

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

WEDNESDAY, SEPTEMBER 18, 2019

Call to Order

Chair Peterson called the special meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 6:30 p.m., Wednesday, September 18, 2019, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Bob Cutshall, Erin Hunker, Steve Kloiber, Grace Sheely and Jodi Peterson

Managers Absent: None.

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

Special Meeting

The Managers held a celebratory gathering in honor of Steve Kloiber retiring from the Board after 12 years. Chair Peterson recognized Steve Kloiber for his long tenure on the Board, the challenges and changes the District experienced, and for his contributions to the District throughout that time.

Chair Peterson adjourned the special meeting at 6:55 p.m.

Chair Peterson called the regular meeting to order at 7:00 p.m.

Agenda

Administrator Anhorn requested to add an item to the agenda under Hearing of Permits, Item 6B, Shady Oak Regional Stormwater Management Plan. He noted under New Business, Item 10B, Permit Review Memo Storage, there were no administratively approved permits and therefore that item could be left as is without discussion or could also be removed.

Chair Peterson agreed that perhaps Item 10B be removed and appear on the next agenda.

Manager Kloiber moved, seconded by Manager Hunker, to approve the agenda as amended. Upon a vote, the motion carried.

Reading and Approval of Minutes

The Chair called for review of the minutes of the Special Meeting/Public Hearing of August 21, 2019. The Managers provided nonsubstantive typographical and grammatical changes to staff.

Manager Hunker moved, seconded by Manager Kloiber, to approve the special meeting/public hearing minutes of August 21, 2019 subject to nonsubstantive typographical and grammatical corrections. Upon a vote, the motion carried.

The Chair called for review of the minutes of the Regular Meeting of August 21, 2019. The Managers provided nonsubstantive typographical and grammatical changes to staff.

Manager Cutshall moved, seconded by Manager Hunker, to approve the minutes of August 21, 2019 subject to nonsubstantive typographical and corrections. Upon a vote, the motion carried.

Public Open Forum

Larry Olson, Edina resident, introduced himself to the managers and stated that he was recently appointed to replace Manager Kloiber once Manager Kloiber steps down at the end of September. He said that he had been involved in the Lake Cornelia issues and a member of the lake association. He stated that he felt that this would be an opportunity to become more involved in water quality issues. He noted that he will miss the October meeting because of a scheduling conflict and thought this would be a good opportunity to introduce himself.

Consent Agenda

- A. Administratively Approved Permits**
- B. Permit Inspection Report**

No action needed.

Hearing of Permit Applications

- A. Permit #2019-81: Edina Self-Storage; 7725 Washington Avenue; Grading and land alteration permit: Edina**

Administrator Anhorn stated that staff has been working with the applicant as the applicant would like the site to be considered restricted due to the seasonally saturated soil conditions. He stated that staff asked for additional information to review and has been working on the wetland buffers. He asked the Board to approve a 60-day extension.

Manager Sheely moved, seconded by Manager Hunker, to extend the permit-review period for 60 days. Upon a vote, the motion carried.

B. Shady Oak Regional Stormwater Management Plan

Administrator Anhorn noted that staff has been in contact with staff from Minnetonka related to the project. He noted that the Board has already approved one 60-day extension and therefore another extension request would need to come from the applicant. He noted that Philip Olson, the Minnetonka city engineer, has requested on behalf of the applicants a 60-day extension of the review period.

Attorney Welch stated that from a regulatory perspective all the work has almost been completed, and the sticking point is determining the cost to connect the proposed regional treatment area via an underground culvert under the Southwest Light Rail line to the treatment-facility property. He stated that Minnetonka staff are hoping to determine a final number soon but from there the city approval process will take around six weeks.

Manager Sheely moved, seconded by Manager Kloiber, to approve the request for an additional 60-day extension. Upon a vote, the motion carried.

Treasurer's Report

A. Rachel Contracting Change Order and Pay Request

Administrator Anhorn presented the two pay requests that were not included on the agenda.

Attorney Welch suggested first reviewing the change order, then the two pay requests could be authorized together in one action if desired.

Engineer Kieffer stated that staff is working on closing out the Normandale project and provided additional details on Change Order seven, including increases and decreases to the previously documented and approved quantities.

Attorney Welch stated that only a couple of the changes in change order 7 actually change the time or price of the work; others merely represent calculation of costs based on quantities and prices in the contract. But since the change order ultimately produces the correct result in terms of both time and cost, the managers could approve it as-is.

Manager Sheely moved, seconded by Manager Hunker, to approve change order seven. Upon a vote, the motion carried.

Manager Kloiber moved, seconded by Manager Cutshall, to approve pay requests nine and ten from Rachel Contracting in the total amount of \$22,666.03. Upon a vote, the motion carried.

The Treasurer submitted the report. Manager Cutshall provided clarification on a few of the cash disbursement items including cost-share grant reimbursements, annual membership dues

with the League of Minnesota Cities, costs to publish public hearing notices in the local papers and the release of cash escrows upon the closeout of a few permits.

Manager Kloiber moved, seconded by Manager Hunker, to accept the Treasurer's Report and pay the bills. Upon a vote, the motion carried.

Staff Reports

A. Permit and Water Resource Coordinator

Permit and Water Resource Coordinator Foley stated that staff received a large influx of permit applications as people attempt to complete projects before the ground freezes. She stated that they are making progress on changing the application process for cost-share grants. She noted that she is planning to send out a pre-winter communication to permit holders, providing best management practices prior to winter in the hopes of reducing spring violations.

In response to a question from Manager Sheely, Ms. Foley stated that city updates could be included on the list as well.

B. Education and Outreach Program Coordinator

Education and Outreach Coordinator Zembal stated that the first of the smart salting trainings occurred today and was well attended, noting that some of the permittees attended as part of their chloride management plan requirements. She stated that the District is hosting a property manager training next week in conjunction with the City of Edina and citizen group Stop Over Salting. She provided an overview of her capstone project, which was developed using some of the goals from the District's ten-year management plan. She thanked the Board for their support in allowing her to complete her master's degree.

Attorney Welch stated that it was great to hear that the permittees are attending the smart salting training, as that was a desired result.

C. Program and Project Manager

Program and Project Manager Sniegowski stated that the Normandale Lake project final stage will be an herbicide treatment that will be completed in the spring of 2020. She stated that the next step will be to submit a Lake Vegetation Management Plan Request and Lake Data Summary to the DNR, which will allow staff to meet with the DNR to discuss and complete the vegetation management plan. She stated that two plant surveys have been completed on Normandale Lake in 2019, one in June and one in August. She stated that staff continues to work with Carp Solutions on the next steps of carp management for the lake. She stated that there are unique challenges to shallow lake carp management, which is why the expertise of Carp Solutions will be helpful. She stated that the 60th anniversary event will take place the following week in an open house format.

D. Administrator

Administrator Anhorn stated that staff is looking to schedule an aquatic invasive species strategy workshop for the Board, possibly on Wednesday, October 30th from 5:30 to 7:30. He confirmed that date should work for the Board. He stated that staff was alerted that Barr Engineering identified milfoil on Shady Oak Lake and noted that staff has been working with the city to ensure filtering of the pumped water which would prevent that AIS from traveling out of the lake. He stated that the County Medical Examiner's building application was received today, providing a sketch of the plans to the Board, noting that the building is now proposed for the southwest portion of the parcel and would not require the previously discussed variances.

Manager Sheely noted the proximity of her property to that project and advised that she was invited to a neighborhood meeting. She stated that this proposed building location is a much better fit because of the existing utility locations and the sloped topography.

Administrator Anhorn noted that the Lone Lake mountain bike trail was recently approved by the City of Minnetonka and will come forward to the Board for review in the near future. He advised of two escrow release checks that he was unable to include in the Treasurer's Report. He stated that he will ask the accountant to cut checks that he could bring to the State of the Waters event for signatures, noting that the checks will then appear in the October Treasurer's Report.

Attorney Welch stated that perhaps the administrator should be authorized to release escrow checks. He suggested that the Board authorize the checks mentioned by motion tonight, if the board is comfortable doing so.

Manager Kloiber moved, seconded by Manager Hunker, to authorize the Administrator to issue the following checks for Permit #2018-41 in the amount of \$24,600 and for Permit #2018-119 in the amount of \$5,000. Upon a vote, the motion carried.

Manager Sheely agreed that it would be helpful to have a better policy on the release of escrow checks.

Unfinished Business

A. Lake Cornelia In-Lake Alum Treatment Project Quotes

Administrator Anhorn stated that the District solicited quotes, which were due September 17. He stated that two memorandums were provided to the Board, the first regarding MPCA approval for the alum treatment and the second from Barr Engineering providing a recommendation on the two quotes received.

Engineer Kieffer reported that two quotes were received: Clark Aquatic Solutions in the amount of \$116,234.91 and HAB Aquatic Solutions in the amount of \$81,844.97. She stated that HAB also submitted the requested documentation of their relevant experience and she recommends selection of HAB. She noted that this contractor also completed the Normandale

Lake project. She advised that the quote from HAB also came in under the engineer's estimate. She noted that if approved, the next steps would be to work on contracting with the selected contractor, issue a notice to proceed, and schedule a meeting with City of Edina staff to discuss site access.

Attorney Welch stated that customarily the Board also authorizes the Administrator to approve change orders, perhaps in the range of up to five to 10 percent aggregate increase from the contract price.

Engineer Kieffer agreed that 10 percent would be an appropriate range for change order authorization for the Administrator.

Manager Sheely moved, seconded by Manager Kloiber, to approve the selection of HAB Aquatic Solutions as the contractor to implement the Lake Cornelia in-lake alum treatment project and authorize the District Administrator, with the assistance of legal counsel, to execute a contract in the amount of \$81,844.97 and to authorize the Administrator to approve change orders in an amount not to exceed an aggregate of 10 percent of the project cost. Upon a vote, the motion carried.

Administrator Anhorn stated that the Board had previously discussed moving away from the previous petition from Edina on Lake Cornelia and Lake Edina and instead working under an memorandum of understanding that provided resolution of the work petitioned for in 2009 and support for additional projects to improve and protect water resources in the city. He noted that the Edina City Council approved an MOU stating as much and staff is awaiting the signed documents from Edina. He asked that the Board authorize the Chair to execute the MOU from the City of Edina. He noted that the Board previously reviewed a draft of the MOU.

Attorney Welch confirmed that this would follow the direction of the District's plan and the document will be useful in streamlining projects the engineer is reviewing, rather than continuing to follow the petition process.

Manager Sheely moved, seconded by Manager Cutshall, to authorize the Chair to execute the MOU with Edina. Upon a vote, the motion carried.

B. Lake Cornelia and Lake Edina Water Quality Study Projects Analysis and Feasibility Study Scope of Work

Administrator Anhorn explained that the purpose of this discussion is to review the possible projects beyond the alum treatment of Lake Cornelia that were identified within the use attainability analysis, allowing the managers to direct the most promising to move forward to a feasibility study. Among the possible projects are: a spent-lime stormwater treatment system in Rosland Park to remove additional phosphorus from stormwater flowing through the Swimming Pool Pond prior to discharge into Lake Cornelia; curly-leaf pondweed management in Lake Cornelia & Lake Edina; installation of a winter oxygen-injection system in Lake Cornelia to minimize winter kill of predator fish and reduce recruitment of bottom-feeding fish; other fishery-management strategies, including potential removal of goldfish and other bottom-feeding

fish in Lake Cornelia and upstream hydraulically-connected waterbodies. He reviewed some of the options that were assessed and alternatives that had been discussed throughout this process and are included in this scope of work. He stated that the scope of work has a proposed cost of \$114,000. He noted that options 1A and 1B include evaluation of a number of BMPs.

Engineer Kieffer reviewed some potential stormwater BMP options that could be constructed on city park property.

Administrator Anhorn highlighted some items included in the UAA that did not proceed for different reasons. He noted that this proposed scope of work could be reduced by removing some of the options that would not appear to provide enough benefit.

Administrator Anhorn referenced the proposed scope of work and commented that the cost for tasks 1A and 1B could be lowered by only reviewing two options. He stated that if all things go well, staff would like to move forward with implementation of a project next fall.

Manager Kloiber stated that he is not overly concerned about the proposed cost for completion of the scope. He stated that the projects have a high cost and therefore the cost for the extra study could help increase the likelihood of success and effectiveness.

Manager Sheely stated that she did not see funding sources, potentially checking for grants and whether that would be a realistic option, in the proposed scope of work. She asked if there should be a backup plan if the city fails to achieve the goal in managing curly-leaf pondweed.

Administrator Anhorn stated that the city did change its philosophy on treating curly-leaf pondweed, but then decided to pick up that activity again.

Manager Sheely commented that curly-leaf pondweed management is an important part of the outcome and therefore perhaps the District should be involved in some capacity.

Chair Peterson asked how the District could encourage the city to be more involved and fully complete the curly-leaf pondweed management activity.

Administrator Anhorn stated that the scope of work would include multiple meetings with the city.

Chair Peterson commented on the external loading that cannot be addressed without buy-in from the city and private property owners.

Manager Sheely commented that she was unsure that the aeration/direct oxygenation option would be worth much review as it is expensive and there is not much data that show benefit. She stated that perhaps simple signage could be used to deter people from putting goldfish into the lake.

Program and Project Manager Sniegowski commented that it is more likely private property owners releasing goldfish into the lake rather than a public access issue, so signage would likely not be the most effective way to engage residents on this topic.

Administrator Anhorn explained that typically the District would construct a project and after completion the city would take ownership, similar to Normandale, which is why there would need to be buy in from the city.

Manager Cutshall stated that he would like to focus on long-term solutions and not towards items that would require a lot of ongoing maintenance.

Chair Peterson commented that the feasibility study will help to provide that information and obtain buy-in from the city. She commented that this is an opportunity to have more wide recognition of the problem and potentially improve the water quality from the external sources.

Manager Kloiber commented that while he agrees, every project has maintenance costs because this is an urban watershed. He stated that there are several shallow lakes where the District has engaged in management activities. He stated that hopefully the District is building competency and knowledge in how to best manage these urban shallow lakes. He provided examples of how prior projects left elements that would assist and lower the cost, should the action need to be repeated in the future. He was cautiously optimistic that changing the biology of the plants and fish would be the most helpful.

Manager Cutshall stated that if there is not some control on what comes into the lake, the problem will continue.

Manager Kloiber agreed but noted that if the fish population can be controlled, that may actually help to maintain the water quality for a long time. He commented that shallow lake management is one of the toughest activities.

Manager Hunker commented that there are ongoing costs, such as costs for operating pumps, for any option.

Manager Sheely stated that when she read this it appears that the District is attempting to do great things with a great outcome. She suggested that a statement be added that while the District is looking for measurable change, the District will most likely not accomplish the desired goal levels.

Manager Kloiber stated that while the state water quality goal will most likely not be reached, an improvement can be gained.

Engineer Kieffer stated that the study relies on the modeling for the UAA and explained that the conclusion of that UAA was that while an improvement can be made it most likely will not reach the goal.

Manager Kloiber commented that the lake has not always been classified as a lake and was previously a wetland, which should be considered as well.

Administrator Anhorn agreed that education will be an important element, similar to the Normandale Lake water-quality-improvement projects. He confirmed that the Board would like to move forward on the scope of work, reducing to two options for 1A and 1B. He commented that for a drawdown 75 percent of the riparian owners would need to agree to the project.

Engineer Kieffer provided additional details, noting that it would be a tricky lake to complete a drawdown on because of the amount of water that comes into the lake after even a ¼-inch rain event. She commented that she would worry about the larger rain events and the winter rains that have been experienced in the past. She noted that it would not be impossible, but it would be a challenge.

Manager Kloiber noted that although the item may be cost prohibitive or ineffective, it does not appear to significantly impact the overall cost of the analysis and therefore should be included.

Chair Peterson confirmed the consensus of the Board to modify 1A from three options to two options and to leave the remaining scope as-is.

Attorney Welch stated that the motion could be to authorize a not-to-exceed amount and direct the engineer to update the cost as the work moves forward.

Manager Sheely asked if staff time is being tracked for this project.

Administrator Anhorn noted that he is noting the time spent on Lake Cornelia but is not allocating that towards the overall project costs. He noted that if desired he could make the adjustment.

Manager Sheely noted that would not be necessary but was simply curious the amount of staff time and city staff time spent on this issue.

Manager Kloiber moved, seconded by Manager Sheely, to approve the feasibility study scope of work and authorize Barr Engineering to proceed at a cost not to exceed \$114,600, and to direct the engineer and staff to bring back a revised update at the next meeting. Upon a vote, the motion carried.

New Business

A. Edina Streambank Project Maintenance Easements

Administrator Anhorn reported that the work to stabilize the streambank of Nine Mile Creek through Edina has been completed, and noted he has been attempting to obtain maintenance easements on eight project properties. He stated that he has received maintenance agreements for five, but the remaining three are proving to be more difficult, mostly because it is difficult to

get banks holding mortgages on the properties to consent to the easement. He stated that he would like staff to have the discretion to instead enter a private agreement with the landowner that would not be recorded and as such would not obligate future owners of the property, if any.

Attorney Welch commented that such agreements would require the property owner in each case to put staff in touch with the incoming property purchaser in the event of a sale. The managers may allow the administrator to determine, he said, that continuing efforts to work with a bank is not cost effective.

Manager Kloiber moved, seconded by Manager Sheely, to authorize the administrator to elect, in his discretion, to seek a long-term private maintenance agreement with the property owners instead of having a recorded maintenance easement on the property deed. Upon a vote, the motion carried.

~~B. — Permit Review Memo Storage~~

Item removed from agenda.

Engineer's Report

Engineer Kieffer had nothing further to add to her written report. She commented that it has been an unprecedented year in terms of rainfall, and the engineer continues to hear concerns of flooding not only in this watershed district but others as well. She stated that perhaps there will be more discussion on the topic with the Board in the upcoming months.

Manager Sheely asked if there will be some kind of tracking of traffic for the anniversary event.

Program and Project Manager Sniegowski reviewed some of the elements that will be incorporated into the event in attempt to track attendance.

Attorney's Report

Attorney Welch referenced an article in the *Star Tribune* related to the area around Lake Nokomis and the high water levels. He noted that the U.S. Army Corps of Engineers and Environmental Protection Agency have released a new definition of “waters of the United States,” reversing the refinement of the definition promulgated by the Obama administration . He said the change will not affect Nine Mile Creek Watershed District’s jurisdiction or its ability to conduct projects and programs.

Managers' Reports

The Chair called for reports.

Chair Peterson commented on the recent governance workshop held by the Minnesota Association of Watershed Districts that she and Manager Cutshall attended the previous week.

She stated that perhaps it would be helpful to hold a retreat for the Board and staff to discuss how to move forward as a Board, including discussion on the rulemaking process that occurred to provide information to new Board members and also related to recent topics of interest. She stated that this could assist the Board in moving ahead cohesively and understand things that may be unclear.

Manager Cutshall stated that in general he found the meeting beneficial. He stated that he is from the private sector and therefore some elements of the public sector can be confusing. He stated that he gained a real appreciation for the District and its ability to do the right thing for the long-term related to water management. He stated that he has a concern with groundwater and would like that to be an item included on the retreat agenda.

Attorney Welch asked if the retreat would focus on governance or more of a big picture policy without focusing on a specific program or project.

Chair Peterson stated that she would think bigger picture with some focus on specific areas, more of a where the District has been and where it is going.

Manager Sheely referenced a local artist that collects trash from the lake and sorts by type to make the logo of the company, using McDonald's as an example. She noted that she helped gather trash and was shocked to see the amount of trash that they collected. She noted that she also installed a raingarden. She referenced an article she recently read regarding flooding on Interstate 494.

Adjournment

It was moved by Manager Sheely, seconded by Manager Cutshall, to adjourn the meeting at 9:07 p.m. Upon a vote, the motion carried.

Respectfully submitted,

Erin Hunker, Secretary

ATTACHMENTS:
Treasurer's Report