REGULAR MEETING OF THE RCWD BOARD OF MANAGERS
Wednesday, October 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, 1st Vice-Pres. Barbara Haake, 2nd Vice-Pres. John Waller, and Secretary Michael Bradley.
Absent: Treasurer Steven Wagamon-with prior notice.
Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Technician Samantha Berger, Water Resource Specialist Kyle Axtell, Technician Lauren Sampedro, Office Manager Theresa Stasica.
Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); and District Attorney Chuck Holtman from Smith Partners.
Visitors: Tim DeWuske, Loren Sederstrom, Larry Lanoux, Chad Ayers, David Ong, Ed Tinklenberg, Max Segler, Matt Wolsvik.

SETTING OF THE AGENDA
Administrator Belfiori requested three small changes: Number 3, under Items Requiring Board Action, should read himself rather than Elizabeth Carreno; Number 5, under Items Requiring Board Action, should have a new C. – W18-01 City of Birchwood Village consider contract extension; and under Items for Discussion and Information, a new 2. Under Discussion and Information, cancelling the 10/22/18 Water Management Plan workshop.
Motion by Manager Haake, seconded by Manager Waller to approve the agenda as amended. Motion carried 4-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the September 24, 2018 Workshop/Watershed Management Planning Workshop.
Motion by Manager Bradley, seconded by Manager Haake to approve the minutes as presented. Motion carried 4-0.
Minutes of the September 26, 2018 Board of Managers Meeting. Motion by Manager Bradley, seconded by Manager Waller to approve the minutes as presented. 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:

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Permit Applications Requiring Board Action

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Permit Coordinator/Wetland Specialist Nick Tomczik requested an additional CAPROC item to permit 17-073 on page 31. The new CAPROC item #11: “The status of the permit fee is undetermined as has been communicated to the applicant. The applicant must submit the total permit fee of $4,625 minus any documented previous fee submittals for the Peltier Estates Application.”

Manager Haake requested clarification on permit 18-092 Findings number 1.

Technician Samantha Berger explained to the Board the proposed NURP pond that would treat the stormwater before discharging into the storm sewer.
It was moved by Manager Haake, seconded by Manager Waller to approve the Consent Agenda item for permits 17-073, 18-006, 18-076, 18-088, 18-089, 18-090, 18-092 and 18-093 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations dated October 2, 3 & 4, 2018. Motion carried 4-0.

PERMIT APPLICATIONS REQUIRING BOARD ACTION

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Permit Coordinator/Wetland Specialist Nick Tomczik stated the project applicant has submitted a written request for a variance from Rice Creek Watershed District (RCWD) Rules C.6(c)(1), C.6(e), and C.7(c), which require the treatment of 2.2” (based on a filtration BMP) of stormwater over the new or reconstructed impervious area, treatment of ≥ 85% of the new or reconstructed impervious area, and reduce the peak runoff rate to not exceed 80% of existing peak runoff rate for the 2-yr, 10-yr, and 100-yr storm events. The District Engineer evaluated the variance request per RCWD Rule L for Permit 18-091 in the Request for Variance and Statement of Practical Difficulty and Undue Hardship (Exhibit 1) dated October 3, 2018 and received on October 3, 2018.

Permit Coordinator/Wetland Specialist Tomczik stated that the project proposes the subdivision of a 1.71-acre parcel that is currently being used as an automotive repair facility. The project proposes the development of 0.44 acres of the existing parcel into a dental clinic office building and reconstructing the existing parking lot and driveway, while the other 1.27-acre parcel will remain as an automotive repair facility. The project proposes the construction of 9,884 SF (0.23 acres) of new/reconstructed impervious surface. The proposed project will subdivide the existing parcel of land owned by RLNB Properties, LLC. and therefore, triggers RCWD rule C.2(a), which requires a permit for the subdivision of an area exceeding one acre for single-family residential, multi-unit residential, commercial, industrial, or institutional development. The project site (1.71 acres) is located in a fully developed area with residential development to the north and east and commercial development to the south and west. The closest storm sewer infrastructure is at the intersection of Palmer Drive and Silver Lake Road, which is approximately 200 feet from the site. Under existing conditions, stormwater runoff from the 0.44 acres development area currently sheet flows to the south across parking lot to the curb and gutter along Palmer Drive which is sloped toward storm sewer infrastructure at the intersection. Existing flow from the remaining 1.27 acres of the automotive repair facility currently sheet flows to Palmer Drive (similar to the developed area) and to Robin Lane where flow is collected by the street curb and gutter and conveyed to the nearest City storm sewer system located 200 feet or more from the site. The storm sewer system then conveys flow to Pike Lake, the resource of concern. The water quality requirement for filtration is 2.2-inches over the new/reconstructed area (9,884± SF) for a total requirement of 1,812 CF.
The applicant is proposing routing 7,869 SF (80%+) of the new/reconstructed impervious area through a swale and a rain garden which will act as a dry pond that outlets to Palmer Drive. Due to type D clay soils and shallow mottled soils, infiltration is deemed infeasible. The closest stormsewer infrastructure is at the intersection of Palmer Drive and Silver Lake Road which is approximately 200 feet from the site, thus underground outlets for BMPs such as filtration basins and ponds are not feasible. Consideration of a filtration BMP that outlets to Palmer drive was considered by the applicant, however due to the flat topography of the site this would be infeasible because the drain tile would be below the elevation of the road surface, rendering the BMP ineffective. The NURP volume requirement for the 0.44-acre parcel would be 2,467 CF. The applicant considered a NURP pond but could only fit a pond with 1,395 CF (56.5% of NURP standards) of treatment volume which does not meet NURP standards. Also, a stormwater pond would face similar challenges as other BMPs in that there is a lack of stormwater infrastructure to tie into on-site and the close proximity to the roadway. The City has indicated that a pond design this close to the roadway could be affected by snow piling up along the roadway creating water to back up against the proposed building. Consideration of treatment in lieu of a part of the remaining 1.27 acres was not considered by the applicant, however assuming the rest of the parcel will likely have Type D soil and does not have access to a City storm sewer, treatment in lieu on the remaining 1.27-acres would face similar challenges and is considered infeasible. The proposed swale and raingarden serve as pretreatment of the runoff to remove Total Suspended Solids (TSS). The applicant could increase the size of the raingarden BMP to achieve greater treatment. The project is located within the Flood Management Zone and thus is required to limit peak runoff rates to ≤80% of existing peak runoff rates. As noted in the table below, the proposed project will not increase the peak runoff rates for any of the design storms and does result in a small reduction (appr. 3%) for the 100-yr storm event. As noted, infiltration is deemed infeasible and a lack of stormwater infrastructure in the area make filtration or a stormwater pond for water quality treatment infeasible, thus the applicant is requesting a variance from RCWD Rules C.6(c)(1), C.6(e), and C.7(c).

Permit Coordinator/Wetland Specialist Tomczik stated 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 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 is not proposing any water quality treatment through the use of RCWD approved stormwater BMPs and thus has not met the water quality treatment requirement of Rule C.6(c)(1). The water quality requirement (based on filtration) is 2.2-inches over the new/reconstructed area (9,884± SF) for a total requirement of 1,812 CF. Due to site conditions making water quality treatment infeasible, the applicant has not met the treatment requirement of Rule C.6.(c)(1), however the applicant has provided TSS removal for 7,869 SF (80%) of the new/reconstructed impervious area. The proposed project will increase the amount of impervious surface on the site by 1,663± SF and will increase the volume of runoff for the 2, 10, and 100-yr, 24–hr. storm events by 243 CF, 280 CF, and 315 CF, respectively. The project also does not meet the reduction in peak runoff rates (less than or equal to 80% of existing condition) as required for the flood management zone per Rule C.7(c). The project does not increase the peak runoff rates for any of the design storms, thus not creating any adverse impacts downstream beyond the existing condition.

Permit Coordinator/Wetland Specialist Tomczik asked per practical difficulties criterion (b) the effect the variance would have on government services.

District Technician Berger replied: issuance of a variance for the Silver Lake Smiles project is not expected to increase the cost or difficulty of providing governmental services.

Permit Coordinator/Wetland Specialist Tomczik asked per criterion (c), which sets the criteria for consideration of whether the variance will affect 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: Runoff from the project site eventually drains to Pike lake, a 303(d) listed water body. The proposed project will increase the amount of impervious surface on the site by 1,663± SF and will increase the volume of runoff for the 2, 10, and 100-yr storm events by 243 CF, 280 CF, and 315 CF respectively. The applicant used the Minimal Impact Design Standards (MIDS) BMP calculator to determine the quantities of phosphorus and suspended solids that leave the project site annually for the existing and proposed site conditions. The results indicate that the pretreatment BMPs will reduce Total Phosphorus (TP) by 0.036 lb./yr. (from 0.518 lb./yr. to 0.482 lb./yr.) (7%) and reduce TSS by 19 lb./yr. (from 94 lb./yr. to 75 lb./yr.) (20%). A NURP pond would on average remove approximately 50% TP (a reduction of 0.259 lb./yr.) and approximately 75% of TSS (a reduction of 70.5 lb./yr.), resulting in a deficit of treatment of 43% (0.223 lb./yr.) and 55% (51.5 lb./yr.), respectively. While the applicant would not be meeting the water quality goals with the pre-treatment measures proposed, the project is not expected to create an adverse impact beyond the existing condition and may provide a slight improvement.

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 project is located within the Flood Management Zone (FMZ), which requires any development project to reduce peak runoff rates to ≤80% of existing runoff rates per Rule C.7(c). The submitted HydroCAD model indicates that the project does not meet the flood management zone requirement. However, the modeling does indicate that the project will not increase the peak runoff rates for any of the design storms and does indicate a small reduction (appr. 3%) for the 100-yr storm event. The project is not expected to have a downstream adverse impact. The Variance Request included a letter from Craig Schlichting, the Director of Community Assets and Development for the City of New Brighton, which states the city’s preference for not detaining water on-site and allowing stormwater to “move through the system”, citing that the HWL of Pike Lake peaks around 13 to 14 hours after a large storm event. Pike Lake drains directly to Long Lake which has a history of flooding. District rules require within the flood management zone a reduction in peak runoff rates to ≤80% of existing runoff rates to help reduce downstream and localized flood conditions, therefore this argument was not considered as part of this variance review.

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) is necessary.

District Technician Berger replied: The presence of type D and mottled soils eliminate the feasibility for infiltration practices and connecting to existing stormwater infrastructure would require either demolition/reconstruction of approximately 200 feet of existing roads or connection via “Jack-and-bore” methods, which would come with challenges of their own in addition to prohibitive costs. The applicant considered a NURP pond but could only fit a pond with 1,395 CF of treatment volume which does not meet NURP standards. Also, a stormwater pond would face similar challenges as other BMPs in that there is a lack of stormwater infrastructure to tie into on-site and the close proximity to the roadway. The applicant also submitted modeling of the alternative pond design that provides only 56.5% of the volume required by NURP criteria. According to the model, this design did lower the peak discharge of the 2-yr storm to meet the FMZ criteria, but increased the peak runoff for the 10-yr event above existing conditions and has no change on the 100-yr event. The City has indicated that a pond design this close to the roadway could be affected by snow piling up along the roadway creating water to back up against the proposed building. It is determined that the practical difficulty cannot feasibly be alleviated by an alternate method and that a variance is necessary.

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 requires consideration.

District Technician Berger replied: The practical difficulties on site include heavy soils not conducive to infiltration and a lack of existing stormwater infrastructure. These are conditions that existed on-site prior to the project being undertaken and therefore were not created by the applicant. Consideration of treatment in lieu on the remaining 1.27 acres was not considered by
the applicant, however our review indicates that the rest of the parcel will likely have Type D soil and does not have access to a City storm sewer. Therefore, treatment in lieu on the remaining 1.27-acres would face similar challenges.

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 is necessary.

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 difficulty standard is the ability or inability of other permit applicants with similar site conditions to comply with the District’s stormwater management plan requirements of Rule C. Other applicants have had the ability to feasibly meet these requirements onsite, however the conditions of this site do pose unique challenges not faced by other projects. Considering the practical difficulties that are unique to this site, the demonstration by the applicant that the project will have no adverse impact and possibly a slight improvement in water quality of runoff leaving the site, and the overall impervious size of the project (9,884 SF of new/reconstructed impervious surface) is less than 10,000 SF, it is our recommendation that the variance request for RCWD Rules C.6(c)(1), C.6(e), and C.7(c) be granted.

Permit Coordinator/Wetland Specialist Tomczik stated that there are a few more items that will be of interest to the Board. With respect to the broader issue - namely, an area of New Brighton in full commercial and industrial use without the ability for property owners to manage stormwater on site, it is his understanding that there is a basic water management project for the area that the city has petitioned for and that may provide regional solutions.

District Engineer Otterness stated that the application for the variance is for parts of our rule that are actually requiring additional treatment beyond what the existing condition would be and the applicant is not increasing the flow beyond existing conditions. It is actually providing treatment for the area in which it is adding new impervious surfaces, but the rules are established in this area because of the extensive amount of development that occurred without stormwater management. He stated that there are a few ways that the District deals with the infrastructure that has been there that doesn’t have any treatment or attenuation via ponding. One of the ways is through the rule, but the other way is through projects. He stated that Permit Coordinator/Wetland Specialist Tomczik alluded to these and noted that the District is currently working with New Brighton, St. Anthony, and Roseville on a petitioned basic water management project which is targeting treatment for water quality and floodplain management for this corridor that drains to Pike and Long Lakes. The District’s interest in retrofitting water quality treatment and flood management where it doesn’t exist today is proceeding, in part, through the basic water management project. He stated that in this case, it doesn’t seem feasible to try to work within this property when there isn’t a way for the water to infiltrate the soils.
Permit Coordinator/Wetland Specialist Tomczik stated that the review of the materials has run into a deficit of $227.50 which staff would like included in any motion that the Board makes. He noted that the applicant and its consultant are present if there are questions.

Manager Haake stated that she knows this area very well and knows that it is a very difficult area with poor soils and is of the judgment that because of the particular conditions, granting a variance will not set a precedent.

**Motion by Manager Haake, seconded by Manager Bradley, to Approve the Variance request for variance application 18-091 as outlined in accordance with RCWD District Engineer’s Variance Technical memorandum, dated October 4, 2018 and with the condition that the applicant reimburse the District for the variance fee deficit of $227.50 as part of the District review of the variance request.**

Manager Bradley stated that strict application of the District rules essentially would make the property unavailable for new construction and it is critical to him that the applicant is doing what it can to improve it and is reducing TSS and TP, and if this were denied it would leave an existing parking lot which would increase or maintain the higher levels of TSS and TP. He asked about the increase in actual runoff but it being less than or equal to the peak amounts.

Technician Berger explained that on page 72 it states that the proposed project will increase the amount of impervious surface which will increase the amount of volume leaving the site, which is what staff is referring to with the increase for the 2, 10, and 100-year events. However, because the applicant is providing some sort of BMP that will cause some treatment of the rate of the water leaving the site, that will create an ultimate decrease in the rate of water leaving the site.

Manager Bradley confirmed that the rain garden basically slows down the time it takes for the water to leave the property which results in a lag between the rain and its outflow.

Manager Waller stated that while this may be a problem with the rules for this individual site, it is important to note that the watershed rules have been changed to work with the cities to create these regional programs and look at a larger area, rather than just an individual site basis, in order to provide for water quantity and water quality issues. He stated that it may appear to be in conflict with part of the District’s rules, but there are other rules that allow for the flexibility to create a way to achieve the District’s goals.

Technician Berger noted that there was a large floodplain mitigation project the city took on at Freedom Park so there is some level of regional treatment.

Manager Waller stated that the District is going towards more of a regional concept which he supports and noted that he plans to vote for this variance.
Motion carried 4-0.

Motion by Manager Bradley, seconded by Manager Haake, to CAPROC permit 18-091 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations, dated October 4, 2018. Motion 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.

Tim Dewuske, 170 View Road, Mahtomedi, stated that he owns two parcels on the north side of Lost Lake and has lived on Lost Lake for 57 years. He informed the Board of two past sewage spills that the Met Council and the City of Mahtomedi have to clean up or compensate him for. He also informed the Board that the sewage pipe now has been taken out of service. He reviewed activities in the area that have degraded the water quality of the lake and have driven his property values down. He requested the Board ask for an EIS of the Mahtomedi proposed ice rink arena on the former Bellaire Sanitation property.

Manager Haake stated that she thought Yingling from the Minnesota Department of Health was pursuing water sampling in Lost Lake and Lake Washington and asked what happened with that and if there are any results.

Administrator Belfiori stated that Jenny had committed to him that if the PCA doesn’t get it done then she will get it done by the Department of Health.

Manager Waller stated that the current problem is the water quality issue and confirmed that the sewer pipe that was leaking has been taken out of service. He stated that Mr. Dewuske would clearly like the water quality to be restored. He noted that the District had worked on a water quality program for Bald Eagle Lake and feels that it may be possible for the same type of thing to be done in this situation. He stated that this area of Washington County is very old and there has always been a problem with sewers and septic systems being refitted to the system. He stated that in addition to the sewer system leaking impact, there appears to be impact from storm water systems and he feels this may be a candidate for a regional water quality project.

Administrator Belfiori stated that the Board has partnered with the Cities of Mahtomedi and Birchwood Village as well as the Washington Conservation District on developing what is called the Southeast White Bear Lake Subwatershed assessment. He stated that it identifies several dozen projects in the areas in both Mahtomedi and Birchwood Village, so regional planning has already occurred. He stated that Mahtomedi received more money than any other city as part of the cost share program for water quality projects.
Manager Waller asked if any of the projects focused on the water quality issues that are in Lost Lake.

Administrator Belfiori stated that he did not remember how many of the projects may be in the Lost Lake subwatershed.

The Board asked Administrator Belfiori to contact Ms. Yingling at the MDH and find out what the schedule is for collecting water quality samples on Lost Lake and Lake Washington.

President Preiner asked for clarification on the request for an EIS and noted that she remembers the District had already looked at that possibility, but was not able to do it.

District Attorney Holtman stated that a request for environmental review under state law goes to the Environmental Quality Board which identifies which unit of government should manage that process. He stated that it was assigned to the City of Grant as the land use authority, which had an environmental assessment worksheet prepared and then made the decision that an EIS was not supported and the rules state that once the process has been initiated and gone through with one governmental unit, there is not a legal basis for a second process to be started. He stated that the District would not have any authority to make that request. He stated that the route would be to challenge the City of Grant’s decision not to require an EIS.

Loren Sederson, 9330–107th, Grant, stated that he is a Grant City Council member but here as a citizen. Mr. Sederson stated he is here today regarding the District proposed boundary change with Brown’s Creek Watershed District. He wanted the Board to be aware that the District would be taking over a parcel owned by Hydro Vac that has had past violations and also has a Cease and Desist Order that was also violated. He stated that the restoration order was completed two months after the deadline. He reiterated that he wanted the Board to be aware of the history and problems with this property since it will be inheriting it when the boundaries change.

Manager Waller asked for the address of the property he was referring to.

Mr. Sederson stated that it is 9643 110th Street North.

Mr. Larry Lanoux, stated that he is a member of the Grant City Council but noted for the record that he is here as a citizen. He requested the Board reconsider asking for an Environmental Impact Statement for the Rink 2 Ice Arena in Mahtomedi. Mr. Lanoux provided information to the Board on why he believes the Board should reconsider. Mr. Lanoux presented a document to the Board to be entered into public record. Mr. Lanoux also stated that he believes the District is able to request an EIS because the District is the LGU (Local Governing Unit) for the City of Grant. He stated that it is clear to him that the Pollution Control Agency, the Department of Health and the Rice Creek Watershed District operate in silos and do not coordinate with each other.
Manager Haake requested District Attorney Holtman clarify Mr. Lanoux’s statement regarding the District being LGU for this project.

District Attorney Holtman explained that the question regarding environmental review has to do with a specific statute and within the statute, there are terms governing what governmental body oversees the environmental review. He noted that in the statute there is a term Responsible Governing Unit (RGU), which refers to the governmental body that oversees the environmental review, and in this case was the City of Grant. He stated that he believes that Mr. Lanoux is referring to is a similar term that operates in a different context, namely the Local Government Unit, or LGU, responsible to implement the Minnesota Wetland Conservation Act, or else a reference to the City’s concurrence through the local water planning process that the District continue to apply its Rules within the City.

ITEMS REQUIRING BOARD ACTION


   Permit Coordinator/Wetland Specialist Tomczik stated that this item is to consider a response and draft resolution for the variance application for Max Segler, Permit 16-027. He stated that this is a continuation from the last meeting where the Board directed staff to prepare proposed findings and a resolution for denial as well as provide questions to the applicant to assist him in being responsive to questions raised by the Board. He noted that staff did provide this information to the applicant via e-mail. He noted that in the additional submitted materials, the technical detail is insufficient as to utility location, elevation and proposed replacement. He stated that within these materials, Mr. Segler proposes a new location that will likely provide some availability of floodplain mitigation. Staff and RCWD consultants considered the material and created an addendum to the variance memo found in the packet on page 98. He called to the Board’s attention two items from the addendum that state, in reference to Exhibit 5: “It is still not clear where the utilities are located. The figure submitted by the applicant was drawn on the approved plan, however this plan is not what was built and differs from the actual site conditions as noted on the lot certificate provided by the City”; with regard to the new alternative floodplain mitigation area (Figure 5),” staff concurs that the floodplain mitigation is feasible at that location, although the volume calculation was a rough calculation and not wholly defined”. He explained that the addendum concludes that the applicant has not met the variance criteria based, in part, on the level of detail. He stated that the review of new materials incurred additional costs above the submitted fee in an amount of $712.50. He pointed out a few items for the Board to address in the findings for denial, on page 86 of the packet, item 7 “precipitation reached a 25-year flood”. He stated that should state it reached a 25-year high, not flood. He stated that the next item is on page 88 of the packet, item 12, where the date May 11, 2018 should be stricken.
Manager Haake asked for where the packet addresses the possibility of utilities being dug deeper.

Permit Coordinator/Wetland Specialist Tomczik stated that the conclusion of the Houston Engineering memo is on page 100 and states, generally, that the applicant has not met the variance criteria based in part on an inadequate level of detail of the information submitted. He stated that Houston Engineering also concluded that mitigation on the site is potentially feasible. In answer to Manager Haake’s question, the information she is referring to can be found on page 138 of the packet.

Manager Waller asked for the amount of additional expenses incurred as part of the review.

Manager Haake answered that it was $712.50.

Permit Coordinator/Wetland Specialist Tomczik clarified that Mr. Segler did provide $1,500 to the District that was to allow further review and then Mr. Segler submitted new material. He stated that staff and the two consulting parties used the full $1,500 and an additional $712.50.

Mr. Segler explained the difficulty in gathering the information as well as the expense of this project. He referenced page 134 of the packet, item 3 (e) that states “Compensatory floodplain storage volume is not required for a one-time deposition of up to 10 cubic yards of fill.” He stated that in theory he could have developed this lot and put many homes on it. He is asking for the Board to come to some middle ground with him. He noted that he did not have an official tree survey done because of the expense and showed a picture of the trees that would be affected.

Manager Haake noted the memo from Houston Engineering that stated the applicant submitted volume of 12.7 cubic yards based on an excavation down to 891.1. She asked where the excavation down to 889.4 would be located because it was stated that this would meet the District requirements.

Mr. Segler stated that number came from Plowe Engineering and he isn’t sure how they came up with that calculation. He stated that was on the drawing he showed, but stated that in order to excavate out you will also have to do some sloping and grading, which means that trees upslope from the flood volume replacement footprint will have to be taken out. He showed the new proposed location and stated that he feels this will provide the least amount of damage to the trees.

Manager Bradley stated that if the Board were amenable to what was presented on page 139 of the packet, he asked Permit Coordinator/Wetland Specialist Tomczik what actions would need to be taken.
Permit Coordinator/Wetland Specialist Tomczik stated that the Board would be approving the variance to a certain amount and the permit would be amended for the reduced amount. He noted that it was identified as 12.7 cubic yards, however the District Engineer has determined that the number may be less than accurate. He stated that the additional excavation may yield more cubic yards of mitigation. He reiterated that the position of staff is to uphold the standard which is what their documentation supports.

Manager Waller asked what the minimum lot size is for the land zoning authority in the area.

Mr. Segler stated that he believes it is 1/3 acre and when he originally rezoned it from Ag to residential, they could have put in 64 homes. He stated that instead of zoning it R-1, they zoned it an E-1, essentially to prove to their neighbors that they had no intention of putting in a bunch of townhomes.

Manager Waller confirmed that there is only about 2.5 acres of buildable land and with the 1/3 of an acre lot size, this property could potentially put in 6 single-family homes. He asked staff if each lot would be allowed the 10 cubic yard exemption or if it would just be for the street.

Permit Coordinator/Wetland Specialist Tomczik read aloud from the review by Houston Engineering findings, “subdivision of property would not result in multiple exemptions, as the exemption would apply to the development of the property as a whole”. He stated that it is the pre-project condition that dictates the 10 cubic yard volume.

Manager Bradley stated that with reference to that rule provision, he would not find it unreasonable if Mr. Segler provides flood storage to the extent he reasonably can, and if the shortfall is not more than 10 cubic yards.

President Preiner stated that if the Board does this, it needs to be made clear that nothing else will ever be developed on this property.

Manager Waller stated that he would like something attached to the deed on the property that makes it clear that this property cannot be developed.

District Attorney Holtman stated that could be included as a condition of the Board’s action.

Manager Bradley stated that if the Board decides to do this, he doesn’t think the Board needs to rule on the variance but would need to modify the CAPROC and asked Mr. Segler if that would take care of the problem.
Mr. Segler stated that he thinks this would be a happy meeting ground for compromise.

District Attorney Holtman stated that as a process matter, if what Manager Bradley stated is the Board’s inclination, it is still a variance decision, because the rule, as written, does not afford a partial exemption in this case.

Manager Waller asked for confirmation that the additional $712.50 may not be the total cost and there may still be some additional expenses for Mr. Segler.

Manager Bradley stated that he would like to see the Board put a stop to the costs, at this point.

Permit Coordinator/Wetland Specialist Tomczik stated that the variance policy that the Board adopted is with regard to review of the application. He stated that at the last meeting, the Board directed staff to craft the findings and noted that the reworking of the findings would not be a chargeable item.

*Motion by Manager Bradley, seconded by Manager Waller, to return this to staff and the District Attorney to modify the proposed resolution to grant a variance on the conditions that Mr. Segler achieve the maximum feasible flood storage within his identified footprint, that at least 14 cubic yards of storage be achieved, that a covenant be recorded prohibiting the use of the District’s 10-cubic-yard exception in any further development of the property, and that Mr. Segler pay the outstanding variance review debit.*

Manager Waller stated that his second is contingent upon Mr. Segler agreeing to it.

Mr. Segler stated that he agrees with the proposed terms.

Permit Coordinator/Wetland Specialist Tomczik wishes to be clear that this is not the “exemption” in the rule, because that does not apply when the total floodplain fill exceeds 10 cubic yards. He stated that it appears that the Board is approving the variance for a reduced mitigation on the site.

Manager Waller stated that he believes that Permit Coordinator/Wetland Specialist Tomczik was simply asking for the Board to use a different word than “exemption”.

Permit Coordinator/Wetland Specialist Tomczik stated that he believes this application may run into the 60-day rule and suggested that Board include a second motion for an extension.

*Motion carried 4-0.*
Motion by Manager Waller, seconded by Manager Bradley, to extend the 60-day requirement under Minnesota Statutes §15.99 for an additional 60 days, in order to allow for the proposed findings to be revised.

Manager Bradley indicated to Mr. Segler that the District did not intend to use the entire 60 days, but rather to take up the resolution at the next Board meeting. Mr. Segler asked if he needs to be present. Manager Bradley replied that the discussion indicates the direction the Board intends to take, and that there is concurrence among the four managers present to grant a variance on the terms discussed. District Attorney Holtman noted that, nevertheless, Mr. Segler should understand that the Board is not now binding itself to a specific decision in 2 weeks.

Permit Coordinator/Wetland Specialist Tomczik asked Mr. Segler if it is his intent to do the work in the new location.

Mr. Segler stated that it is his intent and he will let Plowe Engineering know about the discussion today and the suspected difference in some of the amounts.

Motion carried 4-0.


Water Resource Specialist Kyle Axtell gave an overview of the program and noted that BWSR approved the work plan for the Watershed-Based Funding Pilot Program grant on October 8, 2018. The grant agreement was executed by District Administrator Belfiori on October 9, 2018. He reviewed the rough timeline of how these programs will roll out. He reviewed some of the general program guidelines and noted that there are different requirements and eligibility for the local funds versus State funds. He noted that there is a combined amount of $713,336 available and there may be an additional $20,000 available. He noted that BWSR is requiring 10% in matching funds and the USWR funds cannot be used to meet this requirement.

Motion by Manager Waller, seconded by Manager Bradley, to authorize staff to initiate the 2019 Urban Stormwater Remediation Cost-Share Program and BWSR Watershed-Based Funding Pilot Program and to notify potential applicants of funding availability by publishing the attached Request for Proposals. Motion carried 3-0-1. (Manager Haake absent for the vote.)

3. Consider Citizen Advisory Committee Nominations

Administrator Belfiori stated that staff is pleased to present to the Board an applicant for the Citizen Advisory Committee, Raj Alexander who resides in Washington County. Staff recommends approval.
Motion by Manager Waller, seconded by Manager Bradley, to appoint Raj Alexander to serve on the District’s Citizen Advisory Committee for the remainder of 2018 and 2019. Motion carried 3-0-1. (Manager Haake absent for the vote.)


District Technician Lauren Sampedro stated that the City of Lauderdale submitted its LWMP for consideration on May 21, 2018 and after comment submitted a final draft on October 1, 2018. She gave an overview of some of the water resource issues within the city such as degraded water quality within Walsh Lake and localized flooding adjacent to Walsh Lake. She noted that the city is involved in the Upper Mississippi River Bacteria TMDL. She stated that in order to address these issues, the city plans to continue to enforce its pet waste policies and would like to coordinate with the District on implementation of Walsh Lake water quality projects. Staff finds that the City of Lauderdale LWMP is consistent with the District’s watershed management plan and State requirements and recommends approval.

Motion by Manager Haake, seconded by Manage Bradley, to adopt Resolution 2018-28: Approving Lauderdale Local Water Management Plan.

THEREFORE, BE IT RESOLVED that the RCWD Board of Managers hereby approves the City of Lauderdale’s local water management plan, as submitted on October 1, 2018.

ROLL CALL:
Manager Waller – Aye
Manager Haake – Aye
Manager Bradley – Aye
Manager Wagamon – Absent
President Preiner – Aye
Motion carried 4-0.

Manager Bradley stated that he complimented Technician Sampedro at a workshop and would like to also compliment her publicly. He stated that he is impressed with how much she manages to memorize and how she is able to make her presentations without notes.

Consider Water Quality Grant Program Cost-Share Applications.

a. R18-10 Hartman Shoreline Stabilization and Buffer

Technician Samantha Berger stated that this project is located within the City of Arden Hills as a shoreline stabilization project on Lake Johanna. She showed a photo of the existing seawall and noted the goal is to remove the seawall and add some rock for stabilization with a buffer planting.

Motion by Manager Bradley, seconded by Manager Waller, to approve RCWD Water Quality Grant Program Contract R18-10 for the Hartman Shoreline Stabilization, up to
$7,492.50 and not to exceed 50% of eligible project expenses, in accordance with established program guidelines. Motion carried 4-0.

b. R18-11 Larson Shoreline Stabilization and Restoration
Technician Berger stated that this project is also located within the City of Arden Hills on Lake Johanna. She stated that this project is a good candidate for a bio-engineering practice which would include installation of a planted bio-log along the shoreline. She stated that it was recommended by the Conservation District and the CAC that this project be funded at the 75% level.

Manager Haake stated that because there are not clear data on how long the bio-logs last, she would like to see it funded at 50%.

Technician Berger noted that the District works with Ramsey County annually to conduct inspections.

Motion by Manager Haake, seconded by Manager Preiner, to approve RCWD Water Quality Grant Program Contract R18-11 for the Larson Shoreline Stabilization, up to $4,849.25 and not to exceed 50% of eligible project expenses, in accordance with established program guidelines.

Manager Waller stated that his experience with bio-logs is that they do not work very well and don’t last long. He stated that he prefers the boulders, however these are called coir logs and he doesn’t recall seeing that word before. He asked if there is a differentiation between coir logs and bio-logs with relation to longevity. He stated that he doesn’t need an answer today but would like some research to be done and presented to the Board in the future.

President Preiner suggested asking for the updated researching on these types of bio-logs.

Technician Berger stated that she knows the coir logs typically have coconut in their fibers which provides more of a netted aspect. She stated that she knows the bio-logs do better when they are not subjected to a lot of bounce which is why this location in the cove is deemed to be a good candidate.

Manager Waller reiterated that he favors rock and encouraged staff to let the applicants know about rock.

Manager Bradley noted that it appears that the CAC favors non-rock solutions.

District Engineer Otterness stated that rock is especially useful in areas that are subject to ice action. He noted that this particular location is in a little thumb cove and will be
out of the way of the majority of the wind and ice action which is why a bio-engineering solution may have potential for success in that location.

*Motion carried 4-0.*

c. W18-01 City of Birchwood Village contract extension.

Technician Berger stated that the Board had approved a project in Washington County, in Birchwood Village and the contract expired on October 1, 2018 so it will require an extension.

President Preiner asked how long of an extension is needed.

Technician Berger stated that the extension would need to be for one more year. She suggested that the District consider rephrasing the language in the contracts to allow applicants to have 18 months, rather than 12 months.

*Motion by Manager Haake, seconded by Manager Bradley, to approve a contract extension for one year for cost-share contract W18-01 City of Birchwood Village. Motion carried 4-0.*

6. Consider Check Register dated October 10, 2018, in the amount of $107,313.11 prepared by Redpath and Company.

*Motion by Manager Haake, seconded by Manager Bradley, to approve check register dated October 10, 2018, in the amount of $107,313.11, prepared by Redpath and Company. Motion carried 4-0.*

**ITEMS FOR DISCUSSION AND INFORMATION**

1. **10-Year Watershed Management Plan**

Administrator Belfiori read the following statement:

The Rice Creek Watershed District is currently developing its next 10-Year Watershed Management Plan. Residents of the District are invited to submit comments about their priorities and concerns within the watershed district. These comments will be considered by the Board of Managers. To be considered, comments should be submitted to wmp@ricecreek.org by December 31, 2018.

2. **Cancellation of Water Planning Workshop**

Administrator Belfiori reminded the Board that the October 22, 2018 Water Planning workshop will be cancelled.

3. **District Engineers Update and Timeline.**

District Engineer Otterness noted that the District has received a request for the final payment on ACD-5362 branch 2 project. He stated that the iron enhanced sand filter at
Oasis Pond was started up a few weeks ago which means this project is almost complete.

4. **Managers Update.**

Manager Haake attended the CAC meeting this month where they discussed the WMP process.

Manager Waller attended the Washington County Water Quality Consortium and will attend the Legislative Water Commission next Monday.

Manager Bradley attended the Bald Eagle Lake Association annual business meeting.

**ADJOURNMENT**

*Motion by Manager Haake, seconded by Manager Waller, to adjourn the meeting at 11:50 a.m.*

*Motion carried 4-0.*