REGULAR MEETING OF THE RCWD BOARD OF MANAGERS
Wednesday, July 12, 2017
Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota

Approved Minutes

CALL TO ORDER
1st Vice-President Barbara Haake called the meeting to order, a quorum being present, at 9:00 a.m.

ROLL CALL
Absent: President Patricia Preiner (with prior notice).
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: None.

SETTING OF THE AGENDA
Motion by Manager Wagamon, seconded by Manager Bradley, to adopt the agenda as presented. Motion carried 4-0.

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the June 28, 2017 Board of Managers Meeting. Motion by Manager Wagamon, seconded by Manager Bradley 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:

Table of Contents

Permit Applications Requiring Board Action

<table>
<thead>
<tr>
<th>Permit Application</th>
<th>Location</th>
<th>Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-037 I-35's Business Park, LLC</td>
<td>Columbus</td>
<td>Final Site Drainage</td>
<td>CAPROC 12 items</td>
</tr>
</tbody>
</table>

CAPROC = Conditional Approval Pending Receipt of Changes

Permit Coordinator/Wetland Specialist Tomczik stated there was a correction to the Engineer’s Report Findings item #6, strike out the last sentence “An acceptable drainage easement was previously recorded on the property.”

Motion by Manager Wagamon, seconded by Manager Bradley, to approve the consent agenda as outlined above for permit 17-037 in the above Table of Contents with staff recommended change in accordance with RCWD District Engineer’s Findings and Recommendations, dated July 5, 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.

No comments.

Administrator Belfiori requested delay of item #1 until District Technician Berger arrived. The Board agreed.

ADDITIONAL ITEMS REQUIRING BOARD ACTION

2. Consider Permit Delegation to District Administrator.

Permit Coordinator/Wetland Specialist Tomczik stated this item is in relation to Rule G, specific to dealing with drainage and to address some of the urgency they see from applicants regarding culvert replacement.

Motion by Manager Bradley, seconded by Manager Wagamon, to approve Resolution 2017-17: Delegating Permitting Authority For Culvert Replacement.
THEREFORE BE IT RESOLVED that the Board of Managers hereby delegates to the
Administrator, with the advice of the District engineer, the authority to make permit
decisions on applications under District Rules G and I to replace a culvert or similar
structure within a surface water conveyance system, in accordance with the following
terms:
• Culvert inlet and outlet elevations, and hydraulic capacity, must be equal or
  materially equivalent to those of the structure being replaced;
• For replacements within a public drainage system, if an existing elevation differs
  from an as-constructed-and-subsequently-improved-condition (ACSIC) as adopted
  by the Board, the culvert or similar structure must be replaced to conform to the
  ACSIC.
• If the structure to be replaced is of an obsolete dimension, the next-largest hydraulic
  equivalent is to be used.

BE IT FURTHER RESOLVED that the delegation does not apply if a variance is required,
and that the Administrator may decide that the application should be brought before
the Board if it raises a technical, policy or legal question that the Board should consider.

Permit Coordinator/Wetland Specialist Tomczik stated this delegation does not provide
for 48-hour prior notice to the Board as does the existing, more general delegation of
permitting authority to the Administrator. The rationale for that is the urgency with
which some of these activities have to take place so the language is not present in the
motion.

Roll Call:
Manager Waller – Aye
Manager Haake – Aye
Manager Bradley – Aye
Manager Wagamon – Aye
President Preiner – Absent

Motion carried 4-0.

1. Consider RCWD Water Quality Grant Application R17-05 Cindy Petrie, Raingarden.
District Technician Berger stated the proposed raingarden is located on the north side of
a residential property in Roseville. Current conditions are a mowed turf grass lawn and
swale along the property line that terminates at a catch basin leading directly into the
storm sewer system. The catch basin serves to gather water from a watershed
consisting of 8 total homes, creating a situation where a lot of stormwater runoff from
the surrounding residential properties is entering the storm sewer system untreated.

District Technician Berger stated the proposed project is to remove the existing turf
grass and install a raingarden and native planted swale. The raingarden and swale will
serve to create a natural pollinator habitat through the use of native flowing plants along with the ability to capture and infiltrate the water that currently flows directing into the storm sewer. This will help to remove pollutants and filter sediment. In addition, the project is located in a known volume constrained area, thus holding water on the landscape is always desirable.

District Technician Berger reviewed the proposed project with the Board.

District Technician Berger stated it is recommended that this project be awarded cost share in the amount of $5,290.11 or 50% of the eligible project costs, whichever is less.

Manager Haake asked if there is already a depression where rain is running to. District Technician Berger stated there is an existing swale. She showed on the map where the swale is located. She stated what the District will be doing is adding a little more pond capacity so it is not running straight through into the catch basin, and there will be more time for the water to settle.

Manager Haake asked if there is anything written in regard to the approval of the residents. She understands they approved this verbally. District Technician Berger noted this will be located on one individual landowner’s property so staff will be working with that landowner on this project.

Motion by Manager Bradley, seconded by Manager Waller, to approve RCWD Water Quality Grant Program Contract R17-05 for the Petrie's raingarden project, up to $5,290.11 and not to exceed 50% of eligible project expenses, in accordance with established program guidelines. Motion carried 4-0

3. Consider Motion Related to Use of Volume Bank Credits.

Permit Coordinator/Wetland Specialist Tomczik stated at the July 10th Board workshop, there was discussion on road authorities’ use of prior-banked volume control credits for non-linear projects and addressing volume control debits under Rule C.6(g).

Permit Coordinator/Wetland Specialist Tomczik stated that Rule C.6(g) requires interpretation, and staff recommends the Board approve allowing volume bank credits to be utilized for non-public linear projects.

Permit Coordinator/Wetland Specialist Tomczik reviewed the recommendation with the Board. He also noted there was a letter from Roseville initiating the issue and within the letter it had a comment about the District Attorney’s position on the issue which was not quite right and he asked District Attorney Holtman to comment on what Smith Partners’ position is on it.
District Attorney Holtman stated the letter indicated that counsel determined that the District should apply Rule C.6(g) to allow existing credits to be used for non-linear projects. He thought it would be useful for the record to be clear how staff’s recommendation was derived and it was not derived from his giving a directive as to the interpretation.

District Attorney Holtman stated there is a standard way that they approach these types of interpretive questions that come up when staff is applying the rules. The first step is, do the rules clearly address the question explicitly and if they do then there is no interpretation of the rules, they are just applied. If that is not the case and there is some ambiguity then the next step is, does the District have an established practice of how the rule is applied and if so, then it continues to follow that practice unless there is a good reason to change it, and that reason can be articulated. If there is no such established practice, then they get to the realm where it is a matter for interpretation by the District and that is where they came to for this particular question. In this situation, it is not the attorney’s role to tell staff or the Board what the interpretation should be; it becomes a policy question to look at their rule and the purposes of their rule and broader purposes, to give a reasonable reading to the rule in question, and then to apply it consistently after that.

District Attorney Holtman stated there was discussion at a staff level of the pros and cons and brought before the Board as recommended position and was discussed at the Board Workshop.

District Attorney Holtman added that there is a fair amount of this type of interpretive activity that staff undertakes in the day to day course of applying the rules, so there is a second element, which is what is the relationship between staff and the Board as regards establishing interpretations of rule provisions. With some frequency, staff establishes interpretations as to matters that either are technical or do not have great policy consequences, and typically the Board does not hear about these. Other interpretations will be brought to the Board for concurrence. Finally, some interpretations are significant enough that they are brought to the Board in the form of a Resolution for approval.

Manager Haake asked if a variance is similar to this. District Attorney Holtman stated it is different than a variance because a variance is a case where the rule clearly states the applicant has to do item A and the applicant indicates it can’t do A and would like to do B. With a variance, the Board is looking at it on a case by case basis and there are unique circumstances justifying departing from the rules. This is different because they are not departing from the rule, they are saying the rule has some gaps and they are taking the opportunity to fill them in. When the next project comes that is in a similar situation they would have the same treatment as with this one.
Motion by Manager Waller, seconded by Manager Bradley, to approve administration of volume banked credits and debits through the use of non-public linear projects.

Manager Waller stated this is a reaction to the cities requesting this and it looks like something has come about to change the rules and they have many cities in appearance and interest in this so they are reacting and making this adjustment for the benefit of those that have debits and credits. He noted the cities have asked for the rule changes also. He thought the District was being proactive.

Motion carried 4-0.

4. Consider Letters of Appreciation to Legislators.
District Administrator Belfiori presented draft handwritten letters to the legislators who sponsored the legislation to correct watershed-based wetland conservation act implementation and also to Les Lemm at BWSR who assisted in moving the legislation.

District Administrator Belfiori stated that now that the legislation has passed, it is appropriate to send a formal thank you letter. He noted a thank you letter was also prepared for the sponsors of the CLFLWD/RCWD special legislation transferring the drainage authority for Washington Judicial Ditch 6.

Motion by Manager Waller, seconded by Manager Wagamon, to approve the thank you letters for the legislation to correct watershed-based wetland conservation act implementation and the thank you letters for the CLFLWD/RCWD special legislation and to authorize President Preiner to sign those thank you letters.

Manager Bradley requested a correction to the WCA letter, 2nd paragraph, “taxpayers” is one word.

Manager Waller and Wagamon accepted the friendly amendment.

Motion carried 4-0.

5. Consider Check Register dated July 12, 2017, in the amount of $220,781.27, prepared by Redpath and Company.

Motion by Manager Wagamon, seconded by Manager Waller, to approve check register dated July 12, 2017, in the amount of $220,781.27, prepared by Redpath and Company. Motion carried 4-0.

ITEMS FOR DISCUSSION AND INFORMATION
1. District Engineer’s Report and Timeline.
District Engineer Otterness reviewed the table with the Board and answered questions regarding remaining budgets that are at a deficit.
Managers Update.

Manager Waller stated he attended the Halls Marsh landowner information meeting in Mahtomedi and it was well attended. Manager Waller stated there were questions about any kind of District grant money available to re-establish the shore land. He stated there were also questions about cleaning the sediment out of the pond and he was invited to a future citizens’ meeting about this. He thought most of the questions were answered and he invited all of them to participate in helping to write the District’s ten-year Watershed Management Plan. He thought it was important for people to realize that government is a mechanism to file their complaints and that is what makes a democracy work.

Manager Haake stated she had a discussion regarding purchasing equipment to clean out ditches and in the process of doing so she thought they would have a tour to see how the machine operates. Manager Waller thought what is more important to be done prior to any purchase of machines or decisions is that the operating manual needs to be written for how to proceed in the maintenance of these areas. Manager Bradley stated he agreed that they need to have an understanding of how to keep their ditches clean.

Manager Bradley stated he received a voicemail and email from Merrill Busch on behalf of Minnesota Commercial Railway and requested clarification.

District Administrator Belfiori stated in regard to the Ditch Maintenance program, the District has a robust ditch maintenance program and received a BWSR grant a few years ago to create a public drainage maintenance database. The District also has created a digital GIS system that allows anyone in the world to access with a click of the button and get history, locations, and elevations.

District Administrator Belfiori stated staff did talk to Mr. Busch, representative for the Minnesota Commercial Railway, about its bridge over Rice Creek that requires structural repair or replacement. Mr. Busch first asked about any potential RCWD partnership. Staff explained that the RCWD does have a competitive urban storm water cost share program and shared the website link with Mr. Busch to learn more about the program guidelines, potential eligibility, and financial caps. Mr. Busch then asked about the RCWD permitting program. Staff suggested, given the timing concerns voiced by Mr. Busch, that he schedule a “permitting preapplication meeting” with regulatory staff to learn more about the District’s permitting requirements and to become more aware of District technical assistance that may be available.

Manager Waller asked for more information regarding Mr. Busch and the railroad company because he was not sure what was being discussed. Manager Bradley stated he received a voicemail from Merrill Busch from Busch and Associates and he represents...
Minnesota Commercial Railway. District Attorney Holtman stated Minnesota Commercial Railway sued the District in 2003/2004 claiming the increase in development upstream and the District’s upstream sediment basin together caused scouring around their railroad bridge over Rice Creek. The case was litigated and the District Court dismissed the railroad’s claim. The railroad appealed to the State Court of Appeals which affirmed the District Court decision. The District prevailed in that lawsuit and to his knowledge that was the last they heard from the railroad as to the bridge. He added that the litigation produced a history showing structural maintenance on the bridge going back many decades before the development and the District’s basin installation.

District Administrator Belfiori stated staff is scheduling a pre-application meeting with Mr. Busch in the next week or two and will update the Board.

District Engineer Otterness informed the Board the bridge they are talking about is just upstream of Long Lake in New Brighton.

**ADJOURNMENT**

*Motion by Manager Waller, seconded by Manager Wagamon, to adjourn the meeting at 9:48 a.m. Motion carried 4-0.*