REGULAR MEETING OF THE RCWD BOARD OF MANAGERS
Wednesday, September 25, 2019
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, and Treasurer Steven Wagamon.

Absent: Secretary Michael Bradley (with prior notice).

Staff Present: Interim District Administrator Nick Tomczik, Project Manager Kyle Axtell, District Technician Lauren Sampedro, Office Manager Theresa Stasica.

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

Visitors:

President Preiner stated that the first action of the Board was to nominate an Acting Secretary for the meeting.

Motion by Manager Waller, seconded by Manager Wagamon, to nominate Manager Haake to serve as Acting Secretary. Motion carried 4-0.

SETTING OF THE AGENDA
Interim District Administrator Nick Tomczik asked to add an informational item under Items for Discussion as #2, to discuss Resolution 09-05 an internal policy on rule and permit enforcement.

Motion by Manager Haake, seconded by Manager Wagamon, to approve the agenda as revised. Motion carried 4-0.
READING OF THE MINUTES AND THEIR APPROVAL

Minutes of the September 9, 2019 Workshop. Motion by Manager Wagamon, seconded by Manager Waller, to approve the minutes as presented. Motion carried 4-0.

Minutes of the September 11, 2019 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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Manager Haake stated that for years, Jones Lake has been a disaster and the people in that area are always very worried. She stated that she knows that the District staff does a really good job and she trusts them on this issue.

Interim District Administrator Tomczik stated that he appreciates Manager Haake bringing up Jones Lake. He explained that the district’s rate control rule requires stormwater be held on site for a longer period of time and let out slower to help reduce the flooding implications downstream; such as Jones Lake. He noted that this outcome is able to be accomplished because of the District rule.

District Engineer Otterness stated that the District is working with the City of Roseville, St. Anthony and New Brighton to evaluate projects in that corridor, including Jones Lake.

**It was moved by Manager Haake seconded by Manager Wagamon, to approve the Consent Agenda item for permit 19-076 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations dated September 18, 2019. Motion carried 4-0.**

PERMIT APPLICATIONS REQUIRING BOARD ACTION

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Interim Administrator Tomczik stated Ken Zarling, as one of the project applicants, has submitted a written request for a variance from Rice Creek Watershed District (RCWD) Rule E.3(g), which requires structures built within the 100-year floodplain to maintain a minimum of two feet of freeboard between the lowest floor and the 100-year flood elevation. He stated that the project proposes to replace an existing 10-foot x 16-foot detached boathouse/shed with a new 22-foot x 26-foot 2-car garage on a single-family residence located at 5480 Lake Avenue, Shoreview MN. The property is approximately 1.14 acres, of which 572± square feet will be disturbed. Impervious surface area will increase by 550± square feet. The site drains west under Lexington Avenue to the Main Trunk of Ramsey County Ditch (RCD) 1 and then to Rice Creek and ultimately to Long Lake, which is considered the Resource of Concern. He reiterated that the District Rule E.3(g) requires structures built within the 100-year floodplain to maintain a minimum of two feet of freeboard between the lowest floor and the 100-year flood elevation.

Manager Haake confirmed that the location in question is the gray area on the map and not right on Turtle Lake.

Interim District Administrator Tomczik affirmed that is correct and is the landscape-based scale and is based on Lidar radar, which is remote sensing for elevation and not definitively tied to the ground. He noted that there is flooding that occurs from the back side in conjunction with the large wetland to the west.

District Engineer Otterness stated that Turtle Lake is landlocked and for a 100-year event will overflow out to the northwest and into the basin east of Lexington, which is why this basin has such a large, extensive floodplain. He explained that it is only when the flow equalizes under Lexington Avenue that the water level will finally start to go down in the area.

Interim District Administrator Tomczik stated the site is hydraulically connected to the floodplain downstream of Turtle Lake, with a regulatory elevation of 891.7 (NAVD 88). The project proposes to construct the garage at approximately elevation 890, which is 0.4 feet above the existing elevation and 1.7 feet below 100-year flood elevation. District Rule E.3(g), requires 2 feet of freeboard above the 100-year flood elevation. The applicant has requested a variance from RCWD Rule E.3(g) for the lack of freeboard. The proposed application is compliant with all other RCWD Rules.

Interim Administrator 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.

Interim Administrator 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.

Interim Administrator Tomczik informed the Board that he would reiterate the above criteria and District Engineer Otterness would reply with the District Engineer’s response.

Interim Administrator Tomczik asked per practical difficulties criterion (a), how substantial the variation is in relation to the RCWD Rule requirement(s).

District Engineer Otterness replied: the applicant is proposing to construct the garage at approximately elevation 890, which is 0.4 feet above the existing grade, but 1.7 feet below 100-year flood elevation. District Rule E.3(g), requires 2 feet of freeboard above the 100-year flood elevation. The proposed garage elevation is set at or slightly above the 50-year rainfall event.

Interim Administrator Tomczik asked per criterion (b) the effect the variance would have on government services.

District Engineer Otterness replied: issuance of a variance for the 5480 Lake Avenue project is not expected to increase the cost or difficulty of providing governmental services. The City of Shoreview has already reviewed and issued a conditional use permit for this project, which does not allow the structure to be used for any business purposes.

Interim Administrator 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.
Interim Administrator Tomczik continued: 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 (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 degradation as identified within 7050.0180 Non-degradation for Outstanding Resource Value Waters; and
- Other generally sensitive resources.

District Engineer Otterness replied: The project is proposing a total of 8.8 cubic yards (CY) of fill within the floodplain to raise the garage approximately 0.4-feet above the existing grade. This 8.8 CY of fill will not change the 100-year flood elevation, thus per Rule E.3(e) floodplain mitigation of less than 10 cubic yards does not require mitigation. Non-compliance with the freeboard requirements of Rule E.3(g) is not expected to affect above mentioned watershed resource criteria. The project is currently compliant with all other District Rules except for Rule E.3(g).

District Engineer Otterness 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.

Non-compliance with the freeboard requirements of Rule E.3(g) is not expected to have a negative effect on neighboring properties and is allowable by RCWD Rules. Additional fill may impact drainage between the properties.

Interim Administrator 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) is necessary.

District Engineer Otterness replied: The plan proposes to use screw pilings and a floating concrete slab which would place a total of 8.8 CY of fill in the floodplain to raise the garage approximately 0.4 feet above the existing grade, and 1.7 feet below the 100-year flood elevation. The proposed plan causes minimal land disturbance and does not propose the removal of any
trees. The applicant’s plan also assumes the proposed garage structure will be inundated with water by 1.7 feet during the 100-year flood.

District Engineer Otterness stated two alternative design options were considered to meet the freeboard requirements of Rule E.3(g). The first used the same proposed location but raised the garage 3.7 feet up to meet the required 2 feet of separation through the placement of fill. This would result in an infeasible driveway slope of approximately 45% (3.7 feet of rise in 3.5 feet) due to the narrow lot and the setback requirements of the city. Additionally, the applicant has indicated this option would place more than 10 cubic yards of fill in the floodplain and that the it would be infeasible to mitigate on the property.

District Engineer Otterness stated the second alternative option would be to rotate the garage to face south. This would allow for a more reasonable drive slope; however, it would require the placement of additional fill in the floodplain that the applicant would not be able to mitigate as required by District rule E3(e).

District Engineer Otterness stated due to the existing elevation of the property and the adjacent floodplain, the majority of the property is below the 100-year flood elevation. As such, the applicant has indicated that it would be infeasible to provide floodplain mitigation on the property. The District Engineer concurs with this statement. As such, the applicant has raised the garage to the highest extent possible while keeping flood plain impacts to a minimum and below the mitigation threshold. By requesting the variance on freeboard requirement, the applicants have assumed the risk on their own structure, rather than potential risk to their neighbors due to the increase in fill.

President Preiner asked how the District could control letting people know. She gave the example of a landowner moving away and a new homeowner coming in that now has a garage under water.

Interim District Administrator Tomczik stated that if this approved by the Board, one of the proposed conditions will be that it is recorded on the property that this structure is built below the 100-year flood elevation.

Manager Waller asked how the District verifies that this has actually been recorded on the property.

Interim District Administrator Tomczik stated that it will be a condition and staff will look for a copy of the recorded document before a permit is issued to begin the work.

Manager Haake asked if the existing garage has ever had any water in it.

Interim District Administrator Tomczik stated that the applicant indicated in their application that in the years that they have been at this property there has never been a flooding incident.
District Engineer Otterness stated that he has heard numerous times throughout his career that a structure has never flooded, and then shortly thereafter the structure has flooded. He stated that it is frequently the case that a landowner has not experienced a 100-year event despite having resided at the location for a substantial length of time.

Interim District Administrator Tomczik stated that he had been trying to find the exact language used in the application about whether there had been flooding in the structure before and was unable to find it, and asked the Board to take his recollection accordingly. He explained that the 100-year event has at 1% change of occurrence every year and the elevation the structure is proposed to be built at is actually slightly above the 50-year event, so there is a 2% probability that it will flood in any given year.

Interim Administrator Tomczik asked: Per criterion (e), we considered how the practical difficulty occurred, including whether the landowner created the need for the variance requires consideration.

District Engineer Otterness replied: The District Engineer finds that the current landowner did not create the circumstances which hinder the ability to build the garage above the floodplain elevation. The need for variance is created by the applicant’s desire to place a new garage on a property, and the applicant is unable to do so without impacting available volume in the floodplain. Per the discussion above, the applicant has indicated that the proposed project design is the most desirable and is willing to accept the increase in potential risk of flooding to their own proposed garage, thus has requested variance from the freeboard requirement of Rule E.3(g).

Interim Administrator 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 Engineer Otterness replied: This criterion lies largely in the Board’s domain as it involves judgments of a non-technical nature. One 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 District’s freeboard requirements of Rule E.3(g). Other applicants have had the ability to feasibly meet these requirements onsite, and the practical difficulties provided by the applicant are not unique to the site and are shared by many of the surrounding properties at the northwest corner of Turtle Lake. Another consideration is the relationship of the existing rule to the public interest. The intent of Rule E.3(g) is not to protect a downstream resource, but rather to decrease the risk of damage to the landowner’s property. In this case, the applicant has demonstrated acceptance of the inherent increased flood risk. With this in mind, if the Board decides to grant the variance request, it is our recommendation that the applicant record on the property that the proposed garage was built with a freeboard of 1.7 feet below the regulatory 100-year flood elevation which is non-compliant with RCWD standard freeboard regulations.
It was moved by Manager Haake, and seconded by Manager Wagamon, to Approve the Variance request for variance application 19-086 as outlined in accordance with RCWD District Engineer’s Variance Technical memorandum dated September 18, 2019. Motion carried 4-0.

It was moved by Manager Haake, and seconded by Manager Waller, to CAPROC permit 19-086 as outlined in accordance with RCWD District Engineer’s Findings and Recommendations dated September 18, 2019. 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.

There were no comments by the public.

ITEMS REQUIRING BOARD ACTION

1. Consider City of Columbus Local Water Management Plan.

District Technician Lauren Sampedro stated that the City of Columbus submitted their revised local water plan on September 16, 2019 which sufficiently addresses comments from the RCWD and the Met. Council and is consistent with the District’s 2010 Watershed Management Plan. She explained that Columbus has identified a few water resources issues including water quality and water quantity issues. She noted that Columbus drains to several impaired waters within the District boundary. She stated that there is existing flooding at ACD 10-22-32 (north of Pine Street) and existing and future drainage issues in the ACD15/Freeway District. To help improve water quality, the City of Columbus will participate in the District’s water quality efforts and encourage BMPs that will help improve the impaired waters. She stated that the City of Columbus will also implement and enforce its zoning and subdivision ordinances to assist in the protection and improvement of these water resources. She stated that to address the water quality issues, the City of Columbus will evaluate regional stormwater treatment opportunities for ACD 10-22-32 and ACD 15/Freeway District areas with the District. She noted that Columbus recently partnered with the District on a regional stormwater management plan for the ACD15/Freeway District area in order to evaluate potential stormwater projects, which is expected to be completed this year. Staff finds that the City of Columbus’ local water plan is consistent with District and State requirements and recommends approval.
Motion by Manager Wagamon, seconded by Manager Haake, to adopt Resolution 2019-27: Approve Columbus Local Water Management Plan.

THEREFORE BE IT RESOLVED, that the RCWD Board of Managers hereby approves the City of Columbus’ local water management plan, as submitted on September 16, 2019;

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

Motion carried 4-0-1.

2. Consider Final Payment Rachel Contracting, Inc. for Hansen Park Project.

President Preiner stated that she wanted to commend Project Manager Kyle Axtell for the speech he gave at Hansen Park. She stated that she thought he did a great job and thanked him for all the effort he put into getting this project completed.

Manager Waller stated that he felt it was a very nice celebration on September 24, 2019. He stated that it was nice to walk across the pile and not see any obstruction to any of the views. He stated that it was also nice to see the sand filter system functioning. He stated that there were a lot of people in the park enjoying it and commended Project Manager Axtell for a job well done.

Project Manager Axtell stated that this was the most challenging project he has worked on in his career but was happy to be involved in it. He stated that for the Board’s consideration today is the final payment to Rachel Contracting. He stated that this pay request covers all the remaining work, including Change Order #7 and the release of all retainage held on the contract. He stated that the “keys” have been handed to the City of New Brighton’s public works department for maintenance and management of their portions of the project. He stated that the total construction cost for this project was just a hair over $2.9 million, which was slightly over the original contract and explained that there were significant weather issues and delays. He stated that the representatives from Rachel Contracting and Houston Engineering that were on site managing the project being flexible and handling the changes on a day-to-day basis during construction was critical. He stated that if there had been a less flexible contractor working on this project, it would have been a nightmare. He stated that Rachel Contracting and the City of New Brighton staff were also outstanding. He noted that the overall project costs came in below the original estimate that was provided to the Board by several thousands of dollars. He stated that the overall public impression of the project has been overwhelmingly positive. He stated that there was one issue at the end of the project when one of the subcontractors accidentally seeded two of the iron enhanced sand filter beds. He stated
that he has a notarized agreement from the subcontractor’s owner that if there is
additional weeding or plant management removal that needs to be done, that they will
help with that for the next two years. Staff recommends final payment to Rachel
Contracting in the amount of $106,875.33.
Manager Haake complimented the City of New Brighton staff and Council for the
ceremony that was held yesterday. She asked how the two sand filters that had been
seeded would be handled to make sure nothing was taking hold.
Project Manager Axtell stated that this was frustrating because they had already gotten
some natural weed growth on the sand filter beds. He stated that he and several other
staff members have spent a lot of time weeding those beds which was a lot of work. He
noted that they had just finished weeding and it was looking good when he discovered
the seed and mulch over the two sand filter beds. He stated that he plans to keep an eye
on it and if they see growth occurring in either of those two beds, they may let it grow a
bit so it is easier to pull and will get the contractor back out there to take care of it.

Motion by Manager Haake, seconded by Manager Waller, to approve Rachel
Contracting, Inc.’s pay requests as submitted and certified by the District Engineer and
directs staff to issue a payment in the amount of $106,875.33. Motion carried 4-0.

3. Consider Check Register dated September 25, 2019, in the amount of $356,184.68
prepared by Redpath and Company.

Motion by Manager Wagamon, seconded by Manager Haake, to approve check register
dated September 25, 2019, in the amount of $356,184.68, prepared by Redpath and
Company. Motion carried 4-0.

ITEMS FOR DISCUSSION AND INFORMATION
1. Staff Reports.
Office Manager Stasica explained that she was filling in for Beth Carreño. She explained
that she had distributed a memo from her regarding the District Administrator interview
schedule and questions. She stated that there are two possible dates that have been
identified for interviews: October 3, 2019 and October 4, 2019. She asked that the Board
get back to Ms. Carreño on which date will work best for the Board and noted that Ms.
Carreño plans to schedule the interviews all on the same day.

2. Discussion of Resolution 09-05 – Internal Policy on Rule Enforcement.
Interim District Administrator Tomczik stated that he wanted the Board to discuss
resolution 09-05 because there has been discussion around sending letters when there
has been a violation. He read aloud from the policy that states, “The Board of Managers
may amend this policy or make exceptions to it as it deems appropriate.” He stated that
the policy outlines different scenarios that may come up and reviewed the policy
statement for when there is a CAPROC that has had work started without the permit and noted that if there has been no response within 10 days, staff will issue a Compliance Order letter. He stated that he wants to make sure that the Board and staff are aligned. He stated that currently staff is sending the typical 10-day letter, which in most cases resolves the issue. If the issue is not resolved, staff is proposing to send a second letter that will be from the the District Administrator or district counsel to support enforcement of the rule and permit to the situation. He noted that if this effort should not yield the desired outcome then the issue would move into the Compliance Hearing which is a bit more labor and time intensive for staff. He explained that he is looking for general consensus from the Board that this an acceptable way to move forward in this situation.

Manager Haake stated that her understanding is that a letter goes out with a time limit of 10 days and then an additional letter goes out with a little more force, written on an attorney’s letterhead from either the District Attorney or the District Administrator. She asked what Interim District Administrator Tomczik was specifically asking for the Board to consider.

Interim District Administrator Tomczik stated that he is asking for Board consensus that after the first 10-day letter, staff would like to insert a second letter from the District Administrator or district counsel that will have an enforcement position and moving into a Compliance Hearing. He noted that the first letter comes from the inspector.

Manager Haake asked if they were given another 10 days in the second letter to comply.

Interim District Administrator Tomczik stated that it would depend on the situation, but would likely contain a deadline for compliance and if it warrants it, would set a date for a compliance hearing for the next fold of enforcement. He explained that the second letter will obviously provide some time for the party to respond. He stated that the intent of the second letter is to show an elevated position from the District of the need to come into compliance and that continued non-compliance will result in a hearing before the Board.

President Preiner asked if that new procedure should be written in the policy for rule enforcement.

Interim District Administrator Tomczik stated that the intent was for staff to be transparent and make sure the Board was aware of the additional letter within the process. He stated that recently, staff has sent letters after consulting with the board instead of coming to the Board for the Compliance Hearing process.

Manager Haake stated that she thinks it is a great idea and supports including the second letter in the policy.
Manager Waller asked if the second letter would be sent without going to the District Attorney’s office.

Interim District Administrator Tomczik stated that he feels it could be either way, but he recommends that it is either the District Administrator or the District Attorney, depending on the circumstances. He stated that there are two situations that he will share a bit more on later in the agenda. He stated that one of them is regarding the applicability of the Districts regulation, which staff felt it best for the letter to come from the District Attorney and the other is regarding application of the rule on the site, and that letter will come with the District Administrator.

Manager Waller stated that if the District is going to start inserting the second letter on a regular basis, he would have no problem inserting that into the official rule. He stated that he does feel that the second letter should come from the District Administrator prior to going to the District Attorney’s office.

President Preiner stated that she thinks that decision should be the District Administrator’s call.

Manager Haake stated that she agreed and would be comfortable with the District Administrator deciding which one would be more effective.

Manager Wagamon stated that he agreed that this decision can be made by the District Administrator.

Manager Waller stated that he feels the legal compliance issues happen after the second letter. He stated that he feels the second letter is strike two and if there still isn’t compliance then it is strike three, your out, and the District Attorney steps in with legal action.

President Preiner, Manager Wagamon and Manager Haake reiterated their opinion that the decision on who the second letter should come from should be made by the District Administrator.

Interim District Administrator Tomczik stated that consensus of the Board will be sufficient and reiterated that he just wanted to be transparent about staff intended actions. He stated that he understands Manager Waller’s viewpoint and asked District Attorney Smith if he had a distinction to share where it may make sense for the letter to come from legal counsel rather than the District Administrator. He noted that the desired outcome is that the second letter gets some action and compliance with the District rules.

District Attorney Smith stated that as a backdrop, the District’s policy on enforcement of rule, how the permit program, and variances are really modeling best practices, so the
Board should have confidence that the way they are operating is really sound. He stated that when there are rule violations, what he is looking for is the use of prosecutorial discretion and what the Interim District Administrator is bringing to the Board is making sure the Board is comfortable with how that discretion is being exercised. He stated that it is also to make sure the Board is engaged in the appropriate way to guide these enforcement actions. He explained that the Board wants to balance the oversight and parameters on how the discretion is exercised, but also leave it to the District Administrator to be able to make judgements about what is appropriate in different circumstances. He stated that the violations can vary quite widely from a serious problem such as disregarding the District’s jurisdiction and posing a threat to the water resources to more administrative compliance and paperwork violations. He stated that the Board should look to the District Administrator to make judgements along the way to see when it is time to engage legal counsel, hold a hearing, or when it is time to go to court. He stated that the polices give the District Administrator some guidance and steps to take, but also discretion. He stated that, in general, he thinks that there are some applicants who will wait a long time to bring something into compliance and it is a notice from an attorney that makes them realize that they will start to spend more money on non-compliance than compliance and it is time to comply. He stated that in general, the practice has been to avoid the involvement of legal counsel as much as possible and he thinks leaving this with the discretion of the District Administrator is a sound approach.

Manager Haake stated that she feels it should be left at the discretion of the District Administrator as long as there are sidewalks of what staff can do. She stated that she would like it to state and acknowledge that it will be up to the District Administrator to decide if the letter needs to be from the District Attorney or the District Administrator.

Interim District Administrator Tomczik stated that the resolution already has the discretionary statement about staff being able to use their judgement. He stated that staff will amend the resolution to show the insertion of the second letter in the process and bring it back for Board approval.

Interim District Administrator Tomczik stated that there are two sites that are concerning to staff where the inspector has engaged the developer or landowner. He stated that in the first instance, it is the developer’s belief that they do not need a permit and our inspector has told them otherwise and defined why. He stated that information was communicated weeks ago and the District has yet to receive any additional permit application information. He stated that staff would like to send a letter and say definitively that a permit is needed. He stated that this situation is from a development at 213 Park Avenue in Mahtomedi associated with District File 19-155R.

Interim District Administrator Tomczik stated that the second site relates to 34 Dellwood Road in Dellwood. He stated that there is an ongoing issue with a concrete wash out

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where the inspector has identified that just dumping the concrete waste on the ground is not consistent with the regulation and contamination can infiltrate or direct surface runoff to White Bear Lake. He stated that this is an ongoing issue and the letter sent will ask them to complete the work in October 2019. He said when it is inspected at that time, and when noncompliant staff would like to bring this to the Board for a compliance hearing.

Interim District Administrator Tomczik stated that the Board has discussed CSAH 12 in the past. A number of landowners in the area have expressed concern about the current condition. He stated that the Washington Conservation District has been engaged by the County to assist them in best management practice on the site. He stated that the inspector stated that things are better and the discharges have not been happening. He noted that some of the event was under 4 inches of rain. He stated that the District has contacted the landowners and have been discussing the Districts role in this situation.

Interim District Administrator Tomczik stated that Washington County has contacted the District regarding the 2020 Watershed Management Organization budget presentation to the Washington County Board of Commissioners which will take place on October 15, 2019 after the 9:00 a.m. regular meeting; so roughly at around 10:00 a.m. He stated that staff has submitted the District’s budget and a slide with the activities in the area, issues in the area, and how the District is doing in our portion of Washington County.

President Preiner stated that in past years that meeting has been posted because some of the members wanted to attend.

3. October Calendar.

Interim District Administrator Tomczik noted that the JD3 landowner meeting will be held on October 8, 2019 at 6:30 p.m.

4. Managers Update.

Manager Wagamon stated that regarding the variance issue that the Board discussed today, he would like to schedule a discussion about variances at an upcoming workshop. He stated that the request today seemed to be a perfect example of one that possibly could have been taken care of by the District Administrator without coming to the Board.

President Preiner clarified that she would like to take a look at what trips the threshold for coming to the Board versus being taken care of by staff.

Manager Haake stated that she believes that variance requests always come before the governing body, whether it be a Board or a City Council.

President Preiner stated that this can be brought to a workshop for further discussion and asked District Attorney Smith to be prepared to give a little insight onto whether a
variance always needs to come before the Board or if there are situations where it can be handled at the staff level.

District Attorney Smith stated that variances usually do go before the governing body, such as the Board, but there could be a rule revision that may create a situation where a variance wouldn’t be necessary.

President Preiner asked that this be added to a future workshop agenda.

Manager Waller stated that the water is flowing rapidly out of White Bear Lake and coming out of both pipes with large dead carp laying nearby. He noted that he had attended the legislative subcommittee meeting this month. He stated that Representative Torkelson made a comment that he thought was really important which was, “It is not just a question of stormwater on the land that we are receiving, but we are actually having more rain, so we have to make sure that the stormwater infrastructure works so they can handle more rain.” He explained that much of the stormwater infrastructure was designed 100 years ago and was designed before internal combustion engines and it’s not really designed for the capacity that it is facing. He stated that on the front page of the Minneapolis Star Tribune newspaper there was a large article about the problems with stormwater here in the metro area and particularly focused on the Little Canada area. He stated that one of the things included in the article was a graph that showed records going back to 1895 and also stated that the average rainfall between 1895 and present time has increased in inch. He stated that he also had a resident contact him and report on Wood Lake located in Mounds View.

Manager Haake explained that Wood Lake is now called Spring Lake.

Manager Waller stated that the resident stated that the lake is in disastrous condition and has been used as a stormwater pond. He stated that she explained that they are running a pipe into it and it needs some attention.

Manager Haake stated that this may be a different lake than she was thinking because those are common names.

Interim District Administrator Tomczik noted that the District revised its rules to utilize what is called Atlas 14 which is a capture of the more recent rain events and has recently been updated.

District Engineer Otterness stated that the previous rainfall standard that the District and the rest of the engineering and scientific world in Minnesota used was called TP40 which was developed in the 1960s to determine anticipated rainfalls especially for large magnitude events. He stated that in more recent years, Atlas 14 came out which prompted the District to use more modern standards in evaluating permits and projects.
He stated that changing from using TP40 to Atlas 14 has effectively changed the 100-year rainfall being used for hydrologic analysis in the District from 5.9 inches, up to a range across the District between 7 and 7.4 inches for rainfall. He stated that there is no crystal ball to be able to see what will happen in the future because there is a lot of variability but the best information the District has at this time is the Atlas 14 rainfall information.

**ADJOURNMENT**

*Motion by Manager Waller, seconded by Manager Wagamon, to adjourn the meeting at 10:10 a.m. Motion carried 4-0.*