REGULAR MEETING OF THE RCWD BOARD OF MANAGERS
Wednesday, May 9, 2018
Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota

Approved Minutes

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

ROLL CALL
Present: President Patricia Preiner, 1st Vice-Pres. Barbara Haake, 2nd Vice-Pres. John Waller, Treasurer Steven Wagamon and Secretary Michael Bradley
Absent: None

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Technician Samantha Berger, Office Manager Theresa Stasica
Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); and District Attorney Chuck Holtman from Smith Partners
Visitors: Melissa Barrett, Max Segler, Bob Moser, Jeff Morell.

SETTING OF THE AGENDA
District Administrator Belfiori requested an addition under Items for discussion following up on the consensus discussion of PFC testing. President Preiner stated that this would become #2 and the other items would be renumbered.

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

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the April 21, 2018 Strategic Planning Board Workshop. Motion by Manager Wagamon, seconded by Manager Bradley to approve the minutes as presented. Motion carried 5-0.

Minutes of the April 25, 2018 Board of Managers Meeting. Motion by Manager Wagamon, seconded by Manager Bradley to approve the minutes as presented. Motion carried 5-0.
CONSENT AGENDA

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

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Permit Applications Requiring Board Action

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It was moved by Manager Waller, seconded by Manager Wagamon to approve the consent agenda as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations for permit 17-125 dated May 3, 2018. Motion carried 5-0.

CAPROC= Conditional Approval Pending Receipt of Changes

PERMIT APPLICATION REQUIRING BOARD ACTION

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Permit Coordinator/Wetland Specialist Nick Tomczik stated this is a CAPROC item that also requires a variance and he reviewed the project with the Board. He showed the location of the buffer on Block 2, units 1,2, and 3 and noted its location is entirely on the residential lots. He noted that the wetland line is the lot or parcel line of the individual lots.

Permit Coordinator/Wetland Specialist Tomczik stated to construct 7 single family homes including associated streets and utilities on a 4.16-acre parcel in Lino Lakes. The site currently has no impervious area. This application proposes to add 1.0± acres of impervious area and disturb 2.50± acres overall. A majority of the lot flows northwest to Reshanau Lake, the first Resource of Concern. The southeast corner of the lot flows southeast to ACD 25 and ultimately to Wards Lake, the second Resource of Concern. The site development footprint encroaches on the wetland buffer area and thus the buffer has been proposed in private lots. Due to the site development footprint, the proposed buffer lies within five private lots. The project proposes to construct a wetland buffer that satisfies the 50-foot average requirement and the 25-foot minimum buffer width requirement (Rule F.6(e)(2)). However, a variance is requested from Rule F.5(b)(1), which requires that buffer be located within platted outlots. Proposed
treatment for the project consists of a single stormwater pond designed to NURP standards which flows to one additional pond for rate control.

Permit Coordinator/Wetland Specialist Tomczik stated the District Engineer evaluated the variance request by applying the “practical difficulties” test set forth in the District’s variance rule. This standard is applied through the Board of Managers’ consideration and weighing of the following criteria:

(a) How substantial the variation is in relation to District Rule requirement(s);
(b) the effect the variance would have on government services;
(c) whether the variance will affect a substantial change in the character of the watershed resources or will be a substantial detriment to neighboring properties;
(d) whether the practical difficulty can be alleviated by a feasible method other than a variance (economic considerations play a role in the analysis under this factor);
(e) how the practical difficulty occurred, including whether the landowner created the need for the variance; and
(f) whether in light of all of the above factors, allowing the variance will serve the interests of justice.

Permit Coordinator/Wetland Specialist Tomczik stated ultimately, the Board determines whether consideration of the above criteria supports approval of a variance. The Board may exercise discretion in analyzing the applicant’s compliance with the variance criteria – both generally and with regard to application of the individual variance (and other rule) criteria. The Board also may require input from legal counsel. Nothing in the presented variance memorandum should be construed as rendering a legal opinion.

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

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

District Technician Berger replied: the applicant has not provided the entire buffer in a platted outlot, instead a portion of the buffer is being proposed in private lots. The lots where the buffer is proposed can be found in the Exhibit A Request for Variance dated 4-9-2018. Other than Rule F.5(b)(1) the applicant will meet the remaining provisions of the buffer requirement of 25 foot minimum and 50-foot average footprint.

Permit Coordinator/Wetland Specialist Tomczik asked per practical difficulties criterion (b) the effect the variance would have on government services.
District Technician Berger replied: issuance of a variance for the Saddle Club 4th Addition is not expected to increase flooding (see criterion (c)) or have any negative effect on government services.

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

Permit Coordinator/Wetland Specialist Tomczik asked: In assessing whether a substantial change in the character of the watershed resources may occur, we considered, not exclusively but as a measure of impact, the presence of and potential impact to the following bulleted items:
- a 303(d) listed water body (i.e., an impaired water);
- a high quality or non-degraded wetland;
- a federally listed threatened or endangered species or state threatened, endangered or species of special concern and their critical habitat;
- a Scientific and Natural Area as defined by the Minnesota Department of Natural Resources;
- resources protected from nondegradation as identified within 7050.0180 Nondegradation for Outstanding Resource Value Waters; and
- Other generally sensitive resources.

District Technician Berger replied: Reshanau Lake, which receives project drainage, is listed on the Section 303(d) impaired water list for aquatic recreation & nutrients. The affected designated use is aquatic recreation with a pollutant or stressor of nutrient/eutrophication biological indicators. The project as a whole is not expected to cause adverse impacts. Curb, gutter and storm sewer will route the majority of the drainage to a NURP pond to mitigate the effect of the lack of buffer by removing pollutants prior to runoff entering the wetlands. The NURP pond outlets to a smaller pond designed for rate control adjacent to the wetland. The pond discharges into the wetland from a baffle weir with rip-rap which provides a dissipation and waterbodies function that minimizes the effects of concentrated flow on the buffer and wetland areas. All new/reconstructed impervious surface runoff is treated prior to being routed to the wetlands.

District Technician Berger continued: Wetlands located onsite are both severely degraded and marginally degraded. The applicant requested consultation from the MN Department of Natural Resources regarding threatened and endangered species within and near the project area.
State-listed threatened and endangered species are also a consideration for the WCA permit. The database identified that the Blanding’s Turtles, a state-listed threatened species, have been documented in the vicinity of the proposed project. The MnDNR provided guidance to avoid incidental takings of these turtles. Applicant must utilize guidance materials to avoid incidental takings of Blanding’s Turtles. There are no Scientific and Natural Areas within or near the project area. It is not likely that the other resources identified above will be negatively affected by locating the buffer in the private lots.

Permit Coordinator/Wetland Specialist Tomczik stated per criterion (c) and whether issuing the variance has a negative effect to the neighboring properties, we considered whether the granting variance will:
- cause or contribute to a change in the 100-year floodplain elevation immediately downstream or upstream of the project site
- increase the frequency or magnitude of flood damages to adjacent properties; or
- increase hardship downstream from peak flow and flood duration.

District Technician Berger replied: As discussed the proposed variance is for the buffer requirements, which has minimal effect of flood elevations. The applicant has complied with the Rule C stormwater requirements for peak rate and water quality. The proposed variance on the buffer requirements will have a minimal effect on the adjacent wetland resources. The wetland is large and surrounds the project site. Based on the size of the wetland and the fact that the buffer will meet the 25-foot minimum and 50-foot average footprint, it does not appear that there will be an effect on the wetland resource. The applicant noted that to make the project feasible the applicant must position the buffer in the private lots. Additionally, the applicant is collecting and treating 100% of the runoff from the newly created impervious surface via a single NURP stormwater pond, so minimal direct runoff will enter the wetland without treatment. Overall, there is a net decrease in wetland resource and habitat area. The applicant is purchasing wetland bank credits for the entire wetland area disturbed. The applicant has indicated that the buffer has been provided in outlots where feasible. District staff has discussed the variance with city and they are supportive of the variance.

Permit Coordinator/Wetland Specialist Tomczik replied he was not comfortable with the using the word “supportive” in the last sentence. The variance was discussed with the city and the city found it to be compliant with their rules.

District Technician Berger continued: While granting the variance may have a minimal effect on the neighboring properties or wetlands, it may potentially have an effect on the long-term protection viability of the buffer. By placing it on a platted outlot, it is less likely to be a disturbed by property owners. Additionally, if there is a need for buffer vegetation maintenance or enforcement, there are multiple property owners all of whom need to be coordinated with prior to any District action.
Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (d), an assessment of whether the practical difficulty can be alleviated by a feasible method other than a variance (economic considerations play a role in the analysis under this factor).

District Technician Berger replied: The applicant has indicated that the project cannot be built without the variance, as the development must be built to a minimum size to be marketable. Due to the minimum lot size and setback criteria of the city, without a variance the applicant would be able to construct two of the seven proposed private lots. Development lot size is not engineering related and thus not evaluated. However, the applicant has stated that it has provided as much of the buffer outside of the private lots as possible. The entire site is comprised of the development area, wetlands, or buffer. To place the buffer in city owned outlots, additional wetland could be filled to create the buffer, however this is not considered acceptable under WCA and is not considered prudent.

Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (e), we considered how the practical difficulty occurred, including whether the landowner created the need for the variance. Per the guidance of District counsel, whether the landowner “created the need for the variance” looks at whether the landowner, or the landowner’s predecessor in title, engaged in an act independent of the proposed development that changed the physical or legal circumstances of the property so as to cause or contribute to the practical difficulty that the landowner now faces.

District Technician Berger replied: The District Engineer finds that the current landowner or its predecessor did not engage in any such action. Rather, the practical difficulty is created by the preexisting configuration of the property, the extent of wetland presence on the property, and the city’s lot dimension and road alignment requirements of the city. All of these, in conjunction with the District’s buffer requirements including paragraph F.5(b)(1), will not allow a development intensity that the applicant represents is necessary for economic viability. Per the applicant, the site is small and narrow, and the alignment of the road (as dictated by multiple requirements including fixed start and end points of the road) is through the center of the site. Wetlands that require buffer are located on both sides of the road, which require that buffer be allowed to lie on the building lots in order to meet minimum lot sizes. Per the discussion above, the applicant represents that there is no feasible way to do the project that meets the economic viability requirements of the applicant without a variance.

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

District Technician Berger replied: As always, 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.5(b)(1). Other applicants
have not had the ability to feasibly meet these requirements onsite because the site is undeveloped.

Permit Coordinator/Wetland Specialist Tomczik noted that the District rule requires a sign identifying the buffer every 200 feet along the buffer boundary, and at each change in direction. As a condition of approval, the District will receive a GPS electronic file that will allow it to identify these locations. He showed examples of buffer signage and stated that the easement is required to be recorded over the wetland and buffer constituting the Wetland Management Corridor area. He cautioned that landowners will remove wetland buffer signs. When RCWD staff learns of this, it sends a 10-day letter requiring that the landowner restore the signage.

Manager Bradley noted that on page 46 of the packet there is a statement that says, “Although the WMC buffer will be located within lot boundaries, it will be protected under permanent conservation easement...” He stated that pursuant to the CAPROC, the permittee must submit the proposed easement to the RCWD for review, but he does not see anything in the packet that the permittee must establish, and record on the deed, a permanent conservation easement. He would like to see that included in the CAPROC.

Permit Coordinator/Wetland Specialist Tomczik directed Manager Bradley to page 35, item 3, which states the recording requirement.

Manager Bradley replied that the item Permit Coordinator/Wetland Specialist Tomczik is referencing is an easement to the RCWD for maintenance, but does not establish that the District will have a permanent conversation easement established on the deed.

District Attorney Chuck Holtman stated that the easement in question is not described within the District rules and documentation as a conservation easement. He stated that it is a perpetual easement that is recorded on the entirety of the wetland and buffer area. It allows the District to enter and manipulate the hydrology and vegetation if it wishes, and prohibits the landowner from disturbing the vegetation and the area. So in substance it is essentially a conservation easement that allows the District to undertake water resource enhancements.

Manager Bradley confirmed that the way this is enforced is through our easement rather than a condition on the land.

District Attorney Holtman stated that it is an easement that is recorded on the deed.

Manager Haake stated that there is a lot of wetland in this area. She asked if the homes were going to be walk-outs.
Permit Coordinator/Wetland Specialist Tomczik stated he was unsure if they were planned as walk-outs, but the structures and their low floor openings meet the freeboard requirements of the District rule.

Manager Haake asked if their wetland credits they would be purchasing would be 2:1.

Permit Coordinator/Wetland Specialist Tomczik confirmed that they are buying wetland credits. He noted that one will be 2:1 and the other will be at 2.5:1, based on the Comprehensive Wetland Management Plan (CWMP).

**Motion by Manager Bradley, seconded by Manager Wagamon to Approve the Variance as requested by variance application 17-034, on the basis of the findings in the RCWD District Engineer’s Variance Technical memorandum, dated May 3, 2018.**

Manager Haake noted that serving years on a planning commission tells her that there isn’t a variance given based on economic circumstances. She noted that criterion (e) references “economic viability.” She asked for a legal meaning of the term “economic viability”.

District Attorney Holtman stated that the criterion that a variance cannot be granted based on economic grounds alone is typically interpreted as, if there is viable economic use, absent the variance, then that is when the variance is not justified. But, if, without the variance, there is not a viable economic use of the property, then that is considered sufficient to justify the variance. He noted the difficulty that arises when the District reviews these types of situations, namely that District staff and the District engineer don’t have the expertise, and the District has not chosen otherwise to apply the resources, to evaluate a proposed development and the economic return associated with alternative development approaches. He noted in these cases, District staff relies on the representations of the developer about viability.

Melissa Barrett, Wetland Consultant for Dupont Holdings appeared before the Board and noted that the applicant bought this parcel of land from the City of Lino Lakes. The City has always looked to connect the two ends of Fox Road together and in place of the City building the road, the developer will be building that city road and in return can build lots next to it. She noted that the developer has to balance the cost of building the road with the development. She noted that the original plan included more lots and has been reduced to what is before the RCWD as a compromise between the City and the builder.

Manager Bradley stated that with any variance, he looks to see if they are getting the same protection. The difference is that the location is on private property rather than public property. He would like it built into the rules that it will provide equal protection.

Permit Coordinator/Wetland Specialist Tomczik stated that he wants to be clear that even though the easement and the signage exist, it does occur that people intrude into the easement
area, even when it is on an outlot. He stated that the RCWD could put conditions on the variance approval to help reinforce the fact that it is not on an outlot.

Manager Haake stated that when the signage is put in place, she feels the City needs to go out and look every week to make sure the signage is still in place.

Manager Bradley asked what conditions Permit Coordinator/Wetland Specialist Tomczik has in mind for inclusion.

Permit Coordinator/Wetland Specialist Tomczik stated that the developer could be asked to communicate, prior to purchase, or represent the lots with some sort of handout, that identifies where the easement is located and the need to respect the buffer. He stated that there could be a simple, durable fence that follows the easement line that the developer would be responsible for building as part of the approval. He noted that that these were just examples of the types of conditions that could be included.

Manager Bradley asked if the RCWD could require that the signage be in place before the houses are sold.

Permit Coordinator/Wetland Specialist Tomczik stated that could be a requirement.

Permit Coordinator/Wetland Specialist Tomczik asked District Attorney Holtman if it would be appropriate for the condition that signage be in place before the lots are sold to be a condition of the variance.

District Attorney Holtman stated that would be acceptable and it could be incorporated into the motion by unanimous consent.

Manager Haake stated that she had noticed the road is 66 feet wide with a 10-foot setback, which seems extraordinarily large.

Permit Coordinator/Wetland Specialist Tomczik stated that although he isn’t a road engineer, he believes the right-of-way width is specified as needed for consistency with the existing road segments that it will connect as a through road.

By unanimous consent, the main motion was amended to condition the variance to require that the wetland buffer signage be in place before the lots are sold, and that this be added to the engineer’s report as a CAPROC item.
ROLL CALL on the main motion:
Manager Waller – Aye
Manager Haake – Nay
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Aye

Motion carried 4-1.

Permit Coordinator/Wetland Specialist Tomczik stated that based on the action just taken, staff will adjust the CAPROC to include the requirement that signage be in place before the permit is issued. Staff will add language to Finding #3 accordingly.

Motion by Manager Waller and seconded by Manager Bradley, to CAPROC permit 17-034 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations, dated May 3, 2018 and with amended language about signage being in place before the property is sold.

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

Motion carried 4-1.

Permit Coordinator/Wetland Specialist Tomczik stated that Dupont Holdings was owned by Marcel Eibensteiner and he recently passed away. He noted that he was a great gentleman to work with and always had a smile on his face and will be missed in their offices.

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.

Max Segler, permittee under permit 16-027, 1265 Sun View Court, Shoreview, gave some background information and noted that he obtained a permit to build a home in 2016 and has been working with Mr. Hughes and the RCWD since that time. He noted that it is a 5-acre parcel, with approximately 2.5 acres of usable land. He noted that in order to access the building footprint, he needed to construct a driveway through the wetland. He purchased
wetland credits at 2:1 and proceeded with construction of the home. He stated that an 18-foot-wide driveway was authorized, but he was able to reduce the impact of the driveway with a narrower width. He stated that the last item in order to close out the permit is the compensatory flood storage. He stated that in order to create the compensatory storage, a large number of mature trees of 18-24 inches diameter will need to be removed. Mr. Hughes offered that he could come and speak to the Board to see if there are any ideas or options to address this. He noted that he has a surety with RCWD that will be held until completion. He is willing to donate that surety to benefit another project. He stated that he does not want to knock down trees that are over 40 years old for 2-3 dump trucks full of dirt that needs to be removed.

Manager Bradley suggested that perhaps there could be a waiver from all the affected properties. He noted that the reason for the volume replacement requirement is to prevent a flood impact on neighbors. The Board cannot waive these homeowners’ right to not be affected by Mr. Segler’s house.

President Preiner questioned the waiver approach, stating that if those property owners sold, it would be the new owner whose property would be at risk.

Mr. Segler stated that the wetland basin is more of a holding pond. He wouldn’t say that it really “flows”. He stated that the neighbors aren’t really affected because it doesn’t really move anywhere, it bounces when there is rain and then subsides.

District Engineer Otterness stated that he does not know the specifics of this case, but he can speak to the flood storage protection requirement, which is not necessarily to prevent modification to the flood elevation by a single project, but rather to prevent cumulative effects by projects. He stated that it is possible that this fill from this project along would not be impacting the adjacent property owners, but the rule is in place for the potential cumulative effect.

Permit Coordinator/Wetland Specialist Tomczik stated that one possible solution is that if there was less wetland impact from the narrower driveway, there may also be less floodplain impact as well. If there is an “as built” survey, there would be less mitigation required and it could be reviewed by the Board for adjustment to the permit.

There was a consensus of the Board to have that reviewed and discussed at a future work session.

Permit Coordinator/Wetland Specialist Tomczik stated that cutting down trees for the sake of cutting them down is not ideal. But, he noted, governmental entities exist and their purpose is typically for a specific purpose. He stated that in this case, the District decided that the floodplain is of critical importance. If the City of Shoreview had an ordinance about tree
preservation, he thinks that issue would have come forward as part of the conversation on the
front end before the permit was issued.

Manager Bradley noted that the Board can look for an alternative solution, but Mr. Segler knew
this was going to be the situation before he built his home. He stated that he thinks the RCWD
may have the option to give a variance if there is an alternative solution but cannot just waive
the requirement.

Manager Waller stated that he empathizes with Mr. Segler regarding his trees and is sure many
of the other Managers do as well. He stated that if the District moves forward in removing the
trees, it will be very expensive and the cost will be attached to Mr. Segler’s taxes.

Mr. Segler stated that he is not implying that he would refuse to cut down the trees. He stated
he will cut them down if it is deemed necessary. He is just asking for the Board to consider
other options and if there are no other options, he will remove the trees.

President Preiner asked Mr. Segler to contact staff and work with them and if it is determined
that there is not a viable alternative, then he can just move forward with the removal of the
trees as planned.

Permit Coordinator/Wetland Specialist Tomczik stated that it appears from discussion today
that due to the reduced width of the driveway it may have reduced the floodplain impact, and
if that is proven by Mr. Segler’s additional submittal of an as-built, the permit could be
amended to recognize that.

District Engineer Otterness suggested that Mr. Segler could also look at the possibility of
making that volume up in multiple locations to reduce the amount of trees removed, or take
out less desirable trees to make up for what is required. He noted that the District has maps
available that show where the floodplain is on the property and perhaps there are pockets here
and there that can provide the solution.

**ADDITIONAL ITEMS REQUIRING BOARD ACTION**

1. **Consider State of Minnesota Joint Powers Agreement-Rice Lake Outlet. (Phil Belfiori).**
   District Administrator Belfiori explained that in September of 2015, the District entered
   into a Joint Powers Agreement (JPA) with the Department of Natural Resources (DNR) to
   maintain the outlet channel upstream of the Rice Lake weir. He stated that attempts to
   complete maintenance have been unsuccessful because of site conditions. He stated that
   recent equipment purchased by the District and the DNR have increased the ability to
   maintain the channel. He stated that the DNR has prepared a JPA to extend the terms of
   the agreement for two years. He noted that the DNR has procured a helicopter service
to handle herbicide treatments and the District will pay 50% of the treatment cost, not to
   exceed $750. He stated that also included in the JPA is that if the herbicide treatments
   are ineffective after two years, the District may complete mechanical excavation in the
open channel. He noted that the 400 feet upstream of the weir will be done and the
District will be responsible for that and the DNR will pay 50% of that, up to $26,000. He
noted the work plan for aerial spraying to be done as well as excavation up to 400 feet
above the weir and other activities related to the JPA. He stated that staff is
recommended approval of the JPA for maintenance of the Rice Lake channel.

Motion by Manager Haake, seconded by Manager Wagamon, to approve the Joint
Powers Agreement for maintenance of the Rice Lake Outlet and authorize the Board
President to execute the document.

Manager Waller stated that he is not in favor of this JPA and feels there are several
things included that need to be worked out. He stated that the District is responsible
and has promised to indemnify the DNR and doesn’t understand why two or three years
is necessary to determine the effectiveness of a herbicide. He noted that he is
concerned that the category of herbicides isn’t stated. He stated that it also doesn’t say
if the herbicide used will also kill native plants along with the invasive species or its
impact on pollinators. He stated that he thinks mechanical excavation is the best
solution. He suggested that instead of the aerial sprays that cause problems with
people complaining about the use of herbicides in lakes, that the DNR’s cookie-cutter
machine be used. The DNR put in a special ramp to be able to get the cookie cutter in
and the ramp is still there. He stated they could use the cookie cutter to cut out the
branches and then take the Mobitrac and go in behind and extract the cattail roots and
matting and sidecast that material. He stated that he thinks this approach is best for
pollinator habitats and the branches. He suggested doing the branches first because of
higher water levels.

President Preiner stated that if the Board didn’t like the agreement back in 2015, when
it was initiated, something should have been said.

District Administrator Belfiori noted that the report identifies the Houston
memorandum and its recommendation for alternative two, which is what has been
incorporated into the JPA. He noted that this was Board approved and staff went
forward and crafted the original JPA in 2015. He stated that the original JPA has not
changed in any of the areas that were previously approved. He stated what has
changed is the ability of the DNR to use the helicopter to conduct the spraying at a cost
to the District of up to $750, based on the approved alternative two. He reiterated that
after the two-year period, the District Engineer would evaluate it and if the channel
does not allow the weir to be the sole hydraulic outlet, the District will notify the DNR.
He reviewed alternative two and noted that if the Mobitrac cannot handle the work, the
District will need to look at other equipment. He stated that the branches are not a part
of this agreement; separately, the Board approved a Houston Engineering task order
two months ago ordering the implementation of the repair of Branches 1 and 2 of WJD2
consistent with the engineer’s recommended repair alternative and consistent with the
watershed management plan that will be moving forward in 2018 and 2019 as a separate repair project.

District Attorney Holtman stated that mutuality in indemnification is typical, however, that is not precisely the way this is worded in this agreement. He stated that, as it is written, the District is indemnifying the DNR for the District’s negligent actions, but the DNR is not explicitly indemnifying the District for the DNR’s own actions. He noted that there is language that says the District retains its remedies against the DNR, if the DNR fails to fulfill its obligations under the contract. He stated that this language does offer a route to the equivalence of indemnification. He stated that he doesn’t consider it ideal language, but it is reasonable.

Manager Bradley stated that the reality of dealing with the State or other similar entities is that much of this language is considered boilerplate and they don’t want to mess with it. He stated that alternative two is half the cost of the pure hydraulic dredging and on-site spoil placement. He stated that the $50,000 in savings could certainly be used in other places.

Manager Haake stated that she thinks that Manager Waller’s suggestions seem pretty practical and likes the idea of using the cookie cutter machine because it has worked well in the past. She stated she is not opposed to alternative two, and did make the motion, but stated that she likes Manager Waller’s suggestion.

District Engineer Otterness stated that the cookie cutter machine was owned by the DNR, which has expressed an unwillingness in utilizing it on this project.

Manager Bradley asked if this item could be tabled and asked management and staff to go back to the DNR and express RCWD’s preference to use their cookie cutter for this project.

District Administrator Belfiori noted that the expiration date of the current JPA is June 30, 2018. He stated that the recommendation is consistent with previous Board direction. He stated that the District staff and engineer have had very detailed conversations with the DNR and the DNR specifically identified that it would not proceed with that option. He stated that staff can ask the DNR again but is recommending the herbicide option that the Board has previously approved and if, in two years, that does not work, to take a look at other opportunities at that time.

District Engineer Otterness stated that the last time there was a group discussion with the DNR, it indicated unequivocally that it would not accept a proposal right now to clean out the entire channel by mechanical means until the use of herbicides has been exhausted. He noted that he does not anticipate this changing. He stated that there were a few reasons why the herbicide approach didn’t work previously, including
trouble finding contractors to do the work by boat. There was one contractor who was able to complete herbicide treatment by walking in, but had concerns about safety getting in and out for subsequent applications because of the level of water and instability in the area. He stated that because of their past experience completing the herbicide treatment by boat or walking in and spraying is likely not going to be feasible.

**Motion by Manager Waller, seconded by Manager Haake, to table the main motion and to direct staff to ask the DNR for use of the cookie cutter.**

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

**Motion carried 3-2.**

2. **Consider Water Quality Grant Application- R18-07 Bartel Shoreline Restoration.**

District Technician Samantha Berger introduced a project that would restore and stabilize about 55 linear feet of Lake Josephine shoreline in Arden Hills. There will be treatment of a 16,674 sq. ft. catchment, .38 lbs. of Total Phosphorus(TP), and 9,350 lbs. of Total Suspended Solids (TSS). She noted the total project cost is $13,523 and the applicant is requesting 50%, which is $6,761.50. This has been discussed at the CAC meeting. She noted that at this meeting there was discussion of whether the RCWD targets shorelines and inspects by boat to target the worst situations. She stated that the RCWD currently does not do that, but that is something that could be pursued in the future to specifically target a water body. The CAC also discussed the beach installation and the DNR requirements.

Manager Haake stated that she was at this CAC meeting and there were a lot of concerns about the area being used for a beach and bringing in sand with the wave action putting sand and sediment out into the lake.

District Technician Berger explained that as long as the applicants follow the DNR guidelines for the beach blanket, they will not need a permit.

Manager Bradley asked if there was pea gravel included in the plan because he has seen it used to prevent erosion.

District Technician Berger stated that this area has not yet been defined as to what will be there but noted that review of materials used is not in the RCWD purview.
President Preiner questioned financial support of stabilization on either side when there is a gap in the middle for the beach area.

District Technician Berger stated that there is a retaining wall behind the beach that will hold the surface runoff in middle section. She stated that this is similar to what has been done with other projects.

*Motion by Manager Waller seconded by Manager Bradley, to approve RCWD Water Quality Grant Program Contract R18-07 for the Bartel Shoreline Stabilization, up to $6,761.50 and not to exceed 50% of the eligible project expenses, in accordance with established program guidelines. Motion carried 5-0.*

3. Consider Check Register dated May 9, 2018, in the amount of $189,922.23 prepared by Redpath and Company.

*Motion by Manager Wagamon, seconded by Manager Haake, to approve check register dated May 9, 2018, in the amount of $189,922.23, prepared by Redpath and Company. Motion carried 5-0.*

**ITEMS FOR DISCUSSION AND INFORMATION**

1. District Engineer Update and Timeline.

District Engineer Otterness stated that with the weather warming up construction season has begun. He stated the Oasis Pond project just got started and with their quick time schedule, the site will be looking very different within a month. He noted that they are finishing up work on ACD 53-62 Branch 2 project.

Manager Bradley stated that in previous reports he noted the engineer working on the lower Rice Creek assessment study asked if it had been completed.

District Engineer Otterness stated that the only thing left on that project is to do a presentation to the Board of Managers at a future Board workshop.

2. PFC Testing.

District Administrator Belfiori stated that per Board direction at the workshop on May 7, 2018, he was able to contact Mr. Walker Smith with the PCA who provided him with information to look into perfluorinated compound (PFC) testing in Washington and Lost Lakes in Mahtomedi. Mr. Smith stated that the PCA works with the DNR to collect fish from lakes to test for PFCs and the list of lakes to be tested is compiled far in advance. He noted that Washington and Lost Lakes are not on the list to be sampled. Mr. Smith suggested contacting Todd Biewen to discuss the possibility of adding these lakes to the list to be tested. He noted that five bottom feeders and five predator fish need to be collected from each lake for testing. The cost for the analysis is $300/fish. Mr. Belfiori noted that if the board wishes to continue to pursue this approach, his recommendation
is to request that Mr. Biewen add these lakes to the list, even though it may be unlikely based on Mr. Smith’s feedback.

Manager Bradley asked if the best way to test for PFCs is by testing fish, not the water. He stated that when well water is tested, they don’t pull fish out of the well.

District Administrator Belfiori stated that staff doesn’t have the expertise to make this determination. He suggested that the Board could have a specialist come before them from the PCA to answer these specific technical questions.

Manager Haake stated that she doesn’t understand why the water can’t just be tested.

Manager Bradley stated that he would like the lake to be tested for contaminants, not whether the fish can be consumed.

District Administrator Belfiori reiterated that an expert could be invited to appear before the Board to answer some questions. He noted that the information he was sharing today was in the PCA response to his initial e-mail.

Manager Bradley suggested talking to the companies that test wells and ask them how they would test the lake water.

Manager Haake stated that she can make that call and it won’t cost the Board anything.

Manager Waller suggested talking to Ginny at the Department of Health.

District Administrator Belfiori asked for guidance from the Board for staff action.

Manager Bradley stated he would like staff to contact the people who test well water to ask about testing lake water and ways to tell if there are contaminants present, not just PFCs.

District Administrator Belfiori will check and see if there are any options to test lake water, other than analyzing fish.

District Engineer Otterness noted that there needs to be a certain amount of specificity when you are testing, because there are different protocols for different items.

President Preiner suggested that the District focus on testing for PFCs, since that is the issue that was raised.
Manager Bradley stated that he would like to at least ask the question about whether
there are other things besides PFCs from the Bellaire landfill that may be affecting the
lakes.

Manager Wagamon stated that they had to test their business water all the time for
pollution control and he remembers seeing the full page of items you could test for and
noted that it was very expensive.

Manager Bradley stated that based on the complaint that has been received, he would
like to see what the RCWD should test for and what it would cost.

District Administrator Belfiori stated that he believes the RCWD would first have to
enquire of the PCA about the Superfund/Brownfield program representative whom he
referred at the workshop, Gary Krueger, to identify the possible chemicals present,
then identify how to monitor each one scientifically, so the results are valid. There would
need to be a work plan created for each chemical. He stated that this is a robust process,
since whatever is done needs to be done correctly.

Manager Bradley suggested asking Mr. Krueger to come talk to the Board.

Manager Wagamon stated that he thinks the Board might be getting far afield of what it
is supposed to be doing.

Manager Haake stated that she is going to find out for sure if there is a simple way to have
the water tested.

Manager Waller directed the Board to read the mission statement that is in front of each
member that states, “The purpose of the RCWD is to conserve and restore the water
resources of the district for current and future generations.”

District Administrator Belfiori stated that if he is hearing the direction from the Board
correctly, the Board is asking him to invite Gary Krueger, the PCA Brownfield manager, to
appear before the Board.

President Preiner stated that she would like staff to provide Mr. Krueger specific
information on the matter in question, not just a general overview of the issue, so that he
can offer specific responses.

Permit Coordinator/Wetland Specialist Tomczik stated that if he remembers correctly,
the individuals that appeared before the Board regarding this issue stated that there is a
whole body of evidence that they believe is substantial and has been ignored by agencies.
He suggested perhaps the Board could ask Mr. Kruger if he has seen the evidence that
has been gathered and if it has been considered.
3. Managers Update.
Manager Haake attended a Blue Thumb presentation at Metro Blooms on turf management workshop where they highly recommended fescue.

Manager Waller commented that he and Manager Haake attended the Washington County Consortium meeting and it was all about grasses and watering.

Manager Haake inquired about the import of the legislation to disband the Ramsey Conservation District. Administrator Belfiori replied that he has spoken with RCD personnel who have advised that they foresee no immediate change in existing relationships or provision of services at this time.

ADJOURNMENT

Motion by Manager Haake, seconded by Manager Waller, to adjourn the meeting at 11:04 a.m. Motion carried 5-0.