REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, November 14, 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, Treasurer Steven Wagamon, and Secretary Michael Bradley.

Absent: None.

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Technician Samantha Berger, Office Manager Theresa Stasica.

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

Visitors: Jay Brezinka, Justin Skoglund, Max Segler, Scott Thelen.

SETTING OF THE AGENDA
Motion by Manager Haake, seconded by Manager Bradley to approve the agenda as presented. Motion carried 5-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the October 24, 2018 Board of Managers Meeting. Motion by Manager Wagamon, seconded by Manager Bradley to approve the minutes as presented. Motion carried 5-0.

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
Manager Haake asked about the storm water pond that has not been sized in Permit No. 18-073. She asked if the owner would be the same for both phases of the project.

Technician Berger answered that at the current time it is the same owner and noted that the owner has been informed that if they expand, they will have to come back before RCWD for the expansion of the holding pond. She explained that the property is currently owned by a bank so it is likely that it will eventually be under new ownership.

Manager Haake noted that on page 29 of the packet with regard to Permit No. 18-080, it states that the applicant is not subject to RCWD permitting authority.

Technician Berger stated that they have communicated with the applicant and asked what their intent is and also reviewed their stormwater calculations and it does show that RCWD stormwater rule standards will be achieved, and actually shows that they are oversizing their stormwater features. She stated that this area is also in the flood management zone and they are also meeting the flood management zone requirements.

Permit Coordinator/Wetland Specialist Nick Tomczik stated that the applicant and representatives are present at the meeting. He stated that this is federally owned property and not subject to the RCWD regulations, but they are abiding by State Wetland Conservation Act.

Manager Haake asked about Permit No. 18-098 and noted that on page 32, under Findings, it talks about adequate water storage and asked for confirmation that they applicant really has enough in this location.

Technician Berger noted that the total requirement for the site is 9,912 cubic feet and it looks like they will actually exceed the requirements. She noted that they are in the flood management zone which does require an 80% reduction in peak flow, and they have met this requirement.

Manager Waller stated that he noticed that there are homes being built along Branch 4 of AWJD3 and wants to make sure the engineers are taking this into consideration since there have been past discussions about repairs in this area and just wants to make sure the RCWD is paying attention.
It was moved by Manager Wagamon, seconded by Manager Bradley to approve the Consent Agenda item for permits 18-073, 18-079, 18-080, and 18-098 outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations dated November 7, 2018. Motion carried 5-0.

Permit Coordinator/Wetland Specialist Tomczik gave an update regarding the Anoka Hennepin Schools Permit No. 17-125 (New Blaine Elementary School). He stated that staff sent the board directed letter to the Superintendent and Mr. Anderson called Patrick and expressed his bewilderment as to what obligation was missing. He explained that staff has advised him what is missing and has also recently received an e-mail from the permittee’s consulting team asking what needs to be done and staff has responded to that as well.

Manager Preiner commended staff for their good work in this situation.

Permit Coordinator/Wetland Specialist Nick Tomczik asked Technician Berger to assist him in completing the paperwork for Permit No. 18-080 because the applicants- Minnesota National Guard are present and waiting to proceed.

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.

None.

ITEMS REQUIRING BOARD ACTION


Permit Coordinator/Wetland Specialist Nick Tomczik stated that the Board had considered this application at the October 10, 2018 meeting and directed staff to revise the resolution for its consideration. He explained that staff has included language that the floodplain mitigation on the site be a minimum of 14 cubic yards, that a covenant be recorded on the property prohibiting the use of the 10 cubic yard exemption in the future, and to pay the outstanding debit of the variance and processing of $712.50. He noted that at the last meeting time, Mr. Segler had consented to the proposed terms.

Max Segler, stated that if this is approved, he will pay the outstanding fee by the end of the week and if weather permits, they would like to start the work the week after Thanksgiving. He explained that his goal is to get the work done this year and get everything stabilized.
Permit Coordinator/Wetland Specialist Tomczik suggested that the Board include a deadline in its approval; he suggested adding this to the third bullet point of the resolution on page 40 of the packet.

Mr. Segler stated that his only concern with a hard deadline is if the property gets two feet of snow during the first week of December, it will mean he cannot move forward as quickly as he would like.

Permit Coordinator/Wetland Specialist Tomczik stated that the District requires final stabilization on the site with an established density of 70% for vegetation. He stated that if the deadline is set as sometime mid-2019 that will address the potential weather issue and allow permittee’s adaptive management of vegetation.

District Attorney Holtman suggested including the deadline language in the third bullet point, at the beginning of the second sentence, to state, “by July 1, 2019”, as well as in the next bullet point that should state “to the District by July 1, 2019”.

Mr. Segler asked whether the covenant that needs to be recorded on the property per the first bullet point is something that he is supposed to draft and bring forward.

Permit Coordinator/Wetland Specialist Tomczik stated that he believes the District counsel should draft that document to ensure that the Boards interests are protected and further that the time effort is not too great.

Manager Bradley asked if the first bullet point should be amended to state that a “District approved” covenant be recorded on the property.

District Attorney Holtman concurred in that amendment. He noted that the proposed motion language from Permit Coordinator/Wetland Specialist Tomczik reiterates the fourth bullet point and the Board has inserted the date of July 1, 2019 into the body of the language and would suggest that be added to the motion.

**Motion by Manager Bradley, seconded by Manager Waller, to adopt Resolution 2018-33 concerning request for variance by Max Segler and revise Stipulation 2 of Permit 16-027 to read in part: “Applicant must provide by July 1, 2019, an as-built survey of the flood plain impact and mitigation area to the District for verification of compliance with the approved plans and the variance approved on November 14, 2018.” Resolution 2018-33 has been modified in the first bullet point to include a requirement that the covenant be District approved, that the third bullet point include the language “be provided by July 1, 2019”, and the fourth bullet point state “applicant must provide by July 1, 2019, an as-built survey”**.
THEREFORE BE IT RESOLVED that the August 23, 2018 variance request for relief from Rule E.3(b) under Permit No. 16-027 is granted, with the following conditions:

- Before work begins, Permittee must record on the property a District approved covenant that any fill threshold exemption under the District’s floodplain alteration or equivalent rule will be inapplicable to any further floodplain fill activity on the property.

- Before work begins, Permittee will pay to the District the amount of $712.50 for outstanding variance review fees.

- Permittee will create the greatest amount of flood storage replacement feasible within the area delineated in Attachment A to this resolution. Permittee will supply an as-built survey and such other documentation that demonstrates the creation of at least 14 cubic yards of flood storage replacement by July 1, 2019.

- Stipulation 2 of Permit 16-027 is revised to read: “Applicant must provide an as-built survey of the flood plain impact and mitigation area to the District by July 1, 2019 for verification of compliance with the approved plans and the variance approved on November 14, 2018.”

ROLL CALL:
Manager Waller – Aye  
Manager Haake – Aye  
Manager Bradley – Aye  
Manager Wagamon – Aye  
President Preiner – Aye  
Motion carried 5-0.


   Technician Berger gave a brief introduction of the shoreland stabilization project on Lake Johanna in Arden Hills. She noted that the site is adjacent to a project (Larson property) recently approved by the Board. She explained that the neighbors have plans to work together and use the same contractor. She noted that there will be about 11,765 sq. ft. of catchment including 109 lbs. of TSS.

Manager Haake stated that she remembers our past discussion about the coir logs and asked that if one of the District inspectors follows up when they are in the area to take a look and see how they are doing. She noted that she is curious to know if these logs do a better job than a concrete wall.
Technician Berger noted that a nice part of the grant program is it gives the District more of a chance to go out and inspect these projects in the future.

Motion by Manager Haake, seconded by Manager Waller, to approve RCWD Water Quality Grant Program Contract R18-12 for the Jacob Shoreline Stabilization, up to $1,994.38 and not to exceed 50% of eligible project expenses, in accordance with established program guidelines. Motion carried 5-0.


Administrator Belfiori gave a brief overview of the proposed resolutions and amendments to bylaws. He noted that a summary of each of the 9 resolutions is included in the packet. He stated that the revision to the bylaws allows for WMOs to become full voting members.

Manager Waller stated that he has no objection to adopting the resolutions and amendments as a whole in one motion.

District Attorney Holtman stated that he has some concern about resolution #4 which proposes to add the DNR as subject to watershed permits. He stated that in the early 1990s, MnDot took the position that it was not subject to permitting requirements, which led to MAWD going to the legislature and getting MnDot specifically named in the statute. He stated that it has caused a bit of a problem and some ambiguity as to whether no state agencies other than MnDot are subject to watershed district permitting. He stated that the result is that some state agencies have applied for permits and some have raised the question of whether they are not subject to the permitting process, but because of the uncertainty, have been willing to meet RCWD standards even if a formal permit is not issued. He stated that more recently, the DNR has stepped forward and stated that it does not think it is subject to watershed district permitting under this statute. He stated that if this now only specifically states MnDot and DNR, he feels it will send a clear message that the other state agencies are not subject to the permitting process. He suggested that this concern would be addressed by revising the statute to state simply that watershed district rules apply to all state agencies.

Manager Waller stated that he had initially supported the proposed change, and continues to do so, but agrees that a broader revision is preferred.

Manager Bradley shared his favorite Latin phrase that roughly translates to “the expression of one is the exclusion of the other”. He stated that he feels District Attorney Holtman’s concerns are valid and should at least be communicated with MAWD that this may inadvertently create a slippery slope. He stated that if the intent is that all state agencies are subject to permitting, perhaps it should state that and not simply call out a few specific agencies.
District Administrator Belfiori suggested that the Board could approve of Resolutions #1-3 and #5-9 and the additional by-laws change and then come back and provide a separate motion for Resolution #4 that includes the Board’s comments and concerns.

**Motion by Manager Waller, seconded by Manager Haake, to accept the recommendations outlined in the Memo dated November 8, 2018, for Resolutions 1-3 and 5-9 and direct Board delegates to support these proposed resolutions as well as the bylaw amendment. Motion carried 5-0.**

**Motion by Manager Bradley, seconded by Manager Waller, to direct Board delegates to support proposed Resolution #4, but also advise the MAWD representatives of the Board’s concern that by singling out MnDot and DNR as two specific State agencies that are subject to permitting, the implication is that no other state agency is so required and seek consideration of whether a broader statement should be made.**

Manager Waller stated that he doesn’t think the language offered by Manager Bradley is strong enough. He stated that he would like to see a statement that says the Board supports the resolution, but actually ask that it be modified to include all state agencies, and not just point out that it may be a problem.

President Preiner asked if this can be presented to MAWD.

Administrator Belfiori stated that he will present this to the MAWD executive director and suggested that the delegates also be prepared to share this concern and noted that there is a regional caucus designed for people to share their thoughts.

Manager Waller stated that there will be three opportunities to share this information during the convention via the subcommittee meeting, the regional meeting, and the floor itself when this item comes up for discussion.

The motion was amended by unanimous consent as follows:

**Motion by Manager Bradley, seconded by Manager Waller, to direct Board delegates to support proposed Resolution #4, but also advise the MAWD representatives of the Board’s concern that by singling out MnDot and DNR as two specific state agencies that are subject to permitting, the implication is that no other state agency is so required, and to support resolution language to amend the statute to apply to state agencies generally. Motion carried 5-0.**
Motion by Manager Haake, seconded by Manager Bradley, to appoint Managers Bradley and Waller as delegates and appoint Manager Wagamon as an alternate delegate. Motion carried 5-0.

Consider Letter related to WJD 2 Branches 1 and 2 Repair.

Administrator Belfiori noted that this information was passed out just prior to the meeting regarding a response to the October 26, 2018 unsolicited letter for permission from the DNR on proposed repairs to WJD2 Branches 1 and 2.

Motion by Manager Waller, seconded by Manager Wagamon, to approve the attached letter acknowledging the DNR Letter of Permission to perform repairs on WJD 2 Branch 1 and 2; authorizing the president or administrator to sign the letter; authorizing transmittal to DNR after final legal review and authorizing non-material changes prior to transmittal; and, further, authorizing staff to take all necessary actions to implement the proposed maintenance activities on WJD 2 Branch 1 and 2 no earlier than November 19, 2018. Motion carried 5-0.

Consider Resolution Requesting Boundary Change between the Rice Creek Watershed District and the Brown’s Creek Watershed District.

Administrator Belfiori noted that a revised Resolution 18-34 was distributed just prior to the meeting and gave a brief overview of the resolution.

Motion by Manager Haake, seconded by Manager Bradley, to adopt Resolution 2018-34: Resolution Requesting Change Of Boundary With Brown’s Creek Watershed District.

THEREFORE BE IT RESOLVED that the Board of Managers, Rice Creek Watershed District, authorizes the Board President, on advice of counsel and with any further non-material changes, to sign a petition for boundary change pursuant to Minnesota Statutes 103B.215, on behalf of the Board, adjusting the District boundary in accordance with Exhibits A, B and C hereto.

ROLL CALL:
Manager Waller – Aye
Manager Haake – Aye
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Aye
Motion carried 5-0.

District Engineer Otterness explained the difference in the number of parcels being transferred into the District from the original number. Responding to Manager Haake, he confirmed that the motion would include this updated information about the parcels.
President Preiner noted that the RCWD has received no adverse comment from the public to this change.

Administrator Belfiori explained the boundary change process that was followed including, at the request of the City of Hugo, a public meeting opportunity, and noted that two people had commented but not related to the technical basis for the boundary change, which is what is relevant. He explained that after the petition is filed with the Minnesota Board of Water and Soil Resources (BWSR), there is publication of notice and an opportunity for an interested party to request a public hearing before BWSR before it acts on the petition.


Administrator Belfiori noted that a revised Resolution 2018-35 was passed out prior to the meeting. He stated that it receives the draft repair report for filing and authorizes the process in which the District is seeking concurrence from the three cities that are on the system. He noted that it will also direct staff to schedule a landowner information meeting to be held in the first quarter of 2019. Staff is recommending approval.

Manager Bradley noted that the material handed out is slightly different than the information in the packet.

Motion by Manager Bradley, seconded by Manager Wagamon, to adopt Resolution 2018-35: Findings and Order Initiating Repair Proceedings For Anoka-Washington Judicial Ditch 3, as distributed prior to the meeting with the slight, non-material change in ordering which added a new C.

ORDER

A. The Board of Managers receives the draft engineer’s Repair Report for AWJD 3 for filing.

B. The Board of Managers directs its administrator to send correspondence to the cities of Centerville, Hugo and Lino Lakes to seek their concurrence to exercise alternative powers found in statutes chapters 103B and 103D to repair and manage the drainage system. Upon the concurrence of the Cities of Centerville, Hugo and Lino Lakes, the Board shall conduct further proceedings for the repair of AWJD 3 utilizing the additional authorities provided in Minnesota Statutes Section 103D.621, subd. 4.

C. The Board of Managers further directs its administrator and staff to begin coordination with the required local, state and federal regulatory entities to ensure timely identification of regulatory issues and regulatory approvals for the proposed drainage system repair.
D. The Board of Managers further directs its administrator and staff to set a date, time and
location for an informational meeting on the repair of AWJD 3. Following the
informational meeting, the Board shall set a date for a hearing on the repair. Notice for
said informational meeting shall be given by mail to all owners of property traversed by
AWJD 3, and by publication to all other interested parties.

E. The Board of Managers directs its administrator to coordinate and take all subsequent
actions necessary for preparation of the repair in a manner consistent and compliant with
existing law. The Board reserves to itself, however, all subsequent actions required by law
to proceed upon Board approval.

ROLL CALL:
Manager Waller – Aye
Manager Haake – Nay
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Aye

Motion carried 4-1.

Manager Haake explained that she voted no because in her view the cost of work on
system branches should be borne by benefitted property owners, not RCWD property
owners in general.

7. Consider RCWD Letter requested by Minnesota Commercial Railway.
Administrator Belfiori gave an overview of the proposed letter that was requested by the
Minnesota Commercial Railway. Staff recommends approval.

Motion by Manager Bradley, seconded by Manager Wagamon, to approve the RCWD
letter requested by Minnesota Commercial Railway related to its application for
Minnesota Rail Service Improvement (MRSI) grant funds. Motion carried 5-0.

Administrator Belfiori noted that a letter to the Minnesota Department of Administration
was passed out prior to the meeting, dated November 14, 2018 requesting an advisory
opinion on electronic meeting participation. Staff recommends approval.

Motion by Manager Waller, seconded by Manager Haake to approve sending the
letter to the Minnesota Department of Administration- Data Practices Office
requesting an advisory opinion. Motion carried 5-0.
Administrator Belfiori gave a brief overview of the proposed participation plan for the
upcoming Watershed Management Plan development process. Staff recommends
approval.

Motion by Manager Wagamon, seconded by Manager Haake to approve the Board of
Managers and Advisory Committee Participation Plan for the Watershed Management
Plan development process with any non-material changes. Motion carried 5-0.

Manager Waller stated that there is a Citizen Advisory Committee meeting scheduled
for December 5, 2018 and asked which Board member would be able to attend.

President Preiner stated that she will attend the December 5, 2018 CAC meeting.

10. Consider November 28, 2018 Check Register – Resolution Authorizing Treasurer
Approval.
Administrator Belfiori noted that there will not be a second Board meeting for the months
of November or December and noted that Resolution 2018-36 would authorize the
District Treasurer to approve payments for the November 28, 2018 check register. Staff
recommends approval.

Motion by Manager Bradley, seconded by Manager Wagamon, to adopt Resolution
2018-36: Authorization For Payment Of November 28, 2018 Check Register, not to
exceed $375,000 for operating expenses and $150,000 surety returns. Motion carried
5-0.

11. Consider League of Minnesota Cities Liability Waiver Form.
Administrator Belfiori referenced the staff memo in the packet reminding the Board that
for the last three years, the Board has voted to waive the monetary limits on municipal
tort liability to the District’s policy limit. Staff recommends approval.

Motion by Manager Bradley, seconded by Manager Waller, to WAIVE the monetary
limits on municipal tort liability established by Minnesota Statutes, Section 466.04 to
the extent of the limits of the liability coverage obtained from LMCIT. Motion carried
5-0.

12. Consider 2019 Board Calendar.
Administrator Belfiori reviewed the proposed 2019 District calendar and noted that the
CAC will have two meetings in January, but the remainder of the calendar is similar to
past years.

Manager Bradley noted that at the workshop, he requested a switch between himself and
Manager Haake for the months of May and June for representation at the CAC.

Approved RCWD 11/14/2018 Board Minutes
Consider Policy related to Public Communication by Managers.

Administrator Belfiori noted that the proposed policy regarding Public Communication by Managers was passed out prior to the meeting. He stated that the only modification from the version reviewed at the November 13 Board workshop, based on the consensus discussion, is to add a sentence at the end, “All Managers shall be copied on the communication.”

Motion by Manager Bradley, seconded by Manager Waller, to adopt the policy entitled “Public Communications by Managers” dated November 14, 2018, and direct the Administrator to incorporate it into the District’s Policy and Procedures Manual.

Manager Waller stated that the last time policy rules were revised was back in 2007, he did not vote in favor of the changes then and he will not vote in favor of this proposed change. He stated that he does not think this is a necessary change.

Manager Bradley stated that he will vote in favor of this policy not for the purpose of changing Board behavior, but to provide for the entire Board to be informed when managers are discussing District matters in public forums and, when appropriate, to allow for the Board’s position to be offered.

President Preiner stated that when the Board gets inquiries from other entities as to what the Board’s position is on issues, there has to be a process where the Board can provide that clarification. She stated that this gives the Board the opportunity to respond.

Manager Wagamon stated that to take President Preiner’s statement a step further, he feels it is embarrassing when a manager is contacted about a statement that has been made by a Board member and he or she doesn’t know anything about it. He stated that he feels that if it is Board business, the managers and staff have a right to be notified and have a chance to respond.

Manager Haake noted that under the proposed policy, a manager can attend any meeting and express their understanding or view, but must say that they are speaking for themselves. She stated that because this right is recognized, she doesn’t object to the proposed policy.
ROLL CALL:
Manager Waller – Nay
Manager Haake – Aye
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Aye

Motion carried 4-1.

Consider Check Register dated November 14, 2018, in the amount of $279,053.79 prepared by Redpath and Company.

Motion by Manager Wagamon, seconded by Manager Haake, to approve check register dated November 14, 2018, in the amount of $279,053.79, prepared by Redpath and Company. Motion carried 5-0.

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. District Engineer Update and Timeline.
District Engineer Otterness stated that he had no update.

3. November-December Calendar.
Administrator Belfiori noted there was a hand out regarding the proposed legislative update that would be sent out soon that identifies the results of the PRAP program.

Administrator Belfiori reiterated the CAC meeting on December 5, 2018. He asked the Board to disregard the proposed informational meeting regarding AWJD 3 for December 10/11, 2018 as that will be held sometime in the first month or two of 2019. He stated that they are planning for a Watershed Management Plan Development Workshop on December 20, 2018, at 1:00 p.m.

4. Managers Update.
Manager Waller attended Washington County Commissioner Budget workshop, Washington County Consortium and Citizen Advisory Committee meeting.
ADJOURNMENT

Motion by Manager Haake, seconded by Manager Wagamon, to adjourn the meeting. Motion carried 5-0, and the meeting was adjourned at 10:17 a.m.