

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

WEDNESDAY, JUNE 21, 2023

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, Erin Hunker, and Larry Olson

Manager Absent: Peggy Kvam

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

Staff Present: Randy Anhorn (Administrator), Lizzy Boor (Watershed Specialist), Brett Eidem* (Natural Resources Project and Planning Manager), Erica Sniegowski* (Program and Project Manager), Zach Stafslie (Regulatory Program Manager), and Gael Zembal (Education and Outreach Coordinator).

*Attended virtually

2. Approval of Regular Meeting Agenda

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

3. Reading and Approval of Minutes

a. Draft Minutes of May 4, 2023, Board Workshop

Manager Butler moved, seconded by Manager Olson to approve the minutes of the May 4, 2023, workshop. Upon vote, the motion carried.

b. Draft Minutes of May 17, 2023, Regular Board Meeting

Manager Butler moved, seconded by Manager Olson to approve the minutes of the May 17, 2023, meeting. Upon vote, the motion carried.

4. Public Open Forum

No members of the public were in attendance and no items were raised in the public open forum.

5. Consent Agenda

a. Administratively Approved Permits and Inspection Report

b. Engineer's Report

i. Lynmar Basin Stormwater Retrofit Project Change Order #3

ii. Lynmar Basin Stormwater Retrofit Project Change Order #4

c. 2024 Budget Process and Schedule

Randy Anhorn reported he will meet with the board president and treasurer at the beginning of July to discuss 2024 budget items and will have a draft budget to present to the board in July.

6. Staff Updates

Brett Eidem reported eight landowners and community members and two NMCWD managers attended the district-led wetland walk at the Whited Fen. Lizzy Boor said there are only a few landowners around the project area that the district has not been able to contact. Mr. Eidem plans to continue to try to connect with them.

7. Hearing of Permit Applications

a. Nine Mile Creek Valley Park Erosion Repair Project – Hopkins

Mr. Anhorn said the project does not trigger the district's rules but it is a district project, so it is on the agenda in keeping with NMCWD policy and to address any managers' questions. Mr. Anhorn noted the memo on the project is in the board meeting packet.

Janna Kieffer added the Department of Natural Resources is exercising its jurisdiction over the project through an administrative amendment to the original permit the district had for the original stream-stabilization project.

President Bob Cutshall asked if in the future when the district has smaller projects if it could group them for bidding purposes. He noted the district's soft costs for this project exceed the project costs. Michael Welch said staff have identified the need to comprehensively assessment maintenance of past capital projects and will endeavor to group maintenance and repairs for contracting.

8. **Treasurer's Report**

a. **US Site Works Pay Application #5 for the Lynmar Basin Stormwater Retrofit Project**

Ms. Kieffer pay application #5 for the Lynmar Basin Stormwater Retrofit project from US SiteWork includes erosion sediment and control, limestone steppers, trees, plugs and shrubs, among other items. Ms. Kieffer said she recommends payment of the pay application in the amount of \$233,268.02, including release of \$7,056.82 in retainage even though substantial completion has not yet been achieved because the work has been properly completed.

Manager Olson moved, seconded by Manager Hunker to pay the district's bills, including US SiteWorks pay application #5 in the amount of \$233,268.02 for the Lynmar Basin Stormwater Retrofit Project. Upon a roll call vote, the motion carried 4-0.

9. **Administrator's Report**

Mr. Anhorn reminded the board there will not be a July board workshop and the next meeting will be the July 19 regular meeting. He reported the district is working with the City of Minnetonka on identifying the extent of brittle naiad identified in a plant survey. Mr. Anhorn also reported that the district will hold a neighborhood meeting as part of the district's request to the City of Eden Prairie to increase the number of full-time employees and evening board meetings at Discovery Point.

a. **Edina's Correspondence on Fred Richards Park Plans**

Mr. Anhorn said the City of Edina is looking at redoing the Fred Richards Golf Course. He said the city is proposing two design options: a wetland preserve and park and a wetland mitigation bank and park. Mr. Anhorn

reported the city corresponded with the district to ask if it has interest in participating in the project. He said the district's watershed management plan identifies creating a wetland bank for district projects.

Ms. Kieffer said the land use between the two options is generally the same but the wetland mitigation banking option will require more process and creation of a wetland meeting state wetland standards. She indicated that flood bounce in this area may pose a challenge to creating a high-quality wetland in this location.

Mr. Welch said the question of whether to establish a wetland bank that can be used to offset drainage or filling of wetlands elsewhere is a significant policy question. He said the scope and impact of that question is bigger if the district is involved in the project and smaller if the district is only commenting on the city's project.

President Cutshall asked if there is a set price for selling credits or if it is determined by the market. Mr. Welch said it is market price.

Ms. Kieffer said the city is looking for feedback about the estimated project timeline, the district's potential flexibility in permitting, and whether the district would indicate support for the project to the Minnesota Board of Water and Soil Resources.

Mr. Anhorn reported that staff met with the City of Bloomington and the City of Edina on the adaptive flood control system. He said because funding was not granted by the Minnesota Stormwater Research Council, Edina staff asked Barr to put together a scope of work. Mr. Anhorn said the Bloomington and the district are asking Edina to expand the scope to include some other areas along the creek. He said staff will bring that scope back to the board along with information about estimated costs and partnerships.

10. Unfinished Business

a. Phase 3 of Flood Risk Reduction and Resiliency Study

Janna Kieffer presented a detailed flood-resiliency analysis and benefit-cost analysis.

President Cutshall asked regarding the proposed flood-risk reduction project at the Braemar Golf Course, South Fork of Nine Mile Creek if the proposed option will cause golf course flooding. Ms. Kieffer said yes, and most of the golf course already floods but this option would cause more flooding of the golf course.

Michael McKinney noted the flood mitigation projects will require significant permitting, including working with the Minnesota Department of Natural Resources to address Federal Emergency Management Agency

floodplain regulations and state dam-safety requirements. Manager Larry Olson asked if the district has had any projects that require the dam safety permit. Ms. Kieffer indicated that construction of Normandale Lake required a dam safety permit. She said the flood mitigation projects will face significant permitting challenges.

In terms of the number of structures anticipated to be protected through the proposed flood mitigation projects, Manager Olson asked if they were residential or commercial or if one type was prioritized over the other. Mr. McKinney responded that approximately 95% of the structures identified as protected due to the projects are residential structures. He said there would be a different cost/benefit strategy for residential vs. commercial structures.

Ms. Kieffer laid out the next steps in the study, including finalizing the modeling and cost estimates, finalizing the cost/benefit analysis, and preparing the draft report.

b. Drone Update

Zach Stafslie reviewed staff's comparison of four drone models. He said staff recommends the DJI Mavic 3T Worry Free Plus Combo thermal.

Mr. Anhorn asked the board for direction on whether the district should buy a drone and if so, whether thermal-imaging capability is worthwhile.

Mr. Welch commented that government intrusion into individuals' privacy is a significant consideration.

Manager Grace Butler said if the board approves moving forward with purchasing a drone, she would like staff to develop a plan on how the drone will be used.

Manager Olson moved, seconded by Manager Butler to purchase a DJI Mavic 3T Worry Free Plus Combo at a not-to-exceed amount of \$7,800. Upon vote, the motion carried.

Lizzy Boor shared a draft drone policy outlining that only staff who are trained and licensed will fly the drone, staff will follow all Federal Aviation Administration guidelines, volunteers will not use the drone, the drone is not for personal use, and staff will comply with no-fly zone procedures, among other policy details. She said staff will update the policy regarding thermal imaging. Manager Butler asked staff to address in the policy the use of the district's drone data in public forums, such as the district website or an education presentation.

11. New Business

a. Deputy Administrator

Mr. Anhorn presented the draft deputy administrator position description.

Manager Hunker moved, seconded by Manager Olson to create the deputy administrator position. Upon vote, the motion carried.

Mr. Anhorn clarified the position might not always be filled.

b. Chloride Reduction Cost-Share Grant Application

i. Application

Ms. Boor summarized the application by the York Condo West Association seeking cost-share funds in the amount of \$20,000 to reduce chloride use by replacing parking ramp salting with the Uponor Snow Melt System on entry and exit parking ramps. She said the chloride runoff from the property drains into Adam's Hill Pond in Richfield.

Mr. Welch said the cost-share program is about stewardship. He pointed out chloride reduction of Adam's Hill Pond is a capital improvement goal. He said Gael Zembal noted this proposed project would help the district educate about the no-salt, low-salt program; however, he said, the grant application noted no one would see the project.

Erica Sniegowski pointed out that while this project is not readily visible, there are other ways to increase visibility, such as the district sharing about the project through its content and publications.

President Cutshall voiced his concern with using energy in place of salt, particularly natural gas because of the carbon dioxide release. He pointed out the competing environmental issues of water and greenhouse gases.

Manager Butler said she would like to see the applicant's maintenance plan, she would like the applicant to do the low salt, no salt program and hire an applicator. Ms. Boor said the association would be required to complete the Minnesota Pollution Control Agency's smart salt training.

Manager Olson moved, seconded by Manager Hunker to approve the cost-share grant application from the York Condo West

Association for a grant amount of \$20,000 for heating the ramps contingent upon using an electric boiler and on a representative from the building's maintenance staff completing the MPCA's smart-salt training. Upon vote, the motion carried 3-0-1, Manager Butler abstaining.

12. Attorney Report

Mr. Welch provided a review of state permitting issues and a review of legislative actions of interest to NMCWD including reported the DNR is talking about increasing some of its fees, which would impact the district. He also reported he is coordinating with the district's member cities to provide their legal counsels his analysis and advice on how the district board of Managers appointment process works.

Mr. Welch said the United States Supreme Court released its decision in *Sackett vs. Environmental Protection Agency*, which greatly reduces federal wetland jurisdiction. He said state wetland projections mean NMCWD's ability to protect wetlands is not affected.

Mr. Welch summarized Minnesota legislative changes, including a new state-administrated paid family medical leave program, which applies to the district but does not take effect until January 2026.

Mr. Welch said the Open Meeting Law is amended so that each manager may participate in a meeting from a non-public location three times in a year if necessary due to medical reasons and on advice of a doctor.

Mr. Welch said managed landscapes must now be allowed by cities, meaning cities cannot mandate turf or ban native landscapes.

Mr. Welch said climate resiliency was allocated \$3,000,000 for planning and \$100,000,000 for implementation.

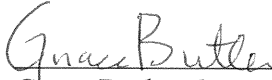
13. Managers' Reports

Manager Butler reported that she participated in the Minnesota Watersheds' summer tour in Albert Lea and attended the Southwest Light Rail tour in Eden Prairie where they viewed impacted wetlands and their restoration within the Golden Triangle area.

14. Adjournment

Manager Butler moved, seconded by Manager Olson, to adjourn the meeting at 9:24 p.m. Upon vote, the motion carried.

Respectfully Submitted,



Grace Butler, Secretary