REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, May 22, 2019

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: Interim Administrator Nick Tomczik, Lake and Stream Specialist Matt Kocian, Project Manager Kyle Axtell, Communications & Outreach Coordinator Beth Carreño, Public Drainage Inspector Tom Schmidt, Office Manager Theresa Stasica.

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

Visitors: Joshua Phillips, Stefan Higgins, Jon Haukaas.

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

READING OF THE MINUTES AND THEIR APPROVAL
Motion by Manager Wagamon, seconded by Manager Waller, to approve the minutes as presented. Motion carried 5-0.

Minutes of the May 6, 2019 Special Meeting.
Motion by Manager Wagamon, seconded by Manager Bradley, to approve the minutes as presented.
District Attorney Smith stated that the normal practice under the open meeting law when going into closed session for a personnel or performance evaluation, is that the minutes typically will not record the discussion. He explained that a summary is required, which, in essence, is what has been done with the minutes in order to meet the intent of that provision of the statute.

*Motion carried 5-0.*

**Minutes of the May 6, 2019 Workshop.**

*Motion by Manager Wagamon, seconded by Manager Bradley, to approve the minutes as presented. Motion carried 5-0.*

**Minutes of the May 8, 2019 Board of Managers Meeting.**

*Motion by Manager Wagamon, seconded by Manager Haake, to approve the minutes as presented.*

Interim Administrator Tomczik noted that on page 15 of the packet, line 140, the word Friday, should be changed to Fridley.

*Motion by Manager Wagamon, seconded and Manager Haake, to approve the minutes as amended.*

*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:

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**Permit Applications Requiring Board Action**

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<td>CAPROC 8 items</td>
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Interim Administrator Tomczik stated that regarding Permit No. 18-094 for Mill Pond, on page 24 of the packet, there is a discussion about the interaction of the downstream control structures in the public drainage system and the intended stormwater ponds on the site. He asked the District Engineer to explain the situation so it is clear for the record.

District Engineer Otterness stated that this project drains into ACD 10 -22-32, Branch 3 which has a few outlet control structures that were placed there by formal agreement to facilitate the ability of the landowner to continue to utilize the ditch for irrigation purposes. He noted that the
irrigation has been permitted through the DNR for many years. He explained that the District had worked with the landowner at the time of the repair on the system to facilitate continued use of the public drainage system for irrigation, under the condition this use does not hinder the ability of the drainage system to function and serve as an outlet. He stated that in reviewing this permit they have determined that the control structures will not have a negative effect on the ability for the water to drain out from the property. He also noted that the irrigation use is secondary to that of the ditch, and that if it is determined that management of the structures is causing an issue, the drainage authority still has the ability to modify those structures or how they are being used, in order to resolve the issue.

Manager Waller questioned if the land use changed and irrigation was no longer being utilized whether the control structures could be removed.

District Engineer Otterness stated that if the land use changes they anticipate a substantial modification to the public drainage system, including the control structures.

Interim Administrator Tomczik stated that regarding Permit 19-037, the notation regarding a new surface infiltration basin-1 on the table on page 38, incorrectly references Permit 19-036 rather than 19-037. He stated that the asterisk under the table should be rewritten to state, “BMP is oversized, being designed with excess volume capacity.”

Manager Bradley stated that item number 5, under Administrative states that “The applicant must pay the remaining Water Management District Charges associated with this parcel.” He noted that the applicant is the school district and asked if the school district was the landowner at the time or whether it was a different landowner.

Interim Administrator Tomczik stated that his understanding is that it is the school district.

Manager Bradley asked why the school district had to pay the WMD charges now if it didn’t have to in the past.

Manager Waller asked if it was a change in use of the property.

Interim Administrator Tomczik stated that he is not clear on the distinction that Manager Bradley is making. He stated that to his knowledge, all parties are subject to WMD charges.

Manager Bradley clarified that sometimes collection is delayed until land is sold.

District Engineer Otterness stated that this property is on the ACD 53-62 system where there was a 3-year charge. He noted that, for example, if they are in the 2nd year of a 3-year charge, they are required to pay all of the remaining charges for the land parcels on which an alteration requires a District permit, thus resulting in a zero balance.

Manager Haake stated that regarding Permit No. 19-005, the water is supposed to be going from the Mounds View school system property and end up in Valentine Lake. She asked if anything would be going into the other pond southwest of the property.
Interim Administrator Tomczik stated that the table on page 31 of the packet defines the different drainage areas of the project. He stated that there is some drainage to the west to the existing wetland and a reduction in the volume of water going to the west/southwest.

Manager Bradley stated that on page 30 there is a statement under Findings, item 2 Stormwater, that states “The applicant must address Recommendation 1 above.” He stated that for future drafting of documents, he would prefer that it state, “The applicant must address Requirement 1 above.”

It was moved by Manager Haake, seconded by Manager Wagamon, to approve the Consent Agenda item for permits 18-094, 19-005, and 19-037 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations dated May 15 & 16, 2019, as corrected. Motion carried 5-0.

Permit Applications Requiring Board Action

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<td>17-122</td>
<td>Preferred Properties and Management</td>
<td>Lino Lakes</td>
<td>Final Site Drainage Plan</td>
<td>VARIANCE REQUEST CAPROC 17 items</td>
</tr>
</tbody>
</table>

Manager Haake asked if the extra costs involved in variance review is included in the fee for the applicant.

Interim Administrator Tomczik stated that public entities are not charged fees and private entities cover the cost of the variance minus the first $500 which is covered by the District. He stated that if the review exceeds the $2,000 fee, then the District would require more money and they would be required to pay any missing funds prior to permit issuance.

Manager Bradley stated that on page 49 of the packet, item 7, states that there will be “No permanent structures, impervious surfaces, or landscape features may be within this easement, except for approved ponding, road or trail crossings.” He stated that paragraph 8 requires a recording of the maintenance declaration and drainage and flowage easements. He asked if there should also be a requirement added that it be recorded that there will be no other permanent structures, impervious surfaces, or landscape features added as noted in paragraph 7.

Interim Administrator Tomczik stated that he thinks this will be born out in the easement documents that are created. He stated that there will be one for the public drainage system and the other for the wetland management corridor easement. He noted that there will also be a declaration over the stormwater facilities as well as a declaration over the buffer. He stated that staff will make note of Manager Bradley’s concern and make sure that it is addressed clearly in the document.

District Engineer Otterness stated the project applicant 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 25
District Engineer Otterness stated that the proposed project is a new housing development, which includes 65 single-family homes and associated infrastructure. The project is located between Lake Drive Northeast and Wood Duck Trail and is bounded to the south by CSAH 14 (Main Street). The site is located on three undeveloped parcels (0 acres of existing impervious area) totaling 94 acres, however only two parcels contain the development, while the third contains only wetlands and WMC buffer. The project will add 8.7± acres of impervious area and disturb 40± acres overall. Runoff from the site flows through a wetland complex to ACD 10-22-32, which crosses the site, and ultimately to Marshan Lake, the Resource of Concern.

Interim Administrator 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.

Interim Administrator 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.
Interim Administrator Tomczik informed the Board that he would reiterate the above criteria and District Engineer Otterness would reply with the District Engineer’s response.

Interim Administrator Tomczik asked per practical difficulties criterion (a), how substantial the variation is in relation to the RCWD Rule requirement(s).

District Engineer Otterness replied: the applicant has not met the 25-foot buffer requirement at location along the Wetland or slope requirement. The areas where the width is not met can be found in the Exhibit A Request for Variance dated 4-5-2019. Multiple areas totaling 0.53 acres, 4% of the total WMC, of the buffer do not meet the 25-foot minimum buffer requirement. The applicant has provided 15.0 acres of buffer area which is more than the required 14.1 acres of buffer area per the average 50-foot buffer requirement. The approximate existing slope of the buffer is 8:1. The proposed slope where the variance is requested (8 areas totaling 8% of the total WMC) is 3:1 – 6:1 thus is steeper than existing conditions. Steep and narrow slopes are needed to minimize wetland fill at these locations.

Interim Administrator Tomczik stated that this is part of the comprehensive wetland protection and management plan portion of the rule. He stated that squeezing infrastructure and development around natural features, it can be a challenge. He stated that staff hopes to address the way the rules deal with this type of thing in the future. He stated that when the homes are put in the slope is needed in order to get the water to the treatment features and the only way to decrease the slope is to eliminate the lots or get a variance. He stated that this may not be as big of a concern in this situation as it would be in others because it will be primarily back yard run off.

Interim Administrator Tomczik asked per practical difficulties criterion (b) the effect the variance would have on government services.

District Engineer Otterness replied: issuance of a variance for the Natures Refuge project is not expected to increase flooding (see criterion (c)) or have any negative effect on government services. The applicant has maximized the amount of buffer without decreasing the original footprint.

Interim Administrator 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.

District Engineer Otterness replied: Marshan 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. Drainage patterns and treatment have not changed from the original site footprint. The project as a whole is not expected to cause adverse impacts. Approximately 100% of the impervious area is treated per RCWD treatment requirements. It is not likely that Marshan Lake will be negatively affected by the reduced buffer widths.

Interim Administrator 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 Engineer Otterness 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 runoff rate control and the Rule E requirements for floodplain mitigation. The project will create a net increase of 47,485 cubic yards of flood plain storage. The granting of the variance will not cause an adverse impact to the adjacent wetlands. Overall the proposed project even with the variance, represents an upgrade in environmental condition as compared with the existing altered conditions. The granting of the variance represents a loss in opportunity for additional habitat and pollutant removal through the native vegetation, but not an adverse impact compared with existing conditions.

Interim Administrator Tomczik stated that the existing condition is that it is an ag field which means they are tilling as much of the property as they can.

Interim Administrator 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 Engineer Otterness replied: The applicant has indicated that the project cannot be built without the variance, as the footprint cannot be reduced. The District Engineer has not evaluated the economics of the project. The entire site is comprised of the development area, wetlands, or buffer. To meet the minimum buffer width and slope requirements, additional wetland could be filled to create the buffer, however this is not considered acceptable under WCA and is not considered prudent.
Interim Administrator 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 Engineer Otterness replied: The District Engineer finds that the current landowner did not cause the situation which led to the implied practical difficulty. The need for a variance was created by the need to construct on the project site. Per the discussion above, the applicant has indicated that to meet the project goals while minimizing the impact to wetlands and improving buffer sheet flow characteristics there is no feasible way to do the project without a variance due to the location and geometry of the multiple adjacent wetlands.

Interim Administrator 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 Engineer Otterness 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 District’s buffer requirements of Rule F.6(e). Other applicants have had the ability to feasibly meet these requirements onsite because the site constraints presented here were not evident in the previous applications.

Manager Haake stated that granting a variance, in essence, changes the policy. She confirmed that any other applicant coming in would need to have the exact same circumstances in order for it to be considered. She understands that the Board should not be considering anything from an economic standpoint, but to say that this variance is “needed” is really only because they want to develop as much of the property as they can. She expressed concern that the next person will also ask for these same kinds of exceptions for the same reasons.

President Preiner stated that she does not feel granting a variance sets a precedent for future variance applications and asked District Attorney Smith to give an opinion.

District Attorney Smith stated that his answer is both yes and no. He explained that the Board has a requirement to be reasonable and apply the requirements consistently. He recommends that the Board keep in mind that each project will likely present with unique circumstances.

Manager Bradley stated that this is the first time that he believes the applicant has not come up with a solution to provide the District with equal alternatives. He stated that in the past, there have been curb and gutter that took the water to storm sewers and did not bring the water to the marshes. He stated that he considers this the first true variance request he has seen in serving 4.5 years on the Board. He asked if there is a storm sewer in this location.
Interim Administrator Tomczik stated that there is a storm sewer system to collect the water and put it into the ponds.

Manager Bradley asked why curb and gutter couldn’t solve the issue in particular, areas A, D, E and F.

Interim Administrator Tomczik stated that in area A the road is elevated for the collection of the water into the pipe and transfer to the associated ponding and the grade differential is part of the rationale. He noted the buffer area shown in green, including the purple area on the map, is being met on a proposed city street.

Manager Bradley stated that it sounds like in area A all that is being done is increase the burden on the buffer by having a higher slope come into it.

Interim Administrator Tomczik stated that in the past the slope criteria has been considered to be a portion of addressing the storm water interests.

Manager Bradley asked if the District was not concerned about water flowing off of that road into area A and if curb and gutter would be of value in this area.

Interim Administrator Tomczik stated that he wouldn’t say the District isn’t concerned, but is part of the consideration of the facts in this case and agreed that curb and gutter would be of value in this area.

Manager Bradley noted that he would like to see this item tabled until there is a response regarding putting in curb and gutter.

Interim Administrator Tomczik stated that he may have been misunderstood and clarified that curb and gutter is already proposed along the road.

Manager Waller stated that there is public drainage involved in this permit. He stated that in the past, there have been problems with the easements being infringed upon and culverts have been placed in the wrong places. He cautioned that staff and the applicant be aware that this space is needed for the repair of the public drainage system so people do not construct sheds or garages in these areas.

Manager Haake stated that going from a 25-foot buffer to a 15-foot buffer concerns her.

Manager Wagamon stated that a point of distinction in his mind is that the applicants are leaving it in better condition that it is currently in.

President Preiner stated that this is a way for the District to provide a variance yet keep the goals, and thinks the Board should consider approving the request.
It was moved by Manager Wagamon, and seconded by Manager Waller, to Approve the Variance request for variance application 17-122 as outlined in accordance with RCWD District Engineer’s Variance Technical memorandum, dated May 15, 2019. Motion carried 4-1 (Manager Haake opposed).

Interim Administrator Tomczik noted that there are some corrections to the engineer’s report on page 45 of the packet that address some of Manager Waller’s concerns for the public drainage system and a large addition that lists the CAPROC items. In the engineer’s report CAPROC item 15 includes the addition of “of the public drainage system” last sentence after the word crossing. Additionally finding 3 Wetland includes the following addition to the end of the text: “The property owner must file on the deed a declaration in a form approved by the District establishing a vegetated buffer area adjacent to the delineated wetland edge within the final WMC and other wetland buffers approved as part of a permit under this Rule. The declaration must state that on further subdivision of the property, each subdivided lot of record shall meet the monumentation requirement of Section 6(e)(8). On public land or right-of-way, in place of a recorded declaration, the public owner may execute a written maintenance agreement with the District. The agreement will state that if the land containing the buffer area is conveyed to a private party, the seller must file on the deed a declaration for maintenance in a form approved by the District. The property owner must convey to the District and record or register, in a form acceptable to the District, a perpetual, assignable easement granting the District the authority to monitor, modify and maintain hydrologic and vegetative conditions within the WMC wetland and buffer adjacent to WMC wetland, including the authority to install and maintain structural elements within those areas and reasonable access to those areas to perform authorized activities, per Rule F.6(d)(f). The WMC shall be identified and delineated as part of the recorded easement. The applicant is considering the development of a wetland bank directly east of the site, but within the area subject to the vegetated buffer declaration and WMC wetland/buffer easement required by this permit. If the applicant proceeds with a wetland bank and is required under state or federal law to protect that bank by a similar recorded easement or covenants, the District will cooperate in amending its prior encumbrances to accommodate those recording requirements.”

He stated that the changes are shown in red lettering. He stated that the landowner is interested in developing a wetland bank and are working with Critical Connections Ecological Services and this provides some attention to that possibility and future recording requirements.

Manager Waller thanked Interim Administrator Tomczik for the language in the permit and reiterated his concerns that care be taken during the inspection phase that they are conscious of the culverts and easements.
Interim Administrator Tomczik made note of one more addition to the top of page 49 finding 7 Drainage Systems that addresses the maintenance obligation of the culverts and public drainage system. The additional final line to read “Applicant must execute a maintenance obligation for the culverts installed along the public drainage system. The project is compliant with District Rules G/I.”

*It was moved by Manager Wagamon, and seconded by Manager Waller, to CAPROC permit 17-122 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations, dated May 15, 2019 with Interim Administrator Tomczik’s revision to the engineer’s report outlined above. Motion carried 4-1, (Manager Haake opposed).*

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<td>Wetland Alteration</td>
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President Preiner informed the Board that the City of Blaine was in the audience today.

District Engineer Otterness stated the project applicant for the City of Blaine, has submitted a written request for a variance from Rice Creek Watershed District (RCWD) Rules F.6(e)(2), and F.6(e)(7)(iii). Rule F.6(e)(2) requires that the buffer adjacent to wetland within the final WMC measure at least 25 feet at all points. Rule F.6(e)(7)(iii) allows a buffer to enclose a linear surface for non-motorized travel, however the proposed permeable access drive will be for motorized vehicles to maintain Well 19. The District Engineer evaluated the variance request per RCWD Rule L for Permit 19-036 in the Request for Variance (Exhibit 1) dated May 13, 2019 and received on May 13, 2019.

District Engineer Otterness stated that the proposed project is located on a 9.92± acre parcel at 12260 Lexington Avenue in Blaine. The permit includes an after the fact for construction of the water tower, well, bituminous drive access to the water tower, and gravel access to the well with associated wetland impacts. The site was previously undeveloped, and the unpermitted work added 0.34± acres of impervious surface. New proposed work includes the construction of Water Treatment Plant No. 4 with an attached public works garage, a backup power generator, and parking, an infiltration basin, a stormwater pond, and various site utility modifications. Additionally, the project will remove the existing gravel well access drive and will replace it with a pervious access drive stabilized through the use of geogrid. The project will add an additional 2.42± acres of impervious surface for a total post developed total of 2.76± acres. There will be 7.58 acres total of new disturbance. Drainage from the site flows predominantly to the west and north to ACD 53-62 with a small portion flowing east to Lexington Avenue. All drainage from the site flows to Golden Lake, the resource of concern. The applicant filed an “after-the-fact” permit application (10-052) for the water tower project, however the applicant never constructed the required water quality BMPs. The subsequent construction of the well and existing gravel access drive were also not permitted. The location and placement of the previously unpermitted wells
and water tower, and proposed water treatment plant was dictated by a multi-year wellfield study performed by the applicant (see criterion (d)). The applicant and RCWD have entered into an agreement to resolve the unpermitted actions mentioned which includes on-site restoration and off-site replacement of the impacted wetlands at a 3:1 replacement ratio. The current project will also provide adequate treatment for the unpermitted impervious surfaces under the current (2017) rule. The project proposes to restore previously unpermitted wetland impacts in the northwestern portion of the property when Well 19 and associated gravel drive was constructed, however the 25-ft minimum buffer width at all points along the wetland has not been satisfied. The 25-ft buffer is not met near the public works garage as indicated below. The applicant will also need to maintain maintenance access to the well 19, thus requiring a permeable access drive (linear surface) through the buffer, however the requirement that it be for non-motorized travel has not been satisfied. The applicant anticipates vehicular access for maintenance occurring on a biannual basis.

President Preiner stated that she does not like “after the fact” permits, especially for a city, and asked if there was any sort of penalty for these actions.

Interim Administrator Tomczik stated that in “after the fact” situations, the District just looks for an applicant to come into compliance and noted that the Wetland Conservation Act side does have a penalty built into it.

Interim Administrator 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:

(g) How substantial the variation is in relation to District Rule requirement(s);
(h) the effect the variance would have on government services;
(i) whether the variance will affect a substantial change in the character of the watershed resources or will be a substantial detriment to neighboring properties;
(j) 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);
(k) how the practical difficulty occurred, including whether the landowner created the need for the variance; and
(l) whether in light of all of the above factors, allowing the variance will serve the interests of justice.

Interim Administrator 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.
Interim Administrator Tomczik informed the Board that he would reiterate the above criteria and District Engineer Otterness would reply with the District Engineer’s response.

Interim Administrator Tomczik asked per practical difficulties criterion (a), how substantial the variation is in relation to the RCWD Rule requirement(s).

District Engineer Otterness replied: the applicant has not met the 25-foot minimum buffer requirement at the location of the public works garage and access drive, where the project will include utilities. The utilities require minimum cover and a 4:1 slope was used to minimize wetland impacts, thus not achieving the required minimum 5:1 slope. This section constitutes 8.3% (97 linear feet) on the northeast portion of the WMC where the grade requirement is not achieved. The applicant will place a permeable maintenance access drive for motorized travel, which does not meet the linear surface for non-motorized travel requirement. The access drive is needed to access Well 19 for biannual maintenance. The purpose of including the access drive is to provide a stabilized surface for maintenance vehicles to avoid soil disturbance and rutting during maintenance activities. Approximately 290 ft of the access drive occurs within 25-ft of wetland, which was approved by the TEP. To minimize the impact of this drive, the applicant has proposed a permeable drive that will be vegetated with a native xeric prairie mix and will only be utilized a couple times a year. The applicant has indicated that the vegetated drive will not require any additional mowing or maintenance other than indicated in the Vegetation Maintenance Plan (submitted with Variance Application).

Interim Administrator Tomczik stated that the text stating that this was “approved by the TEP” is a recommendation of the TEP not an approval that the placement of the access drive is not a big concern to them.

Manager Haake asked what sort of under-stabilization would be done in the vegetated area that will allow the vegetation to grow.

Interim Administrator Tomczik stated that there is clean gravel and a geogrid that will allow large trucks to drive over it without tearing up the ground. He stated that the vegetation is consistent with the buffer requirements, but is not in compliance with the rule which is why the Board is discussing it. He noted that he feels it is in the “spirit of the rule”.

Interim Administrator Tomczik asked per practical difficulties criterion (b) the effect the variance would have on government services.

District Engineer Otterness replied: issuance of a variance for the City of Blaine project is not expected to increase flooding (see criterion (c)) or any negative effect on government services. The applicant has maximized the ability of the vegetated access drive and the 97 linear feet of buffer area not meeting grading requirements to function as a native vegetated wetland buffer.
Interim Administrator 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.

District Engineer Otterness replied: The project has met the peak discharge and water quality requirements of the district. Thus, it is not expected to change the characteristics of the watershed. 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.

Interim Administrator 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 Engineer Otterness 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 variance will create minimal loss of habitat that otherwise would be provided by fully meeting the Rule. Per the vegetative management plan, 6-8 inches will remain after mowing, which affords greater habitat than an allowable asphalt non-motorized trail. The area not meeting the minimum 25-ft width will still be planted with native vegetation.

Interim Administrator 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 Engineer Otterness replied: The applicant had previously completed a multi-year study to determine the layout of a municipal well field and water treatment plant that would provide domestic water for the northeast area of the city. This study determined that the best geological location for productive municipal wells was a corridor that generally ran from the area west of Lexington Avenue starting at Woodland Parkway northeasterly to just north of
125th avenue on the eastern side of Lexington Avenue. The City owns two parcels of land within this zone, one of which is the subject parcel of this variance application and the other is the entrance to the Blaine Wetland Sanctuary. City wells must be located on city owned property or within an easement controlled by the city. The water treatment plant also needs to be on city owned property. It was determined that four to five wells would be needed to achieve necessary production and that the wells should be located no closer than one quarter mile apart. The City (the wellhead manager) desired to locate the wells on city owned property rather than private property within an easement where the City would have less control on what occurred around the well. Two of the municipal wells were located on the subject parcel, and to meet the quarter mile separation, one well had to be located on the westerly side (Well 19) of the property and the other on the easterly side.

The water treatment plant is located on the subject parcel in a manner that makes connection to the municipal wells, water tower and existing main infrastructure feasible and efficient. The City does not own another site that would be suitable for the water treatment plant. The proposed project plan was designed to avoid and minimize wetland impacts to the maximum extent possible. The project could meet the minimum 25-foot grade requirement by increasing wetland fill to create more buffer width, however this would not be consistent with the intent of District Rule F to protect wetlands.

A motorized permeable access drive is needed to provide access to Well 19. If the access drive were not installed, vehicles would cause undesirable soil disturbance and rutting, thus degrading the quality and diminishing the functionality of the buffer area. The only alternative alignment of the access drive is around the south and west sides of the stormwater pond, which would route the path through the western wetland setbacks instead of the northern wetland setbacks and would also not avoid the southern property line setback, and is thus not a desirable alignment. The stormwater pond was located to avoid the wetland setbacks to the maximum extent possible.

Interim Administrator 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 Engineer Otterness replied: The District Engineer finds that the current landowner did not cause the situation which lead to the implied practical difficulty (see criterion (d)). The need for variance was created by the need to construct the municipal wellfield per the restrictions laid out above and the need to have reliable access to these wells. Per the discussion above, the applicant finds that there is no feasible way to do the project which meets the requirements of the applicant and the District without a variance.

Interim Administrator 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 Engineer Otterness 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 Districts buffer requirements of Rule F.6(e). Other applicants have had the ability to feasibly meet these requirements onsite because the site constraints presented here were not evident in the previous applications.

Manager Bradley noted that on page 73 in the summary section it states, “The applicant filed an ‘after-the-fact’ permit application for the water tower project, however the applicant never constructed the required water quality BMPs.” He asked if this deficiency had been solved through some other method.

Interim Administrator Tomczik stated that they have resolved this and the total impervious surface area is being addressed with the application.

Manager Bradley stated that from his analysis, the road solution provides basically the same or better protection, so he does not have a problem with the road.

*It was moved by Manager Bradley, and seconded by Manager Wagamon, to Approve the Variance request for variance application 19-036 as outlined in accordance with RCWD District Engineer’s Variance Technical memorandum, dated May 15, 2019.*

Manager Haake stated that this should serve as an example to all 27 of the member cities to come to the District first.

Manager Waller stated that he believes that about 16 years ago when Blaine put in the first water tower, it was informally discussed that a second tower would be needed. He stated that he didn’t want to excuse the after the fact permit but thinks it may explain it a bit.

President Preiner stated that she felt there is no excuse for an after the fact permit in this day and age.

Manager Waller stated that because Blaine is a rapidly growing city there is a great need for the public health in this situation.

Manager Bradley stated that President Preiner had asked earlier in the meeting about whether or not there was a penalty in this situation. He noted that he assumed that there is one because it is a 3:1 ratio instead of what it should be.

Interim Administrator Tomczik stated that this falls under the CWPMP which is a variety of replacement ratios that are based on the quality of wetland. In this case it is bumped up higher than the rule would otherwise require based on a TEP recommendation to have that penalty.
He noted that the applicant will be restoring some of the fill areas as the fill was not temporary which makes it come out closer to a 4:1 ratio.

**Motion carried 5-0.**

*It was moved by Manager Haake, and seconded by Manager Waller, to CAPROC permit 19-036 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations, dated May 15, 2019. Motion carried 5-0.*

President Preiner thanked the City of Blaine for attending the meeting.

Jon Haukaas, Director of Public Works, City of Blaine, thanked the Board for their consideration of these items and apologized for the past actions the City had taken. He explained that he understands President Preiner’s annoyance and stated that it is his intention that this sort of thing never happens again.

**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.

**ITEMS REQUIRING BOARD ACTION**

1. **Confirm Interim District Administrator.**

President Preiner stated that after former District Administrator Belfiori had given his resignation, she asked Mr. Tomczik to serve as Interim Administrator. She noted that the negotiated agreement was included in the packet and she recommends approval.

Manager Haake asked who would serve as the Interim Administrator during the vacation that Mr. Tomczik already had scheduled from June 18-28, 2019.

Interim Administrator Tomczik stated that during his planned vacation, he will organize as well as he can and delegate the various duties as appropriate.

**Motion by Manager Haake, seconded by Manager Bradley, to adopt Resolution 2019-15: Confirming Appointment of Interim Administrator.**

THEREFORE BE IT RESOLVED that the Board of Managers hereby confirms that effective May 14, 2019, and continuing until the Board by resolution determines otherwise, Nick Tomczik, permit coordinator/wetland specialist, is appointed as interim administrator.
and hereby is authorized and directed to exercise all powers, authorities and responsibilities of the administrator, including but not limited to the following:

- Authority to sign work orders for ditch maintenance pursuant to adopted policy;
- WCA decision authority pursuant to resolution 2019-13;
- Administrative permit approval authority pursuant to board resolution 2009-09; and
- Authority to approve employee leave and expenses claims and to take all other personnel-related actions within the administrator’s authority;

THEREFORE BE IT FURTHER RESOLVED that Mr. Tomczik also will continue to exercise his authority and responsibility as permit coordinator/wetland specialist, except as he may reassign part or all of those duties pursuant to his interim administrator authority;

THEREFORE BE IT FURTHER RESOLVED that aside from the temporary job description and additional duties and authority established above, Mr. Tomczik’s terms of employment and employment status are not altered at this time, including his previously approved vacation, except that 1) he will be granted a $12.00 per hour increase in compensation for the period served as interim administrator and 2) compensatory time and annual leave possessed by Mr. Tomczik as of May 13 and further accumulated when he is serving as interim administrator will be excepted from personnel policies limiting carryover of such time.

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

Motion carried 5-0.

2. Consider Salary Survey Option 2.
Interim Administrator Tomczik stated that Gallagher Human Resources and Compensation Consulting Practice completed an analysis and is recommending an adjustment to the pay structure for the District for 2019 and 2020.

Manager Bradley stated that when this was discussed at the workshop this was not his preferred option, but he does not want to give the impression he is opposed to it so he plans to vote in favor of it.
Motion by Manager Bradley, seconded by Manager Waller, to approve the 2019/2020 RCWD Salary Structure, Gallagher’s Option 2 including the shift of Office Manager 2 position from a Grade 8 to Grade 9 and incorporate the tables into the District’s Employee Manual.

Manager Haake stated that she is opposed to this and plans to vote against this because she preferred option 3. She stated that option 2 was what former District Administrator Belfiori had preferred and he is no longer with the District.

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

Motion carried 4-1.

Manager Waller stated that he understands Manager Haake’s concerns and noted that he has the same feelings about this as Manager Bradley. He stated that he would like to see the Board start taking a look at this situation now rather than later since this only covers through 2020. He stated that he did not think the group the consultant used is broad enough. He reiterated that he feels it needs more study because this has been an ongoing discussion.

Manager Haake expressed her frustration with the process.

President Preiner asked if Interim Administrator Tomczik had an opinion on their discussion.

Interim Administrator Tomczik stated that other watershed districts and other employers are looking for qualified people and this is the method in which recognition is shown for District staff work as well as a way to maintain them as staff. He noted that as the District is finding out now, when there is changeover it can be disruptive.

President Preiner asked if the Board’s intent was to make this retroactive for 2019.

Manager Bradley stated that his thought would be that if someone would have received a raise but for being at the top of the range, then the District Administrator should take that into consideration for a possible raise, but otherwise it would simply be effective moving forward as the usual part of the review process.
Interim Administrator Tomczik confirmed that his understanding of the direction from the Board is that as the District Administrator conducts the personnel reviews, raise may be given as appropriate to both the effectiveness in the position and the market trend.

3. Consider Check Register dated May 22, 2019, in the amount of $340,586.43 prepared by Redpath and Company.
   
   Motion by Manager Wagamon, seconded by Manager Bradley, to approve check register dated May 22, 2019, in the amount of $340,586.43, prepared by Redpath and Company. Motion carried 5-0.

ITEMS FOR DISCUSSION AND INFORMATION

1. Staff.
   
   Interim Administrator Tomczik stated that the MAWD Summer Tour flyer has come out. He stated that it is not local so if the Board would like to participate, he recommends that they work with Theresa Stasica on lodging and other details.

   Interim Administrator Tomczik gave an update on HF 2314/SF 2372 and noted that there has been no action taken since the initial introductions other than the addition of an author.

2. June Calendar.
   
   Manager Bradley stated that what is listed as Wednesday, June 22nd is actually Wednesday, June 26th. He stated that in past years, the Board has moved their meeting up a day in order to accommodate the MAWD tour. He stated that he is not planning on attending so he did not need the meeting moved on the calendar, but wanted to give the option to other Board members who may be planning to attend.

   President Preiner stated that once the Board determines if they are interested in attending the MAWD summer tour, the June meeting can be adjusted, if necessary.

3. Managers Update.
   
   No updates.

ADJOURNMENT

Motion by Manager Waller, seconded by Manager Bradley, to adjourn the meeting at 10:21 a.m. Motion carried 5-0.