment is a cost-share grant. Engineer Kieffer highlighted the \$4,913 invoice from Lake Restoration for the recent herbicide treatment of Normandale Lake and recommended payment.

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

8. Administrator's Report

Administrator Anhorn asked Michael Welch to provide a summary of Governor Walz's most recent order responding to the COVID-19 pandemic. Attorney Welch noted the District can open its office to the public if the District first puts in place a plan detailing how it will manage its operations in conformance with physical distancing and other recommendations from the Minnesota Department of Health.

Attorney Welch said the decision on whether to open the office to the public involves policy considerations, and he asked the managers if they are comfortable with Administrator Anhorn crafting the policy and implementing it administratively or if the Board wants to keep the office closed until the Board can review a draft policy. The Board directed Administrator Anhorn to make the determination and appropriate policy.

Attorney Welch said the governor's latest order specifically allows governmental bodies to conduct public meetings without regard to the 10-person limit that applies to other gatherings. He said the NMCWD president can make the decision to continue to meet via webcast based on the health risks associated with the ongoing pandemic.

The Board agreed to conduct its June meeting remotely and a manager or staff member wants to be in the office to attend the meeting should coordinate with Administrator Anhorn.

Administrator Anhorn asked the Board if it would like to hold a workshop June 3 or June 4. The managers determined not to schedule a workshop. Administrator Anhorn said he would talk further with Chair Cutshall about future possible workshops.

Administrator Anhorn announced the herbicide treatment on Lake Cornelia has started and will continue through Thursday and, if needed, Friday as well. He reported on several other District initiatives, including the need for a change order for the St. Edward's Church rain gardens project to decrease the size of the rain gardens. Program and Project Manager Sniegowski provided more details, noting the church has approved the new rain garden dimensions. She provided more information about the change order, explaining the analysis using the Minnesota Pollution Control Agency's Minimal Impact Design Standards calculator indicates the water quality benefits won't change substantially and the project cost to the District will decrease by \$5,528.

Attorney Welch stated the Board would want to authorize Administrator Anhorn to enter an amendment to the cooperative agreement with St. Edward's, so the agreement reflects the final plans.

Manager Sheely moved, seconded by Manager Olson to authorize the Administrator to enter an amendment to the cooperative agreement with St. Edward's Church so the agreement reflects the final plans. On a roll call vote, the motion was approved, 5-0.

9. Unfinished Business

a) Edina Streambank Restoration Maintenance Plan

Administrator Anhorn reported the types of considerations included in the maintenance plan, such as costs for repair and maintenance would be split 50-50 between the District and the City of Edina. He said staff developed the plan in collaboration with city staff. He asked the Board to approve the plan.

Manager Sheely moved, seconded by Manager Olson to approve the Edina Streambank Restoration Maintenance Plan as submitted. On a roll call vote, the motion was approved, 5-0.

b) Board-Requested SOWs Stemming from May 7, 2020, Meeting

i. Barr SOW for Development of Lake Level Management Plans for Arrowhead Lake and Indianhead Lake in Edina

Administrator Anhorn summarized the Board's previous discussion on this issue. He explained the lake level management plans would be used by the City of Edina to guide the City about when to pump and not to pump the lakes, and for the District to understand downstream impacts. He said the estimated cost for developing the plans is \$30,000, or \$15,000 per lake, and the cost would be split 50-50 between the District and the City of Edina. In response to a question from Mr. Welch, Janna Kieffer stated that the work was technical and she did not foresee any policy issues that may present a conflict-of-interest concern, given oversight by both the NMCWD administrator and city staff.

Manager Olson moved, seconded by Manager Peterson to approve the Barr Scope of Work for Development of Lake Level Management Plans for Arrowhead Lake and Indianhead Lake in Edina with a 50-50 cost share with the City of Edina and at a cost to the District not to exceed \$15,000. On a roll call vote, the motion was approved, 5-0.

ii. Barr SOW for "re-sewing" District-wide XP-SWMM Model with Updated Information from Cities

Administrator Anhorn talked about the District's current hydrologic and hydraulic model and how this initiative would provide a more up-to-date regional model. Manager Sheely asked if this work would incorporate groundwater considerations. Engineer Kieffer responded that the proposed scope of work does not include groundwater considerations or interactions.

Manager Cutshall asked about the timeline for doing the "re-sewing." Engineer Kieffer said she will bring back a timeline to the Board. Manager Sheely asked if the District could get the City of Eden Prairie on board for paying for some of this work. Manager Sheely explained she is on board with moving forward as proposed, but she would like to see more buy in from the City of Eden Prairie regarding flooding considerations, in general, and this project. She said she would like to see a timeline for task 1 at the Board's next meeting. Administrator Anhorn suggested moving

ahead with the scope of work as proposed and he can contact the City of Eden Prairie to ask about possible reimbursement for the city's portion of the updated model.

Manager Sheely moved, seconded by Manager Olson to approve Phase 1 at a cost of \$45,000 for tasks 1, 2, and 3 as detailed in the SOW for Barr to “re-sew” the District-wide XPSWMM model with updated information from the cities and to authorize the Administrator to administrate the scope of work. On a roll call vote, the motion was approved, 5-0.

c) Cornelia/Edina Lake Projects Feasibility Study Update

Engineer Kieffer announced the draft feasibility study will be distributed to the Board and staff in June. She and Engineer Kurt Leuthold of Barr Engineering shared an on-screen presentation and updated the Board on the Lake Cornelia and Lake Edina Feasibility Study. They discussed recommendations included in the study, particularly highlighting the portion of the study regarding design of a stormwater best-management practice in Rosland Park and details about the various filtration materials that could be used and other design options evaluated. Engineer Kieffer said staff will get the draft feasibility study to city staff for review and comment. Next steps will include presenting to the City of Edina's Parks and Recreation Commission, followed by a presentation to the City Council and a NMCWD public hearing on whether to order the project.

Administrator Anhorn asked for feedback from the Board on the project. Manager Olson asked if the city is participating in the cost. Administrator Anhorn said the District will fund the project, and once the District hands the project over to the City, the City will pay for costs such as maintenance. He said there would need to be additional discussion about costs such as art or signage added to the project and replacement of the BMP media if needed. Engineer Leuthold responded to questions about accessibility of the BMP for public education purposes.

The Board indicated consensus for staff to continue developing this project in collaboration with the city.

10. New Business

a) Approval of Professional Services

Administrator Anhorn provided an update on the District's recently completed biennial solicitation of letters of interest from professional-services providers.

Manager Peterson moved, seconded by Manager Sheely to select Barr Engineering, Smith Partners PLLP, Cavanaugh & Company and Redpath and Company as the providers of engineering, legal, accounting and annual audit services and authorize the Administrator to enter into the necessary two-year agreements on advice of counsel. In addition, to select Asakura Robinson, Barr Engineering, Houston Engineering, ISG, SRF Consulting Group, Stantec Consulting Services, Inc. and Wenck Associates, Inc. to be included in the District's project specific engineering pool. On a roll call vote, the motion was approved, 5-0.

b) 2020 Budget Amendment

The Board agreed to defer this item to a future agenda.

11. Engineer's Report

Engineer Kieffer reviewed the report, noting in particular the alum treatment underway at Lake Cornelia.

12. Attorney's Report

Attorney Welch updated the Board on a supreme court opinion issued in the end of April determining that the Environmental Protection Agency and Army Corps of Engineers have jurisdiction over discharge of a pollutant when the point source discharges into groundwater that has reaches navigable water. He stated that the court limited jurisdiction to circumstances where the discharge of a pollutant to groundwater is the "functional equivalent" of discharging that pollutant from a point source directly into navigable waters. He stated that the decision should not directly affect NMCWD operations or programs, which are rely on state – not federal – law.

13. Managers' Reports

Manager Sheely mentioned the University of Minnesota's Aquatic Invasive Species Investigators are hosting a webinar on hybrid milfoil. She said she can share details with anyone interested.

14. Adjournment

It was moved by Manager Olson, seconded by Manager Sheely to adjourn the meeting at 9:29 p.m. Upon a roll call vote, the motion was approved, 5-0.

Respectfully Submitted,

Erin Hunker, Secretary