RESOLUTION NO. 2015-02

RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

FINDINGS AND ORDER CORRECTING DRAINAGE SYSTEM RECORD
FOR ANOKA COUNTY DITCH 46

Manager Wagamon offered the following Resolution and moved its adoption, seconded by Manager Waller:

FINDINGS

1. The Rice Creek Watershed District (RCWD) is the Drainage Authority for Anoka County Ditch 46 (ACD 46).

2. Inspection of ACD 46 by the Drainage Authority’s staff raised questions regarding the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system. Further investigation revealed a lack of written documentation describing elevations and grades throughout the system, several areas of disrepair, and portions of branches or laterals absent from the landscape as a result of changed land use to suburban, commercial, and residential development.

3. The Drainage Authority’s engineer investigated and drafted a historical and technical analysis for the system which is contained in the Engineer’s Historical Profile Memorandum of ACD 46 dated March 19, 2009 and in a Historical Review Addendum dated September 17, 2014.

4. As part of its analysis of the drainage system, the engineer has identified the existing functional alignment, dimension and grade of this system as it provides beneficial public drainage today. This functional alignment, dimension, and grade match the basic functional efficiency of the system as designed and established to provide beneficial public drainage.

5. Several owners of land benefitted by the drainage system have inquired with the Drainage Authority regarding property development and the level of expected service of ACD 46 as an outlet for beneficial drainage.

6. In order to properly manage the drainage system in a way that recognizes its intended, beneficial public function, the Drainage Authority initiated proceedings to identify the extent of its jurisdiction over the system as currently existing and providing beneficial public drainage.

7. Statutes section 103D.335, subdivision 8, allows the Board of Managers to “construct, clean, repair, alter, abandon, consolidate, reclaim or change the course or terminus of any public ditch . . . within the watershed district.”
8. Statutes section 103E.101, subdivision 4a, allows the Board of Managers, as the Drainage Authority, to reestablish records defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; or right-of-way of drainage systems under its jurisdiction.

9. On October 22, 2014, the Drainage Authority adopted Resolution 2014-33 to follow the procedures of statutes section 103E.101, subdivision 4a, to reestablish and correct the drainage system record of ACD 46 to reflect the functional alignment, dimension, and grade of the system.

10. Resolution 2014-33 directed the district engineer, to the extent not already competed in the Historical Review Addendum, to investigate and report findings defining the alignment; cross-section; profile; hydraulic structure locations; materials; dimensions; elevations; and right-of-way of the drainage system. The engineer reported that the review was completed in the Historical Review Addendum.

11. The Board noticed an information meeting for November 10, 2014, but due to weather it was postponed and rescheduled to December 8, 2014 at Columbus City Hall. The purpose of the informational meeting was to inform the public of the proceedings and the proposed action. At the informational meeting, the Board’s staff reviewed the information contained in the engineer’s Historical Review Addendum, describing the history of the system, its current condition and the proposal to establish a functional alignment, grade and capacity of the system which continues to perform a beneficial public drainage function.

12. Pursuant to the requirements of 103E.101, subdivision 4(c), the Board mailed notice of this final hearing to the commissioner of natural resources, the executive director of the Board of Water and Soil Resources, and all property owners benefited or damaged by the drainage system. Other interested parties were provided notice by publication. In addition, notice was published on the Drainage Authority website, posted at the Drainage Authority office, and emailed to the Drainage Authority’s general circulation listserve. Evidence of all notices is on file with the District.

13. Publication, posting and mailing occurred as follows:
   b. Forest Lake Times January 8 & 15, 2015
   c. District website January 7, 2015
   d. District email notice January 8, 2015
   e. District office December 29, 2014
   f. Mailed notice and historical review memo to Commissioner of DNR, Executive Director of BWSR and City of Columbus on December 29, 2014
   g. Postcard mailing to benefitted parties in District January 5, 2015

14. Evidence of all actions in this matter, including preliminary orders, appointments, oaths, affidavits of mailing, publication or posting as well as hearing agendas and presentation materials shall be considered the record of proceedings in this matter.

15. The Drainage Authority is proceeding under its general obligation to maintain drainage systems under its jurisdiction and is acting in response to landowner concerns over the condition of ACD 46 and in response to an inspection report showing that records establishing the alignment, cross-section, profile, or right-of-way are lost, destroyed, or otherwise incomplete.
16. The intent of the proceedings is to reconcile the historical record of the drainage system with the functional alignment, dimension and grade of the system to describe the equivalent of the as-constructed and subsequently improved condition.

17. Future work on the drainage system will utilize the as-constructed and subsequently improved condition established in these proceedings, as a baseline for determining repair or improvement of the system.

18. The decision standard for the Board is whether, based on the proceedings herein, the evidence presented at this hearing and the testimony of the consulting engineer and the public, the Board finds that the existing and reestablished records together define the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system.

19. The Board of Managers has reviewed the historical and technical analyses of the system which are contained in the engineer’s Historical Review Memorandum and Addendum. Said analyses are incorporated by reference into this Resolution.

20. The Board noticed and held a public hearing on the correction of the drainage system record on January 22, 2015, at 5:30 p.m. in the Columbus City Council Chambers, 16319 Kettle River Boulevard, Columbus, MN. Evidence of all notices is on file with the District office.

21. During the pendency of the proceedings, the District did not receive comments regarding property affected by the reestablishment and correction of the drainage system records.

22. During the public hearing portion of the proceedings, no party appeared to provide comment.

23. At the close of the public comment hearing, Manager Wagamon moved to direct staff to prepare findings and an order consistent with the proceedings, including responses to all comments received through the public comment process; that the draft findings and order be written to affect the reestablishment and correction of the public drainage system records consistent with the engineer’s findings; that the order be recorded to reflect the reestablishment and correction of the public drainage system record; and that the hearing be recessed to the Board’s regular meeting on February 11, 2015, at 9:00 a.m., or by adjournment to an appropriate time on the Board’s agenda, at which meeting the Board would consider findings and an order for the proposed reestablishment and correction of the public drainage system records. Manager Waller seconded and the motion carried, 3-0.

24. The proposed functional alignment and grade of ACD 46, as described in the engineer’s Historical Review Memorandum and Final Addendum, reflects the level of performance similar in nature to the as-constructed, subsequently improved condition of the drainage system considering the function required by the change in land use to reestablish the historic drainage function of benefited lands.

25. Correction of the drainage system record to adopt the proposed functional alignment and grade of ACD 46, as described in the engineer’s review memorandum, will provide for the efficient administration of the drainage system.
26. Adopting the proposed functional alignment and grade of ACD 46, as described in the engineer’s Historical Review Memorandum and Final Addendum, will reconcile the historical record of the drainage system with the functional alignment, dimension and grade of the system as it has historically provided public benefit.

Therefore, the RCWD Board of Managers makes the following:

ORDER

A. The Board of Managers hereby corrects the drainage system record of ACD 46 to reflect the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system as detailed in the Engineer’s Historical Profile Memorandum of ACD 46 dated March 19, 2009 and in a Historical Review Addendum dated September 17, 2014, attached as Exhibits A & B respectively.

B. The right-of-way of the drainage system, consistent with law, shall be defined as a right-of-way easement for ACD 46 to include the area physically occupied by the open ditch or tile drainage system, a one-rod (16 ½ foot) perennially vegetated buffer strip adjacent to open ditch, and an area of reasonable set-back to protect and provide for maintenance of the drainage system as required by Minnesota Statutes Chapter 103E, together with rights of entry to parcels containing the drainage system for inspection and maintenance purposes, as well as any and all secondary easements recognized by law and necessary to exercise statutory obligations related to the ditch.

C. The engineer is directed to prepare legal description of the center line of the ditch from the alignment contained in the Historical Profile Memorandum of ACD 46 dated March 19, 2009 and in a Historical Review Addendum dated September 11, 2014, and a plat map depicting the alignment of the right-of-way and identifying the parcels over which the alignment passes.

D. Upon completion of the legal description and plat map, the Board directs recording of this Order, the legal description and the plat map on all properties over which the alignment passes.

The question was on the adoption of the Findings and Order and there were 3 yeas and 0 nays as follows:

<table>
<thead>
<tr>
<th></th>
<th>Yea</th>
<th>Nay</th>
<th>Absent</th>
<th>Abstain</th>
</tr>
</thead>
<tbody>
<tr>
<td>WALLER</td>
<td>☑</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>HAAKE</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
</tr>
<tr>
<td>OGATA</td>
<td>☐</td>
<td>☐</td>
<td>☑</td>
<td>☐</td>
</tr>
<tr>
<td>WAGAMON</td>
<td>☑</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>PREINER</td>
<td>☑</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Upon vote, the Chair declared the Findings and Order **2015-02 passed**

Dated: February 11 2015

[Signature]

John Walker

Acting Secretary
* * * * * * * * * * *

________, Acting Secretary of the Rice Creek Watershed District, do hereby certify that I have compared the above Findings and Order with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 11 day of February, 2015.

________________________
John Waller,
Acting Secretary