

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

**WEDNESDAY, MARCH 17, 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, March 17, 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, Peggy Kvam, and Larry Olson

Manager Absent: None

Advisors Present: Janna Kieffer (Barr Engineering), Louise Heffernan (Barr Engineering), Jordan Wein (WSB), and Michael Welch (Smith Partners)

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

Others Present: Steve Christopher (Board of Water and Soil Resources) and Ted Lockhart

**II. Approval of Regular Meeting Agenda**

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

**III. Reading and Approval of Minutes**

a. **Draft Minutes of the February 17, 2021, Regular Board Meeting**

Manager Butler moved, seconded by Manager Kvam to approve the minutes of the District's March 17, 2021, Regular Board Meeting as amended. On a roll call vote, the motion was approved 5-0.

b. **Draft Minutes of the March 4, 2021, Special Board Meeting**

Manager Butler pulled the March 4, 2021, Special Board Meeting minutes from the agenda for staff to review and add clarity to section 2. She said the minutes are unclear about the exact variance that was approved, and the minutes need to be more specific. Administrator Anhorn said staff will review the recording and bring the minutes back to the Board's April meeting.

IV. **Public Open Forum**

Chair Cutshall said the District received a request from Mr. Ted Lockhart to deliver a presentation. Chair Cutshall welcomed Mr. Lockhart to give his comments at this time.

Mr. Lockhart stated he represents concerned residents of Normandale including Joe and Patty Bahr, Jim and Renee Phelps, Bill Black, June Carbone, Judy and Mark Karesh, Randy and Barb Sutter, Liz Lockhart, and himself. He mentioned there may be others to add to this representation once he confirms their agreement. Mr. Lockhart said the group of residents he listed live on Paola Circle and meet multiple times each summer to discuss Normandale among other concerns.

Mr. Lockhart said the group has essentially the same concerns he presented last fall, which he said fell on deaf ears. Mr. Lockhart listed the following concerns the group he represents would like to see discussed in an open meeting:

The Nine Mile blue-green algae harmful algal bloom toxicity signage, testing, and barriers. Mr. Lockhart stated the group wants to ensure posted Normandale signage information and educational materials include these key facts:

- There is no antidote for toxic blue-green algae: it can't be cured.
- Toxicity cannot be determined by simply observing algal blooms in scums.

Mr. Lockhart added that the group he represents wants the NMCWD to add regular toxicity testing to the Barr testing regimen to be measured on a regular basis. He clarified this request is more than the infrequent test site pull with 27104501 site 201, which is the least likely location on Normandale Lake to identify harmful algal blooms and blue green algae toxicity. He said the group wants this regular toxicity testing to prevent injury and death along Normandale.

Mr. Lockhart reported the group he represents wants to understand when the barriers for the toxic water near Normandale inlet will be installed.

Mr. Lockhart said his group has a point related to the Minnesota Government Data Practices Act. He said the group wants the wrongful and illegal policy of charging concerned residents an arbitrary and capricious \$5,000 investigated. Mr. Lockhart stated the group would like to see the relationship between the indexed list and the table of contents for the electronic data requested last October and the \$5,000 of so-called legal allowable charges for data, which by statute must be in such an arrangement and condition to make the data easily accessible for convenient use. Mr. Lockhart said to be clear, 32-gigabyte USB thumb drives can be purchased for \$25, and the electronically identified data he requested is less than 64-gigs and could typically be downloaded in about a minute of positive employee action. Mr. Lockhart continued by saying, as such, his group doesn't understand how \$5,000 for this electronic data from the District could possibly be considered the intent of the Chapter 13 allowances. Mr. Lockhart requested an investigation of the action and the policies to be in compliance with Minnesota statute, including a transparent report out.

Mr. Lockhart reported that the group he represents would like to see real actions and real results for Normandale going forward, even if it's just in test beds. He explained he means setting some meaningful, measurable goals such that an average Normandale user would be able to understand. Mr. Lockhart provided examples such as to be able to Northern Pike fish in the lake, which was done as recently as the 1990s. He provided more examples, including assuring safe recreational use for kayakers, paddle boarders, and canoers, and making a stretch goal of making the lake safe for wading as well as dog swimming. Mr. Lockhart requested recording observable data of the conditions of the lake, similar to the measurements the MPCA has been doing for over five decades.

Mr. Lockhart shared that the group he represents feels the NMCWD is without meaningful, real initiative trials to give high confidence of real water quality improvements on Normandale. He mentioned carp harvesting, herbicides and algaecides, having an aeration test bed, dredging, raising the spillway, shunting the most polluted branch north of Normandale and putting it out east of Normandale Boulevard, an active alum treatment plant the size of a football field south of Highway 494, harvesting algae, and oxygenation.

Mr. Lockhart read aloud from a communication he and Administrator Anhorn previously received from Joe Bahr, a civil engineer, to the effect that Mr. Bahr would prefer to use the limited funds of the NMCWD to implement solutions versus just conducting more studies and surveys.

Mr. Lockhart noted Chair Cutshall said the charts and survey will be posted before the NMCWD Board's April monthly meeting.

Chair Cutshall said the District will take Mr. Lockhart's comments into consideration, noting the multiple agencies and governmental units involved with public waters and stating that some of the actions Mr. Lockhart suggested aren't feasible.

Administrator Anhorn reported on the February 18, 2021 Normandale community meeting, which had 13 residents in attendance, and the survey, which received 55 responses. Administrator Anhorn stated staff is processing the information gathered in the community meeting and public survey, and the information will be made available. Administrator Anhorn said staff will post on the District website the information regarding the community input received, and the Board will discuss the information at its April 21<sup>st</sup> monthly meeting. He said the information Engineer Kieffer presented at the community meeting will be posted on the District's website.

Manager Butler requested Mr. Lockhart submit a prioritization of the issues he just presented, including his group's primary issue. Mr. Lockhart said safety is his number one issue, and he will respond in an email listing his group's three priorities in order. Manager Butler commented that Normandale Lake was never intended to be a recreational lake, and so she is struggling with the scope of what Mr. Lockhart is requesting for the Board to consider regarding the lake becoming a recreational lake.

Administrator Anhorn reiterated that Normandale Lake will be on the Board's agenda for its April 21<sup>st</sup> meeting.

Attorney Welch remarked Mr. Lockhart's statement that the District's Data Practices Act response was wrongful and illegal should not be left in the record unaddressed. Attorney Welch stated it is categorically false to state the response was wrongful and illegal. Attorney Welch stated the District has followed the Data Practices Act and its policy to the letter in responding to massive data requests from Mr. Lockhart. Attorney Welch noted the basis for the District's charges, which have not been paid at all, has been carefully detailed to Mr. Lockhart.

**V. Consent Agenda**

Administrator Anhorn pointed out the Board has a draft per diem guidance and schedule.

He noted that the memo in the packet from Gael Zembal included highlights of the hits to the NMCWD's 60<sup>th</sup> Anniversary storymap page. Administrator Anhorn said managers can contact staff with any questions. Manager Butler thanked Ms. Zembal for her efforts on the 60<sup>th</sup> Anniversary storymap. Manager Butler asked for a clarification of the per diem guidance specifically about when two events fall on the same day, such as the MAWD day at the state capitol and a Board meeting. Attorney Welch responded the District's bylaws and state law specify one per diem per day.

- a. **Administratively Approved Permits**
- b. **Permit Inspection Report**
- c. **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 Olson to approve the Consent Agenda and accept the information items on the Consent Agenda. On a roll call vote, the motion was approved 5-0.**

**VI. Hearing of Permit Applications**

No permit applications presented.

**VII. Treasurer's Report**

Treasurer Olson provided highlights from the Treasurer's Report. Administrator Anhorn added details about the invoices and checks.

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

**VIII. Administrator's Report**

Administrator Anhorn noted his report is in the meeting packet. He shared that he gave a presentation to the Eden Prairie Rotary Club regarding what the District does, its projects, and volunteer opportunities. Administrator Anhorn said next month is the abstract deadline for the Minnesota Water Resources Conference, and he talked about topic ideas for the District's abstract submissions and invited the managers to share ideas with staff. He mentioned the February 18, 2021 community meeting for Normandale and the survey results, which will be discussed at the Board's April monthly meeting.

Administrator Anhorn provided an update on the Lynmar Basin best-management practice project and the Rosland Park project. He reported the District received a document from the Metropolitan Council regarding its analysis on chloride trends 1999-2019 in Nine Mile Creek. He said the report shows chloride rates continue trending upward and the report provides conclusions and recommendations. Administrator Anhorn said the Metropolitan Council will be contacting the District

about the report's findings and potential partnership opportunities on data collection and analysis.

Manager Butler reported two Minnetonka residents want to meet with her about their concerns regarding potential plans for Shady Oak to be pumped or provided with an outlet. She asked if staff has met with the city on this topic and if any plans are moving forward. Administrator Anhorn responded there hasn't been much communication with the city since late last summer. Engineer Kieffer said the city slowed its process to work through the public engagement process. She stated the city has held a couple of public meetings in the past six months. Manager Butler said she will communicate with Administrator Anhorn about what she hears and sees from the meeting with the residents.

## **IX. Unfinished Business**

### **a. Barr's Technical Support and Oversight for Requests for Proposals**

Administrator Anhorn noted the District talked about reaching out to its engineering pool for the wetland restoration plans and starting work on the South Fork of the Nine Mile Creek restoration from Minnetonka through Eden Prairie, Edina, and Bloomington. He said technical support is needed to pull requests for proposals for the work together and technical assistance is needed to review submittals. Administrator Anhorn reported Barr Engineering will provide the District with a cost estimate on providing that technical support and assistance, and he added that Barr won't submit proposals for those two projects.

Administrator Anhorn said that at the managers' April 1 workshop, Barr Engineering will lead the managers through an exercise to better define the District's wetland goals and priorities for restorations. He said that this information will help in the development of an RFP for wetland restoration plans.

### **b. WSB 2020 Goldfish Population and Management Asset**

Administrator Anhorn introduced Mr. Jordan Wein of WSB & Associates to present on the first-year results of the Lake Cornelia carp and goldfish assessment. Mr. Wein shared historical data starting back in 2005, noting the Department of Natural Resources' 2005 fisheries survey indicated there were significant carp in Lake Cornelia at that time. He compared the 2005 fisheries survey results with the results from the 2019 survey, which showed no carp but an increase in goldfish and an abundance of black bullhead. Mr. Wein explained goldfish are a close relative of carp and are thought to have behaviors similar to carp including behaviors damaging to water quality. He pointed out goldfish are on the Minnesota Aquatic Invasive Species Research Center priority list.

Mr. Wein listed the four objectives of the 2020 study: estimate the population of goldfish and carp, monitor movement between water bodies, analyze recruitment history, and test biomass-reduction options. He described the research methods and steps, reported on the movement-monitoring preliminary data, and talked about the analysis of recruitment history.

Mr. Wein described the baited box net removal technique. He talked about testing this removal technique in Lake Nancy to see if the baited box net would work for goldfish removal, and he reported that due to the muddiness of the bottom, they did not seem to work well there. He talked about the public education component of managing for goldfish populations, noting the goldfish population likely started from a small population of released unwanted pets. He explained that management efforts can be thwarted by additional reintroductions of goldfish into Lake Cornelia. He offered recommendations such as publicizing public unwanted pet drop off days such as through Habitatitude.

Mr. Wein summarized the findings to-date, including carp don't seem to be a problem, goldfish seem to be a problem, the tracking antennas in tagged fish appear to be working and data are being collected, recruitment seems to coincide with winter kill years, and baited box netting as a removal method doesn't seem feasible in soft-bottomed nurseries but should work in both North Cornelia and South Cornelia. He added that seine netting could be explored as a method of goldfish removal. Mr. Wein listed next steps, including continuing to monitor movement between lakes, conducting pre-removal electrofishing and tagging more fish with PIT tags, performing baited box netting and seine netting in North and South Cornelia, conducting post-removal electrofishing for estimating population, and trap netting young of year.

Administrator Anhorn introduced Steve Christopher of the Minnesota Board of Water and Soil Resources (BWSR), the Board Conservationist. Administrator Anhorn reminded the Board that the District is receiving grant dollars from BWSR to fund moving this project to the feasibility stage.

**X. New Business**

**a. Draft 2020 Annual Report and Annual Audit**

Administrator Anhorn summarized the draft 2020 annual report, noting this year's annual report addresses impacts of Covid on the District's 2020 work. He asked managers to send him any edits. He said the agenda for the Board's April meeting will include an item to direct staff to distribute the final 2020 annual report as required.

Administrator Anhorn reminded the Board that the District's annual audit had no findings and that the Board decided it didn't need the auditor to provide a

presentation of the audit to the Board. He said something that has been recently included in the audit is that all entities that contribute into the State's pension plan, which NMCWD does, is obligated to show its portion of the underfunded state pension plan, and the NMCWD's portion is \$257,805. Administrator Anhorn said no action is needed tonight, and the 2020 audit will be on the Board's April agenda as well.

**b. District Rule Revision – Proposed Change Matrix and Strikethrough Version of Proposed Rule Changes**

Permit and Water Resources Coordinator Foley, Attorney Welch, Louise Heffernan, and Administrator Anhorn went through the proposed-change matrix and strikeout version of proposed rule changes.

Administrator Anhorn said staff will finalize the changes as presented. He said staff will walk the Technical Advisory Committee (TAC) through the rules revisions process and will provide an overview of the proposed rule changes. He explained the TAC will have a few weeks to review the proposed changes, and then staff will bring the draft rules revisions back to the Board for direction to release the proposed rules changes for the 45-day public comment period.

**XI. Attorney's Report**

No items raised.

**XII. Managers' Reports**

Manager Butler said the tort-liability legislation related to use of salt for deicing stalled out in the Senate Environmental Committee, so for all intents and purposes the legislation is dead for this year. She said she is working with Jill Crafton, a Riley Purgatory Bluff Creek Watershed District manager, on a soils grant in the amount of \$250,000 to look at urban soil health. Manager Butler said the Izaak Walton League would be the grant administrator.

Manager Butler reported she went to the Whited Avenue wetland, and the City of Minnetonka has a fire pit in the middle of the wetland, so she has communicated with the City of Minnetonka about the fire pit.

Manager Butler reported on a presentation by Cedar River Watershed District provided at the MAWD meeting she attended earlier in the day. She explained she would like the Board to consider how it could collect more photographs of the Board's projects. Manager Butler said she thinks stories are told better through visual media, and in the future she would like the District to discuss this idea and how the District could collect more photographs of the watershed and the District's projects.

**XIII. Adjournment**

**It was moved by Manager Olson, seconded by Manager Hunker, to adjourn the meeting at 9:07 p.m. On a roll call vote, the motion was approved unanimously.**

Respectfully Submitted,

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Erin Hunker, Secretary