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 J. Bradley, and Treasurer Steve Wagamon.

Absent: None

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Office Manager Theresa Stasica, District Technician Samantha Kreibich, and Technical Specialist/Permit Reviewer Chris Buntjer.

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

Visitors: Terry Buchanan, Chuck Daher, Mike Kraft, Gail Mikolich.

SETTING OF THE AGENDA
District Administrator Belfiori asked to have Permit 15-043 removed from the consent agenda and moved to Action Item 1 due to the variance.

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 June 8, 2015, Board of Managers Meeting Workshop Meeting. Motion by Manager Wagamon, seconded by Manager Haake, to approve the minutes as presented. Motion carried 5-0.

Minutes of the June 10, 2015, Board of Managers Meeting Regular Meeting. Motion by Manager Wagamon, seconded by Manager Haake, to approve the minutes as presented. Motion carried 5-0.

PERMIT APPLICATIONS REQUIRING BOARD ACTION
The following applications have been reviewed by the District Engineer and Staff and will be acted upon without discussion in accordance with the Engineer's Recommendation unless a Manager or the Applicant or another interested person requests opportunity for discussion:

BOARD OF MANAGERS Michael J. Bradley Ramsey County Barbara A. Haake Ramsey County Patricia L. Preiner Anoka County Steven P. Wagamon Anoka County John J. Waller Washington County
### CONSENT AGENDA

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Manager Haake asked what was being done on the culvert designs because they have been discussing culverts and she wondered if in other areas the cities are paying for the culverts. Technical Specialist/Permit Reviewer Buntjer indicated regarding Permit 15-052, the Met Council is repairing a bunch of their sanitary sewer interceptors so they are realigning the pipes and will be a lot of grading work done as portions are dug up.

Manager Haake asked if any of that project affected any of the Board’s projects. Technical Specialist/Permit Reviewer Buntjer did not believe so. Manager Waller thought that repairing the interceptors, junctions was an important factor so they did not have any spillage into the system. He supported any of the Metropolitan Council’s clean up maintenance actions.

**Motion by Manager Haake, seconded by Manager Bradley, to approve the consent agenda permits 14-058, 15-033, 15-042, 15-052, and 15-061 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendation, dated June 17 & 18, 2015. Motion carried 5-0.**

### ANNUAL PUBLIC INFORMATION MEETING ON THE DISTRICT’S STORM WATER POLLUTION PREVENTION PROGRAM (SWPPP)

President Preiner recessed the regular Board meeting and called to order the public information meeting on the Rice Creek Watershed District’s Storm Water Pollution Prevention Program.

President Preiner stated the purpose of the meeting is to provide information to, and receive input from, the public regarding the District’s Storm Water Pollution Prevention Program.

President Preiner asked District Technician Kreibich to provide a brief presentation for the audience.

District Technician Kreibich gave a presentation reviewing the annual report contents and the District’s SWPPP to the Board.

Manager Waller asked if the pink areas on the map were the sewered areas and were those areas the only areas being discussed in the plan. District Technician Kreibich indicated that was correct. Manager Waller stated dissolved oxygen and bio-matters were determined to be natural as he recalled, because in that particular case in Hardwood Creek, ground
water outlets from the Marine and with the large organic soils in the area that depletes the oxygen in that area and he wondered why they need to create or maintain a program to try to rectify something that is natural in the world. He wondered how they could amend this if it is found to be natural.

District Administrator Belfiori indicated currently they are required to report on them and currently the biota has been addressed by the District. The District is required to show appropriate progress and that we have made more than great progress with the Hardwood Creek restoration project. The restoration is meant to address all three of those bioimpairments in Hardwood Creek. He noted they would have to contact the MPCA about this because they are the ones responsible for setting these impairments.

Manager Waller realized the District has done its best, however sometimes if they discover something that is in the natural world and is not caused by interference from human activity then that should be recognized by the regulatory authorities. He wondered if the cost they expend on this and the improvements they make are really necessary in that area.

President Preiner stated the purpose of this meeting is to receive comments and questions from interested parties regarding the Storm Water Pollution Prevention Program.

No one wished to address the Board.

President Preiner closed the public information meeting and reconvened the regular Board meeting.

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

1. Permit 15-043, Northeast Bank in New Brighton, Final Site Drainage, CAPROC 3 Items Variance Request.

Permit Coordinator/Wetland Specialist Tomczik and Technical Specialist/Permit Reviewer Buntjer made a presentation to the Board.

Permit Coordinator/Wetland Specialist Tomczik stated the district had received a signed variance application. He stated the District Engineer evaluated the variance request by applying the “Practical difficulties” test set forth in the municipal variance statue and incorporated by prior-adopted policy into the District’s variance standard. This standard is applied through the Board of Managers’ consideration and weighing of the following criteria:

Permit Coordinator/Wetland Specialist Tomczik stated per practical difficulties criterion (a), the applicant has not fully met the Water Quality requirements of District Rule C.6(c).

Technical Specialist/Permit Reviewer Buntjer stated District rules require for projects other than Public Linear projects, no more than 15% of the new or reconstructed impervious surface may be left untreated. The proposed project will result in 54% of the reconstructed impervious area being treated by a mechanical swirl separator (Eco-STORM). District considers this treatment device to be effective for pre-treatment of stormwater, but not an effective standalone treatment BMP to remove Total Phosphorus (TP). The proposed treatment may result in a slightly greater mass of TP reaching the existing downstream pond and Pike Lake...
than if on-site BMPs were constructed in compliance with District Water Quality requirements. However, the proposed treatment will reduce mass of TP below that of existing runoff conditions.

Permit Coordinator/Wetland Specialist Tomczik stated per practical difficulties criterion (b), The effect the variance would have on government services.

Technical Specialist/Permit Reviewer Buntjer stated per criteria (b), issuance of a variance for the project is not expected to have any negative effect on government services.

a. Whether the variance will effect a substantial change in the character of the watershed resources or will be a substantial detriment to neighboring properties

Permit Coordinator/Wetland Specialist Tomczik stated per practical difficulties 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.

Technical Specialist/Permit Reviewer Buntjer stated, 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.

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:

- a 303(d) listed water body (which is 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 MN Rule 7050.0180 Nondegradation for Outstanding Resource Value Waters; and
- Other generally sensitive resources.

Pike Lake, which receives project drainage, is not listed on the Section 303(d) impaired water list. The construction of the project is not expected to cause an adverse impact to the water quality of Pike Lake. The project is not increasing impervious area and will reduce the existing peak flows. The applicant is proposing a biofiltration basin and mechanical swirl separator to provide water quality benefit and remove sediment prior to discharge off-site.

The project does not meet treatment criteria onsite, however the existing pond to the east will provide some additional treatment benefit prior to flow reaching Pike Lake. The applicant is not claiming the use of the existing stormwater pond for treatment because the owner of the adjacent parcel would not grant permission to use the water quality capacity of the pond. It appears that there may be adequate capacity to treat the project. The proposed project will increase the drainage area to the existing pond by approximately 13,000± SF, but due to the use of onsite BMPs, there will not be a substantial peak rate increase to the pond.
Permit Coordinator/Wetland Specialist Tomczik stated the second part of criteria (c) which sets the criteria for consideration and whether the variance will effect a substantial change in the character of resources within the watershed, may address Manager Bradley's question to him before the meeting. The District Engineer used three criteria to assess substantial change:

- Whether granting the variance causes or contributes to a change in the 100-year floodplain elevation immediately downstream of the project site;
- The potential occurrence of flood damages to adjacent properties;
- The anticipated increase in hardship downstream (e.g., caused by peak flow and flood duration); and
- Other similar related criteria.

Technical Specialist/Permit Reviewer Buntjer stated since the applicant is not increasing the impervious area or peak off-site flow, in aggregate, the proposed variance will have minimal effect of flood elevations.

Pike Lake (Tier 4) is the Resource of Concern (ROC) affected by this variance. Tier 4 lakes are typically unable to provide recreation opportunities because the lack of a public access. Also, Tier 4 lakes are typically part of the RCWD trunk drainage system, which gives them unusually large drainage areas. The goal of the RCWD Surface Water Management Plan for Tier 4 lakes is to maintain the quality of the lakes. Granting of this variance will improve the water quality of the ROC, which is beyond the Surface Water Management Plan water quality goal and will not affect the beneficial use of the resource.

Permit Coordinator/Wetland Specialist Tomczik stated per criteria (d) an assessment of whether the practical difficulty can be alleviated by a feasible method other than a variance (economic conservations plan a role in the analysis under this factor) is necessary.

Technical Specialist/Permit Reviewer Buntjer stated the inability to treat on-site was created by the occurrence of three conditions:

- a. First condition is the presence of contaminated soils.
- b. Second condition is the minimal amount of grade available to tie into nearby storm sewer.
- c. Third condition is the inability to treat impervious area in lieu on neighboring parcels or within the same ROC.

The physical conditions of the project include a fully developed area surrounding the site providing limiting grades for drainage, adjacent shallow storm sewer main lines that do not provide enough grade for underground filtration BMPs, neighboring properties unwilling to allow treatment in lieu or use of the existing pond on the adjacent parcel, and contaminated soils. The applicant has explored the following treatment options:

- Pervious pavement was deemed technically infeasible based on the likelihood of freeze thaw damage resulting from water trapped in the voids by required lining of the filtration media due to the presence of contaminated soils.
- Due to shallow grades, the use of in-line filtration is technically infeasible due to the lack of hydraulic head required to meet design criteria for such BMPs.
- Underground filtration off-site on adjacent parcels is technically infeasible due to restrictive grades and soils not conducive to infiltration.
- Expansion of the south bio-filtration basin onto the parcel located to the south is technically feasible and could potentially provide additional treatment capacity in lieu sufficient to treat an equivalent impervious area to that which is untreated on site. However, the expansion of the south bio-filtration
onto the neighboring parcel has been deemed infeasible by the applicant based upon the adjacent owner being opposed to treatment in lieu upon their property, as they are considering use of available treatment areas for their own future redevelopment.

- Different lot configurations were considered to create a filtration basin, on the north end of the lot, however the lot is not large enough to accommodate the required parking stalls, lane widths, and a BMP. The building and sidewalk layout had to be moved as far north as possible to accommodate the bio-filtration basin on the south side as it is currently shown on the submittal. To create a BMP on the north side would require the relocation of existing light poles, and narrow the drive through lanes on the bank site, creating a one-way access to the adjacent parcel. This is not considered favorable to the bank or the adjacent parcel.

- Use of the adjacent stormwater pond was deemed infeasible because the owner of the pond would not grant permission as required by Rule C.5 (a).

The District Engineer finds that the applicant has explored all practicable BMPs and treatment options in search of a technically feasible option.

Permit Coordinator/Wetland Specialist Tomczik stated per criteria (e) consideration of how the practical difficulty occurred, including whether the landowner created the need for the variance requires consideration.

Technical Specialist/Permit Reviewer Buntjer stated the landowner did not cause any conditions of the discussed above that are preventing treatment from occurring on-site. However, the District Engineer is unsure that the current landowner could have worked to avoid the variance. This is based on the adjacent parcel owner, Engelsma Lp, appears to be related to the property owner, Lloyd Engelsma 1984 Trust, although based on Ramsey County property records, it does not appear that these properties were acquired at the same time. Both properties are collectively managed by Krause Anderson. The adjacent parcel could allow treatment in lieu upon their property, but is protecting these options for their own future redevelopment. Additionally, the drainage ultimately flows to a storm water pond on the adjacent parcel. The pond was not explicitly designed to treat the parcel, but it appears that there may be adequate capacity to treat the project to NURP standards. Permission would be required from the property owner per Rule C.5 (a). The applicant indicated in the variance application form that, "the owner of the adjacent lot was not in favor of giving up any treatment credits to the applicant." The pond does appear to meet the other criteria of Rule C.5 (a), including having a declaration of maintenance. The variance was created by the presence of contaminated soils, minimal grade available to tie into nearby storm sewer, and the inability to meet District stormwater requirements by treating impervious in lieu off-site. The applicant could not develop the site for use as a bank, which would eliminate the need for the variance, however this is not considered a prudent option.

Permit Coordinator/Wetland Specialist Tomczik stated per criteria (f), some determination of whether in light of all of the above factors, allowing the variance will serve the interests of justice is necessary.

Technical Specialist/Permit Reviewer Buntjer stated 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 Rule C.6 (e), minimum treatment requirements. Other applicants have had the ability to feasibly meet this requirement onsite because the site constraints presented here were not evident and/or adjacent property owners were not opposed to treatment in lieu upon their land.
Manager Bradley asked what effort has been made to advise the neighboring property of this proceeding today. Permit Coordinator/Wetland Specialist Tomczik stated there is no public notice required. The applicant of this property, through their consultants was probably involved in the conversation up to this point otherwise, they would not be aware of their reluctance.

Manager Bradley asked if there was anyone in the audience representing the neighboring property. There was no one representing the property.

Manager Bradley stated based on the evidence in front of them, he did not have a problem granting a variance but his problem is the evidence before them indicates that there is an increase in the 2-year, 10-year, 100-year flowage to the pond and also the fact that the project will increase the drainage area to the existing pond by approximately thirteen thousand square feet so there is some impact on that neighboring property. He would like to propose they table this item until their next meeting and they give notice to the adjacent property.

Mr. Charles Daher, A.P.A, stated the trust has been aware of their design the entire time this has been worked on. Manager Bradley stated he was not asking the property owner waive their position, he was just wondering whether or not they have an objection to the Board granting the variance.

Manager Wagamon asked District Attorney Smith what the law was for requirement for notification. District Attorney Smith stated their rules do not require a specific notice to that adjacent landowner. If a permit applicant was going to rely on using a downstream facility for treatment then they are required to produce evidence that they have a written agreement, ownership interest in doing that. In this case, that is not being produced and the reason the variance is being requested.

Mr. Mike Kraft, Mike Kraft Architects, 1442 98th Lane NW, Coon Rapids, stated to be clear, the owner of the parcel being developed is related to the owner of the adjacent parcel who has been intimate with this process throughout the course of this. Although some of the solutions that they suggested were not conducive to their future ability to develop their own parcels, they were certainly open to the things that would require them to develop this parcel in so much as it did not hurt them from the ability to further develop their parcel. They have been cooperative and knowledge of this request.

Manager Waller asked if the adjacent property going to come back and stated that what impact there is, is an impact on their credit situation, which would be the basis of their objection. Manager Bradley was content they were not affecting the adjacent property owner's credit ability but he was not content that they were not affecting their property substantially without a statement by them that they concurred to that result. Based on the information before them he accepted their engineering report in full and based on representation by agents from both parties that there is actual knowledge of this proceeding and request, he will suggest they discuss this at a workshop in terms of future requests for variances where the neighboring property is affected.

Permit Coordinator/Wetland Specialist Tomczik stated on page 47 of the packet, top block of text, final sentence should be stricken and replaced with "Peak discharge requirements are met in aggregate. The increase to the east is not expected to cause an adverse impact to the downstream existing pond on the adjacent property. The no adverse assessment is based on the relatively small increase on the peak rate and the conservative nature of the model.”

Manager Wagamon agreed with Manager Bradley that they should discuss this in case it may damage the neighboring property and if in that case the neighboring property should be notified but in this case he did not have any problem in the way it is being handled and he thought they should move this ahead.
Permit Coordinator/Wetland Specialist Tomczik noted there is currently water going to the pond and some change to the subject property. There is a slight increase in that volume of water that goes there and from what he understands, not the rate in which it goes there. The District Engineer has defined their criteria to look at adversity and what happens when this water goes into the pond on the neighboring property. This occurs all of the time in District review of permit applications. The water leaves someone’s site as it would be impossible to retain it all on the property and no permits would ever be approved. The engineer has reviewed that and has determined with the changes he has seen and within the ability of the model to measure them, they do not see it as adverse. District Engineer Otterness agreed and stated were the applicant to have the ability or feasibility to put in some sort of a filtration before it goes onto the other subject property it would still result in the same requirement for the downstream property in the future when they develop. Their inability to have a BMP before it goes downstream is not going to affect the downstream properties ability to do crediting in the future.

Mr. Kraft noted the owner of this parcel is the same owner of the adjacent parcel. They are trying to develop in a way that it does not take future value from what they own collectively.

Permit Coordinator/Wetland Specialist noted the variance application requires a permit fee and the applicant has paid that and any action that is taken should be conditional on paying the remainder of any outstanding balances.

**Motion by Manager Bradley, seconded by Manager Wagamon, to approve the requested variance and that the applicant will pay the outstanding fee. Motion carried 4-0-1 (Manager Haake abstain).**

Manager Haake noted she abstained due to her knowing the applicants.

**Motion by Manager Bradley, seconded by Manager Wagamon, to approve the CAPROC for 15-043 for Northeast Bank in New Brighton and that the applicant will pay any outstanding fees before approval. Motion carried 4-0-1 (Manager Haake abstain).**

**2. Consider Check Register dated June 23, 2015, in the amount of $224,670.07, prepared by Redpath and Company.**

**Motion by Manager Wagamon, seconded by Manager Haake, to approve check register dated 06/23/15, in the amount of $224,670.07, prepared by Redpath and Company. Motion carried 5-0.**

**ITEMS FOR DISCUSSION AND INFORMATION**

**1. Discuss noticing the July 14, 2015 public information meeting for Anoka-Washington Judicial Ditch 3 Historical Review and Correction of Drainage Records.**

District Administrator Belfiori stated in the packet is a memo for the Board’s discussion. Consistent with the Boards’ discussion at the June 10, 2015 meeting, staff has started the process of publically noticing the information meeting including sending meeting notice letters regarding the meeting time, location and purpose to those affected parties. This is an information meeting and the requirements of the law and the code contain no formal requirements for noticing of this informational meeting.

District Administrator Belfiori indicated due to the size and population of the AWJD 3 drainage area, staff has estimated that there will be approximately 4,300 meeting notice letters printed and mailed out if the Board wishes to send meeting letters to each parcel in the drainage area. Based on this estimate, staff identified three options. The first option is to mail the meeting notice letter mailing to all approximately 4,300 parcels in the drainage area of AWJD # 3 plus notice in Citizen Newspaper, Quad Press Newspaper and St. Paul Pioneer Press
Newspaper and post the notice at the three City Hall Buildings. The second option is to mail the meeting notice letters to those parcels that physically touch the public drainage ditch only, approximately 200 letters, plus notice in Citizen Newspaper, Quad Press Newspaper and St. Paul Pioneer Press Newspaper and post the notice at the three City Hall Buildings. Option three is to put a notice in Citizen Newspaper, Quad Press Newspaper and St. Paul Pioneer Press Newspaper and post the notice at the three City Hall buildings with no meeting notice letters sent out. He requests that the Board discuss and provide consensus on one of the letter distributions. He noted staff recommends option two and is looking for consensus of the Board.

Manager Waller asked how they handled this in the past. District Administrator Belfiori indicated that there was discretion in the past but recently they noticed all landowners. The notifications were much smaller than 4,300. Manager Waller asked what the difference was in sending postcards versus a letter. The Board did not think there was that much of a difference in pricing. Manager Haake suggested staff write up the letter and give it to the affected cities to put in with their monthly billing to the landowners.

Motion by Manager Haake, seconded by Manager Wagamon, to move this item to Board Action and follow option 2 and approach the City's to inquire if the letter can be included in their utility billing.

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

Motion carried 4-1 (Manager Waller).

2. Staff Report
District Administrator Belfiori reminded the Board of the scheduling of the July meetings.

3. July Calendar
There were no comments.

4. Manager's Update
There were no comments.

ADJOURNMENT
Motion by Manager Haake, seconded by Manager Bradley, to adjourn the meeting at 10:02 a.m. Motion carried 5-0.