

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

WEDNESDAY, DECEMBER 21, 2022

1. Call to Order of the Regular Board Meeting

President Bob Cutshall called the Nine Mile Creek Watershed District Board of Managers regular meeting to order at 7:00 p.m. The meeting was held at the NMCWD office, Discovery Point, 12800 Gerard Drive, Eden Prairie, MN.

Managers Present: Grace Butler, Bob Cutshall, Eric Hunker, Peggy Kvam, and Larry Olson

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

Staff Present: Randy Anhorn (Administrator), Brett Eidem (Natural Resources Project and Planning Manager), Erica Sniegowski* (Program and Project Manager), and Gael Zembal* (Education and Outreach Coordinator)

Others Present: Brian Boll and Joel Livingood (Interlachen Country Club), and Deric Deuschle (SEH, Inc)*

*Indicates attended virtually

2. Approval of Regular Meeting Agenda

Administrator Randy Anhorn noted that item 10a – Diversity, Equity, and Inclusion in Water Management will be shifted to the January 5, 2023, workshop. He also moved item 5 - Staff Updates, to follow item 6 – Hearing of Permit Applications.

Manager Olson moved, seconded by Manager Kvam to approve the meeting agenda as modified. Upon vote, the motion carried.

3. Public Open Forum

a. 2023 Budget and Levy – Public Comment

Mr. Anhorn noted this is the second opportunity for people to come in and comment on the district’s 2023 budget and levy. He reminded the board that it held a public hearing on the district’s 2023 budget and levy on September 1, 2022 and received no comments on the budget of \$4,594,000 and levy of \$2,800,000.

President Cutshall called for public comments. Mr. Anhorn noted no members of the public are in attendance.

b. General Interest

No members of the public were in attendance.

4. Consent Agenda

a. Draft Minutes of November 16, 2022, Board Meeting

Mr. Anhorn noted Manager Grace Butler provided him with a few non-substantive edits.

Manager Butler moved, seconded by Manager Olson to approve the minutes of November 16, 2022, meeting. Upon vote, the motion carried.

b. Wetland Buffer Guidance Document

Mr. Anhorn reported that Manager Peggy Kvam, Manager Butler, and Erica Sniegowski provided comments on the draft buffer guidance document, and staff will review and provide a revised document next month.

c. Barr Engineering 2023 Rates Letter

Janna Kieffer stated the 2023 rates provided in the letter from Barr in the meeting packet are in alignment with the existing agreement between Barr Engineering and the district. Michael Welch stated no amendment to the agreement between Barr and the district is needed.

6. Hearing of Permit Applications

a. 2022-103 Interlachen Country Club Golf Course Renovation, 6200 Interlachen Blvd., Edina

Ms. Kieffer presented the NMCWD engineer's review of the application from Interlachen Country Club for a permit for renovation of its golf course, including conversion of turf grass to bent grass, updating several tee boxes, and improving greens, cart paths, and landscaping. She noted that the total proposed disturbed area is roughly 15.3 acres. Ms. Kieffer noted the project will decrease impervious surface on the property by approximately 46 percent

Ms. Kieffer reported that the proposed project conforms to the requirements of the NMCWD floodplain rule. She said for the waterbody crossings rule, the applicant will need to provide a draft declaration providing for maintenance of the drain pipe, and then will need to execute the agreement after district approval.

Ms. Kieffer said regarding wetland buffer requirements, the applicant completed an assessment of the value of the five onsite wetlands and all were determined to be medium value. She noted that of the five wetlands on the property, buffer is required on four. As detailed in the report, the proposed buffer does not meet the minimum width on Wetland 12 and Wetland 16, and does not meet the average width on Wetland 16. The proposed project provides more buffer than the district requires overall. Ms. Kieffer said the applicant has requested a variance from compliance with the buffer-width criteria.

Ms. Kieffer said NMCWD Rule 3.4.5 requires permanent freestanding buffer monuments at the buffer upland edge, and the applicant is seeking a variance to instead use flush markers.

Ms. Kieffer said the district requires buffer areas to be planted with native vegetation and maintained to retain natural resources and ecological value. Subsection 3.4.6 also prohibits use of fertilizer in buffer areas. The applicant proposes a seed mixture of fescue grasses that are low maintenance and weather tolerant. Ms. Kieffer said the grasses are not native and will require periodic maintenance including periodic cutting and fertilizer application. She said the applicant is requesting a variance from compliance with Rule 3.4.6.

With regard to the applicant's buffer-width variance request, Ms. Kieffer stated the NMCWD engineer finds that the buffer shortfall on Wetland 12 presents water quality degradation risk to the water resource in comparison to the establishment of the required minimum buffer. She said the shortfall is primarily due to the proposed modification of an adjacent tee box. Ms. Kieffer said discharge rates to the wetland will be reduced, the banks do not currently exhibit erosion such that the lack of required buffer is not likely to exacerbate conditions, and that the shortfall is not likely to significantly degrade the resource.

Ms. Kieffer said the engineer finds that the buffer shortfalls along Wetland 16 present water quality degradation risk in comparison to the establishment of the required buffer area. She explained the shortfall is primarily due to the existing fairway location within the required buffer area. She explained that because no impervious surface is tributary to the noncompliant buffer area, discharge rates will be maintained, concentrated flow across the bank will be reduced resulting in low erosion potential, drainage boundaries will not be altered, and flood risk will not be increased. She summarized that the engineer finds the shortfalls in buffer are not likely to present significant risk or likely to significantly degrade the resource or change the character of the resource.

Manager Butler said the buffer on Wetland 12 should be planted with something native with deeper roots instead of fescue. Ms. Kieffer commented that runoff in this area will only occur in a big storm, so there should be vegetation that is healthy and dense enough to slow down the water, and that fescue has deeper roots than other turf grass. She said she does not have a concern of a significant adverse impact in the area, but there is a lost opportunity to create habitat – one of the other purposes of the buffer requirements.

Manager Kvam said fescue forms a dense mat and does not erode with runoff, and a lot of natives are not that dense and could be wiped out in a big storm event.

In response to a question from Manager Butler, Mr. Welch said the location of the buffer monuments and maintenance requirements will be memorialized in the recorded declaration required as a condition of approval.

Ms. Kieffer said the NMCWD engineer finds that noncompliant monumentation presents water quality degradation risk for the water resources as compared to compliant monumentation. She said the variance submittal indicates strict mowing practices will be implemented. Ms. Kieffer said the engineer finds that if the maintenance practices are documented in an approved maintenance plan, which will be required, and the buffer area is not reduced, the risk associated with monuments flush to the ground is not significant. She reiterated the use of monumentation is required and that other opportunities for education and outreach could and should be considered by the applicant, such as an educational presentation to members or other educational information and signage in common areas.

Ms. Kieffer said the NMCWD engineer finds that the proposed noncompliant buffer vegetation, which includes non-native species requiring fertilizer and mowing for maintenance, presents water quality degradation risk to the water resources in comparison to the establishment of the buffer requirements. Ms. Kieffer reported the NMCWD engineer determined the applicant's assertions with regard to unique conditions inherent to the property and undue hardship present nontechnical matters better assessed by the NMCWD managers.

With regard to the proposed use of fertilizer in the buffer, Brian Boll, Interlachen director of golf course and grounds, said the intention is to use the fertilizer to help with vegetation establishment. He said it is documented that fine fescue performs under low-fertility regimes, such as less than one pound of nitrogen annually or less. He said once the grass is

established, he will not do any fertilizer applications without documented soil tests and nutrient deficiency. Mr. Boll said after that, he would do guided applications. He stated that with the fescue located closest to the pond, there won't be any fertilizer application.

President Robert Cutshall asked how much less water will be used to maintain the course due to the proposed changes. Mr. Boll said across the golf course, by changing the greens and tees to bent grass, he anticipates a water savings of anywhere between five million to 10 million gallons annually. Joel Livingood, Interlachen general manager and CEO, pointed out there also will be a conversion of some irrigated areas to drip irrigation.

Manager Butler asked why the wider areas around Wetland 16, away from the playable area of the course, can't be planted with natives. Mr. Boll said the design is trying to achieve golf course consistency on both sides of the road and the goal of restoring the course to a historical design. He said tremendous thought went into the proposed design. Manager Butler said she would like to see the wider areas around Wetland 16 to be native vegetation, and she will vote no if this piece isn't looked at and improved.

Mr. Boll said the course is proposing buffer along the shoreline of Mirror Lake on Interlachen property, where it is not required by the district. Mr. Livingood said the voluntary memo demonstrates there are no areas in the proposed project without buffers along the wetlands. He said the applicant heard the district's message that it does not want areas with no buffer. Ms. Kieffer said outside of the permit discussion and from a wetland protection standpoint she is pleased to see the proposed voluntary buffer. Mr. Welch stated that voluntary creation buffer in one location does not offset shortfall in another. One resource cannot be protected in lieu of another as a way to support a variance.

President Cutshall said he does not find that the variances meet the undue hardship standard because the changes to the course are within its ability to modify, but that the club has made sufficient efforts to mitigate the adverse impact from the shortfall from requirements, as long as additional education efforts are undertaken. The managers discussed with Interlachen representatives opportunities to educate members and others about the values and benefits of buffers, given that the signage proposed will not be as effective as stand-up signs required by the district.

Manager Butler reiterated that she will vote 'no' because she finds that the applicant could provide better vegetation, in part, around Wetland 16.

Manager Olson moved, seconded by Manager Kvam, to approve the three variances on the condition that Interlachen propose an alternative education program for approval of the NMCWD administrator. Upon vote, the motion carried 4-1 (Manager Butler voted against).

Manager Olson moved, seconded by Manager Hunker, to approve Permit 2022-103 with the recommended conditions and stipulations. Upon vote, the motion carried 4-1 (Manager Butler voting against).

5. Staff Updates

Manager Butler clarified the community kick-off meeting for the Birch Island Water Quality Study will be held on Monday, January 9, not January 6 as listed in the staff report.

Gael Zembal reported the NMCWD calendars will be delivered and distributed next week. Ms. Zembal reported the district is partnering with a group who will partner with nature centers to help increase environmental literacy of English-language learners in the area. Ms. Zembal said the group is pursuing a grant from the National Science Foundation and the district will be listed on the application as one of the potential partners.

7. Treasurer's Report

- a. US Site Works Pay Application #3 for the Lynmar Basin Stormwater Retrofit Project**
- b. Pember Construction Pay Application #9 for the Rosland Stormwater Filtration BMP Project**
- c. Minnesota Native Landscapes Pay Application #4 for Discovery Point Raingarden and Phase 3 Restoration**

Ms. Kieffer said the US Site Works pay application #3 is for \$209,511.10 for a number of items such as storm sewer work, erosion control, and offsite sediment disposal. Mr. Anhorn said he sent the City of Edina an invoice for the sidewalk , and the district will invoice the city for the street and infrastructure change in 2023. Ms. Kieffer said she recommends payment of pay application #3.

Ms. Kieffer said Pember Construction submitted a pay application #9 for the Rosland Park Stormwater Filtration BMP Project. She said the request is for half of the retainage, and she is recommending payment of \$14,310.07. Mr. Welch said retainage is not due until the project reaches substantial completion, but the engineer is recommending payment because the final electrical work needed is a

very small cost and the work has been delayed by supply-chain issues. Ms. Kieffer confirmed that payment for all electrical work has already been issued.

Ms. Kieffer reported the Minnesota Native Landscapes pay application is for the Discovery Point Raingarden and Phase 3 Restoration for \$6,840 and she recommends payment. Brett Eidem added that this is the final payment to close out the agreement. He said in the future the district will pursue a more typical three-year maintenance program for the property.

Manager Butler moved, seconded by Manager Hunker, to pay the district's bills, including US Site Works for \$209,511.10, Pember Construction for \$14,310.07, and Minnesota Native Landscapes for \$6,840. Upon vote, the motion carried.

8. **Administrator Report**

a. **Correspondence**

Mr. Anhorn reported that first and second interviews have been conducted for the regulatory manager position and he has extended an offer. He said the Citizen Advisory Committee applicants will be interviewed next week and staff will bring recommended appointments to the managers in January.

9. **Unfinished Business**

a. **District Rule Revision**

Mr. Anhorn noted the district held a public hearing on November 16, 2022 and issued the proposed rule revisions for the statutory 45-day comment period. The district has not received any comments that would make staff question putting the rules forward for adoption.

Manager Butler moved, seconded by Manager Olson, to adopt Resolution 22-11 Adopting Amendments to the Nine Mile Creek Watershed District Rules and Appending the Amended Rules to the Water Management Plan. Upon roll call vote, the motion carried 5-0.

10. **New Business**

a. **Bush Lake Shoreline Vegetation Management**

Mr. Anhorn said NMCWD has been partnering with the City of Bloomington in 50-50 partnership since 2001 to manage invasive species around Bush Lake. He explained the district's three-year cooperative agreement with the city will expire March 31, 2023, and the district's three-year agreement with

Landbridge Ecological expired December 3, 2022. He said the cost for Landbridge services is approximately \$5,200 per year. Mr. Anhorn reported the city would like to continue the vegetation management work and 50-50 partnership.

Manager Kvam moved, seconded by Manager Hunker, to authorize the administrator to enter into a cooperative agreement with the City of Bloomington to continue jointly managing invasive species around Bush Lake for 2023 to 2025 and solicit quotes for the continued work. Upon vote, the motion carried.

In response to a question from Manager Butler, staff will look into signage at Bush Lake

b. 2023 Draft Workplan

Mr. Anhorn said he will bring the draft workplan to the January meeting.

c. MAWD Annual Conference

Mr. Anhorn said the board can debrief the annual conference of the Minnesota Association of Watershed Districts at its January workshop.

11. Attorney Report

Mr. Welch stated that a court decision has been made with regard to manager appointments, but the decision will not affect the NMCWD managers.

11. Managers' Reports

Manager Butler said Jill Crafton, a manager of Riley-Purgatory-Bluff Creek Watershed District, suggests the NMCWD and RPBCWD hold a joint open house with legislative representatives in May or June.

12. Adjournment

It was moved by Manager Olson, seconded by Manager Hunker, to adjourn the meeting at 8:57 p.m. Upon vote, the motion carried.

Respectfully Submitted,



Grace Butler, Secretary