

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

**WEDNESDAY, JANUARY 16, 2019**

**Call to Order**

Chair Kloiber called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, January 16, 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, Louis Smith, Jana Kieffer, Gael Zembal, Erica Sniegowski, and Lauren Foley

**Agenda**

Administrator Anhorn requested to add an item under New Business, Item C, MAWD Day at the Legislature.

**Manager Sheely 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 Regular Meeting of December 19, 2018. The Managers provided minor grammatical changes to staff.

Manager Sheely asked that staff review language on the bottom of page nine and the top of page 10 to perhaps word the language differently.

Attorney Smith stated that the minutes describe the discussion but agreed that perhaps staff could review that language. He provided additional clarification on the statement he made at the meeting. It was the consensus of the Board and staff to provide clarification on the language.

**Manager Peterson moved, seconded by Manager Sheely, to approve the minutes of December 19, 2018 with the noted changes. Upon a vote, the motion carried.**

**Public Open Forum**

There were none.

**Consent Agenda**

- A. Permit #2018-131: Valley View Middle School Building Improvements: 8900 Portland Avenue; Grading and land alteration permit: Bloomington**
- B. Permit #2018-137: Harley Hopkins Family Center Building Addition: 125 Monroe Avenue; Grading and land alteration permit: Hopkins**
- C. Administratively Approved Permits**
- D. Permit Inspection Report**
- E. 2019 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 noted that the November 2019 meeting would be moved up one week earlier in the month to avoid the Thanksgiving holiday.

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

**Hearing of Permit Applications**

- A. Permit #2019-139: Normandale Lake Trail Maintenance; South of the Intersection of East Bush Lake Road and West 84<sup>th</sup> Street; Grading and land alteration permit: Bloomington**

Engineer Kieffer presented the permit request and proposed plans. She stated that the project proposed is for maintenance and repairs along the bank. She explained that as the lake was drawn down for the District project, the city noticed sections of shoreline that are in need of stabilization repairs. She stated that the trail was constructed as part of the original Normandale Lake construction. She explained that the trail location was determined in order to avoid a home that previously existed. She stated that in 2012 the District permitted a project which allowed the city to replace and repair sections of the trail, noting that a portion of the project reestablished the shoreline. She stated that at the time of the 2012 project, compensatory storage was provided in exchange for the fill that was placed during the project. She stated that this project would include 60 cubic yards of six-inch fieldstone riprap and is being considered a maintenance project to reestablish the slope and grade of the original project and 2012 project. She stated that because the compensatory storage was provided in 2012, that is not being requested at this time. She stated that there is vegetation in place and the riprap will be placed in a manner that will

attempt to preserve the rooted structure of the existing vegetation. She recommended approval of the permit.

Manager Peterson asked if there was any consideration in moving the trail.

Engineer Kieffer stated that at this time Bloomington is not considering moving the trail and is taking advantage of the maintenance opportunity while the water is drawn down.

Chair Kloiber stated that it appears Bloomington is trying to do the right thing and if the city had the opportunity to do it over again perhaps the trail would have been placed in another location. He stated that if the maintenance request comes back every five to seven years, then perhaps there will be a larger issue.

Engineer Kieffer noted that the 2012 project was much larger scale. She stated that most of that project occurred above the OHW and the lower water level allowed the city to have a better view and complete this additional maintenance below the OHW.

Manager Peterson stated that she does not see a reason to deny the permit but noted that if this continues to be an issue, perhaps the city would investigate a different trail alignment in the future.

Manager Sheely agreed that perhaps in the long-term there may be an opportunity to relocate that section of the trail.

Engineer Kieffer recommended approval contingent upon the general conditions, she noted that there is no surety as this is a public entity.

**Manager Sheely moved, seconded by Manager Hunker, to approve the permit contingent upon the general conditions. Upon a vote, the motion carried.**

Administrator Anhorn noted that a similar request will come in for a City of Minnetonka shoreline maintenance project for Highland Road along Wing Lake in February or March.

Administrator Anhorn asked the Board if they would be open to holding workshop prior to the February meeting to have discussion on the District permit variance process and what the Board should consider in hearing and acting on variance requests. He suggested holding the workshop at 6:15 prior to the 7:00 p.m. regular meeting in February.

Manager Sheely stated that her only concern would be on the length of the regular meeting to follow the workshop to ensure that the total meeting length does not get too long where the Board discussion could become unproductive.

Administrator Anhorn stated that he believes that the total meeting length between the workshop and regular meeting would not exceed three hours. He simply wants to ensure that the Board understands their responsibilities in reviewing and acting on permit variance requests and the implications if a variance is not approved.

Chair Kloiber stated that he agrees that it would be a good idea.

It was the consensus of the Board to hold the workshop at 6:15 prior to the 7:00 p.m. regular Board meeting scheduled for February 20, 2019.

### **Treasurer's Report**

#### **A. Rachel Contracting Change Order and Pay Request**

Engineer Kieffer provided additional details on the change order previously discussed by the Board regarding the second draw down that was completed following the September rainfall. She stated that the Board previously delegated authority to Administrator Anhorn to approve and execute the change order, but the final amount from Rachel Contracting was slightly higher than the approved amount of \$18,125. She recommended approval of the change order as presented.

**Manager Peterson moved, seconded by Manager Cutshall, to provide authority to the Administrator to execute and approve change order five from Rachel Contracting. Upon a vote, the motion carried.**

Engineer Kieffer recommended approval of the pay request from Rachel Contracting in the amount of \$29,693.35, which include change orders four and five.

**Manager Hunker moved, seconded by Manager Sheely, to approve the pay request from Rachel Contracting in the amount of \$29,693.35. Upon a vote, the motion carried.**

The Treasurer submitted the report. Manager Cutshall provided clarification on certain items included in the report.

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

#### **B. Year-end Budget Discussion**

Administrator Anhorn stated that Manager Hunker had requested that this item be placed on the agenda for this meeting to review year-end budget line items and see where line items came in over or under the budgeted amounts. He provided a brief summary and explanation of those items.

Administrator Anhorn distributed a spreadsheet detailing the District's assigned and un-assigned reserves. He highlighted the amounts levied and expended for specific capital improvement projects (CIP). He stated that the difference between the levied and expended amounts were considered assigned reserves that were to be used for the specific project they were levied for, or if there were remaining funds following the completion of the project they could be used for future projects. He then highlighted the assigned non-CIP funds, including collected financial assurances and stormwater facility funds that are collected funds that the District is obligated to either pay back to the permit holder or spend to offset the stormwater

volume retention amount met through payments into the stormwater facilities fund. He said the remaining amount between the 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 ensure that the District has funds on hand to cover operational expenses.

Chair Kloiber stated that for the Edina streambank stabilization project it would also be interesting to know the engineer's estimate for the projects to compare to the actual expenses.

Engineer Kieffer agreed that would be a good summary to pull and present to the Board. She noted that the information could also explain things that changed throughout the process.

Manager Cutshall stated that the market conditions play a large factor in the project cost as well. He noted that if a project is bid during a construction slump, the cost could be lower than anticipated but if the project is bid in a busier market (like today's conditions), a higher bid would be received from a contractor.

Administrator Anhorn stated that the intent of this spreadsheet is to provide an annual review on if the District is meeting the requirements of the Fund Balance Policy.

## **Staff Reports**

### **A. Education and Outreach Program Coordinator**

Education and Outreach Coordinator Zembal stated that she will continue to provide an update to the Board on her graduate school activities. She stated that she provided a presentation today fully in Spanish at a school in Minnetonka and she was able to make new connections with the curriculum director which could lead to future education and outreach opportunities. She also thanked the Board for approving the members of the CAC. She stated that there were a few members that did not reapply for reappointment and staff would like to thank those individuals and acknowledge their contributions.

Manager Sheely asked the number of Master Water Stewards in the program.

Education and Outreach Coordinator Zembal replied that there are four Master Water Stewards that are currently going through the program along with a few from past years that are still finishing projects.

### **B. Program and Project Manager**

Program and Project Manager Sniegowski reported that staff was installing interpretive signage today and provided photographs to the Board. She stated that some of the previous signs were very text heavy and the new signs were designed in a manner that will catch the attention of more visitors using both pictures and text. She stated that the District is receiving an

environmental leadership award and noted that any interested Managers are welcome to attend the event on February 9<sup>th</sup>.

Program and Project Manager Sniegowski provided an update on the last length of the pipe that was scheduled to be installed for the Normandale Lake project. She said that the lake bottom soil conditions made the potential install of the last portion of pipe more difficult than initially thought. She stated that staff is not comfortable with the revised technique that the contractor proposed to complete the work due to the potential for harm to overwintering turtles. She stated after review of how the currently installed portion of pipe is working, it does not appear the last portion of pipe will be necessary to maintain the draw down level and therefore staff does not recommend installation of that last length of pipe.

Engineer Kieffer stated that originally the contractor stated that the material was too soft to support the last length of pipe and therefore the decision was made to postpone that installation once the sediment was frozen. She stated that after further discussion installation of the last segment of pipe would have the potential to impact turtles that are wintering in the low level. She stated that the lake has effectively been drawn down to the desired elevation without the last length of pipe and therefore the decision was made that the last segment of pipe would not be needed.

Program and Project Manager Sniegowski stated that staff is comfortable that the pipe is functioning as designed currently and is not comfortable with the impact that would potentially occur from installing the last length of pipe.

Chair Kloiber asked where the end of the pipe will be in relation to the shoreline once the water level is restored.

Engineer Kieffer provided a photograph and identified the location of the pipe. It was confirmed that the end of the pipe will be under water at normal water elevations.

Chair Kloiber asked if there are any additional considerations that should be made to ensure the pipe functions for the long-term, as the design has changed.

Engineer Kieffer stated that staff will review that to ensure that the pipe will continue to function properly.

Program and Project Manager Sniegowski stated that a maintenance agreement and plan will still be developed with the City of Bloomington.

Chair Kloiber asked if an operational plan should also be developed to control vegetation that would include a scheduled draw down every set amount of years.

Administrator Anhorn stated that once the draw down is complete, it will be analyzed to determine how effective this action was.

Engineer Kieffer stated that Bloomington was interested in perhaps scheduling future draw downs but noted that the frequency was not yet determined.

**C. Administrator**

Administrator Anhorn stated that the final land acquisition information was received from Metro Transit for the Southwest Light Rail project, permit 2016-88, and noted that stormwater information for the project is currently being reviewed and he anticipates that the actual permits will be issued soon.

**i. Correspondence**

Administrator Anhorn noted the limited liability legislation correspondence.

**New Business**

**A. Election of Officers**

Administrator Anhorn stated that now that there is a full Board it would be time to elect officers. He asked if any of the Managers are interested in any of the positions.

Chair Kloiber stated that he believes that it is important for different Managers to interact in different positions on the Board. He noted that his term will be expiring in September and he will not be reapplying and therefore believes that it would be a good time to transition to a new President. He noted that he would be willing to serve in another capacity.

Manager Sheely stated that she would be open to the position but would want to meet with Chair Kloiber to gather additional information on the process. She noted that her term would be expiring in September as well, and perhaps the decision would need to be rethought at that time should her term not continue.

Manager Peterson stated that she is on the Board with a lot of great Managers and therefore her thought was that perhaps another member would be more qualified. She acknowledged that she is the Vice President and would not be opposed to accepting the position.

Manager Cutshall stated that he would be interested in continuing as the Treasurer for at least one year, which will help to give him a better understanding of the organization.

Manager Sheely stated that she would prefer for Manager Peterson to accept the President position and she would gladly serve in the Vice President position.

**Chair Kloiber moved, seconded by Manager Cutshall, to nominate Manager Peterson for President, Manager Sheely as Vice President, Manager Cutshall as Treasurer, and Manager Hunker as Secretary. Upon a vote, the motion carried.**

Chair Kloiber noted that the new positions can begin after the meeting tonight and he would continue to serve as President for this meeting.

**B. 2018 Water Management Plan Workplan Tracking**

Administrator Anhorn said that the provided workplan tracking table was meant to track annual accomplishments against the program and project implementation action items shown in Table 6-1 and 6-2 of the District's 10-year Plan. He provided a summary of the information included in the workplan tracking table and indicated which of the 2018 action items were completed, which are still ongoing, or which have not had much progress made on them. He stated that out of the 44 activities listed on the table, 35 identified implementation items/activities were completed, eight were still in process, and one had little to no progress.

Chair Kloiber commended staff for a productive year.

Administrator Anhorn stated that this information can be added to the District's Annual Report as well, as this is a great way to track what the District planned to complete and the actions that were completed.

**C. MAWD Day at the Legislature**

Administrator Anhorn reported that the MAWD Day at the Legislature will occur on February 20<sup>th</sup> and 21<sup>st</sup>. He stated that the regular Board meeting will occur the night of the 20<sup>th</sup>, which would conflict with the reception that evening. He asked if there are any Managers interested in attending the meetings on the 21<sup>st</sup>.

Chair Kloiber stated that he found the process interesting when he attended the previous year. He stated that he found that the legislators that they spoke with were all very interested and respectful of what they had to say.

Manager Sheely agreed that it was interesting and believed that the conversations did sway one vote. She noted that it is a lot of waiting for meetings and therefore it would be a day commitment rather than a two-hour time window.

Chair Kloiber agreed that further explanation of the limited liability salt application was helpful for some legislators.

Administrator Anhorn asked that any interested Managers let him know if they would like to attend.

Chair Kloiber stated that he could possibly attend but will check his schedule.

Manager Peterson stated that she would possibly be interested, depending on her travel schedule.



**Engineer's Report**

Engineer Kieffer had nothing further to report.

**Attorney's Report**

Attorney Smith stated that in regard to the salt legislation, he presented the model contract that the District developed with the City of Edina for the commercial sector to the Minnesota Shopping Center Association today, which was very well received. He stated that the group had an update on the salt legislation on their agenda and seemed to be supportive of the legislation.

**Managers' Report**

The Chair called for reports.

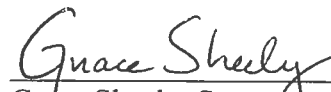
Manager Sheely stated that she signed up for the Water Conservation Advisory Program and will be certified as a Water Conservation Advisor once she completes the program.

Manager Cutshall noted that he also signed up for the program.

**Adjournment**

**It was moved by Manager Sheely, seconded by Manager Hunker, to adjourn the meeting at 8:41 p.m. Upon a vote, the motion carried.**

Respectfully submitted,

  
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Grace Sheely, Secretary

ATTACHMENTS:  
Treasurer's Report

