RESOLUTION 2017-14

RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

LOCAL GOVERNMENT UNIT FOR IMPLEMENTATION OF THE WETLAND CONSERVATION ACT

RESOLUTION APPROVING NO LOSS APPLICATION WITH CONDITIONS AND DETERMINING APPLICATION OF WATERSHED DISTRICT RULES

Manager Haake offered the following Resolution and moved its adoption, seconded by Manager Walker:

FINDINGS

1. The Rice Creek Watershed District (RCWD) is the designated Local Government Unit (LGU) for implementation of the Wetland Conservation Act (WCA) within its boundary. The RCWD also enforces various rules adopted pursuant to its statutory authority.

2. The applicant, Susan and Ronald Moore/Shadow Creek Stables, owns property in Section 20, T.32 N., R.21 W., Washington County, Minnesota. The property is located at Street Address 6150 - 202nd Street North, Forest Lake, MN 55025, and is more particularly described in the application.

3. In 2006, the applicant hired a wetland technical consultant to prepare a wetland delineation for the property. The 2006 delineation indicated a type and boundary of the wetland to which the current application is directed.

4. The LGU finds the 2006 delineation to be reliable.

5. The LGU's determination of reliability is based on its review of the 2006 delineation report and other available evidence, include air photography of the property.

6. Based on its review, the LGU finds that the 2006 delineation accurately delineated the subject wetland and accurately determined the boundary between wetland and non-wetland on the property.

7. Subsequent to 2006, changes occurred to drainage patterns from the property which included disruption of a pre-1991 installed tile drain which impacted the wetland on the property and resulted in the conditions giving rise to the 2006 delineation.

8. The changes to drainage patterns occurring after 2006 include the blocking of an installed roadway culvert that previously drained excess surface water from the property and the obstruction of a historic, private drainage tile that previously removed subsurface water from the property.
9. None of the changes to drainage patterns occurring after 2006 were done with the intent of creating or enhancing wetlands. None of the changes to drainage patterns occurring after 2006 were performed by the applicant.

10. The applicant proposes to remove or correct the blockage and restore the historic drainage – thus returning the property to conditions consistent with the 2006 delineation.

11. The LGU finds that restoration of historic drainage and correcting the obstruction and blockage of drainage structures that occurred after 2006 will only remove hydrology from the areas of the property identified as non-wetland in the 2006 delineation and will not impact the historic wetland signature. This result is “no loss” according to rules part 8420.0415.

12. The LGU finds that but for the blockage, the area should not be wetland and that the applicant has demonstrated a historical condition of non-wetland (as defined in rules part 8420.0111 subp. 46), has identified a historic hydraulic regime for the historic wetland and has shown that the correction of the blockage will not reduce hydrology beyond the historic condition.

13. The LGU finds that the removal and correction of the blockage and obstruction to the historic drainage meets the no-loss requirement of the WCA found in rule part 8420.0415 A and B.

14. The LGU further finds that current wetland signature, in excess of that identified in the 2006 delineation, is incidental.

15. As found in rules part 8420.0105, subp.2.D., the WCA does not regulate impacts to incidental wetlands. “Incidental wetlands” are wetland areas that the landowner can demonstrate, to the satisfaction of the local government unit, were created in non-wetland areas solely by actions, the purpose of which was not to create the wetland. Since the current wetland signature extends into areas determined to be non-wetland in the 2006 delineation, and the blockage and obstruction to the historic drainage was done by third parties and not for the purpose of creating wetland, the LGU finds, even if the no-loss standard were not met, the area to be impacted by the proposed activity will only impact incidental wetland.

16. In addition to removal and correction of the blockage and obstruction to the historic drainage, the applicant has identified its intent to place fill, adjacent to the wetland, in areas identified in the 2006 delineation as non-wetland. For the reasons stated above, the LGU finds that the placement of fill, in the manner described by the applicant, is not subject to the WCA. However, the LGU notes that the placement of fill and other
modification of the property may require other approvals by Federal, State and local units of government.

17. On April 6 and 7, 2017, the LGU staff received administrative comments from members of its Technical Evaluation Panel. Though the TEP has not submitted a formal recommendation, the administrative comments of TEP members have been considered by the LGU. Based on its findings, above, the LGU disagrees with the comments. The TEP member comments suggest considering the historic condition of the property prior to any pre-1991 drainage manipulation. The TEP members’ comments did not consider the conditions created by pre-1991 drainage manipulations reflected in the 2006 delineation. The LGU gives weight to the 2006 delineation as evidence of the wetland type and boundary sought to be reestablished, the air photography history of the property and the actions that caused an expansion of the wetland signature from the 2006 delineation.

18. The LGU determines that activities proposed by the applicant will result in no-loss of wetland under the WCA.

19. The LGU determines that, to the extent wetland impacts will occur because of the applicant’s proposed activities, such impacts are to incidental wetlands.

20. The LGU notes two prior decisions regarding this property. However, neither decision was on the basis of the current application and neither decision considered the evidence presented in current application.

Therefore, based upon the application, the record and history of the applicant’s property and the proceedings herein, the Rice Creek Watershed District Board of Managers, Local Government Unit for implementation of the Wetland Conservation Act, makes the following:

ORDER

The applicant’s no-loss application is APPROVED subject to the following conditions:

A. The restoration of historic drainage facilities my not improve drainage beyond historic conditions or reduce wetland signatures beyond those identified in the 2006 delineation.

B. The placement of fill adjacent to the wetland must conform to the standards found in rule 8420.0410 to include:
   1) appropriate erosion control measures are taken to prevent sedimentation of the wetland or of any receiving waters
   2) the activity does not block fish activity in a watercourse, except when done purposely to prevent movement of undesirable fish species in accordance with a recommendation from the commissioner; and
3) the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices according to the documents referenced in part 8420.0112, items L, M, and N, and water resource protection requirements established under Minnesota Statutes, chapter 103H.

C. Nothing in this approval shall be construed to give the applicant rights to impact any property other than that owned by the applicant.

D. Because the property is currently in agricultural use, the requirements of RCWD Rule D does not apply. However, should the land be converted to a non-agricultural use, the new use will require compliance with Rule D and any other applicable rule of the RCWD.

The question was on the adoption of the Resolution and there were 5 yeas and 0 nays as follows:

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Upon vote, the Chair declared the Resolution passed.

Michael Bradley, Secretary

Dated: June 14, 2017

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I, Michael Bradley, Secretary of the Rice Creek Watershed District, do hereby certify that I have compared the above Resolution 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 have hereunto set my hand this 14th day of June 2017.

Michael Bradley, Secretary