Minutes

ROLL CALL


Absent: None.


Consultants: District Engineers Mark Deutschman and Greg Bowles, Houston Engineering, Inc. (HEI); District Attorney Louis Smith from Smith Partners.

Visitors: Dan Schluender, Mark Smith

CALL TO ORDER

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

OATH OF OFFICE

District Attorney Smith administered the Oath of Office to Manager Haake.

SETTING OF THE AGENDA

District Administrator Belfiori added under the Consent Agenda for permit 14-011, Park and Ride. Under items for Board Action there was a revised ER for Number 1 pursuant to the Workshop discussion. He deleted number 2. At the end a new number 4, Consider Staffing Needs for New Grant. New Number 5, Pay Request Number 1 for Loche Lake Raingarden. Add under Discussion a follow-up on the surety discussion from the April 7 Workshop.

Motion by Manager Ogata, seconded by Manager Waller, to adopt the agenda as amended.

Manger Haake requested the Attorney prepare a memo for the Board regarding all of the changes on the agenda. She believed one of the things they tried to do was to be transparent and she believed if there are going to be new agenda items, that a 36 or 24 hour notice be given. She believed everyone should have the ability to come forward and hear their item. She indicated she realized they spoke about these items at a workshop meeting, but workshop meetings discussions were not discussed at the regular meetings.

Motion carried 5-0.
READING OF THE MINUTES AND THEIR APPROVAL

Minutes of the March 26, 2014, Board of Managers Regular Meeting.

Manager Waller noted on the public hearing Loche County Park Raingarden Project he requested the wording Anoka County be inserted so people know where it is.

Motion by Manager Wagamon, seconded by Manager Ogata, to approve the minutes as amended. Motion carried 4-0-1 (Manager Haake 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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<td>13-094</td>
<td>AJE Companies</td>
<td>Lino Lakes</td>
<td>Land Development</td>
<td>CAPROC 14 items</td>
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| Permit Coordinator/Wetland Specialist Tomczik stated this permit application had been revised. He stated a portion of the site discharged to the south and into the neighboring watershed VLAWMO. VLAWMO expressed concern and the applicant adjusted their project to address the concerns. Permit Coordinator/Wetland Specialist Tomczik stated the adjusted application was reviewed against the District regulations and found acceptable. The primary items that changed were specific to drainage areas and proposed discharge rates and volumes and are reflected in the engineer’s report tables.

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<td>Metro Transit Park and Ride</td>
<td>Lino Lakes</td>
<td>Park and Ride</td>
<td>CAPROC 4 items</td>
</tr>
</tbody>
</table>
| Permit Coordinator/Wetland Specialist Tomczik stated this was the Metro Transit Park and Ride in Lino Lakes in the northwest quadrant of Main Street and 35E.

District Engineer Bowles noted this was north of Main Street along the future 21st Avenue extension. The proposed development was a parking lot with 290 parking stalls. He stated there would be a wetland impact, which was under an exemption.

Manager Waller asked if this was Ditch 55. District Engineer Bowles responded it was.

Manager Waller noted this was a big impervious surface. District Engineer Bowles responded it was.

Manager Waller asked how much would be infiltrated. District Engineer Bowles responded it was bio-filtration as the ground water level is high in this area. The runoff was under what was allocated as capacity which was previously put together in a memorandum.

Manager Waller asked if they were under their allotment for Ditch 55. District Engineer Bowles responded they were.

Manager Waller asked if this was the only property they were going to work on or did they propose expanding the parking lot to the east. District Engineer Bowles noted the application did not indicate so, but there was an extension road to the east but they did not own the property to the east.
Permit Coordinator/Wetland Specialist Tomczik stated what they have seen in the past for Park & Ride facilities is that they turned into parking ramps so they made typically made accommodation in their plans to expand into a ramp at some point in the future.

**Motion by Manager Ogata, seconded by Manager Wagamon, 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 April 2, 2014. Motion carried 5-0.**

**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. **Consider permit application 14-001, Weston Woods on Rice Creek, City of Blaine (Nick Tomczik)**

   Permit Coordinator/Wetland Specialist Tomczik stated this was a revised permit application 14-001 for consideration. He noted the Engineer's Report (ER) was identical to the past Board packets except for item 11, which was in regards to the surety amount and the application's options. He noted the surety amount was $240,600 and was consistent with the recently passed Board floodplain surety amount. He stated based on the discussion at the recent Board Workshop, the applicant could provide the full district required amount if they wished consistent with a letter of credit or bond. He stated they must provide the first $5,000 to the District in cash, which is typical procedure. The option came in in that the applicant may fulfill the remainder of the surety through the arrangement discussed with Blaine; District being co-beneficiaries with Blaine on surety.

   President Preiner asked if anyone in the audience would like to speak on this. There was nobody who wished to speak.

   Manager Haake stated just because the surety was at a Workshop, she requested an overview as to what this development was going to be.

   District Engineer Bowles stated the project was located in Blaine at the existing Kate Haven Golf Course. The proposed plan was a housing development with 70 twin home units along with streets on the west and east side with a wetland in the middle. They were proposing to meet their requirements with ponds and a small BMP. The grading of the ponds would create floodplain fill so the locations they were mitigating were just to the north and south of the ponds. He noted the applicant has met the rules for water quality and rate control. There would be a wetland impact of 3,200 square feet and they would be going through a wetland bank for the replacement.

   District Administrator Belfiori noted the Managers had received a summary under item 1 for discussion which was a summary regarding the co-beneficiary with the City of Blaine.

   Manager Haake believed they should discuss this now because it went with this item. President Preiner removed that item from the agenda and incorporated it into this discussion.
District Attorney Smith stated the idea was that the City and the RCWD would jointly hold this surety so that either party could draw on it. The permit applicant would submit the document to the City, but the document would identify that both the City and the RCWD were co-beneficiaries and each has the authority to approve and accept the terms of the format. Blaine would hold the original document, but either Blaine or RCWD could draw upon it. There was notice provision in the document for either party to give notice of any withdraw. He stated the key for the District was that the available surety amount was sufficient to cover any expenses that could be incurred by the District. The agreement provides the surety amount would be available to draw upon until such time as the District reviewed the site and determined it had come under compliance and then the surety amount could be reduced. At that time once sufficient work has been done on the floodplain, the RCWD would communicate with Blaine that the amount could be reduced for the District’s purposes which would leave additional funds for the City to draw upon under their surety. The RCWD and the City would have a final accounting and if funds were insufficient to cover the costs, the Agreement itemized the priority of costs to be covered. If the surety amount is not adequate to recover the costs, the District could still recover the costs in Court. He stated their effort has been to cooperate with the City but still cover the RCWD’s interests.

Manager Waller stated they were talking about CAPROCCing this today, which required administrative approval. He asked how they would assure the bond was in place before they issued the permit. District Attorney Smith stated this would be a condition of the permit issuance and the agreement would need to be in place before the permit could be issued.

Manager Haake asked how much freeboard was there. District Engineer Bowles responded they required 2 feet above the lowest opening or 1 foot above the emergency overflow and this project met that requirement.

Manager Waller stated he would support this permit, but wanted to point out that this was an exception that they generally did not do. He stated he did not know of any other permits that were combined with the Cities and they have not had any issues with the amount of the surety previously either. He stated he did not want this to become a regular procedure and did not want to develop precedence.

Manager Haake agreed.

Permit Coordinator/Wetland Specialist Tomczik stated as stated the District has shared the draft document from the Attorney with the City late yesterday and as Manager Waller notes, this document was specific to this permit and if the details of the document fell apart, they would have to come back to the Board. If staff could not come to terms with the City, the applicant would be in the same situation because the surety amount remained the same and the applicant would need to come up with the full surety. He noted there has been a lot of discussion about the surety amount and if the Board had any additional direction for staff; he would appreciate the guidance as soon as possible so staff could prepare for future meetings.

Manager Ogata asked if they were going to vote on the agreement or where they just approving in advance what the agreement would say. Permit Coordinator/Wetland Specialist Tomczik stated they were considering conditional approval of the ER, which had language in it allowing the option regarding the surety.

Manager Ogata asked if they were approving the agreement after or before it was agreed to. He noted in the last bullet did they know what that was. District Attorney Smith stated he had the agreement available if the Board desired more detail about the terms.
Permit Coordinator/Wetland Specialist Tomczik stated what they were approving the engineer’s report CAPROC, conditional items, which included surety and there were some options for the applicant. They were not approving the points or the agreement at this time. The agreement would be brought back to the Managers.

Manager Ogata noted on bullet 4, whose decision was it as to how much progress had been made. Permit Coordinator/Wetland Specialist Tomczik responded that would be based on the RCWD inspector going onsite.

Manager Ogata stated there was a provision that stated the amount of the letter or bond could not go below a certain cost. He asked what was the total credit, letter/bond did they have right now. Manager Waller responded $750,000 was what Blaine was mentioning. He stated he did not know if that was the final number or not. He noted at the Workshop there was quite a bit of discussion with the City regarding this.

Manager Ogata stated he believed the outcome was a good option for the applicant.

Manager Waller stated the City had mentioned at the Workshop that they were expecting massive developments and he did not want to have their decision today become a precedent for any future projects that might be developed.

Manager Wagamon stated he believed they should have a special workshop to get this sorted out before the next Board meeting so they could give staff direction as to what they were doing. He agreed this was a mess because they were not coming to a final resolution on this. He stated they all needed to get together in a room and discuss this.

Manager Waller stated they had reduced it 53% and in addition they had an explanation from staff and a consultant as to how it was reached at the $23 figure. He stated he was comfortable with it and he believed the current rule was clear.

Manager Wagamon stated he was not satisfied with it and he wanted to discuss it further.

Manager Ogata stated on this issue he was supportive and they could discuss this further at a workshop meeting.

Motion by Manager Haake, seconded by Manager Wagamon, to approve permit application 14-001, Weston Woods on Rice Creek, City of Blaine with the addition of number 11.

Manager Waller asked if there was some disaster, did they have a 60-day problem. Permit Coordinator/Wetland Specialist Tomczik responded they did not.

Motion carried 5-0.

2. Consider data practice act policy (Phil Belfiori)
   Removed from the Agenda

3. Consider Manager Waller’s 2007-2013 Expense Reports.
   District Administrator Belfiori stated at the February Board workshop, it was the majority consensus of the Board that Manager Waller could submit his per diem expenses from 2007-2013 for Board consideration. He noted if these were approved, it would be incorporated into the 2013 audit.
Manager Haake stated in the memo from HLB that there had been nothing done like this before. She stated this was a large amount. She asked how they paid this now as they had a line item in their budget.

District Administrator Belfiori stated the 2013 would come out of the 2013 budgeting. He stated the others years before 2013 would come out of fund balance because it was not budgeted in the 2014 budget.

Manager Haake asked if they had to revise their taxes to 2007. District Administrator Belfiori stated the Managers were subject to the same tax rules and it would be a personal matter for the Manager. He stated the main thing HLB was noting was the adjustments in the audit.

Manager Haake asked if the District Attorney if there were any legal ramifications. District Attorney Smith stated they had looked at this and beginning with the Watershed law, it authorized Managers to collect a per diem and the RCWD By-laws repeated the Watershed law and did not set a deadline for the submission of claims. He noted they inquired with the State Auditor’s Office regarding this and their indication was that they did not have any separate legal authority, but it was generally accepted best practice to deal with these on a calendar basis. He also pointed out that year on the Board calendar the deadlines were noted for the per diems to be submitted. In terms of legal constraints they want to make sure the per diems are well documented for any meetings covered. There is a general sense of best practice, but there is no specific deadline. He stated the Board could set a policy and articulate a deadline and they might use this occasion to consider that.

Manager Haake stated her reluctance was setting a precedent for anyone to do this. She noted $24,786.69 would have to come out of the reserves.

Manager Ogata asked Manager Waller if it was his intention to participate in the vote or this question. Manager Waller stated yes, he intended to. He participated in voting for his per diem already for the past two months as well as voting for the other Managers per diem. He noted the other Managers had participated in voting for their own per diems also.

Manager Ogata asked the Attorney if there would be a conflict of interest if Manager Waller participated in the discussion. District Attorney Smith responded the conflict of interest question was covered by the Minnesota Statutes. He read from the Statute the section that dealt with conflict of interest. He stated they have looked at case law and there was a case that provided some guidance on when decisions of a governing body should be set aside by a Court due to it being tainted by a conflict of interest, which offered a number of factors to be considered. He stated a couple of things for the Board to consider were that individual Managers were regularly voting on their own per diem compensation each month and approving it because there was not another body that had authority to do that. He stated there was a recognition that they were voting on their own compensation so Manager Waller was in the same position, but what made this unique was that he had accumulated seven years of per diems so instead of it being a month to month vote, it was now a substantial amount of money and the question was whether this was substantially affecting his financial interest, but the question remained whether this was any different from the other Managers who were also receiving per diems. He stated in the questions were there was no clear court ruling, he was left with offering them guidance and his counsel typically was whether the matter was disclosed and in this case the matter was disclosed. He stated when in doubt it as better to recuse.

Manager Haake asked for additional discussion and she would like to table this to the next meeting. She agreed with Manager Waller about they all voted on their own per diems, but this was such a large amount and she favored Manager Waller from recusing himself from the vote. She stated she was not saying no, but she wanted Manager Waller to consider recusing himself.
Manager Ogata stated he believed the Statute was clear. He stated there was no question the decision affected Manager Waller differently than the rest of the Managers as the other Managers put in their per diems in the financial year. He stated Manager Waller was putting in something completely different and therefore the effect was different than on the other Managers. He stated there was no question in his mind that a smaller expenditure was substantially different than a $24,000 expenditure. Personally, he was in favor of having this paid as he did not see any legal bar to doing this. However, he felt very strongly that Manager Waller should not participate in this and if he did participate in this, he would abstain from participation as he would not participate in a vote that was not legal.

Manager Waller stated it was Manager Ogata's opinion that this affected him substantially different than himself. However, Manager Ogata did not point out that this was not for one year, but for seven years so it was really $3,000 over every year. He asked if they wanted to have seven separate votes for $3,000 for each year and could they then say it affected him substantially different than any of the other Managers. He stated for Manager Ogata to make a judgment as to what was substantial when he did not know his personal circumstances, how did Manager Ogata know if this substantially affected him. He asked how did Manager Ogata know that voting for Manager Ogata's per diem substantially affect his financial situation.

Manager Ogata agreed this was his opinion and the substantial affect was not on him as a personal matter, but rather it was a legal affect as to whether there was a substantial financial impact.

Manager Haake noted this substantially affected the District's financial situation and it would have to come out of the reserves.

Manager Ogata stated he was just laying out his position that if they were going to go forward and Manager Waller did not recuse himself, he would not participate in the vote or in the action.

Manager Haake asked if this would be better to table this and give Manager Waller to think about what he wanted to do.

Manager Ogata stated they should vote on this today. He noted Manager Waller brought this up in February and he was given a deadline for the information, which he met. He believed Manager Waller had waited long enough for a vote and they should proceed with a vote.

Manager Waller stated if he wanted Manager Ogata's support he had to recuse himself. Manager Ogata responded he could see why Manager Waller would look at it that way, but he was trying to establish a legal basis and he was doing this under his own ethical reasons.

Manager Wagamon asked how this affected the taxpayers. President Preiner stated this would come out of this year's budget.

Manager Waller noted the District did carry forward budget for items. He stated he had informed the District Administrator to keep the per diems in the budget because he might come for the money someday. He stated what they were arguing about was if he wanted Manager Ogata's support he had to recuse himself so Manager Ogata's conscience was clear and if he recused himself and did not receive his per diem he did not see how they could not pay it. He indicated he did not see what the problem was.
Manager Haake stated they have various other line items that were carried forward, but she has never seen per diems carried through.

**Motion by Manager Haake to table to the next meeting. Motion died for lack of a second.**

President Preiner asked for a Motion. There was no motion made.

President Preiner asked what happened when there was no motion. District Attorney Smith responded that a Board action required a motion.

Manager Ogata stated he did not see a legal bar for not doing this. He stated all of the Managers had been paid by the end of the calendar year and he believed this was a substantial difference and Manager Waller had submitted an accounting of his expenses and it would be acceptable to reimburse Manager Waller for the 2013 per diems and mileage.

**Motion by Manager Ogata, seconded by Manager Wagamon, to reimburse Manager Waller for expenses submitted for calendar year 2013 ($3,075.00 for the per diems and $893.27 for the mileage).**

Manager Haake asked if Manager Waller could participate in the vote. Manager Ogata stated he had no issue with Manager Waller participating in this vote because this did not substantially affect Manager Waller’s financial interest.

Manager Haake asked if the motion was to pay the $24,000. President Preiner responded the motion was to pay only 2013 per diems and expenses.

Manager Wagamon stated he believed Manager Waller was anything but feeble minded and he willfully chose not to take his per diem those years and whatever that was doing for him, he got the results and he did not see how taxpayers could be charged this year for something Manager Waller willfully did not do for the past seven years.

**ROLL CALL:**

Manager Waller – Recuse
Manager Haake – Aye
Manager Ogata – Aye
Manager Wagamon – Aye
President Preiner – Aye

**Motion carried 4-0.**

4. **Consider Check Register dated 4/9/2014, in the amount of $49,613.28, prepared by HLB Tautges Redpath.**

   **Motion by Manager Wagamon, seconded by Manager Ogata, to approve check register dated 4/9/2014, in the amount of $49,613.28, prepared by HLB Tautges Redpath. Motion carried 5-0.**

5. **Consider Staffing Needs for New Grant**

   District Administrator Belfiori stated the District had received a $3 million dollar Targeted Watershed Demonstration project grant and staff was working hard to schedule meetings with project partners and define responsibilities. He noted staff was working with BWSR staff to determine expectations and requirements for the
grant work plan and agreements. He was asking for an interim step to move Patrick Hughes from regular part-
time status to regular full-time status, which would require a salary and benefit modification. He noted he may be
bringing forth permanent or longer term staffing recommendations once the BWSR agreement was executed.

Manager Ogata asked what Mr. Hughes current duties were. District Administrator Belfiori responded currently
Patrick was assisting with administration work and also working with permitting issues. He stated the plan for the
additional duties would be to assist with working with Kyle Axtell to assist him as Kyle would be taking on project
management duties on some of the projects in the grant application.

Manager Ogata asked if it would anticipate in a different allocation to the grade level. District Administrator
Belfiori responded at this time no. He anticipated it would mostly be administrative duties.

Manager Ogata stated the only concern he had was the tails part of it. He asked if there was any anticipation of
the allocation of hours for the future beyond the grant. District Administrator Belfiori noted the grant went until
2018 and he envisioned there would be a large enough workload moving forward past 2018 and beyond.
Manager Haake stated what had been written in the grant for administration. District Administrator Belfiori
responded he did not have that information currently.

President Preiner noted she had asked the District Administrator to gather those numbers and they would be
looked at in the future.

Manager Haake asked if they wrote the grant, didn’t they have to put in those numbers. District Administrator
Belfiori noted they did have to identify the numbers, but there were a number of factors they needed to discuss
with their partners and the specific numbers would be brought forth at a Board workshop.
President Preiner stated right now they wanted the additional 20 hours. District Administrator Belfiori responded
that was correct. He noted there were various agreements that needed to be prepared in the next few months
and those needed to be moved forward.

Manager Waller asked Manager Ogata what his concerns were with the allocation of percentages. Manager Ogata
responded his question was if he would be 50/50 or if there would be a different percentage. He stated he was
satisfied with the answer he received.

Manager Ogata asked if the salary and benefits could come out of the grant money. District Administrator
Belfiori stated it would not come out of the grant funds, but out of the general budget.

District Administrator Belfiori stated the main purpose was to backfill Kyle Axtell’s time. He stated the size of the
grant project was unprecedented and they needed to shift priorities of several people around and Kyle was one of
those. He noted Kyle was already at maximum workload and there was a tight timeline to meet.

Motion by Manager Waller, seconded by Manager Haake, to authorize the administrator to move Patrick
Hughes from regular part time status (20 hours/week) to regular full time status (40 hours/week) starting on
Friday, April 11, 2014. Motion carried 5-0.

6. Pay Request Number 1 for Locke County Park Raingarden.
District Administrator Belfiori stated this was the first pay request from Landscape Direction LLC in the amount
of $5,200.00.
Motion by Manager Waller, seconded by Manager Haake, to authorize payment in the amount of $5,200.00 to Landscape Direction, LLC. Motion carried 5-0.

ITEMS FOR DISCUSSION AND INFORMATION

1. Follow up on the surety discussion from the April 7 Workshop

President Preiner stated Manager Wagamon had requested this be brought back to a workshop discussion to finalize the amounts and come up with a policy.

Manager Haake asked if this could be addressed at the next workshop. President Preiner noted the sooner they could address this, the better.

District Administrator Belfiori noted the City of Blaine had indicated a number of projects in the works, which would need direction.

President Preiner asked if staff could find out what other City policies were. She stated she would like to have a structure.

Manager Ogata stated whatever they came up with had to apply to everyone. President Preiner agreed.

Manager Waller believed they needed to follow the process outlined. He stated they have not had any large problems with it except the one instance and basically this would increase the risk of the taxpayers to help shore up the bottom line balance sheet of developers. President Preiner stated the entire Board had not discussed the issue and now that the full Board is available a workshop discussion should occur.

Manager Ogata stated he believed they should try and set this up as a separate workshop meeting.

Manager Haake asked if they could have a meeting on April 14. Manager Ogata stated this would probably not work for him as it was the day before taxes were due.

Manager Haake stated she would also be available on the 21st. Manager Wagamon stated he was available on the 14th.

District Administrator Belfiori stated if they wanted further research from other cities, he was not sure they could get the data in the next couple of days in time for a meeting on April 14.

President Preiner asked if the City of Blaine’s numbers were accurate and did they also need to look at those numbers.

Permit Coordinator/Wetland Specialist Tomczik stated they would check the City of Blaine’s numbers and other watersheds regarding floodplain. He stated they also needed to look at Blaine’s response to the potential agreement at that time also.

It was the Board’s consensus to meet on April 21 at 1:00 p.m. at District offices.
2. **Engineer’s Report and Timeline**
District Engineer Deutschman stated they were continuing to work on the 53-62 repair report. He updated the Board on where they were at on that work. He stated at Brown’s Preserve the monitoring equipment would be put in in the next week or two. He stated they were working on Ditch 2, 3, 5.

3. **Manager’s Update**
Manager Haake noted Metro MAWD meets next Tuesday night at 7:00 p.m.

**ADJOURNMENT**
Motion by Manager Ogata, seconded by Manager Haake, to adjourn the meeting at 10:30 a.m. Motion carried 5-0.