

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

**WEDNESDAY, JULY 17, 2019**

**Call to Order**

Chair Peterson called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, July 17, 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, Janna Kieffer, Erica Sniegowski, and Lauren Foley

**Agenda**

**Manager Sheely moved, seconded by Manager Kloiber, to approve the agenda as presented. Upon a vote, the motion carried.**

**Hennepin County Commissioner Jan Callison**

Hennepin County Commissioner Callison provided an overview of the 2019 assessment report, noting that the median home in Hennepin County increased in value by 50 percent over the past nine years. She highlighted some current issues including the proposed Medical Examiner's facility, Big Island, a proposed increase of the wheelage tax, and changes to the age of purchase for cigarettes from 18 to 21.

Manager Kloiber stated that he was glad to hear the changes to the proposed location of the Medical Examiner's facility. He noted that the Managers had concern with the previously proposed location.

Manager Cutshall asked if the County is looking into groundwater management.

Commissioner Callison explained that the County would not have direct responsibility for groundwater, noting that is more a topic for the Metropolitan Council.

Chair Peterson stated that she is pleased to see the zero-waste recycling program. She thanked Commissioner Callison for being present tonight.

### **Reading and Approval of Minutes**

The Chair called for review of the minutes of the Regular Meeting of June 19, 2019. The Managers provided minor grammatical changes to staff.

**Manager Sheely moved, seconded by Manager Hunker, to approve the minutes of June 19, 2019 subject to minor corrections. Upon a vote, the motion carried.**

### **Public Open Forum**

There were none.

### **Consent Agenda**

- A. Administratively Approved Permits**
- B. Permit Inspection Report**

Permit and Water Resource Coordinator Foley commented that she has been getting great feedback and communication from the inspected permits.

Administrator Anhorn noted that an estimate of the total number of permits and permits with activity were also included in the report as requested.

### **Hearing of Permit Applications**

- A. Shady Oak Pond Regional Stormwater Management Plan**

Administrator Anhorn noted that the District received an application and information on the permit on May 31<sup>st</sup>, but the applicant is still awaiting cost information from the Metropolitan Council. He explained that because the application was received on May 31<sup>st</sup>, action is necessary within 60 days. He noted that he spoke with the city engineer and he agreed that the best course of action would be to extend the review for an additional 60 days.

**Manager Sheely moved, seconded by Manager Hunker, to extend the review of the Shady Oak Pond Regional Stormwater Management Plan for another 60 days. Upon a vote, the motion carried.**

### **Treasurer's Report**

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

**A. Rachel Contracting Pay Request**

Engineer Kieffer provided details on the pay request and recommended approval in the amount of \$32,842.62.

**Manager Kloiber moved, seconded by Manager Cutshall, to approve the pay request to Rachel Contracting in the amount of \$32,842.62. Upon a vote, the motion carried.**

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

**Staff Reports**

**A. Permit and Water Resource Coordinator**

Permit and Water Resource Coordinator Foley presented her monthly report and stated that she has been pleased with the responses and actions she has been receiving from permit applicants and contractors in response to her inspection reports.

**B. Education and Outreach Program Coordinator**

Manager Sheely commented that the bike event was phenomenal.

Program and Project Manager Sniegowski stated that Education and Outreach Coordinator Zembal will wrap up her capstone project and will soon be completed with her master's degree.

Manager Kloiber asked for additional details on an upcoming event.

Program and Project Manager Sniegowski provided additional details on the Project WET training that focuses on hands-on water-based activities for K-12 formal and informal educators.

Manager Cutshall stated that in reviewing the proposed budget for 2020, there has been discussion on education and the current focus on younger people rather than business and community leaders. He stated that perhaps that be a discussion point in the budget worksession, to focus on additional education opportunities for the adult population.

Program and Project Manager Sniegowski reviewed some of the education workshops available and agreed that additional opportunities could be reviewed.

Manager Kloiber stated that with youth, there is a captive audience because they are in school, but it can be harder to recruit adults into educational events.

**C. Program and Project Manager**

Program and Project Manager Sniegowski provided details on the graphic designer the District has been working with for 60<sup>th</sup> anniversary stickers. The designer is also working with the education staff on coasters that will promote water conservation and water pollution prevention to be used by a few local businesses. She stated that there has been great feedback from the summer tour and staff will begin working on the State of the Waters. She reported that the Story Map is live and will be advertised.

**D. Administrator**

Administrator Anhorn presented his monthly Administrator's report detailing highlights from the previous month. He stated that during the recent heavy storm event, there was a storm sewer collapse as part of the Southwest Light Rail project, which resulted into a discharge into the wetland. He said, as a result, that staff is in the process of meeting with other agencies and the applicant to develop a remediation plan. In addition, he stated that he met with Minnetonka to discuss a long-term solution for Shady Oak Lake and will keep the Board informed.

**i. Correspondence**

Administrator Anhorn highlighted recently received correspondence.

**Unfinished Business**

**A. Lake Cornelia/Edina UAA Report and Alum Treatment Feasibility Study**

- i. UAA Executive Summary**
- ii. UAA Report**
- iii. Alum Feasibility Study**

Administrator Anhorn stated that following the last meeting he sent a copy of the full report to the Managers for review and asked if there were any comments from Managers.

Manager Hunker referenced the recommended actions and asked how the decision is made and the related timing.

Administrator Anhorn noted that a Feasibility Study would be done on the additional options as well, should those be chosen.

Manager Kloiber asked if the District is going to solicit comments or whether there is a process.

Administrator Anhorn stated that the District does not have to ask for comments on the UAA in the form of a plan amendment as the alum treatment option was mentioned in the District's plan.

Engineer Kieffer explained the process that was done for petitioned previous projects versus this process. She noted that the difference was that this process only requires a public hearing with notice to the county and municipalities while the petition process requires the information to be sent to certain agencies.

Manager Kloiber noted that Lake Cornelia is a tough challenge and perhaps one of those other agencies would have a proposed solution that the District may not have thought of.

Manager Cutshall stated that he would echo those comments. He noted that these proposed solutions have a sticker shock element as there will be very little long-term impact to the water body for the high cost.

Chair Peterson stated that the information from the alum treatment process could help to provide additional data. She noted that it might not be an answer going forward in total but stated that the treatment is going to be split into two parts.

Administrator Anhorn stated that he would be more than happy to send the report out to gain additional input from other agencies. He stated that he would still like to move forward on the alum treatment. He asked the Board to accept the UAA, noting that he will request additional input from the other agencies.

Manager Sheely stated that there is a lot that is not known about alum which can cause pause.

Engineer Kieffer stated that sediment cores are collected to understand the phosphorus data and further understand whether alum would be a good investment.

Manager Kloiber stated that the Minnesota DNR is not likely to approve continued back-to-back alum treatments as a management strategy. He believed that the presentation Manager Sheely referenced was from Wisconsin and that DNR may have different regulations.

Engineer Kieffer stated that they intend to do the split dosage to get the most effective treatment. She explained that alum assists in treating the legacy phosphorus, but you will still need to find a solution for the phosphorus coming into the water body. She stated that per the modeling, if the alum treatment is not done and watershed BMPs are implemented, there will not be a noticeable difference because of the internal loading. She confirmed that there could be education opportunities for the different elements.

Manager Hunker asked for details on the Feasibility Study for the alum treatment.

Engineer Kieffer confirmed that it is included in the updated packet.

Administrator Anhorn stated that he would like to move forward with the alum treatment. He stated that the two-part alum treatment would not be two full doses.

Engineer Kieffer confirmed that two smaller doses would be used in the two-part treatment option. She provided a brief review of the Feasibility Study. She explained that the two-dose

method would allow for the mobile alum to be targeted in the first dose and then when additional phosphorus is converted to mobile in the future, the second dose would target that. She reviewed the revised cost which is based on the sediment core data and the split dose method. She noted that the study did look at expanding to the Swimming Pool pond upstream of Lake Cornelia but there would not be enough benefit at this time to expand to that area.

Administrator Anhorn stated that watershed improvements will also continue in an attempt to reduce external loading.

Engineer Kieffer acknowledged that this is a complicated system.

Manager Kloiber asked if there would be a project to address the fish issue.

Engineer Kieffer stated that staff would contact Carp Solutions to obtain a recommendation for the next steps.

Administrator Anhorn stated that it would possibly be a similar process to that currently undertaken at Normandale Lake, tagging the carp to find where they are traveling and to help if a future fish removal is proposed.

Manager Kloiber stated that there have been other lakes where a winterkill of carp has caused a dramatic improvement in water quality the next year. He acknowledged that there would need to be some long-term management of fish, but the management of fish could help to be a long-term solution for the lake as well. He stated that the citizens will have to be prepared that there would be more vegetation in the lake, because that is good for water quality.

Manager Cutshall asked the action that would be necessary tonight.

Administrator Anhorn stated that he would like the Board to accept the UAA and Feasibility Study and schedule a public hearing for the alum treatment.

**Manager Kloiber moved, seconded by Manager Cutshall, to accept the final report, contingent upon staff reaching out to State agencies to obtain ideas that could enhance the process. Upon a vote, the motion carried.**

**Manager Kloiber moved, seconded by Manager Cutshall, to accept the Feasibility Study for the alum treatment on Lake Cornelia. Upon a vote, the motion carried.**

**It was the direction of the Board to schedule a public hearing for the project at 6:30 p.m. on Wednesday, August 21<sup>st</sup>, and authorize the Administrator to publish notice of the public hearing once each week for two successive weeks before the date of the hearing in the District's legal newspaper.**

Engineer Kieffer confirmed the consensus of the Board is that it would be helpful for the Board to have additional information on the other watershed options, including those that have been reviewed and the other modeling that was completed.

Administrator Anhorn stated that the District and City of Edina were working on a Memorandum of Understanding outlining NMCWD's implementation of water-resource protection and improvement projects in accordance with the process in Minnesota Statutes section 103B and the NMCWD plan as the most effective means of addressing the 2009 petition from the city.

#### **B. LHB Scope of Work**

Administrator Anhorn stated that the original scope of work had previously been approved, but the direction has changed since that time. He noted that the cost has increased from \$35,000 to \$40,000 because of the public process that is required and asked that the Board approved the revised amount.

**Manager Cutshall moved, seconded by Manager Kloiber, to authorize the Administrator to enter into an agreement with LHB to complete the scope of work at the revised amount of \$40,000 and submit building additional proposal to the City of Eden Prairie. Upon a vote, the motion carried.**

#### **C. Manager Per Diems**

Administrator Anhorn stated that during the last legislative session the daily rate for Manager per diems increased from \$75 to \$125 per day. He noted that the effective date was July 1<sup>st</sup>. He noted that the specific amount is not specified in the District bylaws and therefore no changes are needed unless the Managers want to choose the lesser amount.

Manager Kloiber stated that he would suggest staying with the legislative amount specified that would not require any changes to the bylaws.

Administrator Anhorn confirmed the consensus of the Board to follow statute and not change the bylaws.

#### **D. Non-Profit Planning Grant Stormwater BMP Projects**

Program and Project Manager Sniegowski stated that six quotes were received on June 25<sup>th</sup> and noted that all of the quotes were higher than the engineer's estimate. She explained that contractors are overloaded with work because of the wet spring and the prices reflected that. She stated that staff recommends that the Board not accept quotes at this time and noted that the RFQ could be reissued in the fall or spring and would likely receive better prices. She asked the Board to reject the quotes and stated that a sealed bid could be done in January on all six projects.

Administrator Anhorn noted that currently there are three projects ready for bid and three that are not. He explained that Barr's scope of work could be revised for Barr to bring the other three projects to the point of bid so that all six projects could go out for bid in January. He noted that the revised scope of work would then come back before the Board for formal action in the future.

**Manager Hunker moved, seconded by Manager Cutshall, to reject the quotes that were received for the project. Upon a vote, the motion carried.**

**E. Permit Review and Approval Process**

Administrator Anhorn recapped the previous discussion that has occurred on this topic to perhaps expand the delegation of permit authority to the Administrator. He stated that as a result, the board asked staff to compile a specific recommendation on expanding delegated administrative permit approval that they could react to, and to provide a few examples on those that may trigger a certain threshold where the managers may want to maintain approval authority. He stated that staff proposes to delegate all permit approval authorities to the Administrator unless it is a variance or exception, a permit submitted by the District, a regional stormwater management plan, if the project is unable to meet the restricted site maximum extent practicable, if the Administrator feels that the application involves policy or legal issues that warrants Board review, or if the applicant would rather the Board act on the permit. He reviewed some size thresholds that could be added as well, using the example of a residential development of ten lots or more or a threshold of the area of impervious surface being added.

Manager Kloiber stated that instead of having different thresholds for the larger projects that should go before the Board for residential, commercial or linear projects, maybe it made more sense to just pick a uniform increase in the amount of impervious surface for all projects.

Manager Cutshall stated that if an application, of any size, meets the rules, the District would not have a basis to deny the permit and therefore he would not see the need for the Board to review those permits.

Administrator Anhorn reviewed the process of staff having pre-permit meetings with applicants and having continual back and forth conversations with the applicant throughout the review process of the submitted designs and supporting information to ensure the project meets the District's standards. He said that currently the result is that staff brings the permit before the Board recommending approval, while in the future, staff would approve the permit and then inform the Board at the next meeting of the permit approval. He further stated that in either case, the end result of the project meeting the District's standards would be the same.

Manager Kloiber said that if the rational is, if an application meets the standard then we give them a permit, then the Board wouldn't hear any of them. He said that the only permit applications that the Board would hear are the ones that do not meet the standards and are seeking variances. He further stated that in practicality, during his 12 years on the Board, he cannot remember a time the Board has not approved a variance.

Manager Peterson mentioned that in these cases though, by hearing the variance request, it gives the managers an opportunity to seek options or trade offs similar to Manager Sheely's request for capturing roof runoff from the townhomes as part of the Friendship Village variance request



Manager Cutshall stated that he understands Manager Kloiber's point, but the fact that the Board has never not granted a variance request doesn't mean that the Board cannot say no, as opposed to if an applicant comes in and meets the District standards then the Board really cannot say no.

Administrator Anhorn again went through examples of different sized projects that would and would not trigger the need to go before the Board for both an increase in the amount of impervious surface area if 1.0 acres and 2.5 acres.

Manager Kloiber said it is difficult to pick the threshold size, but said that it seemed that the 2.5-acre increase for all projects made the most sense, and that that could also be re-evaluated at the same time the Board reviews the additional delegation as a whole.

Manager Sheely stated that as a Manager she feels that she should know what is going on in her area. She provided an example of a project that she drove by that had not received a permit from the District and explained that she was able to call staff and they were able to reach out. She explained that if there is not a way for the managers to clearly know about an approved project and what is being proposed, she herself, would feel out of touch. She stated that the permit reports that the Board evaluates are public knowledge and she believes that information should continue to be shared with the public.

Chair Peterson stated that if this was approved, revaluation could occur at a certain point to review how the process is working.

Administrator Anhorn stated that the resolution could include a time, maybe 18 months from the adoption of the resolution, at which time the Board could review and discuss how the added delegation is working.

Administrator Anhorn stated that it sounds as though it is the consensus of the Board to delegate additional permit approval authority to the administrator, but that it is with the transparency question that the managers have concerns, on how the engineer's permit review memos are shared and in what amount of detail. He noted that additional information could be added to the report, which could solve the concern related to public information. He noted that he has only received one request from the public for additional information.

Manager Kloiber stated that it would be worth considering putting additional information on the website, which would make that data more easily available to the general public. He said that if the reviews were saved in the website library somewhere, they could maybe be searched by name or location, and would promote transparency. He suggested that the Board move forward incrementally on this process.

Program and Project Manager Sniegowski said that the District's website is already set up to allow keyword searches, so that there would really be no additional cost for creating a space for the reviews. She added that we could upload with various searchable taglines such as city and address or another tag. She added that the only real cost would be staff time to upload the reviews.

Administrator Anhorn stated that staff would look at options of where and how to post the permit applications review memos and would bring them back to the Board for discussion.

It was the consensus of the Board to direct staff to move forward with drafting a resolution for the Board to consider at the August Board meeting that delegates all permit approval authority to the Administrator except for those: seeking a variance or exception, submitted by the District itself, seeking approval of a regional stormwater management plans, unable to meet the restricted site maximum extent practicable, that the Administrator feels involves policy or legal issues that warrants review by the Board, that the applicant requests to be heard by the Board, that results in an increase of new impervious surface of 2.5 acres or more. In addition, it was the consensus of the Board for the resolution to include a provision for the Board to review the delegation 18 months after the adoption of the resolution.

### **New Business**

#### **A. 2020 Draft Budget**

Administrator Anhorn stated that he recently met with Chair Peterson and Manager Cutshall to review some of the elements of the draft 2020 budget. He said that the information presented at tonight's meeting was just for informational purposes and went through the upcoming schedule and processes the Board would need to meet to ultimately approve a 2020 budget and submit the levy request to the county auditor.

Administrator Anhorn highlighted some elements of the proposed 2020 budget that are higher or lower than the previous year's budget. He noted that thus far the proposed 2020 budget would be an increase of 13.5 percent but advised that equates to a 0.2 percent increase in the levy because of the proposed use of reserve funds. He stated that the impact to the taxpayers would be lessened because of the increase in market value that has occurred. He confirmed the consensus of the Board to hold a budget workshop on 5:30 p.m. on Thursday, August 1, 2019.

### **Engineer's Report**

Manager Sheely asked for details on the groundwater study, specifically whether that was requested or generated by Barr.

Administrator Anhorn stated that the District requested that study, noting that it was included in the previous year's budget.

### **Attorney's Report**

Attorney Smith had nothing further to report.

### **Managers' Report**

The Chair called for reports.

Manager Sheely provided an update on the recent Metro MAWD meeting she attended.

**Adjournment**

**It was moved by Manager Kloiber, seconded by Manager Sheely, to adjourn the meeting at 9:30 p.m. Upon a vote, the motion carried.**

Respectfully submitted,



Erin Hunker, Secretary

ATTACHMENTS:  
Treasurer's Report

