

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

WEDNESDAY, APRIL 15, 2020

1. Call to Order

Chair Peterson 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 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

Manager Absent: None

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

2. Approval of Regular Meeting Agenda

The Board agreed by consensus to approve the agenda as presented.

3. Reading and Approval of Minutes

a) Draft Minutes of the March 5, 2020, Special Board Meeting

Manager Sheely moved, seconded by Manager Olson to approve the minutes of the March 5, 2020, Special Board Meeting with nonsubstantive changes submitted by the managers. On a roll call vote, the motion was approved.

b) Draft Minutes of the March 19, 2020, Regular Board Meeting

Administrator Anhorn added a statement under item 1 to clarify that the meeting participants present at the NMCWD office for the meeting practiced social distancing.

Manager Cutshall moved, seconded by Manager Sheely to approve the minutes of March 19, 2020, Regular Board Meeting with nonsubstantive edits submitted by the managers. On a roll call vote, the motion was approved.

4. Public Open Forum

There were no items raised in the public open forum.

5. 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.

c) 2019 Annual Audit and 2019 Annual Report

d) CAC Continuing Education Policy

e) Permit #2020-17: Golden Triangle Industrial; Golden Triangle Drive and Valley View Road, Eden Prairie

f) Permit #2020-27: NMCWD Building Addition: 12800 Gerard Drive: Eden Prairie

g) Permit #2020-32, #2020-33, #2020-35, #2020-36 Non-Profit Stormwater BMP Projects: Various Locations in Bloomington and Edina

Manager Sheely noted that she had a few nonsubstantive typographical changes to recommend on the annual report.

Manager Olson moved, seconded by Manager Cutshall to approve the Consent Agenda with any nonsubstantive edits to the 2019 Annual Report that Manager Sheely submits to Administrator Anhorn. On a roll call vote, the motion was approved.

6. Hearing of Permit Applications

a) Permit #2020-34: NMCWD Non-Profit Stormwater BMPs Project at St. Edward's Catholic Church; 9401 Nesbitt Avenue South: Bloomington

Engineer Obermeyer explained this permit is for a project site that is part of NMCWD's non-profit stormwater best-management practices project. He described the two rain gardens proposed to be constructed to handle a portion of the stormwater runoff before the runoff leaves the site. He noted the site has no stormwater treatment in place currently.

He went through the project in relation to the District's requirements. Engineer Obermeyer noted that NMCWD, on behalf of the property owner, has requested variances from the District's wetland-buffer, chloride-management, and maintenance requirements. He noted that with regard to maintenance, NMCWD has entered an agreement with the church that will provide for 17 years of maintenance instead of a perpetual term as is standard.

Engineer Obermeyer said staff recommends Board approval of the permit with the conditions stated in the Engineer's permit review and predicated on the Board's approval of the permit variances.

Manager Cutshall asked for more information about the chloride management component, noting a sentence in the permit review that seemed to contradict the information presented. Attorney Welch responded, noting the stipulation Manager Cutshall has referenced should have been removed.

Attorney Welch went into more detail about the project, explaining the church has negotiated an agreement to allow the District to use church property to construct the stormwater BMP project. He noted that the rain garden maintenance would be in place for 17 years, with the church handling maintenance requirements for 15 years after the District completes maintenance for two years. Attorney Welch explained how staff and legal counsel reason that, given that the project includes no work initiated by the property owner to redevelop or improve the property, the managers may find that it would not be reasonable to impose on the applicant the additional work, including removal of parking lot, required to meet the District's requirements for the wetland buffer and chloride management.

Program and Project Manager Sniegowski commented that although the District wouldn't require the chloride management plan for this permit, the District will continue to provide chloride management education and training opportunities to the applicant. She noted that staff of St. Edward's Catholic Church has previously attended a Smart Salting for parking lots and sidewalks training.

Chair Peterson summarized the considerations of the variance requests, noting site pre-existing conditions such as the church's parking lot, for consideration in reviewing the applicant's variance requests. Attorney Welch agreed with Chair Peterson's remarks and added the project is entirely for water and natural resources protection, at the District's initiative, and explicitly and completely for the District's programmatic purposes.

Manager Sheely asked about the difference between this permit review compared to the permits for the four stormwater BMP projects handled in the consent agenda. Administrator Anhorn said to that point and regarding these stormwater BMP permits in which the projects are essentially erosion control because they don't add or remove impervious surface, he recommends adding language saying although the project triggers stormwater because the project disturbs more than 50 cubic yards of earth, because the project doesn't have any impervious surface area changes, it doesn't require or need to meet the volume, rate, water quality or chloride management plan provisions. Administrator Anhorn said the District has included this language in past permits under circumstances where a project proposed no changes to impervious surface. He said he could add the language to the cover letters for the five stormwater BMP permits discussed tonight.

Manager Sheely raised her concerns with the chloride language. There was lengthy discussion on how to handle the chloride management plan language in this permit review and variance consideration. Attorney Welch provided two possible ways the Board could proceed: direct staff to strike the chloride management stipulation language, or approve the buffer and wetland maintenance variances and direct staff to work with legal counsel to finalize the record and revise the report to remove the chloride management requirement because there is no impervious surface change. Attorney Welch recommended directing a revision on part of the engineer with concurrence of legal counsel, administrator, and program and project manager.

Manager Cutshall moved, seconded by Manager Sheely to approve the variances for the wetland buffer and the maintenance term, and direct staff to modify the report to remove the application of the chloride requirement on the basis of no impervious surface being change. On a roll call vote, the motion was approved.

Manager Hunker moved, seconded by Manager Olson, to approve Permit #2020-34. On a roll call vote, the motion was approved.

Attorney Welch noted he and staff will be discussing issues in the rules where staff is seeing updates that could be made. He said staff could bring the topic forward to the Board in the next couple of months for an initial policy discussion.

7. Treasurer's Report

Manager Cutshall and the administrator presented the expenses.

Manager Olson 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.

8. Staff Reports

a) Permit and Water Resources Coordinator

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

b) Education and Outreach Coordinator

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

c) Program and Project Manager

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

d) Administrator

Administrator Anhorn reported on the status of hiring a summer intern. He noted the District extended an offer, which was accepted. He said the intern is scheduled to start on May 11th, but the timing will depend on the state of Minnesota and executive orders. Administrator Anhorn updated the Board on the District building addition project. He reminded the Board it has a workshop scheduled for Thursday, May 7th at 5:30 p.m., and he listed the agenda items proposed for the workshop. Administrator Anhorn stated he sent the Board and staff a revised schedule of critical work.

9. Unfinished Business

a) New Slate of Officers

Administrator Anhorn said the Board can nominate individual positions or by a slate. The managers discussed the roles.

Manager Hunker nominated, seconded by Manager Sheely, Manager Cutshall for Chair, Manager Sheely as Vice Chair, Manager Olson for Treasurer, and Manager Hunker as Secretary. On a roll call vote, the motion was approved.

The managers were in concurrence that the new officers would take office effective May 7.

[Engineer Obermeyer left the meeting.]

10. New Business

a) Cost Share Grants

Program and Project Manager Sniegowski reported on the review of the 24 Cost-Share Grants applications. She pointed out there is a summary and memo included in the Board's meeting packet with more details about the applications, review, and breakdown of staff and Citizen Advisory Committee's recommendations on funding. Program and Project Manager Sniegowski stated the total recommended Cost Share funding amount is \$145,317.50. She noted this is the first round of applications in which the revised applications were used, and she described the methods used to evaluate and score the proposed projects.

Program and Project Manager Sniegowski talked about the seven projects that are not being recommended for funding, and she noted how the evaluation metrics guided the decisions. There was discussion about the projects that are recommended for funding.

Program and Project Manager Sniegowski said staff is asking the Board to authorize the Administrator to enter into the cost-share agreements with the property owners and provide their reimbursement amounts per applicant as shown in the table in the memo. She added the cost share agreements require five-year maintenance agreements for residential applicants and ten-year maintenance agreements for associations, cities, businesses, and non-profit applicants.

Attorney Welch said the managers should consider adding language into the agreements with the project that will receive five-figure cost-share contributions, noting that such language would allow the property to use the cost-share-funded project for future regulatory purposes, but that doing so would trigger a required pro rate repayment. The managers agreed that looking to add such language with next year's cost share agreements is a good idea.

Manager Olson moved, seconded by Manager Hunker to authorize the Administrator to enter into the cost-share agreements with the property owners and provide their reimbursement amounts in the total amount of \$145,317.50

and per applicant as shown in the table in the memo and per project not to exceed the amounts in the table of recommended funds. On a roll call vote, the motion was approved.

b) 2019 Water Quality Monitoring Summary

Administrator Anhorn pointed out the memo that lays out the monitoring plan for 2020 and announced that Engineer Kieffer had a short presentation on the 2019 Water Quality Monitoring Program and findings.

Engineer Kieffer described the 2019 lake water quality monitoring activities and results for Arrowhead Lake, Indianhead Lake, Mirror Lake, and Normandale Lake. Engineer Kieffer indicated a plant survey was conducted on Lake Smetana in support of the 2019 Use Attainability Analysis (UAA) Update. Engineer Kieffer talked about the plant survey for Lake Edina and the finding that Eurasian watermilfoil has spread in the lake since 2017 and is now found throughout the lake. She said the District may want to discuss in the next year or so whether it wants to treat Lake Edina to manage for Eurasian watermilfoil.

Engineer Kieffer discussed the plant survey and results for Southeast Anderson Lake. She said staff will bring Southeast Anderson Lake back to the Board this year for discussion because the District's 10-year Plan includes a recommended alum treatment and treatment for curly-leaf pondweed for the lake, but more data and discussion are needed about whether the curly-leaf pondweed is causing water quality issues. Administrator Anhorn added more details, stating the two treatments included in the 10-year Plan are to address internal loading. He explained the District has included in this year's budget \$200,000 for that work, but there needs to be discussion about whether curly-leaf pondweed is creating water quality issues through internal loading. There was a brief discussion about whether a drawdown for the lake would be an option.

Engineer Kieffer provided information about the District's stream monitoring program and the 2019 stream monitoring activities and results. There was a brief discussion about whether NMCWD should adopt the MPCA's new methods for evaluating stream health, including the fish and macroinvertebrate Index of Biotic Integrity (IBI) tools, and more universal data reporting methods.

Administrator Anhorn added that lake levels and groundwater well levels were also summarized in the 2019 water monitoring report. Administrator Anhorn said if managers should forward any further questions to him.

c) **Bush Lake Shoreline Vegetation Management Quote**

Administrator Anhorn reminded the Board that in February it authorized amendment of the agreement with the City of Bloomington for management of shoreline vegetation and invasive species around Bush Lake and authorized staff to solicit quotes. He said the District received two quotes: one from Landbridge Ecological for \$30,872 and one from Minnesota Native Landscaping for just over \$54,000. Administrator Anhorn said the District Engineer's estimate for the work was \$35,000, and the District Engineer recommends entering a contract with Landbridge for the work at a cost not to exceed \$30,872. He asked the Board to authorize the Administrator with the advice of legal counsel to enter into agreement with Landbridge Ecological to complete the Bush Lake Shoreline Vegetation Management work at a cost not to exceed \$30,872. He clarified it is a three-year contract.

Manager Hunker moved, seconded by Manager Olson to authorize the Administrator with the advice of legal counsel to enter into agreement with Landbridge Ecological to complete the Bush Lake Shoreline Vegetation Management work at a cost not to exceed \$30,872. On a roll call vote, the motion was approved.

d) **Office Furniture**

Administrator Anhorn reminded the Board it included budget for office furniture as part of the building addition project. He summarized the list of what is required for the two new offices and new storage area, and he walked through the quote from Commercial Furniture Services (CFS) from January. Administrator Anhorn said the quote in January was \$12,899 but the cost has increased. He said the CFS representative recommended adding 6% to the January quote. He reminded the Board that it has approved the office furniture budget, but he needs Board authorization to make any single purchase over \$5,000. Administrator Anhorn asked the Board to authorize him to purchase the office furniture at an amount not to exceed \$13,675, which is a 6% increase over the original quote from CFS. Manager Cutshall pointed out the tear down cost is missing from the CFS quote. Administrator Anhorn said he can connect with CFS, confirm the cost, and bring this item back to the Board at its May 7th workshop. The Board agreed to table this item until the May 7th workshop.

e) **Administrator's Performance Review Update**

Administrator Anhorn reported he had conversations with Manager Hunker and Manager Olson and sent them his self-review. Manager Hunker said she can send the materials out to the other managers. There was discussion about how to proceed. The Board and Administrator Anhorn agreed to discuss next steps again after Manager

Hunker has sent the materials to the managers and the managers have reviewed the information.

11. Engineer's Report

Engineer Kieffer updated the Board about the upcoming herbicide treatment of Normandale Lake. She said the aquatic plant survey would be conducted on April 18, and the results would dictate details of the District's permit with the DNR, including whether the treatment will be using endothall or diquat. If endothall is indicated, the treatment needs to be done when the lake temperature is between 50 and 60 degrees.

Engineer Kieffer reported the Discovery Point restoration work will be moving forward, and the alum treatment project for Lake Cornelia will be moving forward, and the alum contractor confirmed they will be ready to do the treatment between May 10 and June 1. She shared that the City of Edina is moving forward with the curly-leaf pondweed treatment on Lake Cornelia.

Manager Sheely asked if there could be ongoing updates about the development of the medical examiner site and associated wetland protection. Administrator Anhorn said the project is moving forward, but there haven't been any additional meetings since his last update to the Board. He said he can include updates in his Administrator's Report.

12. Attorney's Report

Attorney Welch had no additional information to report.

13. Manager's Reports

Manager Cutshall asked whether the board would meet in person May 7 if the governor lifts the stay-at-home order May 4. Attorney Welch said he can provide input to Chair Peterson, Manager Cutshall, and Administrator Anhorn after he evaluates the governor's next order.

14. Adjournment

It was moved by Manager Olson, seconded by Manager Sheely, to adjourn the meeting at 9:12 p.m. Upon a roll call vote, the motion was approved.

Respectfully Submitted,

Erin Hunker, Secretary