REGULAR MEETING OF THE RCWD BOARD OF MANAGERS
Wednesday, May 24, 2017
Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota

Approved Minutes

CALL TO ORDER
President 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, Secretary Michael Bradley, and Treasurer Steve Wagamon.

Absent: None

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Water Resource Specialist Kyle Axtell, Lakes and Streams Specialist Matt Kocian, District Technician Samantha Berger, Technician Lauren Sampedro, Office Manager Theresa Stasica.

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

Visitors: John Krauseur, Brian Robinson, Butch Robinson, Mark Strandlund.

SETTING OF THE AGENDA
District Administrator Belfiori requested a new item 1 under Board Discussion “Discussion Follow-up from 5-19 Tour of Halls Marsh.”

Motion by Manager Haake, seconded by Manager Wagamon, to adopt the agenda as amended. Motion carried 5-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the May 8, 2017, Board of Managers Workshop Meeting. Motion by Manager Wagamon, seconded by Manager Haake, to approve the minutes as presented. Motion carried 5-0.

Minutes of the May 10, 2017, Board of Managers Meeting. Motion by Manager Wagamon, seconded by Manager Haake, to approve the minutes as amended.
Manager Waller noted on Item 5 of the minutes regarding the audit he made a comment that he would vote to support accepting the audit but he still felt having the bookkeeper and auditor the same agency was problematic and his comment is missing.

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 Coordinator/Wetland Specialist Tomczik noted there was additional information to Permit 17-033. He noted on page 30, under administrative, item 4, adding onto the end of the sentence “for maintenance agreement with recorded easement as acceptable to District Administrator”. The reason for this is that the City may maintain the pond and want to ensure they have access to the site.

It was moved by Manager Haake seconded by Manager Bradley, to approve the consent agenda as outlined in the above Table of Contents in accordance with RCWD District Engineer's Findings and Recommendations, dated May 11 & 17, 2017. Motion carried 5-0.

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.

There were no comments made at Open Mike.

ADDITIONAL ITEMS REQUIRING BOARD ACTION


   President Preiner stated this hearing is held under the authority of the board of managers to issue compliance orders for violations of District Rules. It concerns construction of eight townhomes on land located within the Red Oak Estates subdivision in Mounds View. At its May 10 meeting, the board by motion directed the administrator to schedule this hearing and provide notice to Shade Tree Construction, Inc.

   On May 18, Mark Strandlund, the President of Shade Tree Construction Inc., received the notice of hearing.
President Preiner noted there was no one in the audience. She proceeded to review the
procedural framework for the hearing.

Permit Coordinator/Wetland Specialist Tomczik noted he received a voicemail from Mr.
Strandlund asking where the meeting would be held. The notice of the hearing explicitly states
the location and the time to be present. They have Mr. Strandlund’s number in the documents
so he wondered if the board would like this item held for later in the meeting and staff would
try to call Mr. Strandlund.

Manager Bradley felt there was no reason not to hold this item to later in the agenda in case Mr.
Strandlund is lost. Manager Haake stated they could continue on with the agenda and if by the
end of the meeting he has not shown up then they can proceed with this item. District Attorney
Holtman stated there was no reason why they could not hold this item to later in the agenda.

2. Consideration of HEI Additional Services Request #1 for Task Order 2016-023

Water Resource Specialist Axtell stated the RCWD Board approved execution of Task Order
2016-03 with Houston Engineering, Inc. (HEI) for Phase 5 of the Hansen Park Comprehensive
Water Manager Project on August 10, 2016. Phase 5 included engineering services related to
construction management and observation. The exceptionally warm winter this past season has
caused substantial alterations and delays to the construction schedule of this project. HEI has
been forced to undertake additional tasks and effort, not contemplated in the original task
order, to keep the project moving in difficult conditions and to work with the contractor to
prepare for project idling over the summer of 2017.

There are additional tasks needed in the future once dredging resumes in the winter. In total,
HEI has identified 12 additional tasks and associated costs that are included in Additional
Services Request #1. The request is for an additional $28,600, to be added to the original task
order amount of $217,400, for a total “not-to-exceed” amount of $245,900.

RCWD staff has reviewed the request and finds the task list appropriate and requested funds
reasonable as they relate to the amount of “outside of scope” work staff has observed HEI
completing to keep the project moving ahead in a timely manner. Overall, including this
request, HEI’s costs remain approximately $30,000 under the District’s original budget for
engineering services.

Motion by Manager Haake, seconded by Manager Bradley, to approve Houston Engineering,
Inc.’s request to increase the total cost of Task Order 2016-023 by $28,600 to a “not-to-

3. Consideration of Rachel Contracting Pay Request #8 and Retainage Reduction for the Hansen
Park Comprehensive Water Management Project.

Water Resource Specialist Axtell presented a short photo slideshow to the Board highlighting
the construction conditions at Hansen Park and how well the project performed during the
recent heavy rainfall. Water Resource Specialist Axtell stated Rachel Contracting has continued
to make progress on the Hansen Park Comprehensive Water Management Project and has
submitted its eighth pay request. Staff concurs with the District Engineer’s opinion that the pay request is ready for approval.

Rachel Contracting has requested a reduction in the project’s retainage from 5% down to 2.5% of completed work. The memo from the project engineer and staff concurs with this request and recommends its approval. Much of the completed work is one hundred percent complete and is the type of work that would not be subject to re-work or warranty claims, such as the pond dredging. Maintaining a 2.5% overall retainage approximates an effective 5% retainage on those items that are still subject to potential re-work or warranty claims.

**Motion by Manager Wagamon, seconded by Manager Waller, to approve Rachel Contracting, Inc.’s pay request as submitted and certified by the District Engineer, and directs staff to issue a payment in the amount of $65,267.00. Motion carried 5-0.**

President Preiner noted there were members in the audience that missed open mike. She asked them to come up and provide their name and address before speaking their concerns.

**Open Mike (Cont.)**

Mr. Brian Robinson, 310 Main Street, Lino Lakes, stated his concern is they own a farm and there is a development going on behind them, Century Farms 6th Addition. He stated the outlet for this development is backing up into his private ditch system which in turn is making their farmland very wet. He understood they have had a lot of rain but this has been happening quite a bit and something needs to be done about it. The City of Lino Lakes is saying they cannot do anything about it and the developer is claiming the same thing. He was told that the Watershed District has to give them the ok. He stated the water is supposed to flow south and it is flowing north into their private system.

President Preiner asked if there has been any conversation with District Staff. District Administrator Belfiori stated a few days ago the Robinsons did contact Public Ditch Inspector Tom Schmidt on their staff and he has been working on this issue with the City of Lino Lakes and has gone out and taken a look at the site already. Mr. Robinson is correct in that the outlet for the development -- Branch 1 of Anoka County Ditch 10-22-32 -- is meant to flow south, and right now it is flowing in two directions, north and south. Public Ditch Inspector Schmidt in his inspection did note that there is a driveway culvert down stream of Mr. Robinson’s private ditch and the Century Farm 6th development that is in disrepair. Public Ditch Inspector Schmidt is already moving forward with actions to start the process of replacing that culvert.

President Preiner asked if Public Ditch Inspector Schmidt knew when this would be taken care of. District Administrator Belfiori stated Public Ditch Inspector Schmidt is waiting for locates right now and once he gets that he can move forward.

Mr. Robinson stated he wanted to make sure this is documented on the record. District Engineer Otterness noted the District is currently working on an investigation of public drainage system function along Branch 1 as requested by an adjacent landowner. This week Houston Engineering completed a survey along Branch 1 to determine the original channel bottom elevation. The District will continue to investigate the function of this public drainage system and alternatives for restoring function in the coming months.
Manager Waller asked staff to check the culvert that is in disrepair to make sure it is the right size that goes in there.

4. **Consider USGS Contract for Sediment Monitoring on Rice Creek**

   Lakes and Streams Specialist Kocian stated USGS is proposing to collect additional suspended sediment and bedload samples following the completion of the District’s Middle Rice Creek Restoration Project. The proposed tasks would be very similar to the work completed in 2010-2014. The USGS is also proposing to collect field surveys and in-stream Doppler profiles. Since this is a relatively new model, the USGS has a business interest in development and testing, it is providing approximately twenty-five percent match dollars for the proposed work.

   The contract duration would be from 2017 through 2020 and the work has value to the District. The new data will help refine sediment loading estimates to the Long Lake Sediment Basin. The total proposed budget is $51,300, of which USGS would cover $12,500. The proposed cost to the District is $38,800, spread over 4 years. Annual District costs would range from approximately $4,000 - $12,000. The proposed 2017 cost would be covered by approved 2017 RCWD budget.

   Manager Bradley asked what they will use this information for. Lakes and Streams Specialist Kocian stated they will use the information to track sediment loads in the future. It also helps them to evaluate the progress, changes following the Middle Rice Creek Restoration Project.

   Manager Bradley asked what they would do differently based on this information. Lakes and Streams Specialist Kocian stated they might refine the schedule with which they clean out the Long Lake Sediment Basin. It also tells them that if they are not seeing a great change in sediment being delivered downstream then they might need to look for other erosion hot spots along Middle Rice Creek, especially downstream of our current restoration work.

   Manager Bradley asked where this will be located compared to the restoration work they did. Will this be downstream. Lakes and Streams Specialist Kocian indicated it would be immediately downstream.

   Manager Waller thanked Lakes and Streams Specialist Kocian for bringing this forward. He noted he is a strong believer in producing numbers. He likes to see before and after numbers to see the effectiveness on it. Without quantification, you cannot have a quality decision on whether it is a success or not and what to do. He stated he was supportive of this but had some questions.

   Manager Waller asked if the sediment will be broken down into elements. Will they know how much is sand, how much is phosphorus, will they know how much is dissolved phosphorus versus particulate phosphorus. Lakes and Streams Specialist Kocian stated this is only for sediment but it will break down the sediment size based on category. He stated one of the things they can do with this information is based upon existing known relationships between fine sediment and phosphorus is it gives them an estimate of the amount of phosphorus moving through the system and they have used those estimates in the past. It does not really break
down dissolved phosphorus versus particulate phosphorus. He stated the focus of the monitoring in this case is sediment and not nutrients and chemistry.

President Preiner asked if that was something that could be added onto it. Lakes and Streams Specialist Kocian stated it would be possible for the USGS to add additional information. The RCWD has a monitoring site upstream of this station but that does not help with the pre-and-post portion of it. He stated that is an interesting question and he would inquire with the USGS if it would be possible.

Manager Waller stated they have a new contract with Ramsey County Public Works for chemical analysis and he wondered if it was possible, since the District has already paid them, to use the facility. Lakes and Streams Specialist Kocian stated the contract with Ramsey County is for lakes only. Manager Waller noted it is Long Lake they are protecting and all of their programs are based on measuring lakes. He asked Lakes and Streams Specialist Kocian to kindly remind Ramsey County that it is for Long Lake. Lakes and Streams Specialist Kocian stated they can inquire about this with Ramsey County but he thought it was unlikely that they would be willing to take this on. He thought the most efficient and cost effective way is for the Watershed District to just collect some additional samples on this site, which would be possible.

Manager Waller thought in the written statement that they had four years of earlier data that they are basing it on so in his mind this is an eight-year program and not a four year even though he is only asking for money for 2017-2020. He felt they will figure out the long-term effect of this over the decades by how often they clean out the sediment pond that protects Long Lake.

Motion by Manager Waller, seconded by Manager Haahe, to authorize the Administrator to enter into an agreement with the U.S. Geological Survey for Sediment Monitoring and Analysis of Rice Creek, MN, for an amount not to exceed $38,800.00. Motion carried 5-0.

5. Consider RCWD Board Letter to Washington County Board
District Administrator Belfiori stated at the May 8, 2017 Board workshop meeting, the Managers discussed and reached majority consensus (four Managers) to request that staff bring forward for Board consideration at a future Board meeting a letter to be sent to the Washington County Board in response to the County’s request for a summary of District expenditures by County.

Motion by Manager Haahe, seconded by Manager Wagamon, to approve the attached letter dated May 24, 2017 to the Washington County Board and authorizes the Board President to sign and transmit the letter with changes.

Manager Bradley suggested a word change in the second paragraph, third line down, he thought the sentence reads oddly. He thought it should be changed to read “…looking for follow-up information” instead of “response.”

Motion carried 5-0.

District Administrator Belfiori stated this Resolution is related to continuing actions for Adopting/Confirming Repair Area for the upcoming Repair of Branch 2 of Anoka County Ditch 53-62. He stated this is a follow-up from their meeting on the 15th of May. There was good attendance and discussion. He noted the had two or three people after the meeting come up and personally thank the Board and District for their proactive methods to listen to considerations related to the potential removals of construction areas.

Motion by Manager Haake, seconded by Manager Bradley, to order adopting/confirming repair area for the repair of Branch 2 of Anoka County Ditch 53-62:

Therefore, the Rice Creek Watershed District Board of Managers makes the following findings:

A. The Board of Managers finds that the areas necessary for entry and occupation during the repair of the drainage system as reflected in the engineer’s memorandum and plan sheets, as amended, lie within the established right of way of the drainage system and within the area contemplated and included in the original proceedings establishing the drainage system.

B. The Board of Managers finds that the trees, vegetation and structures in the work area constitute obstructions to the drainage system in that they limit access for statutorily required maintenance and inspection.

The Board of Managers directs its administrator to coordinate and take all subsequent actions necessary for implementation 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 – Aye
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Aye

Motion carried 5-0.

7. Consider Check Register dated May 24, 2017, in the amount of $304,382.85, prepared by Redpath and Company.

Motion by Manager Wagamon, seconded by Manager Bradley, to approve check register dated May 24, 2017, in the amount of $304,382.85, prepared by Redpath and Company. Motion carried 5-0.

1. Compliance Hearing for Shade Tree Construction, Inc. Permit 17-005 (Cont.)

Permit Coordinator/Wetland Specialist Tomczik advised that Mark Strandlund, President of Shade Tree Construction Inc., had arrived.
President Preiner stated this hearing is held under the authority of the board of managers to issue compliance orders for violations of District Rules. It concerns construction of eight townhomes on land located within the Red Oak Estates subdivision in Mounds View. At its May 10 meeting, the board by motion directed the administrator to schedule this hearing and provide notice to Shade Tree Construction, Inc.

On May 18, Mark Strandlund, the President of Shade Tree Construction Inc., received the notice of hearing.

President Preiner stated I will outline how the hearing will be conducted.

President Preiner stated first, I will turn to Nick Tomczik, the District’s permit coordinator. Mr. Tomczik and his regulatory staff will make their presentation about the facts in this matter. The board would like to know what work is occurring, how it violates the District Rules, and what communications have occurred with Mr. Strandlund or others. It also would like to know what risks to water quality or flooding, or other impacts, may be from the violation. When each staff member has finished speaking, Mr. Strandlund may ask any questions that he has for that staff member. Then, I will look for managers who have any questions.

When staff is finished, Mr. Strandlund may come to the podium and address the board. He may present any documents or other evidence that you would like the board to consider. When Mr. Strandlund is finished, managers may ask you questions.

I will ask counsel if there are any further matters to address. Then counsel will present the proposed order for the board’s consideration. The proposed order is to facilitate the board’s consideration of this matter but does not in any way constrain the board’s authority to decide whether a violation has occurred and what is to be done about it. The role of the board is to act as a fact-finder, in order to determine if there is a violation of the District rules, and if so what needs to be done.

The board may issue an order requiring that work cease pending compliance and containing such other terms as the board finds appropriate to gain compliance and avoid or mitigate water resource impacts resulting from noncompliance. Before the board adopts an order, we will give Mr. Strandlund an opportunity to speak to the proposed terms.

President Preiner asked if there were any questions before they proceed.

Permit Coordinator/Wetland Specialist Tomczik explained the Rice Creek Watershed District Board authorized staff to give notice of a Board compliance hearing on May 10, 2017. The Shade Tree Construction, Inc. sites of issue are lots 35-42 of Red Oak estates, Mounds View, undertaking the establishment of impervious surface without proper RCWD permit. He stated Mr. Mark Strandlund, President of Shade Tree Construction, Inc. (STCI), obtained the notice of hearing at the RCWD offices on May 18, 2017. The notice of hearing was accompanied by a packet containing 51 documents identified by RCWD staff as relevant documents it proposed to submit into the hearing record. Mr. Strandlund identified himself as the President of STCI.
District Technician Berger reviewed the permit history of the project, timeline and compliance issues with the Board.

District Technician Berger stated on three separation occasions the District reached out to the applicant on the status of the application, April 17, May 1 and May 5th. She noted staff did receive some response, but the response did not further the application. The application remained incomplete. As of May 23rd photos show eight townhomes are under construction.

District Technician Berger noted the 2005 project was not fully built out per plan, to the full extent of Permit 05-010. All of the Stormwater BMPs have not been installed and all of the impervious was not developed. Per the new rules, the applicant must demonstrate compliance with Rule C. As built were not required as part of the 2005 permit. Under Permit #05-010 a stormwater pond was constructed; however, it appears that not all the features of the pond have been constructed. The stormwater basin is located on land now owned by the homeowner’s association.

Permit Coordinator/Wetland Specialist Tomczik noted Technician Lauren Sampedro, the inspector for the site, is present as well if the Board wanted to ask her any questions.

Permit Coordinator/Wetland Specialist Tomczik stated under the current Rule C stormwater regulations a permit is triggered when 10,000 square feet of new impervious is constructed. The eight-lot townhome construction exceeds the regulatory threshold. In addition, the landowner needs to demonstrate how the project complies with Rule C/Stormwater. Rule C/Stormwater requires peak runoff rate control so that peak runoff rate is reduced to 80% of pre-existing conditions. He noted the District, to date, has invested $2,661.84 in staff, engineer and counsel time related to this compliance matter.

Mr. Mark Strandlund, Shade Tree Construction, 1696 229th Lane, East Bethel, MN, stated this has not been a straightforward, easy process. Working with staff has helped them get in line what was missing from the previous owner. Following through and trying to figure out what was needed as far as a permit, the process of the size of the buildings, what is going to be required, what is included as far as impervious area. This has been a learning curve for him. The other thing, as far as completing the permit is they have been working with Plowe Engineering who did the original work in 2005 and they have been kind of thrown off a little bit by what they thought was needed and what is actually needed. They met on Monday to go through more details so that they know exactly what is missing and Plowe Engineering is completing that part of it. The one thing he wondered is if they need to do an as-built. He stated his project manager has a long-standing history with other Watersheds throughout the state with erosion control. His project manager has worked with staff to make sure they are compliant with current erosion control and also working with Plowe Engineering and Technician Berger as far as knowing the terms more and is a great asset for all of them.

Permit Coordinator/Wetland Specialist Tomczik noted the as-built is a necessity, if the landowner wishes to demonstrate compliance with the existing storm feature on-site. He further noted that this would be a valuable asset in the development of the property.
President Preiner asked Mr. Strandlund when Plowe Engineering could have this information put together. Mr. Strandlund stated he is working on it and after this meeting Plowe Engineering will be instructed as to what else will be needed for compliance.

Manager Bradley thought it would benefit everyone to sit down with RCWD staff and have direct communication to make sure that next attempt to meet their rules is satisfactory. He encouraged this and their proposed order gives them twenty days to get this done. Mr. Strandlund stated he agreed that a meeting would be beneficial.

Manager Bradley asked staff if they thought twenty days was sufficient to get this done. Permit Coordinator/Wetland Specialist Tomczik indicated it was certainly possible. Manager Bradley asked if they would need more time. Permit Coordinator/Wetland Specialist Tomczik stated it was very challenging for him to represent the workload that Mr. Strandlund and Plowe Engineering and others have to do. He would think twenty days was sufficient.

President Preiner asked if they could take a look at their next meeting how far along they are and decide if more time is needed. Manager Waller stated he would agree with some kind of flexibility.

Manager Haake stated she knows the history of this land and project and knows that the area itself has always had a characteristic of always being low and the houses there have had some issues. They have always known that this is a difficult property to develop and before that, they had it where Mounds View was not doing any storm sewer system. Instead, they were using the whole conveyance of some of their low land to take water out and clean it without having storm sewers in there. She noted staff has been giving notices for a while and she thought twenty days should be adequate for them to complete what needs to be done. She agreed with what Manager Bradley suggested about meeting with staff and working through the issues.

Manager Bradley suggested they move this to June 16th and otherwise pass the order as drafted, giving them the June 12th workshop and June 14th regular meeting to review this to see if more time is needed to complete the issues.

President Preiner indicated she is concerned if the property is transferred within the twenty days they are giving Mr. Strandlund because the violation follows the property owner. She wondered if they should put something in writing that the property cannot be transferred until the violation is remedied. Manager Wagamon stated he was concerned also about this and wondered if they can add some verbiage in the language so it cannot be transferred. District Attorney Holtman asked Mr. Strandlund if he could represent that he will not be transferring any of the property during this time. Mr. Strandlund indicated there are two closing dates in June so they want to get this wrapped up before then. He noted they have not brought any of the units into the association yet because they want to get this wrapped up before they bring those in.

President Preiner asked if Mr. Strandlund could confirm the parcels will not be transferred until this is solved. Mr. Strandlund indicated he would like to say that but if for some reason the permit takes longer to be resolved because they need to do more engineering then he cannot agree to that because they are supposed to be closing at the end of June.
Manager Waller asked if the first closing date is twenty days from May 24th. Mr. Strandlund stated they are not set in stone yet because they have been waiting for this to get resolved and weather has not been on their side. Manager Haake noted this could have been resolved earlier. Mr. Strandlund agreed it could have been but he wanted a checklist of what needs to be done.

Manager Waller thought if the closing dates have not been set yet then they could agree not to close on the properties until this is resolved. Mr. Strandlund stated there is nothing that will be closed in twenty days but if this gets extended because of some other engineering that takes longer they will be running up against closing dates. Manager Waller thought the closing dates could be extended if needed. Mr. Strandlund stated that would be running into dealing with homeowners that have locks on their mortgage with interest rates. He indicated he wants to get this wrapped up as soon as possible.

Manager Bradley thought that Shade Tree should have started on this sooner. He asked how many of the eight units are expected to close in June. Mr. Strandlund indicated there would be two closings in June. Manager Bradley stated he would be comfortable with going ahead with the order they have seen amended to move out to June 16, 2017.

District Attorney Holtman stated it sounds to him like the Board would like as tight of a timeline as it believes is feasible for the permitting process to be completed, so that at that point the Board knows whether the timeline has been met or not, whether the order has been met or not and at that time if the Board deems it necessary the Board can consider legal action to keep the properties from being transferred. President Preiner agreed. Manager Bradley stated he was all in favor of an injunction if this does not get done by June 16th.

Manager Waller asked District Attorney Holtman if he feels he received a satisfactory answer from Mr. Strandlund regarding this matter. District Attorney Holtman stated he did not receive a full answer. He advised that while the Board does not necessarily have the authority to order a prohibition on a transfer of the property, the Board does have the authority to specify a time at which work needs to cease on site until a permit is in place, and that may be an effective way of insuring that the stormwater management is addressed before the properties start to be sold off.

District Administrator Belfiori stated if they were to move this past June 13th, they would have to set a special meeting based on the timing, if there is an urgency to do any additional work. The purpose of the end of day June 13th is that they could then react to whatever is responded to by the deadline at the next day’s Board meeting without having to set a special Board meeting the following week, which would be June 19th and three Board members will be gone for a good chunk of that week at the MAWD meeting as well.

Manager Bradley offered that the Board could authorize staff and the District Attorney to commence legal action effective at the close of the 16th and there would be no further action for the Board to take, it would be administrative at that point. The purpose of the 12th and the 14th was if staff wanted to bring to the Board status reports and if staff wanted to request a change
they could then do that on the 14th. District Administrator Belfiori thanked Manager Bradley for
the clarification.

Permit Coordinator/Wetland Specialist Tomczik submitted the packet previously provided to
Shade Tree Construction, Inc. consisting of about 51 documents, into the record of the hearing.
He stated Mr. Strandlund received the packet and signed for them on May 18, 2017. A
signature page was submitted as well for the record.

Permit Coordinator/Wetland Specialist Tomczik submitted a memorandum listing RCWD staff
and engineering costs related to this noncompliance matter, in the total amount of $1,001.34,
and RCWD counsel costs in the amount of $1,660.50, both through May 23, 2017. This was
submitted via email and received by its destination. A draft order was also communicated via
the same email as well.

District Attorney Holtman asked Technician Berger for review of Document 14, chain of email
from November 23rd, indicating the District was informing Mr. Strandlund that a permit would
be required but did not know the scope as of yet. He thought this was initiated by the City and
Mr. Strandlund did respond to that, stating that he was the site owner and that he had
disturbed about 11,000 square feet. Technician Berger indicated that was correct.

District Attorney Holtman asked Technician Berger to reference Documents 24 and 25 which
pertain to the inspection that Technician Sampedro conducted and the photographs for the
February 23rd inspection report. He wondered if that report also advised Mr. Strandlund that he
needs to proceed and get his permit application completed. Technician Berger indicated that
was correct. She read the following from the document “work done without a permit, please
continue working with RCWD to complete the permit application”.

District Attorney Holtman asked Mr. Strandlund if he understood the opportunity to raise any
questions about the proposed order, the facts that are stated in that order. He asked if Mr.
Strandlund has had a chance to review it and asked if he had anything to add. Mr. Strandlund
indicated he did not take issue with any of the facts as represented above. He stated that he
intends to comply with the District Rules in a timely manner.

District Attorney Holtman went through the proposed Findings of Fact with the Board.

1. On May 24, 2017, at the regular meeting of the Rice Creek Watershed District (RCWD)
Board of Managers (Board), a hearing was held by the Board on RCWD regulatory matter #17-
005, concerning the construction of an eight-unit townhouse on Lots 35-42, Red Oak Estates,
County Road H2 West, Mounds View (the “Site”). All managers were present, as well as the
following RCWD staff members: Phil Belfiori, Administrator; Nick Tomczik, Permit
Coordinator/Wetland Specialist; and Samantha Berger and Lauren Sampedro, Technicians.
Chuck Holtman, RCWD legal counsel, also was present.

2. Mark Strandlund, President of Shade Tree Construction, Inc. (STCI), obtained the notice
of hearing at the RCWD offices on May 18, 2017. The notice of hearing was accompanied by a
packet containing 51 documents identified by RCWD staff as relevant documents it proposed to
submit into the hearing record. Mr. Strandlund attended the hearing and identified himself as the President of STCI.

3. Ms. Berger stated the background and status of the matter to the Board, as follows:

a. On March 16, 2006, the RCWD issued Permit 05-010 to Marty Harstad, for development of 66 units on 11.4 acres encompassing the Site. The permit stated an expiration date of September 16, 2007 (Doc. 6).

b. In a February 14, 2012 letter and a June 29, 2012 closure inspection report (Docs. 7, 8), RCWD advised Mr. Harstad of the permit expiration and closeout, noted those areas not yet developed including the Site, and stated that further permits would be required if those areas were developed in the future.

c. On November 22, 2016, Ms. Berger was informed by City of Mounds View staff email of construction occurring at the Site. On November 23, 2016, Mr. Strandlund replied that he owned the Site and was responsible for the excavation encompassing roughly 11,000 square feet. Ms. Berger stated that an RCWD permit would be required and that the permit scope would be determined based on certain information that Mr. Strandlund should supply (Doc. 14).

d. In a January 18, 2017 email to Mr. Strandlund, Ms. Sampedro reiterated the requirement for a permit, advised that the Site was in violation of RCWD Rules, directed that STCI submit a complete permit application within 10 days and emphasized that any further work would be at STCI’s risk (Doc. 15).

e. Subsequently, STCI submitted an application and installed measures for site erosion and sedimentation control (ESC) (Docs. 17, 18). Ms. Sampedro inspected the site and in a February 23, 2017 inspection report with photographs, notified STCI of inadequate ESC and the outstanding need to complete the permit application (Docs. 24, 25).

f. On March 22, 2017, Ms. Berger transmitted to Mr. Strandlund a report of the RCWD engineer identifying elements of the application that continued to be incomplete so as to prevent the RCWD from being able to assess the stormwater runoff impacts of the work on downgradient lands (Docs. 32, 33). The RCWD copied this communication to Kay Sand as the representative of the Red Oak Estates homeowner’s association.

g. Since that date, STCI has not supplemented its incomplete application. However, as of May 23, 2017, its construction continues. The townhome units now are in an advanced state of construction.

h. STCI may intend further land disturbance or hard surface construction within Red Oak Estates on land other than the Site.

4. Ms. Berger further stated that under Permit 05-010, a stormwater basin was constructed to provide for capture and treatment of runoff from the development, on land now owned by the homeowner’s association. The basin was designed with a capacity to provide
treatment to the Site under the RCWD “Stormwater Management Plans” rule (Rule C) in place at that time.

5. Mr. Tomczik stated as follows:

a. In 2013, the Board adopted revisions to Rule C. Among these, the requirement for peak runoff rate control was changed to require that within the southwestern portion of the RCWD, a developer must reduce peak rate to no more than 80 percent of the existing condition. This revision reflects existing constraints in municipal infrastructure and surface water storage that are linked to localized capacity issues and flooding. The Site is within the area in which peak runoff must be reduced.

b. RCWD Rule C, at paragraph 2(c), states: “A permit is required for development, other than Public Linear Projects, that creates or reconstructs 10,000 square feet or more of impervious surface. This threshold is cumulative of all impervious surface created or reconstructed through multiple phases or connected actions of a single complete project, as defined by the District, on a single parcel or contiguous parcels of land under common ownership, development or use.”

c. The work by STCI exceeds 10,000 square feet of impervious surface. Further, it is a phase of or connected action to the prior Red Oak Estates development constructed under Permit 05-010.

d. STCI has yet to submit the engineering information as to the runoff rate from the townhome units, whether the present standard can be achieved by the existing basin and, if not, how STCI will further manage the rate to meet the standard and avoid impact on downgradient property.

e. A permit is required under the RCWD “Erosion and Sediment Control Plans” rule (Rule D) whenever the Rule C permit requirement is triggered, according to Rule D.2(a)(3).

6. Mr. Tomczik submitted the packet previously provided to STCI, consisting of about 51 documents, into the record of the hearing.

7. Mr. Tomczik submitted a memorandum listing RCWD staff and engineering costs related to this noncompliance matter, in the total amount of $1,001.34, and RCWD counsel costs in the amount of $1,660.50, both through May 23, 2017.

8. Mr. Strandlund did not take issue with any of the facts as represented above. He stated that he intends to comply with the District Rules in a timely manner. He stated that STCI has retained an engineer that is capable of performing the analyses sufficient to meet RCWD permit submittal requirements.

9. On the basis of the hearing testimony and hearing record, the Board finds the statements of RCWD staff as related above to be accurate and adopts those statements as findings of fact. The Board finds that STCI has been aware since at least November 23, 2016, that its work is subject to RCWD permit requirements, in violation of RCWD Rules and at its own risk.
Manager Bradley offered the following to paragraph 7 above:

Mr. Strandlund offered statements indicating his intention to comply with Rice Creek Watershed District (RCWD) rules in a timely manner.

Manager Haake asked what date would be considered timely. Manager Bradley stated on the order it requires a date, currently it is showing June 9, 2017 and he would like to change the date to June 15, 2017 so if needed they can begin to take necessary action on June 16, 2017.

District Attorney Holtman suggested the Board work through the findings of fact and come to a consensus on those and then to focus on the terms of the order. Manager Bradley indicated the above were the only two things he wanted to change based on what was presented.

Board consensus was in agreement of the Findings of Fact.

CONCLUSIONS OF LAW

The RCWD possesses authority under Minnesota Statutes §§103D.335 and 103D.341 to adopt and implement erosion control and stormwater management rules.

The RCWD Rules, including erosion control and stormwater management rules, have been at all relevant times duly adopted and in force pursuant to the Board’s statutory authority and all applicable provisions of law.

Under authority of Minnesota Statutes §§103D.345, 103D.537 and 103D.545, the Board may issue orders requiring compliance with RCWD Rules and duly issued permits of the RCWD and may require a party subject to an RCWD permit to reimburse the RCWD for costs incurred to monitor and enforce compliance with RCWD Rules and permits.

STCI is in violation of RCWD Rules, specifically but not exclusively Rules C and D, by engaging in land disturbance and construction impervious surface without an RCWD permit.

Board consensus was in agreement with the Conclusions of Law.

Accordingly, the Board of Managers orders:

A. STCI shall provide a complete permit application submittal to the RCWD at the earliest possible time and no later than June 9, 2017. Specifically, the submittal shall address all items identified as incomplete in the March 22, 2017 memorandum of the RCWD engineer, complete and conforming to all RCWD technical requirements.

B. If RCWD staff has not advised STCI in writing that the application is complete by close of business on June 13, 2017, work on the Site shall cease at that time and until RCWD staff advises in writing that the application is complete.
C. Authority is delegated to the RCWD Administrator to approve and issue a permit subject to any and all conditions as are within RCWD authority. The RCWD Administrator is not authorized to issue a variance to any RCWD Rule.

1) If the RCWD Administrator approves a permit with issuance subject to conditions, work shall cease until those conditions are met and the permit is issued.

2) If the RCWD Administrator denies permit approval, work on the Site shall cease pending an appropriate modification or further process resulting in issuance of an RCWD permit.

D. As a condition of permit issuance, STCI shall pay the RCWD the sum of $2,661.84 for RCWD administrative, engineering and legal costs to date to address this noncompliance matter. STCI shall be subject to reimbursement of further RCWD costs pursuant to Minnesota Statutes §103D.345.

E. Any land disturbance or hard surface construction by STCI on other lands within Red Oak Estates will be considered a phase or connected action and may not occur without an RCWD permit.

F. At all times, STCI shall provide for erosion and sediment control at the Site conforming to RCWD Rule D and best site management practices thereunder. When an RCWD permit has been issued, the Rule D terms of that permit will supersede this order and work on the Site shall conform to the permit.

President Preiner asked if the Board wanted to change Item B date from June 13, 2017 to June 15, 2017.

District Attorney Holtman stated one thing to note to make sure there is no misunderstanding, the date that is being discussed is the date by which staff needs to determine the application is complete. Beyond that staff needs to assess whether the application complies with the rules, the administrator approves the permit, the approval will probably have certain CAPROC items which will need to be fulfilled before the permit is actually issued.

President Preiner noted June 9, 2017 is when it needs to be completed and then they go to June 15, 2017 rather than June 13, 2017. Manager Bradley stated his initial motion is that upon passage of these times that the administrator in conjunction with their District Attorney is authorized to take such action as appropriate and necessary to enforce their rules.

President Preiner asked if there should be two motions for this. District Attorney Holtman stated the Board should have consensus or come to a vote on the terms to adopt the order and then proceed to a subsequent motion authorizing initiation of enforcement by the Administrator and counsel, if it chose to do so.

Manager Waller stated he did not have an issue with changing the date to June 15th. Manager Wagamon agreed.
 Permit Coordinator/Wetland Specialist Tomczik stated there are a number of steps in order, one of which is: Mr. Strandlund’s action to provide them the materials by June 9th, from that point staff and engineers need to make sure it is complete by June 15th. He thought either date they would have the capacity to determine if it is complete or not.

Board Consensus was to change the date in Item B from June 13th to June 15th.

**Motion by Manager Bradley, seconded by Manager Wagamon, to approve the findings and order in the Matter of Shade Tree Construction, Inc. Regulatory Matter No. 17-005 as previously discussed with the additions in the blanks provided to them as draft including the additional language in paragraph 7 concerning Mr. Strandlund offering statements indicating his intention to comply with RCWD rules in a timely manner. Further changing the date at page 4, paragraph B, from June 13, 2017 to June 15, 2017. Motion carried 5-0.**

Manager Haake asked if they should address selling of the two properties because she was not in favor of them selling property until this matter is completed. Manager Wagamon stated that was his concern as well.

Manager Waller did not think they could stop Mr. Strandlund from selling, they can only issue a cease work order on the property. District Attorney Holtman stated that was his advice to the Board. He noted as of today there will be a final signed order on the record and it would be in the best interest of Mr. Strandlund that it would not remain an outstanding issue.

Manager Bradley asked if there was a way to record the order on the title to the property. District Attorney Holtman thought that they would have to have the courts authorize that. Manager Waller thought there was adequate time for enforcement of this if needed. He thought at this time they would be jumping the gun if they headed to District Court. He thought that by June 15th they will have a good idea as to what would need to be done.

District Attorney Holtman stated if the Board’s concern is heightened, it has the authority to order that work cease today because work is occurring without a permit; otherwise, it can wait until June 15th. He stated the second note he would make is that clearly there is a desire on the part of the Board and Mr. Strandlund to resolve this before any lots are sold, but that so long as Shade Tree retains the ownership of some lots there is still the ability to enforce the Board’s order directly against it.

**Motion by Manager Bradley, seconded by Manager Waller, authorizing the Administrator and District Counsel to take such actions as are deemed appropriate and necessary to enforce the order.** District Attorney Holtman stated his understanding that the Board did not wish for legal action to be initiated in advance of the further update to the board. Manager Bradley responded that was correct. **Motion carried 5-0-1 (Haake abstained).**

**ITEMS FOR DISCUSSION AND INFORMATION**

1. **Discussion Follow-up from 5-19 Tour of Halls Marsh**
   District Administrator Belfiori reviewed the 5-19-17 Tour and discussion.

District Engineers McAlpine and Otteness from HEI made a presentation to the Board.
District Engineer McAlpine stated at the 5-19-17 meeting, the Mayor of Birchwood asked the District to investigate the feasibility of utilizing pumping to drawdown the water levels in Halls Marsh during the summer, to provide temporary relief of higher water levels on adjacent properties until construction of the repairs can be completed beginning in August/September.

District Engineer McAlpine stated HEI researched the feasibility of using both diesel powered and electric pumps for this application. Because of the unavailability of 3-phase power at the proposed pumping location (the shared driveway owned by Dale Johnson), the electric pumping option was determined to be infeasible.

District Engineer McAlpine stated HEI determined that based on last year’s rainfall patterns, pumping with a diesel-powered pump would need to occur approximately 6 times over the course of the summer, for a week at a time, pumping 9 hours per day at a rate of approximately 1200 gpm. Pumping at a rate less than 1,200 gpm would extend the pumping period into a near continuous operation. If rainfall events were to have the frequency and intensity of those observed the last few weeks, pumping would not be able to keep up with the inflow and would provide no relief until inflows to Halls Marsh subside. Cost for the diesel pump would be $320/day applying that to the six pumping events and adding a little bit for the additional draw down they would be at $13,300. He stated he applied a twenty percent contingency on that for line cleaning to bring the total for a six-inch pump with six pumping events to $15,980.

Manager Haake asked if these calculations were for Monday – Friday, through the time period until the outlet structure is replaced. District Engineer McAlpine indicated they are. Manager Haake thought $320 a day was a lot and wondered if they could get an intern or someone that lives in the area that can be paid $15/hour to look at it.

Manager Wagamon asked if they can keep the pumps from plugging up if nobody is there to watch it. District Engineer McAlpine agreed with the concern and stated there will probably be some issues as the pond gets drawn down to the low flow elevation. District Engineer Ottermann stated the $320/day includes fuel, rental fee and labor. He was doubtful they would be able to do if for a lower cost because they would not be able to have an unqualified person manning that pump. Someone needs to be there that is responsible that can make a change or modification if something plugs up. The other complication they are dealing with on this is this would have to occur on private property. He did not know if long-term pumping operations would fall within the conditions of the easement that the District has acquired from the landowners. His opinion is the District would want to get some sort of authorization from those four landowners prior to proceeding further.

Manager Bradley stated he knows there is the issue of the noise factor and he wondered what the decibel level would be for that. District Engineer McAlpine stated a sound retarding enclosure would be needed to reduce the emission of noise from the pump and engine. Even with such an enclosure, noise levels would be anticipated to be approximately 80 decibels, or roughly the sound level of a busy freeway.

District Engineer McAlpine stated although the RCWD has obtained an easement from the landowners serviced by the shared driveway for the purposes of maintaining the Halls Marsh
outlet, we would need permission from each of these landowners to establish a pumping station along their driveway, and would need to inform them of the noise implications.

District Engineer McAlpine stated given the extended duration of pumping required and the sediment known to exist in the basin, it is very likely that clogging on the intake to the pumping system would be problematic and could substantially limit the effectiveness of the pumping operation. Minor excavation may be required to establish a low point to pump from. Completing this work without damaging the driveway would be challenging.

Managers Haake and Wagamon stated they would like to proceed with the Halls Marsh Outlet Project without the use of long-term pumping operations, because of the numerous unknowns regarding feasibility of operations and the noise which will be too loud for the adjacent landowners. Manager Bradley recommended that District staff clearly explain this rationale to the Mayor. The Board agreed.

Board consensus was to leave this issue alone based on the two challenges referenced and that it is not a viable option for pumping based on the early review. Consider adding dredging as part of their local water plan which the Board would consider when the ten-year plan is updated.

2. **Staff Reports**
   There were no comments.

3. **June Calendar**
   There were no comments.

4. **Manager’s Update**
   Manager Waller stated on his trip to Friday’s meeting along MN Hwy 244, along the east side of White Bear Lake there were signs at mile post 6 indicating Highway under water. White Bear Lake happens to be there and the highway is under water because the lake is high. He stated when he saw that he drove over to the outlet on White Bear Lake and he observed the water trickling through the outlet on White Bear Beach in Ramsey County. He asked staff to contact Ramsey County and ask them to clean the outlet because there are a number of trees that have grown up in the area and a lot of sediment. He stated the storm water pond is full and the outlet pipe has water standing in it because the storm water pond is not draining properly. The 48-inch culvert that goes under the railroad tracks is the outlet for the pond and there is water standing there at least half way up the culvert so he thought that needed to be cleaned out at well. He asked staff to have the highway department check the outlet that goes under Highway 96 from there into the swamp, Ditch 11.

**ADJOURNMENT**

*Motion by Manager Haake, seconded by Manager Bradley, to adjourn the meeting at 11:31 a.m.*

*Motion carried 5-0.*