

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

**THURSDAY, SEPTEMBER 7, 2017**

**Call to Order**

Chair Kloiber called the meeting of the Board of Managers of the Nine Mile Creek Watershed District to order at 5:05 p.m., Thursday, September 7, 2017, at the Nine Mile Creek Watershed District Office, 12800 Gerard Drive, Eden Prairie, MN 55346.

Managers Present: Twele, Lynch, Kloiber, Sheely (arrived at 5:25 p.m.) and Peterson

Managers Absent:

Advisors Present: Randy Anhorn, Michael Welch, Bob Obermeyer, Janna Kieffer, Erica Sniegowski, and Wes Leksell

**Agenda**

Administrator Anhorn noted that Item Two, Hearing of Permit Requests, will be removed from the agenda.

**Manager Peterson moved, seconded by Manager Lynch, to approve the agenda as amended. Upon a vote, the motion carried.**

**2018 Budget/Levy Hearing**

Chair Kloiber opened the public hearing for the 2018 budget and levy. He introduced himself and the members of the Board and staff present at the meeting. He stated that the District is required by Watershed Law to notice and hold a public hearing each year on its annual budget and tax levy. He stated that as the hearing begins, he will call on the Administrator for a brief explanation and to review the proposed 2018 budget and levy. He stated that the Board will then accept any comments from the public. He noted that after receiving the comments, the Board will close the public hearing and the Board of Managers will deliberate and adopt the 2018 budget and tax levy. He then called upon Administrator Anhorn.

Administrator Anhorn stated that the public notice for the hearing was posted in the District's two official newspapers for the two weeks prior to the hearing date. He stated that the budget and levy presented are the same as presented to the Board at their regular August 16, 2017 meeting. He stated that while the proposed \$2,663,000 levy represents a 1.9 percent increase from 2017, due to the market value increase within the District, the estimated annual impact to property owners will actually be a decrease of 7.8 percent. He stated that the proposed

budget of \$4,158,000 includes the large capital improvement projects that the District is currently involved with. He stated that the difference between the proposed budget and levy is made up using existing reserve funds.

Chair Kloiber invited any interested members of the public to come forward and comment on the proposed budget and tax levy, or ask any questions. He stated that the public hearing is being tape recorded to preserve the record. He noted that when recognized, speakers should come forward, stating their name and address for the record. He asked that the comments be limited to three minutes.

No comments made.

There being no additional comments, Chair Kloiber closed the public hearing on the 2018 budget and levy and invited discussion among the Managers.

No additional input from the Board.

Chair Kloiber invited consideration by the Board of Managers of the 2018 budget. It was moved by Manager Lynch, seconded by Manager Peterson to adopt the 2018 budget as distributed. Upon vote, the motion carried with 4 ayes and 0 nays as follows:

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Maressia Twele	X		
Corrine D. Lynch	X		
Jodi Peterson	X		
Steve Kloiber	X		
Grace Sheely			X

Upon a vote, Chair Kloiber declared the resolution adopted unanimously.

Chair Kloiber invited consideration by the Board of Manager of the 2018 Management Planning Fund Levy. It was moved by Manager Peterson, seconded by Manager Twele, to adopt the 2018 Metropolitan Surface Water Management Act Levy. Upon a vote, the motion carried with 4 ayes and 0 nays as follows:

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Maressia Twele	X		
Corrine D. Lynch	X		
Jodi Peterson	X		
Steve Kloiber	X		
Grace Sheely			X

Upon vote, the Chair declared the resolution adopted unanimously.

Chair Kloiber recessed the meeting at 5:12 p.m.

Manager Sheely arrived.

Chair Kloiber reconvened the meeting at 5:25 p.m.

### Hearing of Permit Applications

~~A. WCA Wetland 03-23A Sediment Removal: Tanager Lane and Leesborough Avenue: Eden Prairie~~

~~B. WCA Wetland 14-44 A Sediment Removal: 431 Prairie Center Drive: Eden Prairie~~

### District Rule Review/Revision

Engineer Kieffer stated that the purpose for tonight will be to discuss the rule revisions that are being considered, noting a majority of the focus will be on the changes to single-family homes. She also hoped to talk a bit about chloride management, and perhaps language that would require permittees to provide a chloride management plan. She stated that although the discussion may not occur tonight, there will be future discussion on whether the fee schedule should be updated. She stated that another future topic is whether the definition of a 100-year floodplain and event should be amended. She also noted that future discussion should also include whether a rule should be added addressing enforcement.

Administrator Anhorn stated that obviously not all that discussion can occur tonight and therefore the rules will be discussed at the September 20<sup>th</sup> meeting and at a special Board meeting on October 5<sup>th</sup>. He stated that staff will present the draft revisions at a TAC meeting on October 10<sup>th</sup> and with the CAC at their October meeting. He stated that the draft rules would then go back before the Board at the regular October meeting with adoption in October or November to allow for the necessary comment period before final adoption.

Attorney Welch invited any comments on other rules topic from the Managers, noting that staff will have sufficient time to incorporate those suggestions.

Engineer Kieffer reviewed the proposed revisions and discussion points for the changes to single-family home permitting portion of the District rules. She reviewed the triggers which currently apply to a single-family. She stated that there are many single-family homes that trigger this requirement and require an erosion control permit but not a stormwater permit. She stated that in the past three years there were 119 single-family home permits and only 64 of those requests required a stormwater permit in addition to an erosion control permit. She reviewed the elements that are required under the stormwater permits for single-family homes.

Chair Kloiber asked for and received clarification on the triggers for the wetland buffer requirements.

Manager Sheely asked how long this rule has been in place and whether the rule is consistent with other watersheds.

Engineer Kieffer replied that the rule has been in place since 2008. She noted that although the District was one of the first to come out with a stormwater volume retention criteria, it has now, since the MPCA's Minimal Impact Design Standard (MIDS) study, become a more common practice.

Attorney Welch stated that the while stormwater retention criteria have become consistent across the metro, he noted that the treatment of single-family home permitting does vary from watershed to watershed.

Engineer Kieffer reviewed the language regarding redevelopment, noting that the majority of the activity that the District reviews for single-family homes is redevelopment. She reviewed some of the elements that staff is discussing for revision including the option of keeping the existing thresholds and criteria for stormwater permits.

Manager Twele asked how much of that would be redundant from what the member cities are already requiring.

Attorney Welch noted that the measures of the erosion control permit would be redundant to what the member city is already requiring. He stated that the thought process is that one entity should handle that requirement and do it well, rather than two entities requiring the same action. He stated that it would be helpful if the member cities handled the erosion control activities with support from the District, rather than the District requiring duplicate action and collecting financial assurance.

Chair Kloiber stated that while there is value in protecting the water resource, there is also value in not being redundant.

Attorney Welch agreed that the District should look for a balance between the burden that is placed on the property owner/developer versus the water quality and protection that is achieved.

Administrator Anhorn stated that staff often finds out that a stormwater permit is triggered, when someone is applying for an erosion control permit. He stated that it could be difficult for a member city to determine if a stormwater permit is required.

Manager Sheely stated that if the city is not collecting surety, it would be difficult for a member city to complete a project that a developer may not complete. She used the example of a developer that did not finish their project and caused problems for three other neighbors. She stated that cities often want to see people happy and would look to the District to solve problems that may arise when a developer does not complete a project.

Attorney Welch stated that the District has not been quick to pull that trigger.

Administrator Anhorn stated that the District looks at things on a larger scale rather than neighbor versus neighbor.

Engineer Obermeyer stated that erosion control is not on the primary radar for a member city. He stated that the District reviews projects monthly. He noted that if an issue is identified, the District would then involve the member city in attempt to get the issue resolved, noting that delaying the certificate of occupancy can be used as a tool to gain compliance.

Engineer Kieffer reviewed some potential thresholds that trigger stormwater retention criteria for single-family homes that could be changed, including exempting all single-family homes.

Chair Kloiber stated that one consideration should be the benefit that is received in return for the effort. He stated that the District is often constrained on what can be completed because much of the watershed is developed and therefore redevelopment projects are a method in which the District can gain some benefit and therefore he would not support giving up that opportunity unless it is shown that the benefit does not outweigh the effort.

Attorney Welch asked and confirmed the consensus of the Board to not pursue the option of exempting all single-family homes.

Engineer Kieffer stated that the next element of discussion would be the criteria. She noted that there would be options to lessen the criteria or simply require a BMP, similar to what Riley-Purgatory-Bluff Creek Watershed District requires. She noted that another option would be to change the criteria to require a BMP for D soils, which are more challenging. She provided further analysis for the Board to consider.

Administrator Anhorn provided additional details on the cost that would be associated with applying the criteria to the different types of soils, comparing A soils to D soils and the high cost burden put on D soil properties. He stated that of the 119 single-family permits in the past three years, there were 64 that required stormwater permits and out of those 64, 28 had D soils.

Chair Kloiber stated that the District is already urbanized and the impervious surface will continue to be increased.

Manager Sheely stated that often people are putting in driveways to park additional items, such as boats, and there is not a lot of regulation regarding accessory structures.

Engineer Kieffer stated that most cities do not regulate impervious surface outside of their zoning processes.

Chair Kloiber stated that perhaps the District should do complete impervious trends and model to determine the impact that will occur on flooding in ten to 20 years. He stated that information may be helpful for the member cities.

Manager Lynch stated that perhaps the District considers a smaller percentage of change for redevelopment.

Engineer Kieffer stated that currently if more than 50 percent is changed, the entire site must be treated but if less than 50 percent is changed, the homeowner would only need to treat for the new addition. She provided information on the phosphorus loading that occurs at the different rates of development and for the different types of soils, noting that the impact is dependent on the soil type.

Chair Kloiber stated that in some ways the two to three-tiered strategy should be an economic disincentive for a homeowner to go over the 50 percent threshold. He stated that perhaps the District should consider lowering the threshold from 50 to 25 percent for redevelopment.

Administrator Anhorn stated that is one of the scenarios being considered but noted that he struggles with D soils. He stated that it could be unfair to make the D soil properties better than undeveloped.

Chair Kloiber stated that perhaps the standard should be to meet the pre-development conditions.

Attorney Welch stated that the 50 percent threshold has to do with balancing reasonableness, specifically how much the District can ask compared to what is being achieved. He used the example of someone adding a sunroom onto their small home which increases by 30 percent and under a threshold of 25 percent would then require a property owner to treat their whole site. He stated that perhaps the trigger be related to the overall imperviousness of the site.

Engineer Kieffer stated that her concern is that by just requiring a BMP, some properties would then not meet the pre-development condition.

Chair Kloiber asked how many single-family homes are meeting the 50 percent threshold.

Engineer Obermeyer stated that 95 percent of requests meet that requirement.

Attorney Welch clarified that most of these single-family home permits are removing an existing home and building a new home and therefore more than 50 percent of the site is being disturbed.

Chair Kloiber wondered if the policy for triggering the different tiers should not just be on the percentage disturbed, but increase in imperviousness as well. Chair Kloiber further added, as a principal he does like the idea of non-degradation for certain circumstances.

Attorney Welch agreed that would be a good method to achieve the goal and recognize the challenge of D soils. He stated that perhaps the goal for D soils is non-degradation.

Engineer Kieffer reviewed the ratio of single-family homes to the total amount of impervious surface added and the treatment that was provided in return.

Manager Lynch noted the different types of soils on the site a substantial difference in infiltration and runoff rates. She questioned if it was always black and white on if a sites soil type was A, B, C or D, and does the District get that information to review?

Engineer Obermeyer said that we required soil borings as part of review an application and noted that the soil borings provide that knowledge and provided additional details.

Chair Kloiber stated that it would be nice to see a comparison of the burden that is placed on the District staff and homeowner to meet the criteria. He stated that the Board must consider where they would like District staff to spend their time, as there is often a lot of handholding for single-family home permits. He asked if it is worth it for the District to invest their staff time in the single-family home process.

Manager Sheely stated that she would like to see the District not be the cog that holds up the wheel in the process for construction.

Administrator Anhorn provided additional input on the single-family home permitting process, noting that the process is done administratively. He agreed that there is a balance that needs to be found between what is required and the benefit that is gained.

Manager Sheely noted that the single-family home permitting is an opportunity to provide education.

Administrator Anhorn stated that he liked the idea of linking the one-inch requirement to the increase in impervious. He also believed that there should be an element separate for D soils.

Chair Kloiber agreed that the important element is the additional impervious and perhaps the District should set the threshold that identifies the need for any BMP or the requirement to meet the one-inch rule.

Administrator Anhorn stated that perhaps other thresholds are then removed in order to clarify the process.

Chair Kloiber stated that the District cannot neglect the fact that projects outside of the 500 feet zone also contribute towards run-off. He agreed that the 500-foot threshold should be removed and the link should be made between the increase in impervious surface to the need for simply any BMP or the requirement to meet the one-inch rule.

Attorney Welch noted that would be an opportunity for education with homeowners that they could scale down the impervious surface being added to avoid having to meet the one-inch rule.

It was noted that certain properties would not then meet non-degradation.

Chair Kloiber noted that is why it is important to set the right threshold. He explained that the minimal loss that would occur from those that remain under the impervious surface threshold could be made up through the properties that are above the threshold and have to meet the one-inch rule which could still equate to an overall gain for the watershed.

Engineer Obermeyer provided additional information on the permits with D soils, noting the number that paid into the stormwater facilities fund and the number of permits that required a variance. He noted the amount of staff time that is spent working on certain single-family home permits.

Chair Kloiber stated that having a streamlined permit that does not have the full one-inch requirement for small increases in impervious would provide an incentive to those property owners and would also free up staff time to work on the bigger requests.

Administrator Anhorn appreciated the input of the Managers on this topic, noting the importance of getting the rule revision right.

Attorney Welch confirmed direction from the Board for staff to use the input gained from the Board tonight with staff input to bring back a recommendation for the Board to further consider.

Chair Kloiber stated that it would be helpful to have information showing the impact on the number of permits and staff time under the proposed revisions.

Administrator Anhorn confirmed that the Board would like staff to further investigate the percentage number for the increase in impervious surface, consideration for non-degradation of D soils and watershed wide.

Chair Kloiber stated that ideally there would be a requirement similar to a basic erosion control permit for the properties that have a small increase in impervious surface.

Administrator Anhorn stated that at the next Board meeting the group will discuss chloride management and a requirement that would trigger a chloride management plan to be submitted when a stormwater permit is triggered. He reviewed some of the discussion points the Board should consider prior to the next meeting. He stated that the Board will also discuss potential resolutions for the MAWD Annual Meeting at the next regular Board meeting.



**Adjournment**

**It was moved by Manager Lynch, seconded by Manager Sheely, to adjourn the meeting at 7:07 p.m. Upon a vote, the motion carried.**

Respectfully submitted,

  
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Grace Sheely, Secretary

ATTACHMENTS:  
Treasurer's Report

