

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

**WEDNESDAY, JANUARY 15, 2020**

**Call to Order**

Chair Jodi Peterson called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, January 15, 2020, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Bob Cutshall, Erin Hunker, Larry Olson, Grace Sheely and Jodi Peterson

Managers Absent: None

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

**Agenda**

Administrator Anhorn requested two additions to the agenda: Under New Business, Item D. Administrative Amendment to Water Management Plan and Item E. Amendment to Service Agreement with Barr Engineering.

**Reading and Approval of Minutes**

The Chair called for review of the minutes of the Regular Meeting of November 20, 2019.

**Manager Sheely moved, seconded by Manager Cutshall, to approve the minutes of November 20, 2019 as presented. Upon a vote, the motion carried.**

The Chair called for review of the minutes of the Regular Meeting of December 18, 2019. The Managers provided minor grammatical changes to staff.

**Manager Hunker moved, seconded by Manager Sheely, to approve the minutes of December 18, 2019 subject to minor, nonsubstantive corrections. Upon a vote, the motion carried.**

**Public Open Forum**

There were none.

## Consent Agenda

- A. **Administratively Approved Permits**
- B. **Permit Inspection Report**
- C. **2019 Annual Communications**
- D. **2020 Annual Business Items and Designations**
  - i. **Adoption of Schedule of Board of Managers and CAC Meetings**
  - ii. **Appointment of CAC and TAC Members**
  - iii. **Naming of District Bank and Permit Security Depository**
  - iv. **Naming of Official Newspaper**
  - v. **Review of Permit Fees and Financial Assurances**
  - vi. **Insurance Coverage**
  - vii. **Review Employee Policy and Governance Manual**

Administrator Anhorn referenced a City of Edina permit, 2019-143, included in the administratively approved permit memo. He said that in working with the city on the permit, there is a possibility for the District to contribute stormwater facilities fund money to increase the size of the proposed underground infiltration facility. He said he would address the need for an administrative amendment to the District's Water Management Plan in the added agenda item D under New Business.

**Manager Olson moved, seconded by Manager Sheely, to approve the Consent Agenda. Upon a vote, the motion carried.**

## Hearing of Permit Applications

- A. **Permit #2019-142: Repair and Maintenance of a Reach of the District's Lower Valley of Nine Mile Creek Project; 2251 Overlook Drive: Bloomington**

Engineer Kieffer presented the permit request and proposed plans from the City of Bloomington. She said the proposed project involved maintenance repairs at two locations in the most downstream section of Nine Mile Creek in the lower valley of the creek on park property owned by the City. She said that this section of the creek is impacted by the backwater and flood conditions of the Minnesota River. She said that in the spring and summer of 2019 the area was inundated by high-water conditions of the river for several months and as the inundation receded and with the saturated underlying soils of the banks of Nine Mile Creek, two erosion areas developed that now require stabilization. She said that without the stabilization of the erosion areas, the continued erosion could eventually impact the walking trail and the stability of the valley wall, which is more than 100 feet high.

Engineer Kieffer further stated that the proposed stabilization is a combination of fieldstone toe boulders, fieldstone riprap, root wads and vegetated geogrid to comply with the requirements of the District shoreline and streambank improvement rule, Rule 7.0. She added that similar methods of stabilization have been used in other areas of the lower valley that have required maintenance since the 1991 lower valley stabilization project was completed.

Engineer Kieffer stated that the proposed stabilization will restore the creek location and cross-section to the conditions that existed prior to the 2019 high water, and will involve the placement of 424 cubic yards of fieldstone boulders, root wads and rip-rap below elevation 710 M.S.L., the 100-year frequency flood elevation of the creek. The flood elevation of the Minnesota River, a backwater and flood fringe of the river at this location, is 725 M.S.L. She said that District Rule 2.3.2, requires that compensatory storage be provided for the placement of fill within the floodplain, but the City is requesting an exception because the fill will not result in a reduction of flood volume as compared to pre-2019 high-water conditions. She stated that in light of the unique hydrodynamics in this area, the bank stabilization provides better natural resources protection than allowing the continued sedimentation of the creek and river, and the engineer finds that substantial evidence in the record for approval of an exception for the proposed stabilization.

Administrator Anhorn noted that when the stabilization project was undertaken in 1991, it was with the understanding that the creek would be able to naturally meander within the confines of the valley walls without encroaching on or destabilizing the valley walls. He said that it was expected at the time that ongoing maintenance would be required. He said that as part of the project's maintenance agreement, City and District staff annually inspect the stretch of the creek where the work had previously been done to identify areas that may need to be repaired. He said the need for the repair of these areas was identified during the fall 2019 inspection.

Chair Peterson asked if the outlet for Nine Mile is natural or had ever been moved.

Engineer Kieffer was not aware of any major changes in location of the Nine Mile Creek confluence with the Minnesota River, other than natural meandering and/or channel movement.

Chair Peterson stated that the need for repairs has happened more than once, and with the changes in precipitation patterns she wondered if this would start happening more often.

Engineer Kieffer noted that the District had been involved with the City of Bloomington in repair projects every so often in the past several decades, but the repairs have not usually been in the same location. She said that to her knowledge, this specific area has not needed repairs to date and the erosion issue that occurred in 2019 is more related to the Minnesota River as opposed to increased flows of the creek.

Chair Peterson agreed that the site needs to be stabilized, but wondered if the District needs to revisit the issue and look at overall costs of past repairs and the ongoing need for repairs in the area.

Engineer Kieffer agreed it would be worth pulling together a summary, then having a discussion with the Board.

**Manager Sheely moved, seconded by Manager Cutshall, to approve the exception from Rule 2.3.2 due to the unique hydrodynamics of this area and the potential for further degradation of the integrity of the banks, threatening adjacent infrastructure, as presented in the engineer's review. Upon a vote, the motion carried.**

**Manager Hunker moved, seconded by Manager Sheely, to approve the permit application No. 2019-142 with the conditions recommend by staff. Upon a vote, the motion carried.**

Engineer Kieffer asked if the Board of Managers wanted staff to pull together a presentation in the future about the entire lower valley project, including initial construction and subsequent repairs.

Manager Sheely asked for an overview of the work completed, cost, and the options that were undertaken and/or rejected.

The managers concurred, and asked the engineer to prepare a report for presentation at a future meeting.

### **Treasurer's Report**

Treasurer Cutshall submitted the report, noting that December expenses were usual.

He provided a general overview of financial performance for the year, that showed expenditures for administration at 23 percent under budget; programs at 15 percent under budget; and capital projects at 75 percent under budget. He stated that the shortfall in capital projects had to do with delays and projects happening over multiple years. The result is another \$800,000 added to reserves.

Administrator Anhorn mentioned that unassigned reserves were \$300,000 less than they were at the end of 2018.

Manager Sheely asked for more detail on the 52 percent overall shortfall from budget. She said that it may be beneficial to form a sub-committee or permanent group, or brainstorming at an upcoming workshop, to look at what was not being spent. She said that as a steward of public tax dollars, the board needs to be looking at that.

Administrator Anhorn said the main reason was carryover for capital projects that take multiple years to complete. He cited the Cornelia Lake project, which was levied and budgeted for, but due to weather conditions, the in-lake alum treatment was postponed. He said the same was true for the Pentagon Park flood projects, where we have yet to find traction for partnerships with the cities. He added that in some cases the budgeted amount was carryover money from past levies and/or collected fees like the repair and maintenance, and stormwater facility fund line items. He added that the overall budget and levy amounts for 2019 are different, and expenditures compared to the levy show expenditures at roughly 80 percent.

Treasurer Cutshall continued, noting that annual revenue was \$2.9 million. If administration and programs were pulled out, then \$1.2 million was left for capital projects, plus the money left in reserves.

## **A. Year-End Budget Discussion**

Administrator Anhorn provided a brief review of where and why individual budget line items were over or under budget. He highlighted the permit review line item that was 83 percent over budget and stated that the reason was largely an increase in the number and complexity of permit applications in 2019 as well as an increase of past permits seeking to close out where as-built drawings need to be reviewed. He also mentioned, that due to the hire of a permit coordinator, inspection costs have decreased and as the position evolves, he hopes the review costs will follow.

Administrator Anhorn highlighted that the education expenditures were substantially under budget and much of that was due to budgeting for numerous events and products in 2019 as part of the 60<sup>th</sup> Anniversary celebration when, due to limited staff, the District was not able to conduct all of the programs and events staff had contemplated.

Project and Program Manager Sniegowski stated that, for example, interpretative signs were budgeted for, but staff did not have the capacity to get it completed.

Administrator Anhorn said that as a result, the education and outreach budget was scrutinized during the 2020 budget process and reductions were made to several areas.

In response to a question from President Peterson, Administrator Anhorn explained the unspent funds designated for the Edina streambank stabilization would be moved to capital reserves and used for repair, maintenance, other projects, or to maintain a flat levy.

Manager Sheely stated that unspent capital funds should be used to accelerate implementation of capital projects.

Administrator Anhorn said that it is difficult to just accelerate projects due to the process the District needs to identify, order, design, bid and award for a project before a shovel can go in the ground.

Chair Peterson stated that she did like the idea of keeping the annual levy relatively flat.

Administrator Anhorn distributed a spreadsheet detailing the District's assigned and un-assigned reserves. He highlighted the amounts levied and expended for specific capital projects. He stated that the difference between the levied and expended amounts were considered assigned reserves that were to be used for specific projects they were levied for, or if there were remaining funds following the completion of the project, they could be re-assigned as capital reserves and used for future capital projects. He highlighted assigned noncapital project funds such as collected financial assurances, unearned income, retainage and others that were not really District funds because the District is obligated pay out. He said the remaining amount between District's total cash assets and the assigned amounts was considered un-assigned reserve. He said that the District's Fund Balance Policy found in its Governance Manual, provides direction on how much un-assigned reserve the District should maintain. He said that the purpose of the policy is to make sure that the District has funds on hand to cover operational and unexpected costs.

Manager Cutshall stated that the Fund Balance Policy of 62 percent of the next year's budget, not the revenue, is excessive.

Chair Peterson said that some of the reason for having that amount in reserve is to be able to be flexible and add projects or be partners on projects when opportunities arise, like regional stormwater management facilities, or if something catastrophic happened like the 1987 flood. She talked about encouraging Bloomington and Edina to move forward on projects in the Pentagon Park/Border Basin Area.

Manager Cutshall said that he looked at it a bit differently. He said that he sees what the District has in the bank, subtracts the amount the District is obligated to pay out, and in the end feels that what the District has in reserve is too high. He stated that the District needs to get more projects in the ground.

Attorney Welch noted the extra money would be spent very quickly if the District started buying land for resource and flood-protection purposes.

Administrator Anhorn stated that the best time for this discussion might be before the 2021 budget process begins in June. He said that it would be a topic that comes out of the board retreat that could be addressed at a subsequent workshop where options for accelerating capital projects could be discussed as well as potentially prompting a change to the Fund Balance Policy.

## **Staff Reports**

### **A. Permit and Water Resource Coordinator**

Permit and Water Resource Coordinator Foley said that 2019 was a record for number of permits and 2020 was already ahead of schedule. She had spoken with an employee from the Minnesota Department of Transportation's erosion group about how the agency handles requiring biodegradable erosion products.

Chair Peterson asked how the District could accelerate this requirement.

Engineer Kieffer said the District's design projects were using biodegradable netting and thought it was not an unreasonable ask permittees' contractors to do the same.

Administrator Anhorn said the District would start by adding it as a preferred practice and then the next time the District undertakes a rule revision, it could be added as a requirement.

Attorney Welch said there were a couple of options to adding the provision as a requirement. He said that generally, the rules are performance standards, not design criteria. He suggested writing a performance specification that could only be met by using biodegradable netting.

Permit and Water Resource Coordinator Foley further provided an update on staff's work on revising the cost-share grant applications and said that the cost-share application webpage was live and the feedback was positive.

**B. Education and Outreach Program Coordinator**

Education and Outreach Coordinator Zembal briefly touched on education programs. She said that while a few events were cancelled due to weather in 2019, she was very pleased with the overall the number of events and reach of the programs. She is planning to meet with Program and Project Manager Sniegowski to start the process of planning for 2020 events, key topics and audiences to try to address. She said there will be a gathering to recognize the District's volunteers at 6:30 p.m. on February 5.

Ms. Zembal added that she has been working with a group of watershed partners to look at translating District materials into other languages.

The Education and Outreach Coordinator also shared a map showing the residence of all Citizen Advisory Committee applicants and returning members. Manager Sheely thanked her for doing a phenomenal job getting the word out about Citizen Advisory Committee applicants.

**C. Program and Project Manager**

Program and Project Manager Sniegowski said she did not have anything to add beyond what was in her report in the meeting packet.

**D. Administrator**

Administrator Anhorn talked about the Lake Smetana UAA community stakeholder meeting and the upcoming Technical Advisory Committee meeting. He noted that Hennepin County is restarting its wetland restoration/banking project at Glen Lake.

Administrator Anhorn provided an update on the recent discussions held by the Board retreat ad-hoc group. He said that the committee met prior to this evening's meeting, and he and staff had also met with Leslie Yetka, City of Minnetonka, to discuss options. He said that the group's initial thoughts were that the retreat would have a phased approach. He said that the emphasis on the first get together would be on how the District got where we are, discuss the various roles and interactions of the Board and staff and end with team/trust building. Administrator Anhorn said possible retreat dates were March 5<sup>th</sup> or April 7<sup>th</sup> from 8:30 a.m. to 12:30 p.m.

The Board set Tuesday April 7, 2020 from 8:30 a.m. to 12:30 p.m. for the retreat.

Administrator Anhorn then stated that subsequent workshops would be used to address topics or ideas that come out of the initial retreat.

**i. Correspondence**

Attorney Welch noted the letter from Redpath and Company concerning the annual audit.

Attorney Welch also made mention that the IRS mileage reimbursement rate for 2020 went down to 57.5 cents per mile.

**Unfinished Business**

**A. Non-Profit Stormwater BMP Project Estimates**

Program and Project Manager Sniegowski provided background on the project and said staff would issue the solicitation for bids shortly. She said that the design plans were complete for rain gardens at the five individual project sites. She shared the engineer's opinion of probable cost of \$188,144 and said that staff would bring the results of the bid back before the board at the February 19 meeting.

Manager Cutshall asked about the expected performance of the rain gardens with regard to phosphorus removal and stormwater-volume storage.

Engineer Kieffer said that as is often the case for smaller urban retrofit projects, the costs were on the high side of the range in terms of dollars per pound of phosphorus removal. She talked about the many design constraints involved, including how much water you can get to a green space to be used for a rain garden in retrofit situations like those proposed.

Program and Project Manager Sniegowski talked about the benefits of people seeing them and then thinking about completing one for their home or business.

Manager Sheely envisioned a bus tour of the projects and hoped that could occur in 2021.

**New Business**

**A. Election of Officers**

Administrator Anhorn said that in past years, the Board had decided to consider electing a new slate of officers at the annual business meeting in January of each year. He further highlighted the basic roles of each office.

Chair Peterson noted her Board of Manager term will be up in September 2020, and she would not be seeking reappointment.

Manager Olson asked if there were specific rules regarding who held each office.

Attorney Welch explained that the four officers, president, vice president, secretary and treasurer must be held by four different managers.



The Board of Managers discussed keeping the positions the same and revisiting the topic in April and appointing a new chair prior to Chair Peterson leaving.

**Manager Sheely moved, seconded by Manager Olson, to maintain the current officers and revisit the topic at the Board’s April regular meeting. Upon a vote, the motion carried.**

**B. Update Special Meeting Fee**

Administrator Anhorn explained that due to the increase in the per diem rate, the cost of a special meeting will now exceed the current fee of \$750, which was adopted in 2006. The recommended new fee is \$1,500.

Chair Peterson asked what made up the \$1,500.

Administrator Anhorn said the increased per-diem rate, plus attorney, engineer, and staff time.

**Manager Peterson moved, seconded by Manager Hunker, to adopt Resolution #2020-01, adopting an updated fee for special meetings requested by permit applicants. The attorney conducted a roll call vote:**

	<u>Yay</u>	<u>Nay</u>
<b>CUTSHALL</b>	<b>X</b>	
<b>HUNKER</b>	<b>X</b>	
<b>OLSON</b>	<b>X</b>	
<b>PETERSON</b>	<b>X</b>	
<b>SHEELY</b>	<b>X</b>	

**The motion carried.**

**C. Personnel Committee**

Administrator Anhorn said that at the Board’s December 18, 2019 regular meeting the Managers discussed the value of forming a Personnel Committee for the purpose of reviewing employee benefits and policies, conducting the administrator’s annual performance review, and other personnel needs. He suggested the committee only needed two members and added that meeting dates would need to be published to adhere to the Open Meeting Law. He further stated that one of the committee members could give a brief overview of committee meetings at subsequent Board meetings.

Manager Hunker and Manager Olson volunteered for the committee.

**Manager Sheely moved, seconded by Manager Cutshall, to appoint Managers Hunker and Olson to the District’s Personnel Committee. Upon a vote, the motion carried.**

#### **D. Administrative Amendment to Water Management Plan**

Administrator Anhorn discussed the current opportunity to partner with the City of Edina to utilize District Stormwater Facility Fund dollars to provide beyond-compliance stormwater volume management as part of the Braemar salt storage project the city is pursuing.

Administrator Anhorn said that the District's stormwater rule includes a last-resort fee-in-lieu provision that allows permit applicants who cannot infiltrate onsite to pay into the Stormwater Facilities Fund for construction of volume-retention facilities elsewhere in the watershed. He said that in adopting the Stormwater Facilities Fund in 2008, the managers required that such funds must be expended for beyond-compliance stormwater-retention projects. He stated that the special cost-share program described in section 6.6.3.3 of NMCWD's 2017 watershed plan provided for such projects, but did not specify that the Stormwater Facilities Fund would be a source of funding.

Administrator Anhorn stated that in discussions with Attorney Welch, it was their view that as opposed to a major or minor plan amendment, this was more of a clarification of existing plan goals and policies, such as could be completed as an administrative amendment under state rules. He said the Board of Water and Soil Resources concurred in the District's determination that adding a reference to the fund in this section of the plan constituted a "clarification of existing plan goals or policies" and an "adjustment to how the District will carry out program activities within its discretion."

Attorney Welch stated that staff wants to ensure that the managers are comfortable proceeding with the administrative amendment.

Administrator Anhorn presented a strikethrough version of a proposed administrative amendment to the District's Water Management Plan. He explained this would allow the District to more efficiently move forward with contributions of Stormwater Facility Fund dollars of less than \$50,000.

The Board of Managers concurred with the administrative amendment.

#### **E. Amendment to Service Agreement with Barr Engineering**

Administrator Anhorn mentioned that while the District will be publishing its biennial solicitation for professional services in March, the current service agreement with Barr engineering included its 2019 fee schedule. He further stated that he had just received Barr's 2020 fee schedule and rates. Modifications to Barr's fee schedule and hourly rates requires an amendment to the current service agreement. He requested authorization to amend the District's current agreement with Barr to incorporate Barr's 2020 fee schedule.

**Manager Sheely moved, seconded by Manager Olson, to authorize the Administrator to amend the current service agreement with Barr Engineering to include their 2020 fee schedule. Upon a vote, the motion carried.**

**F. 2019 Water Management Plan Workplan Tracking**

It was the consensus of the Board that in the interest of time and to allow sufficient time for discussion, the 2019 Water Management Plan tracking would be held for an upcoming meeting.

**Engineer's Report**

Engineer Kieffer had nothing further to report.

**Attorney's Report**

Attorney Welch highlighted his upcoming participation with Ms. Kieffer on a panel discussion at an annual conference of city attorneys. He said that stormwater was a focus of the conference and panel discussion centered around Atlas14 precipitation data and climate preparedness.

**Managers' Report**

The Chair called for reports.

Manager Sheely asked whether or not the Board wanted to appoint someone to attend the upcoming Metropolitan Minnesota Association of Watershed Districts meeting. She said she likely cannot attend the next meeting. The managers discussed the difficulty they had experienced with receiving notices of Metro MAWD meetings.

Chair Peterson suggested having the administrator send the meeting notices to the Managers.

Administrator Anhorn said most districts designate Board members to specific meetings.

**Adjournment**

**It was moved by Manager Hunker, seconded by Manager Olson, to adjourn the meeting at 9:23 p.m. Upon a vote, the motion carried.**

Respectfully submitted,



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Erin Hunker, Secretary

ATTACHMENTS:  
Treasurer's Report

