

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

WEDNESDAY, JULY 20, 2022

1. Call to Order

Vice President Larry Olson called the regular meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 7:00 p.m., Wednesday, July 20, 2022, at the NMCWD office at 12800 Gerard Drive, Eden Prairie, Minnesota.

Managers Present: Grace Butler, Erin Hunker, Peggy Kvam, and Larry Olson

Managers absent: Robert Cutshall

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

Staff Present: Randy Anhorn, Brett Eidem, Lauren Foley, Erica Sniegowski, and Gael Zembal

Other Attendees: Earth Evans (WSB and Associates) and Andrew Lutayo (Minnesota Department of Transportation)

2. Approval of Agenda

Administrator Randy Anhorn requested the addition of Unfinished Business item 9d regarding a land-use agreement for the Lynmar Basin project with the City of Edina.

Manager Butler moved, seconded by Manager Hunker to approve the meeting agenda as amended. Upon a vote, the motion was approved 4-0

3. **Reading and Approval of Minutes**

a. **Minutes of the June 2, 2022, Board Workshop**

Manager Butler moved, seconded by Manager Hunker to approve the minutes of the District's June 2, 2022, workshop as presented. Upon vote, the motion was approved 4-0.

b. **Minutes of the June 15, 2022, Regular Board Meeting**

Manager Butler moved, seconded by Manager Kvam to approve the minutes of the District's June 15, 2022, meeting as presented. Upon vote, the motion was approved 4-0.

4. **Public Open Forum**

a. **General Interest**

No items of general interest were raised.

5. **Consent Agenda**

a. **Administratively Approved Permits**

b. **Permit Inspection Report**

c. **MAWD Resolution Packet**

d. **Staff Reports**

i. **Permit and Policy Manager**

ii. **Education and Outreach Coordinator**

iii. **Natural Resources Project and Planning Manager**

iv. **Program and Project Manager**

v. **Engineer's Report**

Administrator Anhorn commented the Minnesota Association of Watershed Districts request for resolutions is in the meeting packet and could be an item on the board's next meeting if the board wants. The managers discussed the fact that the resolution supporting legislation providing limited liability protection for salt applicators who get smart-salting training sunsets this year, and Manager Butler indicated that the board should renew the request. Administrator Anhorn noted staff will add MAWD resolutions as an action item at the board's next meeting.

6. **Hearing of Permit Applications**

a. **2022-029 Minnesota Department of Transportation I-494 Phase I**

Engineer Bob Obermeyer reported the District received a permit package from the Minnesota Department of Transportation for the construction of high-

occupancy vehicle lanes from Highway 169 to the Minneapolis-St. Paul Airport. He reported the project's Phase I limits within NMCWD's jurisdiction commence approximately 1,200 feet west of East Bush Lake Road and stretches to Nicollet Avenue, the eastern boundary of the watershed. Engineer Obermeyer described the proposed design-build project and presented the engineer's review and recommendation. He discussed the differences in the open water basins and infiltration basins proposed throughout the project, noting the Phase I area water quality basins are estimated to annually remove 46,000 pounds of total suspended solids and 182 pounds of total phosphorous, providing water quality treatment along the roadway alignment previously untreated. The applicant is requesting district approval of the conceptual preliminary design with the applicable district rules. The applicant, once the design build contractor has been selected, is required to submit the final design and necessary documents for district review and approval prior to the commencement of construction if the final design deviates in a material way from the plans submitted for NMCWD regulatory approval at today's meeting.

Engineer Obermeyer presented the engineer's findings, conditions and stipulations and recommendation of approval, including for the board to consider delegation of the authority for approval of any permit modifications necessary to the administrator.

Manager Kvam moved, seconded by Manager Hunker to approve for a period of three years permit 2022-029 MNDOT 1-494 Phase I with the conditions and stipulations in the engineer's review memo, including delegation of authority to the Administrator Anhorn to approve subsequent permit modifications that do not present a variance or significant policy consideration. Upon a vote, the motion was approved 4-0.

7. Treasurer's Report

a. Pember Construction Pay Application #6 for the Rosland Stormwater Filtration BMP Project

Engineer Kieffer reported the District received pay application number 6 in the amount of \$212,123. She listed the items included in the pay application. She said the engineer reviewed the pay application and recommends the District pay it.

Manager Peggy Kvam highlighted the invoices and disbursements listed in the treasurer's report.

Manager Butler moved, seconded by Manager Hunker to accept the treasurer's report and approve paying the bills, including the Pember Construction pay application #6 in the amount of \$212,123 for the Rosland

Stormwater Filtration BMP Project. Upon a vote, the motion was approved 4-0.

8. Administrator Report

a. Correspondences

i. Hopkins Valley Park Creek Erosion Memo

Administrator Anhorn said the District received a memo from Barr Engineering regarding estimates for repair and maintenance to fix the erosion identified on an area of the Hopkins streambank project. He will continue discussion with city staff on implementing the necessary repairs.

ii. Edina's Proposed Adaptive Level Control System Study

Administrator Anhorn said the City of Edina's proposed predictive pumping study has expanded to include the cities of Bloomington and Richfield, as well as NMCWD. He said the City of Edina and their consultant are in the process of developing a draft scope, which will be distributed to potential project partners for review and feedback, and ultimately brought to the board.

Administrator Anhorn went through the items in his administrator's report and listed agenda items for the board's August 4 workshop and August 17 meeting. He announced staff will send out to the Technical Advisory Committee a survey and memo to get initial feedback regarding the single-family home rule trigger, which the board discussed at its June 2 meeting.

9. Unfinished Business

a. Blue Water Science Agreement Amendment

Administrator Anhorn reminded the board it authorized him to enter an agreement with Blue Water Science to undertake fish surveys in four watershed lakes. He said subsequently it has been discovered that NMCWD has no fish information for Lake Otto. Blue Water Science could survey the lake for \$1,500, increasing total survey cost to \$7,800.

Manager Butler moved, seconded by Manager Kvam to authorize the administrator to execute an amendment to the agreement with Blue Water Science to include the Lake Otto fish survey at not-to-exceed \$1,500. Upon a vote, the motion was approved 4-0.

b. Holiday, Wing and Rose Lakes Water Quality Study Next Steps

i. Holiday, Wing and Rose Water Quality Study Summary Report

Administrator Anhorn said he is directing Barr Engineering to prepare a proposed scope of work for next steps in improving water quality in Holiday, Wing and Rose lakes. The managers and staff agreed to have the scope include a menu of options.

c. Non-Profit BMP Retrofit Project Maintenance

i. Metro Blooms Maintenance Proposal

Program and Project Manager Erica Sniegowski explained the need for maintenance of the nonprofit rain gardens. She presented the Metro Blooms maintenance proposal. Ms. Sniegowski reported the proposed cost is \$5,813.86 to complete the additional maintenance, to be performed in early September. She recommended the board approve \$6,000, to provide extra dollars in the event any additional plants are found that need to be replaced.

Manager Hunker moved, seconded by Manager Butler to authorize the administrator on advice of legal counsel to enter into an amendment to the agreement with Metro Blooms not to exceed \$6,000. Upon a vote, the motion was approved 4-0.

d. Lynmar Basin Access and Construction License With the City of Edina

Mr. Welch reminded the board that last month it authorized the cooperative agreement with the City of Edina. The agreement did not include specific land-use rights, though. Edina has now agreed to a scope of such rights, and an agreement providing for access and construction is in the packet for the managers' approval.

Manager Hunker moved, seconded by Manager Kvam to authorize the administrator on advice of legal counsel to enter into the land use agreement with the City of Edina. Upon a vote, the motion was approved 4-0.

10. New Business

a. Freshwater Society Board Retreat Facilitation Support Proposal

i. Freshwater Society Proposal

Administrator Anhorn reported he reached out to the Freshwater Society to see if it would organize and facilitate the NMCWD's board retreat. He said the Freshwater Society prepared a proposal. Administrator Anhorn went through the proposal and said the proposed cost is \$5,500.

Manager Kvam moved, seconded by Manager Hunker to authorize the administrator to enter into an agreement with the Freshwater Society to provide facilitation support for the upcoming board retreat at a not-to-exceed amount of \$5,500. Upon a vote, the motion was approved 4-0

b. 2023 Draft Budget

Administrator Anhorn reported he met with Treasurer Kvam and President Bob Cutshall to look through the year's work plan and look at previous years' expenditures and come up with a preliminary budget. Administrator Anhorn provided an overview of the proposed draft 2023 budget, noting that it represents a 21% increase over this year's budget. He said he is proposing a 7% increase to the levy compared to the 2022 levy. Administrator Anhorn said the watershed's total valuation for property value is a 3% increase over last year. Additional detail will be reviewed at the board's August 4 workshop. Administrator Anhorn said he will adjust the proposed budget as necessary for the permit review line item and potentially provide a schedule replacing major items such as the roof and furnace for the NMCWD office.

c. League of Minnesota Cities Insurance Trust Liability Waiver

Manager Hunker moved, seconded by Manager Butler to not waive the monetary limits on the municipal tort liability. Upon a vote, the motion was approved 4-0

11. Attorney's Report

Mr. Welch reported on the U.S. Supreme Court's decision in West Virginia versus Environmental Protection Agency, noting that while it upsets a basic presumption of an agency's expertise in its field – known as Chevron deference – it doesn't change NMCWD's day-to-day work. Mr. Welch also reported that the Minnesota Pollution Control Agency has announced that it has stopped developing a nitrate standard for surface water. He said the announcement from MPCA did not include information on the basis for the decision.

12. **Managers' Reports**

Manager Butler reported that MAWD's annual meeting will be November 30 to December 2 and in-person. She said the MAWD summer tour is August 23 to 25.

Manager Kvam said Metro MAWD communicated that the MPCA is helping with a nationwide survey the USEPA is doing regarding stormwater needs and projects. She said she has seen social media posts with concerns about the city of Edina road project the board permitted, in particular about the tree removal.

13. **Adjournment**

It was moved by Manager Hunker, seconded by Manager Butler to adjourn the meeting at 9:00 p.m. Upon a vote, the motion was approved 4-0.

Respectfully Submitted,



Grace Butler, Secretary

