REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, June 14, 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, Treasurer Steve Wagamon, and Manager Bradley (arrived at 9:13 a.m.)

Absent: None.

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

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

Visitors: Larry Lenoux, Bob Zick, Brian Robinson.

SETTING OF THE AGENDA
District Administrator Belfiori requested an additional item 5 under Board Action: Consider Draft Letter to Mr. Faymoville, which would move approval of the check register to item 6.

Motion by Manager Haake, seconded by Manager Waller, to adopt the agenda as amended. Motion carried 4-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the May 24, 2017, Board of Managers Meeting. Motion by Manager Wagamon, seconded by Manager Haake, to approve the minutes as presented. Motion carried 4-0.
CONSENT AGENDA

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

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Permit Applications Requiring Board Action

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Manager Haake requested more information on permit 17-020. Technician Berger stated this project has been discussed at previous Board meetings and currently a fire lane is being constructed which has caused an additional BPM on site. She stated the project will drain to two different BMP’s. Technician Berger indicated on a map where the additional BMP will be located and how it would work on the site.

Motion by Manager Waller, seconded by Manager Wagamon, to approve the consent agenda as outlined in the above Table of Contents-Approve permit 16-047 and CAPROC permits 16-071, 16-109, 17-020, 17-050, 17-051- in accordance with RCWD District Engineer’s Findings and Recommendations, dated June 6 & 7, 2017. Motion carried 4-0.

OPEN MIKE – LIMIT 12 MINUTES. Any RCWD resident may address the Board in his or her individual capacity, for up to three minutes, on any matter not on the agenda. Speakers are requested to come to the podium, state their name and address for the record. Additional comments may be solicited and accepted in writing. Generally, the Board of Managers will not take official action on items discussed at this time, but may refer the matter to staff for a future report or direct that the matter be scheduled on an upcoming agenda.

Mr. Larry Lenoux, Grant City Council came before the Board to discuss Item 16-107 Mahtomedi School District permit status. Mr. Lenoux stated, the RCWD Board put a CAPROC on the parking lot improvements and the City of Grant approved it contingent upon the RCWD Board’s approval. Mr. Lenoux stated currently their City is allowing the School District to tear the parking lot apart. Mr. Lenoux asked if the District was aware of this.
Mr. Lenoux requested the Board to send a cease and desists to the School District because what they are doing is a blatant violation of the RCWD permitting process.

President Preiner asked Permit Coordinator/Wetland Specialist Tomczik for more information regarding this item.

Permit Coordinator/Wetland Specialist Tomczik stated on February 22, 2017 the Board did take an action for conditional approval, CAPROC, of 16-107 file, which is the 2017 Mahtomedi Public Schools Pavement Reconstruction Project. That document included several items that were conditional for obtaining the permit. On Friday, June 9, 2017 he saw that staff from the District office did communicate to David Ray, Consultant on the project and cc’d the applicant, Julie Overbrauer, stating the remaining items necessary for permit issuance. Through the communication to RCWD staff the District understood there was heavy equipment on site. No permit has been issued yet because of the one remaining CAPROC item.

Manager Bradley arrived at 9:13 a.m.

District Technician Catherine Nester, stated she received an email from District Administrator Belfiori on June 13, 2017 indicating there was some heavy machinery seen on site. She happened to be out doing inspections in Mahtomedi at the time and stopped by to see what was going on because she was not aware of any active work going on. When she arrived at the site, she drove through the elementary school first and did not see any heavy machinery there but did see a glimpse of the middle school area and drove over there. There were some roads that were shut down so she went out on foot to inspect the area. She stated there was evidence of tree clearing activities, and grinding up of asphalt. The permit is for pavement rehabilitation project. Most of the work was tree clearing, which did result in some land disturbance but no mass grading. She also spotted some workers on site and she spoke with Justin Tate of Peterson Companies who is associated with the permit and he indicated that he thought everything was issued in regard to the project. She asked Mr. Tate to check on it. She also had a brief conversation about Erosion control, BMP’s. She did not see any inlet protection or silt fence. Mr. Tate indicated the inlet protection was going to be installed later that day and then subsequent conversations with him over the phone. She stated through conversation with Mr. Tate it was apparent that he thought all the permits had been issued.

District Technician Nester stated they did have an approved plan they were working off of and Mr. Tate assured her that the remaining items would be taken care of as soon as possible and that the erosion and sediment BMP’s would be installed by the end of the day. He also told her that a significant amount of silt fence would be going in as early as this morning. They also received word from someone at Anderson, Johnson Associates indicating that the remaining CAPROC item was being worked on and should be addressed soon. She summarized the site inspection and stated there was no significant threat to the resource identified so therefore they moved forward with the standard ten-day compliance letter giving the School District ten days to complete the remaining CAPROC items and a reminder that the site remains in compliance with temporary erosion control, BMP’s while there is active work going on. The School District has been very responsive.
Manager Bradley asked for clarification that the one item remaining outstanding is the Maintenance Agreement. District Technician Nester stated that was correct. It is a revision to the Maintenance Agreement.

Manager Waller asked if both areas are within the current permit application. District Technician Nester stated the current application, the work is on primarily on the middle school and high school driveways and parking lots. She did not believe there was any work on this application for the Wildwood Elementary School site. Manager Waller thought this was important to point out because there are two different areas they are talking about.

Manager Waller stated the road flooding Mr. Lenoux talked about is in Valley Branch District, not within RCWD District. At this time, he is not aware of any road flooding that is within the District’s area.

Mr. Bob Zick, Inside Insite News Hour Reporter, stated he was at the Mahtomedi School Board meeting where he told the City Council there was no permit that he had knowledge of from the RCWD District, the MPCA and from the health department. He described his current interaction with the School District and the lack of following rules.

Manager Bradley stated District Staff is on call every day and it is their staff that does the investigations and issues the letters and this would have been taken care of regardless. He thanked Mr. Zick for his diligence. Mr. Zick stated when he talked to District staff he was told they could not issue a cease and desist, that had to come from the District Board so he was before the Board requesting this.

Manager Waller stated his understanding of a cease and desist is that there has to be an activity that begins before they can ask it to cease. In this particular case, they are waiting for some activity to occur, such as a permit application for the area outside of what the permit has currently been CAPROC for and that has not occurred at this time. Grading has not occurred yet. Until the time comes that the activity reaches the point of where the inspector says it is grading and if they have not applied for a permit at that time, then they could issue a cease and desist action to be taken by the Board. He did not believe they have reached that point yet.

District Attorney Smith thought Manager Waller accurately described how the Board would look at this situation. The Board does have authority under the enforcement rule to issue a cease and desist for either activity that has been initiated or is proposed but the key ingredient is that the Board analyze a record and determine the threat or ongoing impact to resource concerns and in this case the inspection report the Board has is there is no significant threat to the resource and that they are on a path to addressing this last CAPROC item. Under these circumstances they would normally not exercise their authority for a cease and desist.

Mr. Zick made the Board aware of a proposed hockey rink and how he would like to see the District monitor the School Districts activities.

Permit Coordinator/Wetland Specialist Tomczik stated the District has sent a 10-day letter to the School District. The letter indicates the RCWD sees a violation of the District rules and puts the applicant on notice that they need to fulfill requirements.
Manager Bradley asked if the hockey arena project was ordered to develop an EAW. Manager Haake stated the PCA is already going to be working on that and the District is aware of that. Permit Coordinator/Wetland Specialist Tomczik stated it was his recollection that the EAW was noticed and out for comment. District staff has not seen any formal declaration on that noticed EAW.

Mr. Zick thanked the Board for all their work and time.

Permit Coordinator/Wetland Specialist Tomczik did not think there was question as to whether or not there is disturbance of existing vegetation or hard surface on the site. The District Inspector has inspected and found as much. The parcels involved in regard to their Board Action of 16-107 is not in the vicinity of the recorded PCA document identifying the dump area. He recognizes what District Technician Nester is doing for the District and with her experience he is confident in what she is finding. Further in alignment with what District Attorney Smith had indicated, the District Staff take actions based on Resolution 09-05 which talks about these types of situations when CAPROC is approved but no permit issued and work begins and staff actions to date are consistent with that resolution.

Mr. Brian Robinson, 310 Main Street, stated the water is going into their private ditch system and he wondered if anything was going to be done about it in a timely manner. District Administrator Belfiori stated from what he has been reported to by staff the sheet pile weir located on the north side of Century Farm six is in and there are still plans to move forward with a replacement of a new culvert to replace the culvert in disrepair very soon. He believed that was located on the park road downstream of this area in the City of Lino Lakes.

Mr. Robinson stated it looks like there is a mitigation pond against their ditch bank and he thought it would be simple to build the ditch bank back up to prevent any of that water from going into their private system. District Administrator Belfiori asked if the storm water pond was in the development. Mr. Robinson stated it was and he thought it would be a simple fix. District Administrator Belfiori stated he would have staff look into that. He understood the Weir was supposed to act in the same capacity and the Weir was installed a week or two ago and if that is not occurring it is something else they will need to take a look at.

District Engineer Otterness stated he understood the District Inspector has or is in the process of ordering the pipe for the replacement of the ditch crossing downstream of Robinson Drive. HEI recently completed a survey of the ditch on a related matter and did notice there was quite a bit of depth of water that the culvert was holding back. It appeared the culvert was partially clogged.

**ADDITIONAL ITEMS REQUIRING BOARD ACTION**

1. Consider Susan and Ronald Moore/Shadow Creek Stables No Loss Application with Conditions.

   Permit Coordinator/Wetland Specialist Tomczik explained the resolution regarding the decision on the Susan Moore No Loss Application with Conditions is before the Board. He noted this was discussed at the June 12th workshop. At the workshop, there was a comment in regards to the comment that the District received from the Technical Evaluation Panel (TEP). Staff has made some changes to the language which was provided this morning. In addition to what is in the packet, on page 3 of the revised document, item 17, the end of the third sentence “…disagrees with the comments they have added. The TEP Member comments suggest considering the historic condition of the property prior to any pre-1991 drainage manipulation. The TEP
Members comments did not consider the conditions created by the pre 1991 drainage manipulations reflected in the 2006 delineation.” That was staff’s addition to try to address the comments.

**Motion by Manager Haake, seconded by Manager Waller, to approve Resolution 2017-14, Resolution Approving No Loss Application with Conditions and Determining Application of Watershed District Rules:**

The applicant’s no-loss application is APPROVED subject to the following conditions:

**A.** The restoration of historic drainage facilities may not improve drainage beyond historic conditions or reduce wetland signatures beyond those identified in the 2006 delineation.

**B.** The placement of fill adjacent to the wetland must conform to the standards found in rule 8420.0410 to include:

1. Appropriate erosion control measures are taken to prevent sedimentation of the wetland of any receiving waters.
2. The activity does not block fish activity in a watercourse, except when done purposely to prevent movement of undesirable fish species in accordance with a recommendation from the commissioner; and
3. The activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices according to the documents referenced in part 8420.0112, items L, M, and N, and water resource protection requirements established under Minnesota Statutes, Chapter 103H.

**C.** Nothing in this approval shall be construed to give the applicant rights to impact any property other than that owned by the applicant.

**D.** Because the property is currently in agricultural use, the requirements of RCWD Rule D does not apply. However, should the land be converted to a non-agricultural use, the new use will require compliance with Rule D and any other applicable rule of the RCWD.

Manager Waller noted he did attend a meeting with Ms. Moore, and Mr. McCullough and later spoke with Aaron Parrish, Administrator of Forest Lake and Chris Taylor. Ms. Moore stated the reason this action had taken a long time and the reason for the delay in coming before the Board was due to the consultant she had employed. Ms. Moore was sorry they had taken so long.

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

Motion carried 5-0.
2. **Consider Water Quality Grant Program Cost-Share application A17-05, Neeb Curb Cut Raingarden**

   District Technician Berger stated this project proposes the installation of a curb-cut raingarden with underdrain and a retaining wall in a neighborhood in Columbia Heights. The existing area has little treatment and the project would intercept runoff from over 7 acres of highly impervious surface. The project will also include a Rain Guardian Bunker to help catch sediment and untreated runoff that would otherwise flow untreated directly into Silver Lake. Silver Lake is a Tier II waterbody in the RCWD Watershed Management Plan. Silver Lake is also impaired for nutrients/eutrophication, mercury, and chloride.

   The total estimated cost, including the plants is $12,316.40. Due to the large amount of impervious surface being treated and the pollutant load reductions with over 2 lbs of total phosphorus reduced, staff felt this project deserved 75% cost-share.

   District Technician Berger stated at the CAC meeting members had questions in regard to how filtration basins work, specifically the drain tile component. The drain tile is needed because of the heavy soils, and how treatment was still provided despite the use of the tile.

   District Technician Berger stated RCWD’s Citizen Advisory Committee and Staff recommend that the RCWD Board of Managers approve Water Quality grant funds for the Neeb raingarden retrofit.

   President Preiner asked if the homeowner or City will be maintaining the rain garden. District Technician Berger indicated the homeowner will be maintaining it which is typical. President Preiner if they could see if the City could maintain this because it goes out to the street and the homeowner might change. District Technician Berger stated they could look into this. She noted as part of this project they do have the ability to have the maintenance agreement recorded on the property if that would be of interest. Manager Haake stated she liked that idea and did not know if ownership would change and what a future homeowner would do to the project so having it recorded somewhere would put the landowner and City in agreement to make sure they can maintain this over time.

   Manager Waller asked if the water goes from the raingarden into the street storm sewer. District Technician Berger indicated it would and there would also be drain tile within the raingarden that would connect to the storm sewer for drainage. Manager Waller thought it was an excellent idea to have the City involved in the maintenance of this because it drains directly into their storm water system.

   **Motion by Manager Bradley, seconded by Manager Haake, to approve RCWD Water Quality Grant Program Contract A17-05 for the Neeb curb-cut raingarden, up to $9,237.30 and not to exceed 75% of eligible project expenses, in accordance with established program guidelines to include the maintenance obligation be recorded and the communication occur with the City to determine whether the City will cooperate in the maintenance. Motion carried 5-0.**

District Administrator Belfiori stated the MAWD will be conducting a special meeting on Wednesday, June 21 in Bemidji for the purposes of acting on the proposed MAWD Bylaws and Manual of Policy and Procedures (MOPP) dated 4/28/17. If the membership approves the proposed Bylaws and MOPP, then the MAWD Board of Directors will review the proposed 2018 MAWD budget for preliminary approval.

Manager Haake noted on page 99 is the proposed budget and it is very difficult and want to get a lot of this done and until they have the acceptance of the By-Laws and MOPP they cannot formalize the budget but it does tell them how they can budget for the next year. She thought the budget has been very well thought out and suggested the District go in favor of it.

President Preiner asked if this can be changed every year, because she did not like that. Manager Haake indicated they could.

Motion by Manager Haake, seconded by Manager Bradley, to support the proposed MAWD Bylaws and Proposed MAWD MOPP dated 4/28/2017 and directs the RCWD delegates to support these items at the June 21, 2017 MAWD special meeting.

Manager Waller stated he attended the committee meeting in March and he was not enthusiastically in support of this new arrangement. He stated he would like to withdraw his name as a delegate and he has also asked Office Manager Stasica to remove him as a delegate to the Bemidji meeting because he would not be supportive of it and he was not sure that would reflect the Boards viewpoint. He thought it would be inappropriate for him and difficult for him to attend.

District Attorney Smith stated as of last week he was seeing at other Watershed District Meetings a spreadsheet that showed an array of possible dues and what appeared to be a recommendation for Metro Districts of $12,500 and that was not well received at the Watershed District. He only mentioned that in the delegates are aware of that and want to come informed by the Board’s position on that in case it does arise. Manager Waller thanked the District Attorney and noted it enforces his decision.

District Administrator Belfiori stated he forwarded the information from Maddie Bohn to the Board via email. Manager Haake stated the $7,500 is the cap that she felt the Board will finalize. If they would end up changing it, she as the District Delegate would not vote for it unless it stayed at $7,500. The point of this being attached to the MOPP is what concerns her. She thought there would be great resistance to anything to do with $12,500. She believed the Board would understand and listen to what the District’s say. They need to show everyone the value of MAWD. Manager Wagamon agreed. President Preiner indicated that was the one part she was concerned with because it can change every year and she thought there needed to be some stability.
ROLL CALL:

Manager Waller – Nay
Manager Haake – Aye
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Nay

Motion carried 3-2.

Motion by Manager Waller, seconded by Manager Haake, to appoint Managers Wagamon and Haake as official delegates and Manager Bradley, as alternative delegate for the MAWD special meeting scheduled for June 21, 2017. Motion carried 5-0.

4. Consider Pay Request #4 from Veit & Company, Inc. for the Anoka County Ditch 31 & 46 Repair Project.

District Administrator Belfiori stated the purpose of this action is for partial payment #4 to Veit Company for Anoka County Ditch 31 & 46 repair project. The contractor is completing the tree cleaning and the culvert replacements and other punch list items to finish up work there. Staff based on the Engineer’s recommendation, recommend authorization of partial payment #4 for $27,733.73 to Veit & Company.

Motion by Manager Haake, seconded by Manager Waller, to approve Veit & Company, Inc’s pay request #4 as submitted and certified by the District Engineer and directs staff to issue a payment in the amount of $27,733.73. Motion carried 5-0.

5. Consider Draft Letter to Mr. Faymoville

District Administrator Belfiori stated at the 6/12/17 workshop meeting the Board by consensus directed staff to draft a letter with the comments the Board discussed regarding Mr. Faymoville’s concerns.

Manager Haake asked what is the as-built that is supposed to be in this ditch. District Engineer Otterness asked which structure was she talking about. Manager Haake stated she understood ACD 53-62 has the elevation determined by the courts and she wondered what the elevation of as-built is for the entire Anoka County Ditch 15. District Engineer Otterness stated they have an as constructed subsequently improved condition that they had determined prior to the construction of the project, however when they constructed the project the operating elevation of the public drainage system became the 890.7 elevation upstream of the Browns Preserve Outlet Structure and was done as part of the 103D Watershed District project.

District Administrator Belfiori stated within the draft letter, the second bullet point is the 890.7 which is what the Board approved for the weir. The third bullet is talking about what happens with the hydrology upstream of that and because of that control and that the hydrology, the water level in the pipes they are talking about with Mr. Faymoville, the pool elevation of that water level is identical to what it was designed because of the 890.7 control. District Engineer Otterness stated that was correct.
Manager Waller stated the District is restricted by changes in law and is a problem they District faces. He would hope that sometime in the future the Legislature would revisit the Wetland Conservation Act and take a look at how they can adjust the water basins in some way or another. That is why he understands Mr. Faymoville’s position.

President Preiner stated she did a field review with Mr. Tom Schmidt and Mr. Mike and Mr. Faymoville and the water was up to her knees, however she felt the best policy they can have is to review the whole area and try to make the corrections with the new business industry coming in. Manager Waller supported that attitude.

Motion by Manager Haake, seconded by Manager Waller, to authorize staff to send the draft letter to Mr. Faymoville as written. Motion carried 5-0.

5. Consider Check Register dated May 14, 2017, in the amount of $119,261.81, prepared by Redpath and Company.
   Motion by Manager Wagamon, seconded by Manager Haake, to approve check register dated May 14, 2017, in the amount of $119,261.81, prepared by Redpath and Company. Motion carried 5-0.

ITEMS FOR DISCUSSION AND INFORMATION

1. District Engineer Update and Timeline.
   District Engineer Otterness stated on Anoka County Ditch 31 & 46, the contractor is very close to completing all of their punch line items on the project. It has taken awhile and part of that is due to the amount of water they have seen coming through this Spring and part of it is due to conflicts with utilities out there which have been challenging to work around. The date has passed for the highest amount of incentive payment for the contractor so they will not be recommending that they receive the full incentive.

2. Manager’s Update
   Manager Haake reviewed the MAWD Budget with the Board.

ADJOURNMENT
   Motion by Manager Haake, seconded by Manager Bradley, to adjourn the meeting at 10:34 a.m. Motion carried 5-0.