REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, February 12, 2014

Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota

Minutes

ROLL CALL

Present: President Patricia Preiner, 2nd Vice-Pres. John Waller, Secretary Harley Ogata, and Treasurer Steve Wagamon.

Absent: 1st Vice-Pres. Barbara Haake (with prior notice).

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Water Resource Specialist Kyle Axtell, Office Manager Theresa Stasica, Technical Specialist/Permit Reviewer Chris Buntjer.

Consultants: District Engineer Mark Deutschman, Houston Engineering, Inc. (HEI); District Attorney Louis Smith from Smith Partners; Drainage Attorney John Kolb, Rinke Noonan.

Visitors: Alice A. Waller, Stephanie Souter, Len Pratt, Jed Chestnut, Jamie Granganvare, Fran Miron, Cam Hedland.

CALL TO ORDER

President Preiner called the meeting to order, a quorum being present, at 9:00 a.m.

SETTING OF THE AGENDA

District Administrator Belfiori added a new number 1 under Discussion of Builder’s exemption (Follow-up from February 10, 2014 workshop)

Motion by Manager Ogata, seconded by Manager Wagamon, to adopt the agenda as amended. Motion carried 4-0.

READING OF THE MINUTES AND THEIR APPROVAL

Minutes of the January 22, 2014, Board of Managers Meeting Regular Meeting.

District Attorney Smith stated on Page 3, line 112, he requested “bids” be substituted with “quotes”.

Motion by Manager Wagamon, seconded by Manager Waller, to approve the minutes as amended. Motion carried 3-0-1 (Manager Ogata abstained).
CONSENT AGENDA

The following applications have been reviewed by the District Engineer and Staff and will be acted upon without discussion in accordance with the Engineer's Recommendation unless a Manager or the Applicant or another interested person requests opportunity for discussion:

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PERMIT APPLICATIONS REQUIRING BOARD ACTION

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Motion by Manager Wagamon, seconded by Manager Ogata, to approve the consent agenda as outlined in the above Table of Contents in accordance with RCWD staff and District Engineer's Findings and Recommendations, dated February 4, 2014. Motion carried 4-0.

OPEN MIKE – LIMIT 12 MINUTES. Any RCWD resident may address the Board in his or her individual capacity, for up to three minutes, on any matter not on the agenda. Speakers are requested to come to the podium, state their name and address for the record. Additional comments may be solicited and accepted in writing. Generally, the Board of Managers will not take official action on items discussed at this time, but may refer the matter to staff for a future report or direct that the matter be scheduled on an upcoming agenda.

There were no comments made at Open Mike.

ITEMS REQUIRING BOARD ACTION

1. Election of officers and selection of personnel subcommittee (Phil Belfiori)
   Administrator Belfiori explained every year at the first meeting in February they elected officers for the various posts and also he was asking for a selection of two Managers for a personnel subcommittee as well.

   Motion by Manager Waller, seconded by Manager Ogata, to keep the present officers and personnel committee as they were. Motion carried 4-0.

2. Designation of Official Depository (currently Anchor Bank) and Official Newspaper (currently St. Paul Pioneer Press) (Phil Belfiori)
   Administrator Belfiori explained at the Board's first regular meeting in February, the Board must designate an official depository and newspaper. He indicated the current official depository was Anchor Bank and the current local newspaper was the St. Paul Pioneer Press.

   Motion by Manager Wagamon, seconded by Manager Ogata, to designate Anchor Bank as the official depository of the Rice Creek Watershed District and to designate St. Paul Pioneer Press as the official newspaper of the Rice Creek Watershed District. Motion carried 4-0.

3. Consider Findings and Order related to the petition from the Minnesota Department of Natural Resources to impound waters on Washington County Judicial Ditch 2 (John Kolb)
   Manager Waller recused himself from the discussion and stepped down.
Drainage Attorney Kolb stated procedurally, the Board should recess their regular meeting and reconvene the public hearing on the petition.

President Preiner recessed the regular meeting and reconvened the public hearing on the petition.

Drainage Attorney Kolb stated the drainage authority received public comment at the hearing on November 20, 2013. He indicated the Board closed the public testimony portion of the hearing but left the written comment period open until 5:00 p.m. on December 11, 2013. He noted after closing the public testimony portion of the hearing, the drainage authority adopted a motion directing staff to prepare findings and an order consistent with the proceedings, including responses to all comments received through the public comment process; also directing that, unless further written comment cast substantial doubt on the evidence presented, the draft findings and order be written to grant the petition of the Department of Natural Resources to impound waters of Washington County Judicial Ditch #2 with conditions as suggested by the Engineer; and recessing the hearing to the Board’s regular meeting on January 8, 2014, at 9:00 a.m., or by adjournment to an appropriate time on the Board’s agenda, in the Council Chambers at the City of Shoreview, at which meeting the Board would consider findings and an order for the proposed modification of the drainage system.

Drainage Attorney Kolb proceeded to review the proposed findings – reviewing in detail those findings related to comments received at the Public Hearing. After reviewing the proposed findings, conclusions and order, Drainage Attorney Kolb asked the Managers if they had any questions.

President Preiner asked on the Order what they were saying was the DNR’s responsibility for the open ditch. Drainage Attorney Kolb responded what they were saying is that consistent with the discussions with the DNR they would cooperate with the DNR and the DNR would cooperate with the drainage authority for the establishment of the open water channel. He stated there were discussions regarding funding. What this Order did was to give them an option of how to deal with the DNR going forward.

Motion by Manager Ogata, seconded by Manager Wagamon, to amend the proposed Finding on Paragraph 75, Page 15, last sentence change “lake” to “lack”. Motion carried 3-0.

Attorney Kolb noted on paragraph 69 on page 49, third line down it talks about the water levels of 1.5 to 2.0 feet. The 2.0 feet should be omitted.

Manager Ogata asked if that would continue to be 1.5 feet lower. Drainage Attorney Kolb responded that was correct.

Motion by Manager Ogata, seconded by Manager Wagamon, to omit 2.0 feet on page 29, paragraph 69. Motion carried 3-0.

District Engineer Deutschman stated on page 18, item 1, was there a need to identify at the current location of the weir.

Drainage Attorney Kolb stated the actual petition contained the design plans and specs for the weir and he believed they should check to see if there was a station identified as they were saying they were only authorizing what they had petitioned for.
Manager Ogata asked what the resolution number was. Drainage Attorney Kolb responded it was 2014-06.

District Engineer Deutschman stated he had reviewed the document handed to him by Drainage Attorney Kolb and he believed it was sufficient to identify the location.

Drainage Attorney Kolb stated in paragraph 2 of the order, they were saying they were only allowing what was petitioned.

*Motion by Manager Ogata, seconded by Manager Wagamon, to approve Resolution 2014-06, Resolution to Adopt Findings, Conclusions and Order Approving the Petition of the Minnesota Department of Natural Resources to Impound Waters on JD2 by Permanently Modifying the Drainage System and Drainage System Profile by Placing a Sheet Pile Weir in the Channel of JD2 at the Outlet of Rice Lake, Public Waters #82-146P.*

Manager Ogata stated he had looked at everything extensively and the way he saw this was that there were two basic disagreements - one being the original ongoing minor maintenance and the second area was what they should be using as their baseline water level. He believed there was compelling testimony as to what it should be and they were looking at should this be based on the as constructed condition, the area before the drain, or the level of the water immediately after the drain, which was the lowest. He stated having gone through numerous meetings, he was satisfied the Engineer's conclusion in this regard were reasonably supported by the evidence. He indicated the further precaution of adding the channel to the front end would cause no further damage to the riparian owners so even if they disagreed what the baseline level should be, once the level was established they did not want to cause any further damage.

Drainage Attorney Kolb stated they had closed the public portion of the testimony so any comments they should receive would be outside of the record. He stated the Board had discretion if they wanted to hear additional comments, but they would be outside of the record and would have no bearing on this proceeding. He stated they might want to do that after they took their vote.

Manager Ogata stated he would like to hear Mr. Waller speak. Manager Wagamon stated he had no problem with that.

President Preiner noted Mr. Waller's comments would be outside of the record.

John Waller, 1410 Homestead Avenue, Hugo, stated he owned property directly affected by this and impacted here. He realized what he was going to say was outside of the record, but the record they were relying on was incomplete. He stated the record was framed in a very short period of time. He stated this was an established water course that was established in 1910, which was quite a long time ago – over a century. Therefore, there was much more record than just ten years. He stated the report did not balance all of the environmental laws. He believed this was an important issue and he believed that by instituting this weir was a permanent structure that he believed in the end they would come back and have it removed. He indicated they had impaired waters that were downstream from the structure and he believed the structure would continue to produce harm to those waters. He did not believe the report were in compliance with local zoning ordinances. This was a stormwater conveyance structure and it had impact on local zoning ordinances, which were not addressed in the Engineer's report. The Engineer's report did not address the question of damages, which Manager Ogata referred to as to what they were going to use as a standard. He asked if they were they going to use an as built structure or a minor maintenance profile. The report also infers that the as constructed profile did not include drainages on his
property. It did not recognize Branch 1, Branch 2 or the main branch that is south or Rice Lake and adopted by this Board as a part of the profile. The Engineer’s report did agree and he believed they were correct, that there is an impact to the as built construction was on this lake by, he would say 1 ½ to 2 feet was correct. He stated this was in a chart and the as constructed profile, which was built and agreed to through the processes and adopted by the Board in approximately April, 1982. He stated there was an impact there as well as the water quality issues at Peltier Lake. He suggested they leave a door open and if later science came along and discovered they had caused detriment by not properly balancing all of the environmental laws, they should be able to remove this structure. He stated they should leave themselves this safety net.

President Preiner asked if there were any further comments.

ROLL CALL:
Manager Haake – Absent
Manager Ogata – Aye
Manager Wagamon – Aye
Manager Waller – Recused
President Preiner – Aye

Motion carried 3-0-2.

President Preiner closed the public meetings and reopened the regular meeting. Manager Waller rejoined the meeting.

Consideration of Bald Eagle Lake Alum Treatment Project Contract Award (Phil Belfiori)
District Administrator Belfiori stated this was for consideration of the contract award. He noted on February 3, 2014, bids were opened with the apparent low bidder being HAB Aquatic Solutions, Inc. with a low bid of $878,991.26. The engineer found the bid was responsive and recommended that HAB Aquatic Solutions, Inc. be determined to be the responsible bidder. He noted the project was included in the approved 2012 and 2013 annual budget and the District’s 2010 Watershed Management Plan. The project work plan estimated a total project cost of $929,953.26. He noted funding for the project would utilize an estimated $400,000 from Clean Water Partnership loan funds and an estimated $529,953.26 in RCWD “matching” funds. The RCWD “matching” funds would utilize existing “encumbered” funds from the approved 2012 and 2013 budgets. It was anticipated that the majority of the future loan repayment would be funded through future Bald Eagle Lake WMD change revenue. The loan would be scheduled for repayment over a 10 year period.

He recommended the Board consider Resolution 3014-04, awarding the contract to HAB Aquatic Solutions, Inc. for the bid price of $878,991.26. The action also included authorizing staff to approve up to an additional 5% of the contract price to be budgeted for potential change orders resulting from unforeseen conditions or omissions discovered as the project progresses.

Motion by Manager Ogata, seconded by Manager Wagamon, to approve Resolution 2014-04, Contract Award for the Bald Eagle Lake Alum Project.

Manager Waller noted this was a large amount of money and compared to their total budget it was around 20%. He stated they had no tracking method for determining the phosphorus. They only had a rough estimate. He stated they have never sat down and taken an extensive study and it was time to take the expense and money to place in extensive measuring devices to determine what the phosphorus was. He noted this treatment only
covered the bottom of the lake, but did not stop the source of it. He noted they were only bandaging it. He stated this might be the best they could do at the moment, but technology was available to determine how the phosphorus came in from internal loading. He stated maintaining the wetland areas at the levels they were might be generating the phosphorus and they needed to further study this in both Bald Eagle and other areas. He stated they needed to identify the areas that were the points of pollutions, whether they were wetland, residential, non-residential farming areas, livestock, etc. He stated the cost to do this might seem phenomenal, but in the long run they would save money. He stated he did support this because it was the best they could do, he believed it was time for them to go beyond the current engineering standards and extensively test and monitor these areas.

President Preiner stated they had discussed this at their workshop and had decided they were going to proceed.

District Administrator Belfiori stated staff would be presenting one of the monitoring plans, which might be a good forum to further discuss other approaches. He noted many Watersheds have started looking at various BMP monitoring. He stated these were costly and labor intensive activity, but staff could do additional research on this.

Manager Waller agreed it would be costly and labor intensive, but he believed they needed to change the business.

ROLL CALL:
Manager Waller – Aye
Manager Haake – Absent
Manager Ogata – Aye
Manager Wagamon – Aye
President Preiner – Aye

Motion carried 4-0-1.

5. Consideration Resolution Supporting Change of Boundary with Brown’s Creek Watershed District (Kyle Axtell)

Water Resource Specialist Axtell stated on December 16, 2013, a letter was received from the City of Hugo identifying several inconsistencies along the common boundary of the RCWD and BCWD, including parcels not allocated to either watershed district, parcels bisected by the common boundary, and parcels being taxed by one watershed district when they were within the legal jurisdiction of another. Since this discovery, staff along with BCWD staff and Washington County have explored the need for a revision to the RCWD/BCWD common boundary. He indicated Houston Engineering had completed a hydrologic review of the boundary areas in question and had determined which parcels should be assigned to each watershed district.

He stated Washington County has indicated they would petition BWSR for the boundary changes. He noted the Resolution supported a change in the common boundary between the RCWD and BWCD.

President Preiner asked if there was anyone in the audience interested in speaking. There were no comments made.

Motion by Manager Ogata, seconded by Manager Waller, to approve Resolution 2014-05, Resolution Supporting Change of Boundary With Brown’s Creek Watershed District.
ROLL CALL:
Manager Waller – Aye
Manager Haake – Absent
Manager Ogata – Aye
Manager Wagamon – Aye
President Preiner – Aye

Motion carried 4-0-1.

6. Consider direction to notice public hearing on Anoka County Ditch 53-62 Zone of reasonable access for construction – (pending discussion at the February 11 information meeting) (Phil Belfiori)
District Administration Belfiori requested Board authorization to publish a notice for a public hearing regarding Construction Access, Right of Way, Removal of Trees and Obstructions on the ACD 53-62 Br. 1 Public Drainage Systems.

Motion by Manager Wagamon, seconded by Manager Ogata, to direct staff to publish a notice for a public hearing regarding Construction Access, Right of Way, Removal of Trees and Obstruction on the ACD 53-62 Br. 1 Public Drainage Systems for the week of March 12, 2014 at the Shoreview Council Chambers. Motion carried 4-0.

7. Consider 2014 MAWD Legislative Reception, Breakfast and Briefing March 19-20, 2014 (Phil Belfiori)
District Administrator Belfiori stated this was an invitation to attend the upcoming March 19 MAWD legislative reception. He noted there was no fee this year due to the change in law, but MAWD did want to know a head count by the time they registered.

President Preiner asked how many attended last year. District Administrator Belfiori stated no one attended the reception from the legislative district that he could recall.

President Preiner suggested staff follow this up with a phone call.

Manager Waller stated this was in contrast to previous years as the breakfast used to be well attended. He recommended this be brought up with MAWD.

Motion by Manager Waller, seconded by Manager Ogata, to authorize the submittal of the letter to the appropriate Legislators in the District as well as follow-up. Motion carried 4-0.

5. Consider Check Register dated 2/12/2014, in the amount of $198,510.35, prepared by HLB Tautges Redpath.

Motion by Manager Wagamon, seconded by Manager Ogata, to approve check register dated 02/12/2014, in the amount of $198,510.35, prepared by HLB Tautges Redpath. Motion carried 4-0.
ITEMS FOR DISCUSSION AND INFORMATION

1. Discussion of Builder's exemption (Follow-up from February 10, 2014 workshop)

District Administrator Belfiori stated this was a follow up at the February 10, 2014 workshop. He stated Manager Waller had requested staff do investigation of an item he had brought forward and they found Mr. Waller's comment on a previous workshop meeting regarding his concerns about a "builder's exemption".

Permit Coordinator/Wetland Specialist Tomczik stated at the workshop they had a discussion about proposed rule revisions. Review of the minutes was completed and he believed they had found the information the Board had inquired about. He indicated staff needed additional direction in the rule revision process for what the Board intend for this winter season.

President Preiner believed the issue was that commercial had a deadline timeframe and builders never had this timeframe and they were exempt. She believed this was the issue they were trying to bring into the revision.

Permit Coordinator/Wetland Specialist Tomczik stated an attempt to address that issue is in their current revision, Section 13. The section was added at the meeting to adopt the previous revisions and now for this winter that the language had been redrafted. The legal guidance had told them there was no substantial change to it other than for the purpose of clarity. He stated if that was consistent with the concern Manager Waller had, he believed it had been addressed.

Manager Waller stated something was missed that would hold things up for the season. He did not see any data collected, which was what he was asking. He asked them to put this on the schedule for later and they would skip another season until the next rule revision.

President Preiner asked if he was concerned about the data collection.

District Administrator Belfiori stated there was a consensus reached at that workshop after it was explained how much staff time it would take and staff should not undertake the work at this time.

Manager Ogata stated basically they should just do the revisions and proceed. Permit Coordinator/Wetland Specialist Tomczik stated they could put this on another workshop if they wanted to discuss this forward.

Manager Ogata asked if they were going through formal rule making. Permit Coordinator/Wetland Specialist Tomczik responded this was a formal rule making and the next step would be to bring the final document before them, receive comments and respond to comments.

President Preiner asked for this at the next meeting.

2. Engineer’s Update and Timeline

District Engineer Deutschman updated the Board on the Engineer’s timeline.

3. Manager’s Update

There were no comments.

ADJOURNMENT

Motion by Manager Ogata, seconded by Manager Wagamon, to adjourn the meeting at 10:28 a.m. Motion carried 4-0.