REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, January 10, 2018

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

Approved Minutes

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

ROLL CALL
Present: President Patricia Preiner, 2nd Vice-Pres. John Waller, Treasurer Steven Wagamon, and Secretary Michael Bradley.

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

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Technician Samantha Berger, Water Resource Specialist Kyle Axtell, Communications & Outreach Coordinator Beth Carreño, Office Manager Theresa Stasica.

Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); and, District Attorney Louis Smith from Smith Partners.

Visitors: None.

SETTING OF THE AGENDA
Administrator Phil Belfiori noted Item No. 5 was removed from the agenda, and requested the following additions:

Under Items Requiring Board Action
- Item No. 6 – Consider Response to Minnesota Commercial Railway’s (MCR) 12/22/17 Legislative Briefing Document
- Item No. 7 – Consider Directing Staff and Consultants to Investigate Logistics of Executing Remote Meeting Attendance Per Statutes 13D.02

Under Items for Discussion and Information
- Item No. 1 – MAWD Survey on Electronic Meeting Attendance

Wetland Specialist Nick Tomczik requested Permit No. 16-035 be removed from the Consent Agenda and be considered separately immediately after consent agenda.
Motion by Manager Waller, seconded by Manager Bradley, to adopt the agenda as amended. Motion carried 4-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the December 11, 2017 Board of Managers Workshop. Motion by Manager Wagamon, seconded by Manager Waller to approve the minutes as presented. Motion carried 4-0.

Minutes of the December 13, 2017 Board of Managers Meeting.
Manager Bradley requested line 685 of the minutes be changed to “...he does not expect...”

Motion by Manager Wagamon, seconded by Manager Bradley to approve the minutes as revised. Motion carried 4-0.

CONSENT AGENDA
The following items will be acted upon without discussion in accordance with the staff recommendation and associated documentation unless a Manager or another interested person requests opportunity for discussion:

Table of Contents
Permit Applications Requiring Board Action

<table>
<thead>
<tr>
<th>No.</th>
<th>Applicant</th>
<th>Location</th>
<th>Plan</th>
<th>Type</th>
</tr>
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<tbody>
<tr>
<td>16-035</td>
<td>Ron Peltier</td>
<td>Dellwood</td>
<td>Final Site Drainage Plan</td>
<td>CAPROC 8 items</td>
</tr>
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It was moved by Manager Wagamon, and seconded by Manager Waller to approve the consent agenda as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations for permit 17-086, 17-113, and 17-126 dated December 18, 20, 2017 & January 3, 2018. Motion carried 4-0.

PERMIT APPLICATIONS REQUIRING BOARD ACTION

<table>
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Permit Coordinator/Wetland Specialist Tomczik explained Permit No. 16-035 is an after-the-fact permit. The building is up, the structures are largely in, and there are a number of administrative items that need to be addressed. He recommended administrative CAPROC
items 1, 4, 5, 6, 7, and 8 be due to the District by February 7, 2018 and CAPROC items 2 and 3 remain under 12-month deadline.

Manager Waller inquired how much time was shorted and how much time the applicant has already had.

Permit Coordinator/Wetland Specialist Tomczik responded the applicant had changed things on the site and the revisions were recently submitted to the District. Staff cannot define the timeframe until they receive approval from the Board. The applicant has already constructed much of the site and additional site work is needed, the CAPROC items noted are required prior to earth work and permit so February 7 is a reasonable deadline.

Manager Waller noted it is a shame the dairy farm is now a winery.

It was moved by Manager Waller and seconded by Manager Wagamon, to approve CAPROC permit 16-035 as adjusted by District staff, CAPROC administration items 1, 4, 5, 6, 7 and 8 due to the District by February 7, 2018, and CAPROC items 2 and 3 remain with the 12 months deadline as outlined in accordance with RCWD District Engineer’s Findings and Recommendations, dated December 26, 2017, including staff’s recommended adjusted CAPROC deadlines. Motion carried 4-0.

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<thead>
<tr>
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<tr>
<td>17-088</td>
<td>Gary Larson/Fernando Vega</td>
<td>Blaine</td>
<td>Final Site Drainage Plan</td>
<td>VARIANCE REQUEST &amp; CAPROC 14 items</td>
</tr>
</tbody>
</table>

**Two Actions: Variance Request and CAPROC decision.**

Permit Coordinator/Wetland Specialist Tomczik stated this is a CAPROC item that also requires a variance. He reviewed the project with the Board.

Permit Coordinator/Wetland Specialist Tomczik stated Gary Larson, as the project applicant for the Blaine Commercial project has submitted a written request for a variance from Rice Creek Watershed District (RCWD) Rule F.6(e)(2), which requires that a “buffer adjacent to wetland within the final WMC must average at least 50 feet in width, measure at least 25 feet at all points, and meet the average width at all points of concentrated inflow” (hereafter buffer requirement). The District Engineer evaluated the variance request per RCWD Rule L for Permit 17-088. The project proposes to construct a 6,900 square foot commercial building and parking lot on a single 2.26 acre parcel in Blaine. The parcel is primarily a vacant field and wetland with 0.0± acres of existing impervious surface. The project proposes 0.89± acres of post-developed impervious surface. The project will disturb 1.53± acres overall. The project drains to Golden Lake which is the resources of concern. Proposed treatment for the project consists of a stormwater pond designed to NURP standards.
The District Engineer evaluated the variance request by applying the “practical difficulties” test set forth in the District’s variance rule. This standard is applied through the Board of Managers’ consideration and weighing of the following criteria:

(a) How substantial the variation is in relation to District Rule requirement(s);

(b) the effect the variance would have on government services;

(c) whether the variance will affect a substantial change in the character of the watershed resources or will be a substantial detriment to neighboring properties;

(d) whether the practical difficulty can be alleviated by a feasible method other than a variance (economic considerations play a role in the analysis under this factor);

(e) how the practical difficulty occurred, including whether the landowner created the need for the variance; and

(f) whether in light of all of the above factors, allowing the variance will serve the interests of justice.

Permit Coordinator/Wetland Specialist Tomczik stated some of the discussion relevant to these criteria has already been documented in the Engineer’s Report (ER) narrative. Rather than reiterate the ER discussion, it is the intent of this memorandum to incorporate the discussion by reference where necessary, and use this memorandum to indicate how it applies to the above criteria. Ultimately, the Board determines whether consideration of the above criteria supports approval of a variance. The Board may exercise discretion in analyzing the applicant’s compliance with the variance criteria – both generally and with regard to application of the individual variance (and other rule) criteria. The Board also may require input from legal counsel. Nothing in the presented variance memorandum should be construed as rendering a legal opinion.

Permit Coordinator/Wetland Specialist Tomczik informed the Board that he would reiterate the above criteria and District Technician Berger would reply with the District Engineer’s response.

Permit Coordinator/Wetland Specialist Tomczik asked per practical difficulties criterion (a), how substantial the variation is in relation to the RCWD Rule requirement(s).

District Technician Berger replied: The applicant has not met the average 50-foot requirement or the 25-foot minimum. The areas where the minimum distance is not met can be found in the Exhibit A Request for Variance dated 11-29-2017. In areas where the minimum distance cannot be met, the applicant has provided a 15-foot grass side slope. This slope is 3:1, which is greater than the maximum buffer slope requirement of 5:1. The slope was designed to minimize wetland impacts. The ER for Blaine Commercial, dated January 3, 2018 finds that the applicant would need to provide an additional 16,053 S.F. of buffer to meet the average 50-foot width. Other than Rule F.6(e)(2), the applicant will meet the remaining provisions of the buffer requirement.
Permit Coordinator/Wetland Specialist Tomczik asked per practical difficulties criterion (b) the effect the variance would have on government services.

District Technician Berger replied: the issuance of a variance for the Blaine Commercial project is not expected to increase flooding (see criterion (c)) or have any negative effect on government services.

Permit Coordinator/Wetland Specialist Tomczik asked Per criterion (c), which sets the criteria for consideration of whether the variance will effect a substantial change in the character of resources within the watershed, the District Engineer used three criteria to assess substantial change: 1) water quality, defined the quantity of pollutants such as phosphorus and suspended sediment leaving the site and the potential for degrading water quality downstream; 2) the presence of and potential impact to special and impaired waterbodies as defined by various laws including the Minnesota Pollution Control Agency stormwater program, whether a water body is impaired and related designations including Wild and Scenic or Outstanding Natural Resource Value designations; and 3) flooding, the potential for flood damages or other adverse hydrologic impacts.

Permit Coordinator/Wetland Specialist Tomczik asked: In assessing whether a substantial change in the character of the watershed resources may occur, we considered, not exclusively but as a measure of impact, the presence of and potential impact to the following:

- a 303(d) listed water body (i.e., an impaired water);
- a high quality or non-degraded wetland;
- a federally listed threatened or endangered species or state threatened, endangered or species of special concern and their critical habitat;
- a Scientific and Natural Area as defined by the Minnesota Department of Natural Resources;
- resources protected from nondegradation as identified within 7050.0180 Nondegradation for Outstanding Resource Value Waters; and
- Other generally sensitive resources.

District Technician Berger replied: Golden Lake, which receives project drainage, is listed on the Section 303(d) impaired water list. The affected designated use is aquatic recreation with a pollutant or stressor of nutrient/eutrophication biological indicators. The project as a whole is not expected to cause adverse impacts. Curb, gutter and storm sewer will route the majority of the drainage to a NURP pond to mitigate the effect of the lack of buffer by removing pollutants prior to runoff entering the wetlands. Only 0.01 acres or 1.22% of untreated surface is routed to the wetlands.

It is not likely that the other resources identified above will be negatively affected by the reduced buffer widths.
Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (c) and whether issuing the variance has a negative effect to the neighboring properties, we considered whether the granting variance will:

- cause or contribute to a change in the 100-year floodplain elevation immediately downstream or upstream of the project site
- increase the frequency or magnitude of flood damages to adjacent properties; or
- increase hardship downstream from peak flow and flood duration.

District Technician Berger replied: The proposed variance is for the buffer requirements, which has minimal effect of flood elevations. The applicant has complied with the Rule C stormwater requirements for peak rate and water quality.

The proposed variance on the buffer requirements will have a minimal effect on the adjacent wetland resources. The wetland is large and extends off the property to the north and west. Based on the size of the wetland and the length of the reduced buffer width, it does not appear that the reduced buffer will have an effect on the wetland resource. Additionally, the applicant is collecting and treating 98.78% of the runoff from the newly created impervious surface via two NURP stormwater pond, so minimal direct runoff will enter the wetland without treatment. The applicant is purchasing wetland bank credits for the entire wetland area disturbed. The applicant is providing buffer in areas where feasible.

Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (d), an assessment of whether the practical difficulty can be alleviated by a feasible method other than a variance (economic considerations play a role in the analysis under this factor).

District Technician Berger replied: The applicant has indicated that the project cannot be built without the variance, as the project must be built to a minimum size to be marketable. The building size and location requirements are not engineering related and thus not evaluated. However, the applicant met the Wetland Conservation Act requirements to avoid and minimize wetland impacts. The entire site is comprised of the development area, wetlands, or buffer. To meet the minimum buffer width requirement or the average buffer width requirement, additional wetland could be filled to create the buffer, however this is not considered acceptable under WCA and is not considered prudent.

Permit Coordinator/Wetland Specialist Tomczik stated: For the record, RCWD records include the TEP members concurrence that the wetland protection afforded will not be less than that resulting from application of standard WCA criteria.

Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (e), we considered how the practical difficulty occurred, including whether the landowner created the need for the variance.

District Technician Berger replied: The District Engineer finds that the current landowner did not cause the situation which lead to the implied practical difficulty. On the basis of the applicant’s representation, the variance is necessary to make economic use of the property.
Per the discussion above, there is no feasible way to do the project which meets the requirements of the applicant, the District and the City without a variance.

Permit Coordinator/Wetland Specialist Tomczik asked: In consideration of criterion (f), some determination of whether in light of all of the above factors, allowing the variance will serve the interests of justice.

District Technician Berger replied: This criterion lies largely in the Board’s domain as it involves judgments of a non-technical nature. Our criterion for assessing this portion of the practical difficulties standard is the ability or inability of other permit applicants with similar site conditions to comply with the Rule C.6(c) water quality treatment and BMP siting requirements. Other applicants have had the ability to feasibly meet this requirement onsite because the site constraints presented here were not evident or alternative BMPs, such as inlet filtration, was shown to be effective in that setting.

President Preiner inquired if the applicant owned the property before the buffer law.

Permit Coordinator/Wetland Specialist Tomczik responded his belief that the property has been owned by the applicant since 2008 or earlier. The applicant is trying to sell the property to Fernando Vega.

Manager Bradley stated he thought this was not an inconsistency with the State buffer laws, but rather an inconsistency with the District rules.

Permit Coordinator/Wetland Specialist Tomczik confirmed it was an inconsistency with the District rules.

Manager Bradley commented he is comfortable with this request for the reasons explained by staff. However, this problem is caused by the applicant due to the way he has designed his project.

District Attorney Louis Smith responded these are the criteria used to establish rules for evaluating variances. Typically, they discuss site conditions not created by the applicant, and a steep slope and proximity to the wetland are included in this application. However, he does not know if an evaluation has been done to determine that this is the only economic use of this project. It is up to the Board to balance all the information and evaluate the criteria to achieve an appropriate result.

Manager Bradley thanked District Attorney Smith for his explanation and stated he will vote in support of the variance.

District Engineer Chris Otterness stated that when HEI evaluates a variance request, they consider if the applicant has done an action prior to the application that has caused a hardship, rather than considering proposed actions.
Manager Bradley commented the applicant is causing this, but considering all the protections involved, he will recommend approval.

President Preiner stated she see it as the laws causing it, not the applicant.

Manager Wagamon noted that is what a variance is for and the applicant is not harming anything.

*It was moved by Manager Wagamon and seconded by Manager Bradley, to approve the variance request for Blaine Commercial permit 17-088.*

District Attorney Smith clarified the variance is being approved based on the findings in the Engineer’s Report. The Board agreed.

*Motion carried 4-0.*

*It was moved by Manager Wagamon and seconded by Manager Waller, to CAPROC permit 17-088 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations, dated January 3, 2018. 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.

No comments.

**ADDITIONAL ITEMS REQUIRING BOARD ACTION**

1. **Consider Citizen Advisory Committee Nominations.**

Communications and Outreach Coordinator Elizabeth Carreño reported the Citizen Advisory Committee (CAC) is a great group that gives good insight. They can have up to 12 members and she is recommending the following 10 nominations be considered for reappointment in 2018:

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation or Organization</th>
<th>County</th>
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<tbody>
<tr>
<td>David Anderson</td>
<td>Forest Lake</td>
<td>Anoka</td>
</tr>
<tr>
<td>Wayne LeBlanc</td>
<td>Centerville, Peltier Lake</td>
<td>Anoka</td>
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<tr>
<td>Jeff Severseike</td>
<td>Circle Pines</td>
<td>Anoka</td>
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<tr>
<td>Mary Jo Truchon</td>
<td>Anoka Conservation District</td>
<td>Anoka</td>
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<tr>
<td>Gary Krejcarek</td>
<td>Bald Eagle Lake, White Bear Lake</td>
<td>Ramsey</td>
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<tr>
<td>Bridget Osborn</td>
<td>New Brighton, Long Lake</td>
<td>Ramsey</td>
</tr>
</tbody>
</table>
President Preiner noted the people on the CAC bring up good questions and are an excellent group.

Communications and Outreach Coordinator Carreño commented they are excited to have Water Resource Specialist Kyle Axtell at the next meeting to provide guidance as they begin discussion on their Watershed Management Plan.

Manager Waller stated the CAC has changed over the past 10 years and it has become a much different Board.

Manager Wagamon noted when he was first on the Board and would attend the CAC meetings, they did not accomplish much. That has changed, and things are getting accomplished.

Mot 

Motion by Manager Waller, seconded by Manager Bradley, to the 10-member roster for an additional year to the Citizen Advisory Committee. Motion carried 4-0.

2. Consider RCWD Water Quality Grant Program Applications.

a. R18-01 Brighton Square HOA

District Technician Samantha Berger referred to the memo on page 73 of the agenda packet. She reported this project proposes the installation of a raingarden at Brighton Square located off Silver Lake Road, just north of Freedom Park in New Brighton. The 60-townhome association was constructed prior to the District rules, and there is no stormwater management on site. The purpose of the project is to provide volume control and the raingarden would help provide additional water quality treatment before entering the City storm sewer. While inspecting the site, staff noted erosion off the property. This project and future projects would help to reduce the volume leaving this site.

District Technician Berger reported the project will provide 82 percent volume reduction, 74 percent phosphorus reductions, and 77 percent TSS reduction. The HOA is interested in future partnerships on other projects and the CAC recommended approval at its January 3 meeting. The total cost of the project is $10,617.56. The Ramsey Conservation District (RCD) has funds available through its Community Partners Grant and will provide approximately $6,351. The total RCWD cost-share recommendation is 25 percent, not to exceed $2,654.39 and the HOA will be responsible for $1,613.10.
Manager Bradley noted he was at the CAC meeting and they would have recommended more than 25 percent but for the RCD’s contribution to the project.

**Motion by Manager Bradley, seconded by Manager Wagamon, to approve RCWD Water Quality Grant Program Contract R18-01 for the Brighton Square HOA raingarden project, up to $2,654.39 and not to exceed 25% of eligible project expenses, in accordance with established program guidelines. Motion carried 4-0.**

b. R18-02 Schumacher Shoreline Stabilization
District Technician Samantha Berger referred to the memo on page 88 of the agenda packet. She reported this project is for a stabilization located off Josephine Lake in Arden Hills. She provided photos on the area and noted they intend to stabilize 122 feet of shoreline with riprap and install 400 square feet of buffer.

District Technician Berger reported this project will reduce 53 percent (1.03 pounds) of phosphorus, 60 percent (3,291 cubic feet) volume reduction, and 55 percent (28 pounds) of TSS reduction. The CAC recommended approval at the January 3 meeting, and questioned the use of riprap instead of vegetation. Staff explained each site is different and the approach used is based on factors that include wave action, slope, and sunlight. The CAC is encouraging more vegetative practices, and this will be considered going forward.

District Technician Berger stated the total cost of the project is $13,273, and the RCWD cost-share recommendation is $6,636.50, not to exceed 50 percent of eligible expenses. The difference in bids has to do with difficulty accessing the site. One contractor wanted to use a barge, while another was able to access it from above.

**Motion by Manager Bradley, seconded by Manager Waller, to approve RCWD Water Quality Grant Program Contract R18-02 for the Schumacher shoreline project, up to $6,636.50 (50%) and not to exceed 50% of eligible project expenses, in accordance with established program guidelines.**

Manager Bradley noted he inquired about the 50 percent of eligible expenses and determined it is the normal amount they fund.

**Motion carried 4-0.**

3. **Consider Water Quality Cost Share Program 2018 Guidance Policy Document.**
District Technician Samantha Berger highlighted the 2017 projects by County. She provided photos of some projects and noted they completed a total of 17 projects, totaling $172,452. The program worked with a total of 9 different partners. She reported the following changes were made to the Water Quality Grant Program in 2017:
1) Added a 25 percent funding level; 2) Revised the name from Clean Water Grant
Program to Water Quality Grant Program; 3) Simplified the screening form; and, 4) Changed language to allow for program flexibility. This included allowing outside contractors to design projects, the addition of Buffer Law information, and the ability to move dollars to other grant programs.

District Technician Berger reported the following changes are proposed for 2018: 1) Updated dates for 2018; 2) Clarified language on the recommended buffer width; and, 3) Revised the administrative amendment from $500 to $750.

District Technician Berger also reported they have been working with Houston Engineering to develop a grant tracking system. The system will be an extension to the existing Permitting Database that will allow them to plot all project locations, track pollutant load reductions, track project funding sources, and track the details of maintenance obligations. In the future, this will also be a valuable tool to tell the stories of the District to our constituents and partners.

District Technician Berger reported the 2018 budget increased by $12,000 to $162,000. The increase was to provide Master Water Stewards technical assistance, which is about $3,000 per steward. In the future, staff may come back to the board if needed for the Master Water Stewards contracts. The remaining budget was allocated to projects and Technical Assistance Contracts with Anoka Conservation District ($10,000), Ramsey Conservation District ($20,000), and Washington Conservation District ($10,000).

Manager Bradley inquired why Ramsey Conservation District receives $10,000 more than the others.

Manager Waller noted there is a greater demand for raingardens in Ramsey County. He complimented District Administrator Belfiori and his staff for the flexibility they have incorporated into this program and for the implementation of the tracking program. It is good to have quantitative numbers to make qualitative decisions.

Motion by Manager Waller, seconded by Manager Bradley, to approve the newly named Water Quality Grant Program Guidelines as presented and authorize staff to promote and implement the 2018 Water Quality Grant Program. Motion carried 4-0.

District Administrator Belfiori complimented the RCWD staff and team members at the conservations districts, cities and lake associations. This program has grown since the Board expressed desire to develop higher impact projects.

Motion by Manager Waller, seconded by Manager Wagamon, to approve service agreements with the Anoka Conservation District, Ramsey Conservation District, and Washington Conservation District for up to $10,000, $20,000 and $10,000, respectively, to provide technical assistance for the 2018 Water Quality Grant Program. Motion carried 4-0.
4. **Consider Pay Request #11 from Rachel Contracting, Inc. for Hansen Park Project.**

Water Resource Specialist Kyle Axtell referred to the memo on page 109 of the agenda packet. He reported they have restarted dredging operations last week and expect to be finished next week. They will also be starting at Mirror Lake later this month. This pay request in the amount of $18,454.30 was for providing the electrical service and hookups for the iron enhanced sand filter that was completed September 2017. He noted, the project specifications called for a set $20,000 cost allowance for permanent electrical service as a pass-through cost from Xcel to the contractor to the District. The final cost was only $13,327.19, resulting in a project savings of $6,672.51.

*Motion by Manager Wagamon, seconded by Manager Bradley, to approve Rachel Contracting, Inc.’s pay request as submitted and certified by the District Engineer, and directs staff to issue a payment in the amount of $18,454.30. Motion carried 4-0.*

Manager Bradley requested an update regarding a letter that was sent to the City regarding six landowners.

Water Resource Specialist Axtell responded City staff thanked them for clarification on the issue and were hopeful there would be more time to finish negotiations. The RCWD and City have since received an email from one landowner, and the City indicated that it would handle communications with them.

5. **Consider Pay Request #2 from North Pine Aggregate, Inc. for Anoka County Ditch 53-62 Branch 2 Repair Project.**

Administrator Phil Belfiori referred to the memo on page 122 of the agenda packet. He reported this project is moving forward quickly and the contractor has completed mobilization, tree clearing, and chipping for the entire project area, and excavation and spreading and smoothing of soils for approximately 6,509 linear feet of ACD 53-26 Branch 2. Staff recommends partial payment of $76,375.67 to North Pine Aggregate.

District Engineer Otterness commented he is pleased with the contractor’s work to date. The excavation work along the system should be completed soon and they will have to return in the spring to construct a couple of culverts under the roadway.

*Motion by Manager Wagamon, seconded by Manager Bradley, to approve North Pine Aggregate, Inc.’s pay request #2 as submitted and certified by the District Engineer, and directs staff to issue a payment in the amount of $76,375.67. Motion carried 4-0.*

6. **Consider Response to Minnesota Commercial Railway’s (MCR) 12/22/2017 Legislative Brief Document.**

Administrator Phil Belfiori directed the Board to the memo included in the packet that was distributed prior to the meeting. At the workshop on January 8, the Board reached
consensus to consider this item at this meeting. This document contains the Districts draft response to MCR with revisions. He directed the Board to page 4 of the document, and noted the main insertion off text. He summarized that Rice Creek is actively coordinating with MCR and has been continuously through the early stages. In order to limit the scour of erosion and reduce sediment transport to Long Lake, MCR has submitted an application for RCWD urban cost-share program. This cost share application will be considered by the Board in February. The District recognizes economic and safety benefits of the bridge and has pledged its cooperation with respect to the water quality concerns within its authority.

Motion by Manager Waller, seconded by Manager Wagamon, to approve the response to MN Commercial Railway's 12/22/2017 legislative briefing document and authorizes the Administrator to respond in a manner that establishes a clear record of the District's position and role.

Manager Waller complimented District Administrator Belfiori and his staff for working with Smith Partners and Mr. Holtman. He stated they all demonstrated the helping hand of regulatory, and not the heavy hand of regulatory.

Motion carried 4-0.

7. Consider Directing Staff & Consultants to Investigate Logistics of Executing Remote Meeting Attendance Per Statutes 13D.02.

Administrator Belfiori reported that at the last workshop meeting, the Board requested this item be added to the agenda for the meeting today.

President Preiner stated they need to determine if they want staff to continue to investigate this topic or wait until there is legislation that allows it to be done.

Manager Bradley stated he will be absent for one meeting per year. Based on the memo provided by the District Attorney, the Supreme Court would not permit them to use electronic meeting technology unless they were attending remotely within the watershed district. He understands that MAWD seeks to change this provision, but until that occurs, neither he nor Manager Haake would benefit from these changes. He suggested the Board not take action at this time.

Manager Waller stated over the last few years, he has heard there is a need to be able to watch what goes on in their public meetings. Electronic meeting technology may be a tool for staff and the public to watch the meetings and he supports further investigation on this item. There are plenty of facilities available and an equipment purchase would not be a barrier.
Manager Wagamon stated it is important that all the Board Managers are involved in the meetings, and he would prefer they all be physically present. He wished there was a way that the law would work, but he does not see why they would spend money to further investigate this item if there is a chance it cannot be used. They need to be careful with the ambiguity and the law getting in the way.

Manager Bradley commented he thought the open meeting law only applied to Managers and not outside parties. He also thought that consultants could present something to them via telephone and did not have to be present at the meeting to offer that information.

District Attorney Smith explained there is no restriction on facilitating electronic participation of others. The Open Meeting Law focuses on the governing body, and in this case, the Board of Managers.

President Preiner stated it is not a hard thing to investigate, and by the time they get new laws that allow it to be done, the technology will be different. She does not have a problem doing the investigation, but the timing is not now.

Manager Wagamon agreed with President Preiner. He stated it does not make sense to spend the resources now to investigate when there will be better technology after the law is fixed.

Manager Bradley stated he is content waiting until the law allows it. He also noted it is not likely that he would find a place adequately public in Hawaii that he would give public notice of and try to get a room for a meeting. The hurdles necessary to comply with the law exceed the benefits of his participation.

Manager Wagamon inquired where the Legislature is at with trying to fix this.

District Attorney Smith responded the topic has been introduced in past legislatures, but nothing has moved on it. There is growing interest, and the more mobile members of governing boards are, the issue will keep coming up. A survey has also been completed by the Minnesota Association of Watershed Districts.

District Administrator Belfiori referred to item No. 1 under Items for Discussion and Information, and noted MAWD is actively working on this topic as part of a survey. He noted that Middle Fork River District has had the same resolution two years in a row at the MAWD Annual Meeting regarding the ambiguity on how the Board has been advised and wishes for this topic to be addressed by the Legislature.

Manager Waller stated the City of Hugo still uses remote technology and it began with a request from Deer River. He recalled that any citizen can participate in it and it is not
just limited to the Board of Managers. If the Board received a written, formal request, they would have to consider it.

Manager Bradley noted the issue is more with what happens with Managers who are absent, not third-party viewers.

In response to Manager Waller, District Attorney Smith stated the opinion they have provided to the Board is the same as it was in 2013. Based in the Minnesota Supreme Court’s decisions, they have concerns that require the definition of a meeting being accessible to the public within the geographic jurisdiction of the watershed district. There is also an advisory opinion that has approved of remote participation of a meeting by Skype out in California that is outside that city’s jurisdiction. That presents a basis of exploring that option, if the Board chooses to, and they would not be exposed to penalties under any open meeting law. However, a court could still find that they violated the open meeting law. It is up to the Board to determine the best way to operate meetings. Even if the Board were to use the advisory opinion, the law clearly requires that the remote Board member sit in a publicly accessible place and that the meeting be noticed.

Manager Waller stated that seems to be accomplished at the City level in Hugo. He believes that if someone came in, made a formal request on this and complied with the regulatory actions, the Board of Managers would have to provide for it.

District Attorney Smith summarized that Manager Waller would like to accommodate a citizen as a matter of policy. However, the open meeting law allows them to have their meetings through interactive television, subject to certain requirements. If they do this, and a member of the public requests access in the same way, the Board must accommodate them and can charge any cost that is incurred.

Motion by Manager Bradley, seconded by Manager Wagamon, to table this item until the Legislature enacts legislation to allow open meeting law to include participation outside the District. Motion carried 4-0.

8. Consider Check Register dated January 10, 2018, in the amount of $37,221.06 prepared by Redpath and Company.

Motion by Manager Wagamon, seconded by Manager Bradley, to approve check register dated January 10, 2018, in the amount of $37,221.06, prepared by Redpath and Company. Motion carried 4-0.

ITEMS FOR DISCUSSION AND INFORMATION

1. MAWD Survey on Electronic Meeting Attendance.

   District Administrator Phil Belfiori reported he is excited to share that the Middle Fork Crow River District has a Representative who is willing to support their resolution that
would amend Minnesota’s Open Meeting Law to allow watershed district participation in meetings via electronic means outside the territorial limit. This proposed legislation would also appear to be focused on addressing the ambiguity between the Supreme Court decision and administrative policy documents. He requested Board Managers let him know of any concerns regarding the language used in the survey. MAWD also believes this legislation would be helpful and further clarifies the ambiguity previously discussed.

The Board took a moment to read the questions, and President Preiner inquired if they had any questions or comments.

Manager Wagamon referred to question No. 5, and noted “per the District Attorney’s direction, the person calling in can only listen to the conversation and may not participate in any discussion” only refers to District Managers. The public and others are allowed to participate in discussion.

Manager Waller noted the questions seem to represent a positive viewpoint in supporting the issue and he supports it.

2. **District Engineers Update and Timeline.**
District Engineer Otterness directed the Board to the table on page 129.

3. **January/February Calendar.**
District Administrator Belfiori noted the first Strategic Planning Session will be held on Monday, January 22, at 1:00 p.m. Staff no longer recommends the second Strategic Planning Session on February 26, but plans to meet with the Board twice in March. They have tentatively planned to hold a City/County partner meeting later in February to discuss initial high-level issues as part of the Strategic Planning Process. In early February, the CAC will be doing a similar level of discussion.

4. **Managers Update.**
Manager Waller commented he has attend City Council meetings in the last few months and encouraged them to get their local watershed plans in. He also attended the Washington County Consortium meeting and toured the Stillwater sewer plant.

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