

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

WEDNESDAY, AUGUST 19, 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, August 19, 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, Bob Obermeyer, Erica Sniegowski, Michael Welch, Gael Zembal

Other Attendees: Bryan Gruidl, City of Bloomington

2. Approval of Regular Meeting Agenda

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

3. Reading and Approval of Minutes

a) Draft Minutes of the July 15, 2020, Public Hearing

Manager Sheely noted that in the first paragraph under item 1, a comma is needed after “Minnesota Statutes section 13D.021”.

Manager Sheely moved, seconded by Manager Olson to approve the minutes of the District’s July 15, 2020, Public Hearing as amended. On a roll call vote, the motion was approved 5-0.

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

Manager Olson moved, seconded by Manager Sheely to approve the minutes of the District’s July 15, 2020, Regular Board Meeting. On a roll call vote, the motion was approved 5-0.

4. Public Open Forum

Administrator Anhorn presented the District’s procedure for the public open forum and explained the managers take no action on items raised during the public open forum. He said a member of the public, Mr. Lockhart, requested to have more time to present his comments than the District’s three-minute allotment to each speaker, noting Mr. Lockhart indicated the comments would take approximately seven and a half minutes.

Mr. Ted Lockhart, resident of Bloomington, Minnesota, introduced himself and read into the record the following comments:

Thank you Mr. Cutshall, Ms. Sheely, Ms. Hunker, and Mr. Olson, Ms. Peterson for recognizing us at the Nine Mile Creek Watershed District Open meeting on August 19th, 2020; representing roughly a score of concerned citizens who live in, around and near Normandale.

We ask that before publishing the minutes, Nine Mile uses a recording made of this meeting to accurately capture the open meeting. We will provide Mr. Cutshall the text of the remarks after the meeting to inform the record.

Thank you, Mr. Cutshall for acknowledging receipt of the electronic communications regarding our concerns brought to Nine Mile’s attention (electronic correspondence beginning in May 2020 including correspondence of yesterday.)

Because of the serious public safety nature of the concern and other issues brought to your attention, we request Nine Mile make reasonable changes to rules, policy, practice, procedures, and methods such that we use both agreed minutes of open meeting time as well as an additional three minutes today – this is necessary in accommodation, and necessary to adequately describe the issue before. Do you agree this is reasonable?

[Attorney Welch responded that no changes to District rules, policy, practice, procedures, and methods are on the Board’s agenda this evening. Mr. Lockhart clarified he is asking for more than the allotted three minutes his time to provide comments, which will take approximately seven and a half minutes. Mr. Cutshall said Mr. Lockhart may have the seven and a half minutes. Mr. Lockhart asked for someone to keep track of time and to let him know how he is doing on time as he presents comments.]

Let me begin by representing the Normandale community, who collectively have over two and a half centuries of Normandale observations. We have grievous public safety, integrity, and accountability concerns regarding Nine Mile's stewardship of the body of water properly known as Normandale Ditch #1, "the Army Corps of Engineers Flood Control Project", or as Nine Mile Vice President Ms. Sheely refers to the water, paraphrase "Normandale is at best a Marsh – It's no lake."

In our collective observation, Normandale Ditch has significantly declined since the 2005 Use Attainability Analysis was published. Normandale has so precipitously declined that currently it remains in the worst water quality conditions ever observed. We encourage the Board to personally make observations of Normandale this week to see for themselves how far the water has declined since the UAA.

For the record, Barr Engineering reported to Nine Mile serious concerns of Harmful Algal Blooms and toxicity of Normandale in a hidden report, paraphrased and summarized for the record here:

These expansive algal blooms are toxic to animals during large blooms and interfere with recreational uses of Normandale. Excess phosphorus loads such as those seen in Normandale stimulate blue-green algal growth. The warm growing conditions and release of dissolved phosphorus during July and August are particularly favorable to blue-green algae, and blue-green algae have a competitive advantage over the other algal species during this time.

To date, monitored blue-green algae levels in Normandale have been recorded above the level of mild adverse health effects albeit remaining below the World Health Organization's threshold for moderate health risk.

Bahr Engineering provided us the methodology and training to determine the presence of Harmful Algal Blooms and suspected blue-green algae, the methods are known as the stick and jar methods. Over the Summer 2020, we administered bi-weekly testing by a registered professional engineer, with results repeatedly showing Normandale exhibiting Harmful Algal Blooms and suspected blue-green algae.

In addition, Barr Engineering recommended to us that if a person comes in contact with the water during harmful algal blooms, they recommend washing with fresh water only and not to use soap. Barr Engineering also recommended via their written procedure, whenever harmful algal blooms are observed during the recreational season, that routine regular (weekly) monitoring be undertaken to determine blue-green algae and toxicity presence.

To be painfully clear, it is not possible to determine whether a large harmful algal bloom is producing toxins without special testing. Therefore, it is both recommended and warranted to warn people and their pets to avoid contact with surface scums whenever a harmful algal bloom blue-green algae is suspected – Barr Engineering recommended such condition warnings and monitoring, Lower Colorado River Association (LCRA) in consultation recommends such warnings and monitoring, and the state of Minnesota also recommends such warnings.

Sadly, as you know or should know, Nine Mile has not/never warned people (and their pets) regarding harmful algal blooms despite the recommendations to do so -- this is a failure in duty as stewards of the watershed toward the concerned citizens of Normandale.

Not only has Nine Mile been painfully derelict to their duty toward public safety while failing to provide any public warnings, during this same time, Nine Mile continues publicly to support the UAA Recreational-Use for Normandale water quality which fully supports swimming - swimming as defined by the MPCA's Use Support Classification for Swimming Relative to Carlson's Trophic State Index report.

Just as egregiously during this time-period, Nine Mile employee Mr. Anhorn purported to us, quote "In general, we are pleased with the results" [of Nine Mile's stewardship of Normandale].

In testimony - for the board to make of record - we know of community members who have or are currently suffering adverse health effects while in and around Normandale - as Nine Mile knows or should know.

While the stewardship of the water and concern for public safety is the most grievous failure of Nine Mile, significant other failures in integrity and lack of accountability are enumerated in the electronic correspondence, which Mr. Cutshall and Ms. Sheely have acknowledged. Integrity and accountability failures include:

- *Nine Mile contractors polluting Normandale with no accountability*
- *Nine Mile making false or misleading claims that Normandale is not an impaired waterway when of record the Minnesota Pollution Control Agency downgraded water quality to "Class 3 Industrial Use" and declared the waterway impaired in 2018 and again in 2020*
- *Nine Mile making false or misleading claims that Normandale citizens should be pleased with the benefit an increased Carp population after the drawdown*
- *Nine Mile making repeated false or misleading comparisons of Normandale to the Boundary Waters, recently suggesting that before drinking Normandale Water one should simply filter, similar to filtering water done in the Boundary Waters - I want to make painfully clear and on the record, Normandale comparisons to the Boundary Waters, and in specific the filtering analogy comparison is not only wrongful, its dangerously wrongful to suggest filtering Normandale water makes it safe for consumption. To be painfully clear, using Mountain Safety Research (MSR) Filter which can confidently and safely be used regularly in the Boundary Waters, will not filter out toxins as such, filtering is never a recommended method to purify the Industrial Use classified water or water suspected of toxicity of Normandale in order to make potable*

[Administrator Anhorn let Mr. Lockhart know he had 30 seconds of time remaining to complete his comments].

Mr. Chairman and members of the board, ask you to accomplish the following during tonight's open meeting and reap the benefits borne from integrity and accountability:

- *Make motion, pass, and ensure every board member has access to the electronic correspondence of Nine Mile & Barr Engineering from May culminating in August 2020, including the attached photographs and videos.*
- *Make motion, pass, and immediately undertake efforts to contact a trusted consultant, test Normandale's Harmful Algal Blooms, including tissue samples, as well as EPA testing Method 544 and make public a determination if Normandale is safe for recreational use*
- *Make motion, pass, and develop a timely and responsive plan to implement the recommended minimum public safety actions described in the electronic correspondence*
- *Make motion, pass, and name an individual to identify the root cause of the integrity and accountability failures at Nine Mile and make report at the next open board meeting*
- *Make motion, pass, and develop a plan to correct the Nine Mile failures on Normandale Ditch #1 using the provided electronic correspondence as a guide*
- *Make motion, pass, and immediately halt spending of any of the remaining \$1M funding for the Normandale Project, and only resume disbursement upon published plans to remedy errors made during the spending thus far.*

The benefits of taking these actions begin to repair the integrity and confidence loss by the community of Normandale and set the conditions toward improving Normandale water quality.

We welcome your questions.

Administrator Anhorn said if the Board of Managers would like to discuss these comments, the discussion can be scheduled for a future agenda. He asked if managers have any questions. No managers provided questions. Mr. Lockhart said he would provide a written copy of his comments to the District.

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

6. Hearing of Permit Applications

a) Permit #2020-67: Film Tec Parking Lot Improvements: 5230 West 73rd Street, Edina

Engineer Obermeyer noted that Louise Heffernan of Barr Engineering may be a new name to the Board and explained that her work includes permit application reviews and preparing permit review memos. Engineer Obermeyer presented the Engineer's review of the permit application for this parking lot reconstruction project located in Edina. He went into detail on why groundwater/ volume retention is not feasible on the site because of high groundwater conditions and that the volume retention provided on the site will be zero. Engineer Obermeyer pointed out that with the recent revisions of the 100-year frequency flood elevation on the site using Atlas 14 precipitation total, there has been an increase in flood elevation since original construction of the existing building. He explained why the District's low floor criteria does not apply since there are no additions or alteration to the existing on-site building proposed..

Engineer Obermeyer stated the Engineer recommends approval of the permit with the conditions as outlined in Engineer's memo, including a financial assurance in the amount of \$166,100, of which \$5,000 is for compliance with the chloride management requirements, and standard procedures regarding the necessary maintenance agreement, the District Engineer receiving a plan showing the actual flood plain on site and an as-built drawing of the proposed floodplain mitigation area.

Engineer Obermeyer responded to questions. Manager Sheely commented the applicant could look at the green space on the site to see if something could be done there to infiltrate more water. Engineer Obermeyer said he will pass that comment on to the applicant. Attorney Welch stated is it required that volume control be provided to the maximum extent practical, and the Engineer has determined the maximum extent practical is zero. Attorney Welch said if there were a voluntary measure feasible to address volume control on site, it would be reasonable to include it in the permit requirements.

Manager Peterson commented that this area is seeing redevelopment. She said that regarding the issue with close groundwater and lack of infiltration, she asked if there is an effort to take a collective look at the area to make infiltration better compared to one an individual project by project basis. Engineer Obermeyer said such work would be through the City process, and the City is the first step for developers. He noted that this area of Edina is being considered for redevelopment, and if the City prepares a redevelopment plan, it would come to the District for comment, and this review and comment process would be the best mechanism for the District to address this topic. Attorney Welch remarked that this topic could be one that Administrator Anhorn brings up with the City of Edina.

Manager Sheely moved, seconded by Manager Hunker to approve Permit #2020-67: Film Tec Parking Lot Improvements: 5230 West 73rd Street, Edina. Upon a roll call vote, the motion carried unanimously.

b) 2020-73 TRPD Nine Mile Trail Connection 169 Underpass; Minnetonka and Edina

Engineer Obermeyer said this project is the continuation of the Three Rivers Park District (TRPD) trail, and it is the final section of the trail within the District. He described the project, which extends approximately 1,500 lineal feet, and is a combination of boardwalk and bituminous trail. He went through the Engineer's permit review. Engineer Obermeyer talked about the proposed fill in the floodplain and mitigation. He explained the boardwalk would need to be constructed below the 100-year flood elevation of the creek in order to meet ADA requirements and connect to the extending bike/pederstrian crossing beneath T.H. 169.

Engineer Obermeyer pointed out on a PowerPoint slide the location where there would be excavation, resulting in the conversion of the wetland from a Type 2 to Type 3 wetland, to provide the necessary floodplain volume mitigation. He reported the excavation is considered a de minimis exemption by the Wetland Conservation Act. He noted that the Nine Mile Creek Watershed District (NMCWD) is the LGU (Local Governmental Unit) administering the Wetland Conservation Act for the project east of T.H. 169 (Edina side), and the City of Minnetonka is the LGU administering the Wetland Conservation Act (WCA) for the project west of T.H. 169. Engineer Obermeyer said the City Minnetonka in its capacity as LGU reviewed and approved the wetland impacts and fill whereas both LGU's reviewed and approved the wetland boundary and type within their respective jurisdictions.

Engineer Obermeyer talked about the variance needed for this project due to construction of 306 lineal feet of boardwalk below the 100-year floodplain of the creek. He reminded the Board that the boardwalk is considered a structure by the District.

Engineer Obermeyer said the District Engineer recommends approval of the variance and the permit. He said the actions in front of the Board are for approval of the variance request for boardwalk construction below the 100-year floodplain and approval of the permit with as-built drawings of the floodplain mitigation as proposed to be submitted to the District by the applicant.

Manager Olson commented in favor of the project. Manager Sheely asked for the District to be a better job in record keeping as to who did the WCA determinations. She said she assumed Barr Engineering did the determination on behalf of the NMCWD and wondered who did the determination on behalf of the City of Minnetonka. She voiced her concerns for residents adjacent to the project site and wondered what type of notification they received regarding the project's proposed tree removal, remarking it can be disconcerting for trees to be removed without warning in what feels like one's backyard.

Manager Sheely shared her concern about how far below the floodplain the boardwalk will be because on a trail adjacent to Minnehaha Creek near Methodist Hospital, the trail floods, leaving debris when water recedes, making the trail difficult for her to walk. She said she assumed the TRPD will be responsible for trail maintenance. Engineer Obermeyer said the proposed trail should be similar to the trail to the east of Tracy Avenue at Valley View Road in Edina. He described the height of that boardwalk and addressed Manager Sheely's concerns about the boardwalk height and the tree removal. Manager Sheely requested that going forward the permits will document who does the WCA determinations, and she asked that the District Engineer communicate to the applicant that the District is concerned about trees being removed without residents being notified. Engineer Obermeyer said he will notify the applicant that

the Board raised this concern. Administrator Anhorn said that this project included three separate WCA decisions, and it would be a lot of documentation to include those decisions in the Board's meeting packet

Manager Olson moved, seconded by Manager Peterson to approve the variance request for the TRPD Nine Mile Trail Connection 169 Underpass as presented in the Engineer's Report. On a roll call vote, the motion was approved 5-0.

Manager Hunker moved, seconded by Manager Peterson to approve Permit 2020-73 for the TRPD Nine Mile Trail Connection 169 Underpass as presented in the Engineer's Report. On a roll call vote, the motion was approved 5-0.

7. Treasurers Report

a) Sunram Pay Application for Non-Profit Site BMP Retrofit Projects

Administrator Anhorn stated the pay app for the non-profit site BMP retrofit projects is for the amount of \$206,693.07, including a small change order for redesign of one of the sites and which was within his change order authorization ability granted to him by the Board.

b) Sunram Pay Application for Warranty Work and Maintenance on Edina Streambank Project

Administrator Anhorn said the Edina Streambank work had a change order in the amount of \$614.75, which was within his change order authorization ability granted to him by the Board. Engineer Kieffer noted that she and Attorney Welch determined a change order isn't required for the additional work in the amount of \$614.75 because the change was a change in quantities.

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

8. Administrator's Report

Administrator Anhorn noted his report is in the packet, and he noted that the dates for the Storm Con webinar are listed incorrectly in his report and the correct dates are September 9th and 10th. He highlighted the news that Lauren Foley recently finished her graduate studies, and he thanked District intern Megan Jester for her work this summer and her last

day is Friday, August 21. Administrator Anhorn mentioned the deadline for early bird registration for the Water Resources Conference, being held virtually, is September 25th and for Board members to let him know if they want to attend, if they haven't already let him know. He noted there may be things coming up related to the COVID Family First Coronavirus Response Act and federally funded sick time for reimbursements for care.

Administrator Anhorn reported the District has a budget public hearing scheduled for Thursday, September 3rd at 5:30 p.m., and he said there may be a permit and a few other items also on that meeting agenda.

Administrator Anhorn summarized the District's August 6th Special Meeting discussion and the District's resulting position on cyanobacteria and cyanotoxin monitoring and analysis. He said the District discussed that if during the course of the District's routine lake monitoring an algal bloom or potential algal bloom is seen, the District will do an algal enumeration and identification and provide that information to the City to conduct public communication or notification postings. Administrator Anhorn stated that the District's position regarding receiving a citizen report outside of the District's routine monitoring, is to refer those people to the Minnesota Pollution Control Agency (MPCA) and the Minnesota Department of Health (DOH), which have phone numbers and systems in place for receiving such reports. He noted the District has on its website the contact information for the MPCA and DOH regarding such reports.

Administrator Anhorn provided lab results from the test for blue green algae that was discussed at the Board's last meeting. He reported that the cyanotoxin test for the stormwater basin and the lake came back negative, and the results showed there was blue-green algae present in the lake and in greater amounts in the stormwater basin. He said he has forwarded the results and information on to the City of Bloomington, and the City decided not to post communications about the presence of blue-green algae based on the fact that the stormwater basin is not designed for recreational use or bodily contact. Administrator Anhorn reported the District has received a Data Practices Act request, and the District has initiated the process. He said the request is for all District information, meaning data and communications, related to the North Branch, South Branch, and Normandale Lake and from 2004 to now.

Administrator Anhorn announced the District has been awarded a \$96,000 grant for the Rosland Park Stormwater Filtration BMP Project. He reported he submitted a grant application for a Minnesota Board of Water and Soil Resources (BWSR) Clean Water Fund grant for \$550,000.

9. Unfinished Business

a) Rosland Park Stormwater Filtration BMP Project

i. Draft Resolution 2020-05 Ordering Rosland Park Stormwater Filtration BMP Project

Administrator Anhorn reminded the Board that the District held a public hearing on August 6th to receive comments on the Rosland Park Stormwater Filtration BMP proposed project. He noted no public comments were made at the hearing, and he described questions the District received through other channels. Engineer Kieffer provided details on the Engineer's recommendations for addressing project comments from the City of Edina.

Attorney Welch explained the action in front of the Board is to adopt the resolution ordering the project and authorizing the President to enter into agreement with the City of Edina. He reported that the City of Edina authorized the agreement at its City Council meeting on August 18.

Manager Cutshall provided ideas for the District to consider for the project, including recirculating water from Lake Cornelia as a means of providing for times of low water. Engineer Kieffer said it sounds like the Board is interested in investigating these ideas further, and Barr Engineering could put together some initial ideas and costs and present the information to the Board.

Administrator Anhorn pointed out that if new project components are added to the project, the related costs will change the numbers identified in the resolution, but the Board can amend the resolution if the Board ends up taking action at a future meeting to make project changes. Manager Sheely spoke in favor of the District implementing as part of the project the means to address how the system can operate in periods of low water or drought. She also commented that the agreement contains one instance of a fifteen-day review period, and she asked the staff to consider for future agreements that turn-around times may be slower due to COVID-19.

Manager Olson moved, seconded by Manager Hunker to adopt Resolution 2020-05 Ordering Rosland Park Stormwater Filtration BMP Project as presented in the meeting packet and authorize the Board President to enter into agreement with the City of Edina.

ii. Draft Cooperative Agreement with City of Edina

[Action taken as part of agenda item 9ai.]

b) Update on Current NMCWD Capital Projects

Administrator Anhorn provided brief updates on the District’s current capital projects.

c) 2021 Draft Budget

Administrator Anhorn reported about the Board’s August 6th Special Meeting discussion of the 2021 draft budget and levy request. He highlighted that the District is proposing a 2021 budget of \$3,956,250 and a levy of \$2,600,000, and noted the Board’s budget public hearing is Thursday, September 3.

10. New Business

a) Cost-Share Grant Program

Program and Project Manager Sniegowski pointed out there is a memo in the Board packet detailing the policy recommendations that the Cost-Share Grant Program ad hoc sub-committee is putting forth for the Board’s consideration. She summarized the program, its history, eligibility for the grants, the number of grants provided by the District since the program’s inception in 2008 as well as the types of grants awarded and cities where grants have been awarded.

Program and Project Manager Sniegowski presented the recommendations of the sub-committee, including moving forward with two new grant tracks: native habitat restoration grant tracks and stewardship grants. She explained that if the Board approves the District’s 2021 budget as currently proposed, the cost-share grant program would have \$300,000 in total funding available. Program and Project Manager Sniegowski said the Committee is asking the Board to approve designating \$50,000 of the 2021 Cost-Share Program budget to habitat restoration grants.

Program and Project Manager Sniegowski said the Committee is asking the Board to take policy action to lower the maximum award for habitat restoration grants so that the maximum residential grant is \$3,000, the maximum association grant is \$5,000, and the maximum commercial/ nonprofit/ government grant is \$10,000. Program and Project Manager Sniegowski reported the Committee recommends the habitat restoration grants require a minimum of 50% matching funds for all costs and require projects to be completed within two years. She said project start dates would be in spring and fall and applications deadlines would be in spring and fall.

Program and Project Manager Sniegowski highlighted that the Committee recommends vegetation and invasive species removal not be eligible for grant funds, but

costs for such work may be used as/toward the grant match. She noted that bee lawns and fescue lawn conversions would not be eligible for habitat restoration grants. She explained the Committee recommends that applications for grants \$5,000 and under are administratively approved and grants over \$5,000 will go to the Board with staff recommendations. She added that the Committee recommends leaving the Stewardship grants review process as it is currently. Program and Project Manager Sniegowski explained the Committee is recommending the Board proceed with these recommendations as a two-year pilot. She responded to manager questions.

Manager Sheely moved, seconded by Manager Olson to adopt the native habitat restoration grants policies based on the recommendations of the ad hoc habitat restoration subcommittee. On a roll call vote, the motion was approved 5-0.

b) Update on Wetland Analysis Inventory Study

Administrator Anhorn said this item doesn't need immediate action. The Board consented to defer this item to the Board's next meeting.

11. Engineer's Report

Engineer Kieffer noted an update to the report, explaining she updated the second paragraph on page one, on the topic of cyanobacteria testing. She said the update provided more details about the two labs the samples were sent to for analysis.

12. Attorney's Report

Attorney Welch had no additional comments to report.

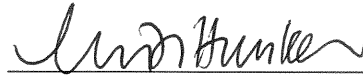
13. Managers' Reports

Manager Sheely commented on the salt virtual presentation put on by Fortin Consulting, sharing it was an amazing online learning experience. She noted some of her takeaways from the program and said she hopes the District's Green Corps member could get more involved in the topic area of water softeners.

14. Adjournment

It was moved by Manager Olson, seconded by Manager Hunker to adjourn the meeting at 9:24 p.m. Upon a roll call vote, the motion was approved 5-0.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Erin Hunker", written over a horizontal line.

Erin Hunker, Secretary

