

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

WEDNESDAY, AUGUST 18, 2021

I. Call to Order of the Regular Board Meeting

President 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, August 18, 2021. 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, Peggy Kvam, and Larry Olson

Advisors Present: Janna Kieffer, Michael McKinney (Barr Engineering), and Michael Welch (Smith Partners)

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

II. Approval of Regular Meeting Agenda

Manager Kvam moved, seconded by Manager Olson to approve the meeting agenda as presented. On a roll call vote, the motion was approved 3-0 (Manager Hunker absent).

III. Reading and Approval of Minutes

a. Draft Minutes of the July 21, 2021, Regular Board Meeting

Manager Olson moved, seconded by Manager Kvam to approve the minutes of the District's July 21, 2021, Regular Board Meeting. On a roll call vote, the motion was approved 3-0 (Manager Hunker absent).

[Manager Hunker joined the meeting, 7:04 p.m.]

IV. Public Open Forum

No items were raised in the public open forum.

V. Consent Agenda

Administrator Anhorn reported on permit inspections, noting that staff have found that portions of the Lone Lake mountain bike trail are wider than the permit-approved width of 18 inches. He said staff has forwarded this information to the City of Minnetonka.

Managers and staff discussed the issue, the possibility of areas of the trail, such as switchback corners, becoming even wider over time due to trail use, and actions the Board could take, such as revoking the permit. Attorney Welch commented on actions the Board could take, indicating that any District enforcement action should be proportionate to the risk to water resources or flood storage. Administrator Anhorn said that staff has not found that the wider trail areas present a risk to downgradient water resources. Attorney Welch said the District can communicate to the city that the project isn't being built as approved in the permit, and the District can ask the city to submit plans for review and, as needed, a permit modification. Further action, he said, would not seem warranted, given the lack of risk to water resources.

Manager Kvam stated that she hasn't seen any signs of erosion below erosion-control barriers. She commented that even though the trail is wider, it is functioning and draining correctly. Administrator Anhorn said the City contracts with a third party to do routine inspections and maintenance on the trail to address any issues they find. He said that staff will continue to ask the City for updates from their inspection and maintenance program.

- 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**

The Board accepted the consent agenda by consensus.

VI. Hearing of Permit Applications

VII. Treasurer’s Report

Manager Olson highlighted invoices and other items in the report. Administrator Anhorn added two checks to the payables list, one for \$6,800 for a cash escrow release for a permit 2020-132 and another for Smith Partners that will be reconciled in next month’s report.

Manager Hunker moved, seconded by Manager Kvam to accept the Treasurer’s Report and approve paying the bills. On a roll call vote, the motion was approved 4-0.

VIII. Administrator’s Report and Correspondence

Administrator Anhorn noted his report is in the meeting packet, and he highlighted items from the report. He noted the District’s Technical Advisory Committee will meet on August 31 from 9 to 11 a.m., and the Board’s next workshop is at 6 p.m. on August 31.

IX. Unfinished Business

a. Watershed-wide Risk Assessment (Atlas 14 Flood Risk and Resiliency – Phase 2) Update

Engineer Kieffer shared a presentation titled “Atlas 14 Flood Risk and Resiliency Phase 2” and introduced Mr. Michael McKinney, PE to share the preliminary results. Engineer Kieffer said Barr will share more results at the Board’s August 31 workshop. She reminded the Board that Phase 1, conducted in 2020, included updating the model and incorporating recent city updates where available; Phase 2, conducted this year, is a watershed-wide assessment of flood risk; and Phase 3 in 2022 will identify flood mitigation or resilience projects throughout the creek system.

Engineer McKinney went through the Phase 2 scope and tasks, the schedule and progress to date. He provided a detailed review of the model calibration and results and went through a mapping example. He talked about the task to quantify high-level potential flood damage cost and analysis of the risk of crossing failure. Engineer McKinney noted that modeling and mapping identified flooding issues, and he said preliminary Phase 2 results will be shared in the next couple of weeks and at the Board’s August 31st workshop.

Engineer Kieffer raised the point that addressing flooding issues will take multiple strategies, big ideas, cooperation, and strong partnerships. She said a question for the District to consider and discuss is how the District can remove barriers to designing and implementing flood risk-reduction projects. The

managers, staff, and advisors discussed efforts by other metro watersheds and the importance of partnerships.

b. Amend Engineer's Scope of Work for the Rosland Park Stormwater Filtration BMP Project

i. Barr Engineering Expenditures Memo

Administrator Anhorn reminded the Board that when it ordered the Rosland Park project in August 2020, the managers authorized not-to-exceed \$172,000 for the engineer's design of the project. He said there have been issues on permitting and other design and project considerations that have been discussed since then with the board, which has directed the engineer to continue work on the project. Administrator Anhorn said Barr Engineering provided a memo explaining the expenditures invoiced so far, a cost of \$261,560. Administrator Anhorn said project tasks remain to be completed, and those tasks are projected to cost an additional \$70,000, which would bring the project engineering cost to \$332,000. He said staff is recommending the Board ratify the costs to date and authorize additional expenditures, together totaling \$160,000 and bringing the total engineering scope to \$332,000 for final design, plans, specs, and construction oversight for the Rosland Park Stormwater Filtration BMP Project.

The managers concurred that they have been well informed regarding the additional engineering costs and noted their appreciation for the administrator's and engineer's accounting.

Manager Olson moved, seconded by Manager Hunker to ratify payment of costs to date totaling \$261,560 and to authorize additional expenditures of \$70,000, bringing the total engineering scope to \$332,000 for final design, plans, specs, and construction oversight for the Rosland Park Stormwater Filtration BMP Project. On a roll call vote, the motion was approved 4-0.

Attorney Welch stated the bid-price construction cost for the Rosland project significantly exceeded the engineer's estimate . He said the cost increase between the engineer's estimate and the lowest bid was more than 60 percent. Attorney Welch stated that the project originated in a petition from the City of Edina under Minnesota Statutes 103D, which includes a required reconsideration process when bids exceed the estimated project cost by 30 percent or more. He noted, though, that in September 2019 the District entered into a memorandum of understanding with Edina whereby the city concurred that the petition was effectively fulfilled by the successful construction of the Edina streambank stabilization project, and acknowledged that future projects within the scope of the petition would be considered by the board of managers under authority in Minnesota Statutes chapter 103B. Attorney Welch said the Rosland project and the cost increase have been discussed by the board as part of public meetings

several times, and no concerns regarding cost or the efficacy of the project have been voiced by members of the public. In fact, he said, changes to the project that increased its cost were designed to minimize the possibility of impact to upstream property owners. Attorney Welch said his analysis confirms the July 2021 award of the project was proper and authorized by the statute, and he doesn't recommend any further action.

c. Protection of High-Quality Wetlands Scoping and Prioritization Study

Administrator Anhorn reminded the Board that at its June 16, 2021, meeting, the managers authorized the release of the request for qualifications for wetlands protection. The District received four proposals by the deadline. Administrator Anhorn stated staff recommends the board authorize the administrator on advice of counsel to enter into agreement with SRF and its subcontractor RES to complete the high-quality wetlands scoping and prioritization study for an amount not to exceed \$35,065. He noted he had forwarded the four proposals to the managers for their review.

Manager Olson moved, seconded by Manager Kvam to authorize the administrator on advice of counsel to enter into agreement with SRF, including services subcontracted to RES, to complete high-quality wetlands scoping and prioritization study for an amount not to exceed \$35,065. On a roll call vote, the motion was approved 3-0-1, Manager Hunker abstaining because, she noted, she is an employee of SRF.

d. 2022 Draft Budget

Administrator Anhorn explained that due to high permit demand and the idea of adding a second intern in 2022, he increased the proposed budget for employee salaries by \$20,000. Administrator Anhorn said he lowered the maintenance of the nonprofit best-management practices project by \$5,000. He stated the proposed 2022 budget is \$4,110,000, which is \$15,000 higher than presented and discussed at the Board's August 5th workshop and about a 4% increase over last year's budget. He noted the tax burden on residents has dropped. Administrator Anhorn said the proposed levy remains \$2,600,000. After determining that none of the managers had questions or concerns about the budget, President Cutshall directed the administrator to proceed with the budget and levy as drafted.

X. New Business

a. Habitat Restoration Cost Share Grant Update and Approval Process

Program and Project Manager Sniegowski reported the District received seven residential applications and two city applications for its new habitat-

restoration cost-share program. She displayed a chart documenting the administratively approved grants. She said one grant needed to come to the Board for approval because its cost exceeded the administrator's authorization – a habitat restoration grant application from the City of Bloomington.

i. Habitat Restoration Grant Application: Bloomington

Program and Project Manager Sniegowski stated the grant request is for \$10,000, and staff recommends funding the grant at that amount. She described the proposed project and location. Program and Project Manager Sniegowski said staff is asking the Board to authorize the Administrator to enter into a cost-share agreement with the City of Bloomington and provide reimbursement for \$10,000. Attorney Welch stated that the project need not include a cost-recovery provision, pending a more comprehensive policy decision on that next spring when the Board discusses the cost share program again.

Manager Hunker moved, seconded by Manager Olson to authorize Administrator Anhorn to enter into a cost-share agreement with the City of Bloomington for the habitat restoration grant and to include the 10-year maintenance agreement but not the cost recovery. On a roll call vote, the motion was approved 4-0.

XI. Attorney's Report

Attorney Welch noted the Board's upcoming workshop will be held virtually and at the workshop the Board will discuss the format for the District's October meeting.

XII. Managers' Reports

No manager reports.

XIII. Adjournment

It was moved by Manager Olson, seconded by Manager Hunker to adjourn the meeting at 8:40 p.m. On a roll call vote, the motion was approved 4-0.

Respectfully Submitted,



Erin Hunker, Secretary