

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

WEDNESDAY, OCTOBER 19, 2022

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, Peggy Kvam, and Larry Olson

Manager Absent: Erin Hunker

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

Staff Present: Randy Anhorn (Administrator), Brett Eidem (Natural Resources Project and Planning Manager), and Gael Zembal (Education and Outreach Coordinator)

Others Present: John Bilotta (Minnesota Stormwater Research Council, *attended via web conference*) and Jen Kader (Freshwater Society, *attended via web conference*)

2. Approval of Regular Meeting Agenda

Randy Anhorn suggested adding item 10c, registration for the Minnesota Association of Watershed Districts annual meeting, and removing the engineer's report from the consent agenda to discuss the Rosland Park project change order.

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

3. Reading and Approval of Minutes

a. **Minutes September 1, 2022, Public Hearing and Workshop**

Manager Butler moved, seconded by Manager Kvam to approve the minutes of the district's September 1, 2022, public hearing and workshop as presented. Upon vote, the motion carried.

b. **Minutes September 21, 2022, Public Hearing and Regular Meeting**

Manager Kvam moved, seconded by Manager Butler to approve the minutes of the district's September 21, 2022, public hearing and meeting as presented. Upon vote, the motion carried.

4. **Public Open Forum**

No items were raised.

5. **Treasurer's Report**

a. **US Site Works Pay Application #1 for the Lynmar Basin Stormwater Retrofit Project**

Janna Kieffer reported the district received the first US Site Works pay application for the Lynmar Basin Stormwater Retrofit Project for \$86,969.65. She indicated that the NMCWD engineers have reviewed the pay application and recommend payment.

Manager Butler moved, seconded by Manager Olson to pay the US Site Works pay application #1 in the amount of \$86,969.65 for the Lynmar Basin Stormwater Retrofit Project and to approve paying the district's bills as listed in the treasurer's report. Upon a roll call vote, the motion carried 4-0.

6. **Administrator Report**

Mr. Anhorn noted his report is in the meeting packet. He reported he participated in the Minnesota Association of Watershed Districts Resolution Committee meeting and submitted the district's limited liability chloride resolution to MAWD at the committee meeting. Mr. Anhorn noted MAWD isn't going to sunset anything for this year or for next year. Mr. Anhorn said Valley Branch Watershed District also submitted a resolution for limited liability, and so the NMCWD and Valley Branch WD decided to combine resolutions and ask for a five-year extension. He said the committee recommended passing the resolution, and he said Manager Grace Butler will help with the presentation at the MAWD annual meeting.

Mr. Anhorn reminded the board of the retreat scheduled on Thursday, October 27 and a board workshop scheduled for Thursday, November 4.

7. **Unfinished Business**

a. **Board Retreat Agenda**

Jen Kader said the board has identified the retreat's purpose as gathering the group together to have strategic conversations about the district's focus and how to move forward in helping to achieve the district's goals. Ms. Kader said the board's input determined the retreat's outcome objectives as arriving at clear, shared priorities; redefining what the district finds is reasonable feasible and launching the district into innovative and sustainable actions.

Ms. Kader said she will send out the final agenda early next week with more details around the guiding principles and the framing questions, all of which should lay the groundwork to the board's objectives for the retreat.

Mr. Anhorn asked about the requirement of the minutes and if the retreat should be formally called to order and adjourned like a meeting. Mr. Welch said the minutes should capture whatever will be helpful for the group after workshop. Ms. Kader said included in the scope of work is for her group to develop a summary that identifies key themes and next steps and captures the outcomes in a way the board and staff can refer back to them. She said the summary is to help provide clarity and to be a tool the district can use in the future. She said she can provide the draft summary to Mr. Welch for his review after the retreat.

Mr. Welch said the retreat is designed for the board, but it's not a closed meeting and the public could attend as observers.

b. **Minnesota Stormwater Research Council Participation Request**

Mr. Anhorn said the district has partnered with the Minnesota Stormwater Research Council of the University of Minnesota's Water Resources Center for each of the last three years at an annual amount not to exceed \$15,000. He said the memo in the board meeting packet lists the research projects undertaken and completed, including the district's Rosland Park stormwater filtration BMP monitoring.

Mr. Anhorn said the district is not permitted to contribute to the MSRC and can only fund the research if it finds benefit from of the research in terms of the district meeting its goals and objectives. He recommended the board authorize partnering with MSRC in 2022 at an amount not to exceed \$15,000. Mr. Anhorn reminded the board that John Bilotta, senior research and extension coordinator at the WRC, presented to this board last year and he is available at this meeting to answer any questions.

Manager Olson moved, seconded by Manager Butler to authorize the administrator to enter into a contract with the

University of Minnesota Water Resources Center for an amount not to exceed \$15,000 to support the stormwater management research. Upon vote, the motion carried.

c. Proposed District Rule Revision

Mr. Anhorn reviewed the matrix of proposed changes with the board. He noted that staff considered additional changes to the stormwater rule to better align with language from the Minnesota Pollution Control Agency 2020 Municipal Separate Storm Sewer System general permit as it pertains to linear projects. However, it was decided that more discussion is needed with cities and Technical Advisory Committee representatives about potential rule changes related to linear projects and therefore, linear project rule changes are not included in the proposed changes.

Michael Welch said the board has already seen these proposed changes except a few very minor changes to clarify language. He noted an update to remove bridges and boardwalks from the operation of the low-floor elevation requirement of the stormwater rule. Ms. Kieffer said most bridge installations would be below the 100-year flood elevation of a water body and would trigger the district's floodplain requirements, but where there is no work in the floodplain, it is not necessary to require freeboard.

Manager Butler said her concern is missing projects that are mill and overlay of large parking lots. She said if these projects come in through the permit process, we will have the chance to provide inputs on better stormwater management. Mr. Welch said this could be done just by directing staff to promote stormwater management opportunities, but under the district's current rules those types of projects trigger the district's erosion control rule. He said it's under the purview of district staff to review and approve those permit applications.

Mr. Anhorn said agreed and that we can have a conversation about this during training of new regulatory program manager. Mr. Anhorn said staff could develop a document about the district's cost-share grant programs and other management practices and to share this information with applicants.

Manager Peggy Kvam noted a missing buffer graphic referenced within the rule changes. Mr. Welch said this graphic is almost done but will not be included within rules: it will be guidance. He said staff will need to make sure managers have an opportunity to review this graphic. Mr. Welch said he can revise the statement in the rules document to note that the graphic guidance.

Regarding linear projects, Mr. Welch said the engineers and staff propose to work with TAC members on language regarding liner projects. He said staff recommends the board authorize staff to move forward with the proposed changes to the district's rules, with the changes discussed tonight and release of the draft for the 45-day comment period. Mr. Welch said staff will bring comments received to the board at its December meeting.

Manager Butler moved, seconded by Manager Kvam to authorize the administrator to release the proposed rule changes, revised as noted, for comment. Upon vote, the motion carried.

President Cutshall said it would be helpful to him regarding the rules and proposed changes to understand what other watershed districts are doing. He said he would like to understand if we are doing something out of the norm and if so, why. Manager Butler commented that discussion tends to take place at the TAC. President Cutshall said as a board member that he would like perspective to aid in understanding inconsistencies between NMCWD's rules and other watershed districts' rules. Ms. Kieffer said one of the individuals at the MPCA in the stormwater group who worked on drafting the MS4 permitting prepared a comparison of watershed rules and that he offered to share that comparison.

d. Engineer's Report

i. Rosland Park Stormwater Filtration BMP Project Change Order

Ms. Kieffer introduced change order #3 and said that although the change in project cost is within the administrator's approval authority previously granted by the board, the change order also includes a change in contract time which requires board approval.

Ms. Kieffer said the project is very close to being done, but the data logger equipment has been on back order and now is not anticipated to arrive until December. She said the data logging equipment can be installed over the winter, but that the engineer wants to verify that it works when the system starts up again in the spring. She said that change order #3 extends the substantial completion and final completion dates to account for the project delays. She said the recommendation is to push the substantial completion date to April 21, 2023, and move the final completion date to April 28, 2023. She indicated that the recommended substantial completion date of April 21, 2023 differs from the October 31, 2022 date that was shown in the version of change order #3 that was included in the board meeting packet.

Manager Olson moved, seconded by Manager Kvam to approve the change order as amended and to revise the substantial completion date to April 21, 2023. Upon vote, the motion carried.

8. New Business

a. City of Edina Local Water Management Plan Amendment

Mr. Anhorn said in March 2018 the board conditionally approved the City of Edina's local water management plan and sent the city comments to consider and apply to the plan. He said district staff is approaching the process the same way for the City of Edina's Water Resources Management Plan 2022 amendment.

Ms. Kieffer said the updates to the City of Edina's WRMP are generally related to incorporating the city's flood risk-reduction plan. She indicated that some of the district's comments in its memo to the city are related to how the city's standards align with Nine Mile's rules, for example regarding low floors.

Mr. Welch said Resolution 22-10 conditionally approves the city's plan as amended and has a low-threshold condition requiring the city to send the district the plan when finalized. He said the comment memo is very technical but staff is open to board comments about it.

Ms. Butler commented the resolution isn't very strong or directive regarding what the district wants to receive back from the City of Edina regarding a response to the comments. Mr. Welch said staff did discuss the rigor to include in the memo and resolution and felt that because the watershed retains the ability to impose the two-foot freeboard standard, staff didn't feel the need to require additional review or approval. Ms. Butler said the resolution should require action regarding impervious surface, and she wants to make sure the city mentions all of the district projects.

Manager Butler asked if staff would document and provide feedback to the board on the areas the district and the city's amendment don't align.

Mr. Welch said the district's cover letter could include language to inform the city of sections in which the board is particularly interested.

Mr. Anhorn suggested the district communicate in the cover letter that we would like to see the city's response to the district's comments.

Manager Olson moved, seconded by Manager Butler to adopt Resolution 22-10 as drafted. Upon a roll call vote, the motion carried 4-0.

b. Staff Reports

Mr. Anhorn opened a discussion about staff reports and the information they include and how the managers can get more out of the reports.

President Cutshall said the reports highlight items that are out of the ordinary but that presupposes he knows what is happening on a day-to-day basis. He suggested using monthly board workshops to dive into the different programs, so going forward, the staff report doesn't need to include their day-to-day work because the board would already understand the type of work happening.

Mr. Anhorn mentioned his practice of noting in his Administrator's report the meetings he attends, so the managers can bring up questions or ask for more details. He said he'd like to continue including meetings in his staff report summaries.

Ms. Butler said it's very helpful for the Personnel Committee to have all these details in the staff report, because the committee is working on the district position descriptions and the staff reports are a resource about the activities staff is spending time doing.

Mr. Welch said staff reports should contain substantive points of interest and engagement for the board instead an account of day-to-day activities.

Ms. Butler suggested each month one of the staff members is prepared to share to the board. Mr. Anhorn said staff could do this on a rotating schedule, but the reason this practice was eliminated was because the board meeting agendas are usually full and staff and the board tries to keep the meetings limited to two hours. The managers and staff talked about the idea of having staff present on a rotating basis what they are doing at the board's workshops.

President Cutshall said sometimes there is information overlap about projects between the engineer's report and the staff report, and he would like that to be resolved so the board doesn't get duplicate reports. Gael Zembal said she and Erica Sniegowski coordinate on who is going to report about the work and projects they both are involved in.

Manager Butler said she'd like staff to find a way to make the staff reports less time intensive. Mr. Anhorn said staff will continue to discuss ways to revise their reports.

c. Minnesota Association of Watershed Districts Annual Meeting Registration

Mr. Anhorn reported he has the rooms reserved for the MAWD annual meeting and noted Manager Kvam isn't able to attend the meeting. He said he'll register President Cutshall, Manager Butler, and Manager Larry Olson for the meeting and will check with Manager Erin Hunker.

Mr. Welch said the board has to authorize the expenditure for the mileage, hotel, and conference registration for staff and managers. Mr. Anhorn said the expenditure is in the district's budget.

Manager Butler moved, seconded by Manager Olson to authorize reimbursement of costs for staff and managers attending the MAWD annual meeting. Upon vote, the motion carried 4-0.

11. Managers' Reports

Manager Olson asked if in the future the October meeting could be pushed back a week because of the holiday for schools. Mr. Anhorn said the board can do this at its January meeting when the board adopts the calendar for the year.

Manager Butler reported she and Manager Kvam participated in the October 18, 2022, Metro MAWD meeting, and although the MAWD strategic plan was on the agenda, there was not much of a discussion. Ms. Butler said there was a discussion about use of Clean Water Funds for fixing septic systems and that discussion was a bit contentious. Manager Kvam noted that October 18 was the 50th anniversary of the Clean Water Act.

12. Adjournment

It was moved by Manager Olson, seconded by Manager Kvam to adjourn the meeting at 9:05 p.m. Upon vote, the motion carried.

Respectfully Submitted,



Grace Butler, Secretary