REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, September 26, 2018

Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota

Approved Minutes

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

ROLL CALL
Present: President Patricia Preiner, 1st Vice-Pres. Barbara Haake, 2nd Vice-Pres. John Waller, Secretary Michael Bradley, and Treasurer Steven Wagamon.
Absent: None
Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Technician Samantha Berger, Water Resource Specialist Kyle Axtell, Technician Catherine Nester, Technician Lauren Sampedro, Office Manager Theresa Stasica.
Consultants: District Engineers Chris Otterness & Greg Bowles from Houston Engineering, Inc. (HEI); and District Attorney Chuck Holtman from Smith Partners.
Visitors: Max Segler, Matt Wolsvik.

SETTING OF THE AGENDA
Administrator Belfiori noted that staff has one change to the agenda under Items Requiring Board Action item #1-relating to Permit 17-105 for a compliance hearing. He stated that based on the staff report and consultation with legal counsel and President Preiner, he exercised his judgment and cancelled the compliance hearing. He noted that everything else on the agenda would be adjusted accordingly.

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

READING OF THE MINUTES AND THEIR APPROVAL
Minutes of the September 10, 2018 Workshop. Motion by Manager Wagamon, seconded by Manager Bradley to approve the minutes as presented. Motion carried 5-0.

Minutes of the September 12, 2018 Board of Managers Meeting. Motion by Manager Wagamon, seconded by Manager Bradley to approve the minutes as presented. Motion carried 5-0.
CONSENT AGENDA

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

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Permit Applications Requiring Board Action

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<td>CAPROC 7 items</td>
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Permit Coordinator/Wetland Specialist Nick Tomczik stated that staff have no adjustments and can entertain questions from the Board.

Manager Haake stated that for Permit 17-094 it appears that there was an overcharge of $1,100 and asked how that occurred.

Technician Samantha Berger stated that as applicants submit their application, they check the boxes that ultimately calculates their fee. She noted that at times the boxes are checked incorrectly and during the project review process, staff realizes that and makes the adjustment.

Manager Haake stated that it appears as though two of the projects on this 93-acre campus have been completed without permitting from the RCWD.

Technician Berger stated that the District has been working with Boston Scientific on another application and found that they had not provided enough treatment within the two individual resources of concern. She stated that they came back in with another project and the District reminded them of the issues, but that construction had already been completed, so the decision was made to roll all of it into this permit.

Manager Haake confirmed that this permit will provide for adequate storage of the current project as well as the other two projects that were already completed. She asked if this was inadvertent on the part of the applicant.

Permit Coordinator/Wetland Specialist Tomczik stated that he finds that the terms accidental or inadvertent are both reasonable terms for what occurred with this applicant. The applicant is proposing the current project to create excess treatment that might be utilized for future permit applications.
Manager Haake asked about Permit 18-086, under Findings, #1, it states that the project drains west of the project and then through city storm sewer. She asked about the pond and whether it is on the project site or if there is a regional pond on the west side that it will drain into.

Technician Berger stated that this is part of the Headwaters development that does include a lot of regional ponds but will first drain into the pond that is proposed as part of the project and then drain into the regional pond, the city storm sewer and then Peltier Lake.

It was moved by Manager Waller, seconded by Manager Haake to approve the Consent Agenda item for permit 17-094 and 18-086 as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations dated September 19, 2018. Motion carried 5-0.

Permit Coordinator/Wetland Specialist Nick Tomczik gave an update to the Board on the Anoka-Hennepin School District and the new Blaine Elementary School and noted that the Board had asked to be apprised of their success in fulfilling their obligations. He stated that to date, there are a number of items that have not been addressed and the last notice the District received was on September 19, 2018. He stated that Steven Anderson was expecting to secure the signatures for recording the plat at their next board meeting. He stated that the District has asked Mr. Anderson to submit the draft documents to fulfill the obligations to the District and noted that the District wants to make sure those are correct before anything is recorded. He stated that as of this morning, the District had not received any response.

President Preiner asked what the next steps are.

Permit Coordinator/Wetland Specialist Tomczik stated that he would like to hear back from Mr. Anderson and noted that this had been considered low risk because it is a public entity. He stated that he plans to keep asking for the draft documents and will continue to update the Board and a compliance hearing can be considered.

**PERMIT APPLICATIONS REQUIRING BOARD ACTION**

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Permit Coordinator/Wetland Specialist Nick Tomczik stated the project applicant, Max Segler, has submitted a written request for a variance, after the fact, from Rice Creek Watershed District (RCWD) Rule E.3(b), which requires compensatory floodplain storage volume to be provided within the floodplain of the same water body as the proposed work and within the same permit term. The District Engineer evaluated the variance request per RCWD Rule L for Permit 16-027 in the Request for Variance and Statement of Practical Difficulty (Exhibit 1) dated August 23, 2018 and received on August 23, 2018.
Permit Coordinator/Wetland Specialist Tomczik stated the project constructed a driveway and a single-family residence. The applicant constructed an 18-foot wide surface driveway with 3:1 side slope for building site access, through a wetland and floodplain area. The applicant provided a discussion of Wetland Conservation Act avoidance and minimization measures by reducing the driving surface from 20-feet wide and utilizing 3:1 side slope versus a 4:1 side slope. The driveway includes a 15-inch culvert to maintain hydrologic conductivity and existing drainage patterns. Total land disturbed was 0.6± acres and added 9,700 square-feet (SF) of impervious surface. The regulatory floodplain elevation for the site is 891.42 (NAVD 88). The project site drains to Long Lake, the Resource of Concern. The project placed a total of 24 cubic yards (CY) of fill within the floodplain based on as-built survey, a decrease of 2 CY from the original plans. Construction of the project has been completed, with the exception of the floodplain fill mitigation. The applicant has requested a variance from RCWD Rule E.3(b) for the 24 CY of floodplain fill after the fill already has been placed within the floodplain. The proposed application is compliant with all other RCWD Rules.

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

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

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

Permit Coordinator/Wetland Specialist Tomczik informed the Board that he would reiterate the above criteria and District Technician Berger would reply with the District Engineer’s response. He also informed the Board that Mr. Segler is present today and District Engineer Bowles had a conversation with him yesterday regarding his variance.
Permit Coordinator/Wetland Specialist Tomczik asked per practical difficulties criterion (a), how substantial the variation is in relation to the RCWD Rule requirement(s).

District Technician Berger replied: the applicant is not proposing any floodplain mitigation, and thus has not met compensatory floodplain storage volume requirements of Rule E.3(b). The project has placed a total of 24 CY of fill within the floodplain but has not provide any compensatory floodplain volume.

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

District Technician Berger replied: issuance of a variance for the Segler Driveway project is not expected to increase the cost or difficulty of providing governmental services.

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

Permit Coordinator/Wetland Specialist Tomczik asked: In assessing whether a substantial change in the character of the watershed resources may occur, we considered, not exclusively but as a measure of impact, the presence of and potential impact to the following:

- a 303(d) listed water body (i.e., an impaired water);
- a high quality or non-degraded wetland;
- a federally listed threatened or endangered species or state threatened, endangered or species of special concern and their critical habitat;
- a Scientific and Natural Area as defined by the Minnesota Department of Natural Resources;
- resources protected from nondegradation as identified within 7050.0180 Nondegradation for Outstanding Resource Value Waters; and
- Other generally sensitive resources.
District Technician Berger replied: Floodplain alteration is not expected to affect watershed resources except for flooding as discussed below. The project is currently compliant with all other District Rules except for Rule E, Floodplain Alteration.

Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (c) and whether issuing the variance has a negative effect to the neighboring properties, we considered whether the granting variance will:

- cause or contribute to a change in the 100-year floodplain elevation immediately downstream or upstream of the project site
- increase the frequency or magnitude of flood damages to adjacent properties; or
- increase hardship downstream from peak flow and flood duration.

District Technician Berger replied: The applicant submitted annual precipitation information, which is not pertinent to the regulatory floodplain which is based on the 100-year 24-hour rainfall event. The applicant did not quantify the effect of the regulatory floodplain. However, the one-time loss of 24 CY of floodplain volume likely will not have a significant impact on the 100-year floodplain elevation. The overall floodplain area is approximately 5 acres and the amount of fill would amount to a rise of 0.003 feet (0.04-inches). Multiple occurrences of floodplain storage volume loss, however, can eventually result in a more significant impact to the 100-year floodplain elevation.

The applicant cites the removal of “50 foot Quaking Aspen, Red Pine and White Spruce which represent an effective natural buffer to the wetland in the area which appears to be of medium quality” in the cover letter for the variance application. The applicant did not quantify the number or specific sizes of trees that would need to be removed in order to create the floodplain mitigation or document the assessment of the buffer function that would be lost in creating the required replacement flood storage. Removal of trees has not historically been considered a practical difficulty by the District as tree removal is often required to construct projects.

The applicant also indicated that the City of Shoreview has a preference for maintaining forested buffer vegetation along wetland boundaries (Exhibit 1 Appendix D), however tree removal would not be prohibited by the City. In an April 11th email (Exhibit 3) between Patrick Hughes of RCWD and Tom Wesolowski, the City Engineer for the City of Shoreview, Mr. Wesolowski states that the original mitigation site (Site A Exhibit 1 Appendix E) is acceptable to the City. The original mitigation area is not in an area the City deemed to be avoided. Additionally, a modification of the approved mitigation site design may lessen or avoid tree impacts.

Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (d), an assessment of whether the practical difficulty can be alleviated by a feasible method other than a variance (economic considerations play a role in the analysis under this factor) is necessary.
District Technician Berger replied: The original plan for the project included 26 CY of floodplain fill mitigation that was approved by RCWD and also acceptable to the City. While the applicant in the current variance materials indicated that it was “expensive” it was originally submitted by the applicant as acceptable to meet the regulatory obligation. Thus, the District finds that the applicant can feasibly create the floodplain mitigation per the approved plan.

Permit Coordinator/Wetland Specialist Tomczik asked: Per criterion (e), we considered how the practical difficulty occurred, including whether the landowner created the need for the variance requires consideration.

District Technician Berger replied: The application was approved to mitigate 26 cubic yards of floodplain storage. The applicant placed fill in the floodplain without creating the approved mitigation. Therefore, the applicant has created the need for the variance.

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

District Technician Berger replied: 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 District’s floodplain alteration requirements of Rule E.3(b). Other applicants have had the ability to feasibly meet these requirements onsite, and the applicant has not presented evidence within this application that the requirements cannot be met on this site. The need and cost to remove trees to create the compensatory floodplain storage required by RCWD Rule E.3(b) is not a site-specific condition. Therefore, it is the District Engineer’s recommendation that the board deny the request for variance.

Manager Haake asked District Attorney Holtman if the District grants a variance, has it changed our rule and will it set a precedent.

District Attorney Holtman stated that a variance, in general, is not a precedent for other cases, however, if the set of facts is such that they relate to other cases that may come before the Board, then you are, in effect, setting a precedent for similar cases. In this case, one of the elements is the indication that there won’t be a substantial effect on the elevation. He stated that what concerns him about this argument is that the District does have a rule that is intended to address the potential cumulative effect of allowing minor increases. He stated that the Board would be risking creating a precedent where instead of applying the District rule of no floodplain loss, the Board will look case by case and make judgments about potential cumulative impacts. He noted that this involves greater administrative expense and potentially undermines the uniform basis of the rule.

Manager Haake stated that because of the reasons just given by District Attorney Holtman, she is planning to support the recommendation to deny the variance.
Manager Bradley asked for clarification of the distance between their house and the pond and whether there will be room to plant new trees.

Technician Berger stated that based on the scale of the drawings she believes there would be room to place additional trees.

Manager Wagamon stated that he agrees with the points made by District Attorney Holtman.

Mr. Segler stated that he had a good conversation with Houston Engineering earlier in the week and everything he laid out is accurate. He understands that they did agree to create the floodplain storage prior to starting construction. He stated that he was under the impression when they were trying to get permitting for all of this, Plowe Engineering, who they were working with at the time, said, let’s just place it somewhere on the property so we can get the permit and get the project started. He noted that it had taken close to 7 months to get the permit from Rice Creek Watershed District just to start the process of building the home. He stated that the original site they had suggested for the floodplain mitigation is where the utilities ended up having to be located. He explained that they tried directional boring for the sewer and water to try to save as many of the trees as possible. He stated that the photo the Board has was the original plan but because of the utility location, they had to relocate the compensatory storage. He stated that there have been three variations of the plan and he has worked with two different engineering companies in addition to the RCWD staff on how else the compensatory storage can be created. He stated that the majority of the trees in the buffer are considered landmark trees by the city. He stated that he feels they are losing trees at an alarming rate and to see trees that he planted 40 years ago get cut down to create compensatory storage doesn’t seem right. He noted that he has spent a lot of money in engineering and survey fees as well as $7,000 spading in the trees. He stated that if the compensatory storage needs to be moved, more trees will need to be removed which means he will need to add more trees and he will need to dispose of 24 cubic yards of fill which will also cost a lot of money. He stated that they have tried through the whole process to reduce the impact on the wetland. He noted that he and his children pulled purple loosestrife out of the swamp because it is a noxious weed. He noted that they had also cleaned out the silt from the direct discharge pipe from the cul-de-sac. He stated that he believes that every case should be looked at individually.

Manager Wagamon stated that he did not see any of that information in the application and asked if District Engineer Otterness agrees with the information the is being shared by Mr. Segler regarding the placement of the utilities.

District Engineer Otterness stated Greg Bowles was just made aware of the utility issue earlier this week and is not sure whether it can or cannot feasibly be lowered and still be maintained under the pond as they had originally proposed. He stated that the District has not been provided with the specific information.
District Engineer Bowles stated that he had spoken with Mr. Segler and they did speak about the utilities. He agreed that they do not know the specifics and know just what has been provided today by Mr. Segler.

Manager Haake stated that she doesn’t like setting precedent where someone later on can come and do the same thing. She asked if there was something so unique about this situation that the Board could grant this variance without setting a precedent.

Manager Wagamon stated that he feels the electrical situation may be that unique situation.

District Attorney Holtman stated that he suggests the way the Board thinks about this is that it is a variance after the fact, and that the Board can put themselves back in the posture of if this was coming before the Board as though it wasn’t after the fact. He stated that he believes there are two questions: Is there another location to site the utilities other than the location that was used; and, is there another feasible location for the flood volume replacement other than the area that was approved in the permit. He stated that if the answer to each question is no, that would be the strongest basis for a variance because otherwise the property cannot reasonably be developed. He stated that if the utilities could have gone elsewhere but Mr. Segler placed them in their current location, then the variance criterion that asks whether the applicant created the need for the variance, would apply.

Mr. Segler stated that none of this was done intentionally.

Manager Wagamon asked if there was a full accounting for the cost if the Board denies the variance request.

Mr. Segler stated that he has gotten bids from $7,000 up to $20,000 but nobody is guaranteeing it because of the swamp. He stated that to address Manager Haake’s comment about uniqueness, he feels the property is very unique because it is 5 acres with a large amount of tree coverage.

President Preiner asked why Mr. Segler didn’t come in to the District and discuss it when he decided to put the utilities in this location when he had an existing permit on the table.

Mr. Segler noted that he didn’t think about it because there was a sewer line break when they were trying to do the directional boring and ended up disconnecting the sewer from about 7 homes for two days as a result. He realizes in hindsight he should have gone back and discussed this with the staff.

Manager Waller asked District Engineer Bowles if within this sub-watershed district area there are other developable lots. He stated that this is an important fact to him because if this is the last one or if there are only two other developable lots then the District has to look at whether it will be a cumulative problem.
District Engineer Bowles stated that the 5 acres is the wetland adjacent to the parcel that is hydrologically connected to the larger flood plain and does flow to Long Lake. He stated that locally the estimate of the change in the floodplain elevation is 0.04 inches but on a regional scale it is adding an additional 24 cubic yards to the floodplain that is downstream which is Long Lake. He stated that it is a much larger watershed than just the 5-acre parcel.

President Preiner confirmed that what District Engineer Bowles was stating is that if the Board approves this variance, development in the larger area could be restricted in the future.

District Engineer Bowles noted that with the area proposed, many times staff goes through the alternatives process and try to meet some level of treatment. He stated that in location A it looks like there are some trees near the driveway and he has asked the applicant if there is any amount that could be done in this area to work it between the large landmark trees.

Manager Bradley noted that the first time this came before the Board, he speculated whether the Mobitrac could be used by a contractor to take care of location B1 and noted that this is still his question.

District Administrator Belfiori stated that if the Board wishes to have that option he would suggest it be talked about as a policy issue because the District then would be utilizing it for private use. He stated that this issue has come up for discussion in other situations. He suggested looking at it in a program-based way rather than a reactionary way. He stated that there is a lot of demand for the Mobitrac both from other agencies, cities and private entities. He noted that there is one staff member that is certified on that equipment and he is overly busy right now.

Manager Bradley stated that the Board had discussed the possibility of allowing a subcontractor whom the District trusts to rent it from the RCWD. He stated that if the Board denies this variance he believes the Board needs to at least have the conversation about making this available to Mr. Segler. He explained what a Mobitrac is to Mr. Segler.

Manager Waller noted that he has seen the Mobitrac in action and does not think it can do the work that Mr. Segler needs done. He stated that he agrees with District Administrator Belfiori that a policy will need to be developed for others to use the equipment. He stated that it was mentioned that Long Lake is the Resource Of Concern (ROC) and asked about this location. He asked if staff had taken a look at the whole ROC.

District Engineer Bowles stated that they had looked at the overall regulatory floodplain and that it is connected in some way for the 100-year flood. They did not look to see if this was a pothole for a smaller event where it wouldn’t be connected. He reviewed some photos of the general location of the site and the mitigation sites.
Mr. Segler stated that they have owned this property for 42 years and everything around them has already been developed but admitted that he doesn’t know about developments downstream.

District Engineer Otterness stated that this is a highly developed area, but the District is not the land use authority and he doesn’t know how many other homes could potentially go in the area. He noted that the District has not seen other suggestions from the applicant that would include ponded areas on the home side of the trees that could potentially be used. He asked the Board to keep in mind that it doesn’t necessarily require a wide channel to get water to function as a floodplain. He stated that it could be a pipe, a narrow ditch or a channel to get the water over there, it just requires some type of connection.

Mr. Segler stated that he is happy to give the Board a tour of his property because it is an interesting and difficult site.

Permit Coordinator/Wetland Specialist Tomczik stated that he has a few items in response to the general discussion by the Board that he would like to get on the record. He explained that the discussion included comments that obtaining the permit took 7 months. However, the District received an application in March and the Board took action in May. He noted that there was reference made to landmark trees but no information provided supported that the city identified any landmark trees or that the city found the proposed plan unacceptable. He stated that if there are landmark trees, the District would need more information from the city. He stated that a comment was made that some areas were not allowed for floodplain mitigation and noted that there are criteria for floodplain alteration and in part it must have a hydrologic connection and further digging in the wetland itself would also have regulatory considerations. As was already mentioned, the site drains to Long Lake which is a ROC and is a flooding water body and any storage on the landscape is applicable to how the floodplain is managed; interact and case by case impacts in the floodplain, the floodplain storage that exists, could be problematic to the adopted rule of the Board. He noted that it was evident in the plan itself of where the mitigation would take place which is now in conflict with the electrical run. He stated that the District doesn’t know the depth or width of the electrical run or any other utilities in that location. It may be possible to put some of the mitigation in; on top of it or adjacent to it. He stated that with some forethought, the utility could have been put outside of that proposed mitigation area although it may be been a bit longer of a run, it still probably could have hugged the driveway avoiding the defined floodplain mitigation area. There were comments made about the trees being inundated which is not necessarily true. The excavation is for the critical event and so the mitigation area may be dry during portions of the year and not have an effect on the trees. He noted that the city code of Shoreview was referenced a number of times within the application materials. He noted that City of Shoreview code standard applies to all development; 209.040, Sub C(1) states that all provisions necessary for the management of floodplain, surface waters and stormwater, as determined by the City ordinances and those of other agencies having jurisdiction, have been met.
Manager Wagamon asked if this application was approved in 1.5 months.

Permit Coordinator/Wetland Specialist Tomczik stated that it was roughly that amount of time. He stated that the application came in March and the Board took action on May 11, 2016.

Manager Waller stated that he would like to gather more information from the land authority as to in the entire area and what remains as developable land and how long term its plan is. He stated that this information is not the responsibility of the District but of the applicant and noted that much of this was missing from the application and will have to be gathered from the city.

District Attorney Holtman stated that there is no motion on the table and the Board can decide to postpone further action with or without a motion and give whatever direction it likes to staff.

Permit Coordinator/Wetland Specialist Tomczik stated that the District’s fee policy for variances is to have the applicant pay the actual cost based on the District’s policy. He noted that the current variance balance is near a zero balance so the applicant would have to provide additional funds for any additional variance review. He stated that the Board action that took place on the original permit on May 11, 2016, did include the regulatory wetland item.

Manager Bradley confirmed that the two proposed alternative locations that the applicant has considered would require excavation in the marsh and asked whether the District would then have to require replacement of the wetland impacts also.

District Engineer Otterness stated that it appears to be outside of the wetland, but in the floodplain.

Manager Bradley asked if there was an elevation problem that would cause it to be infeasible to put a pipe through there and dig someplace else.

District Engineer Otterness stated that he was not aware of any sort of practical difficulty that would prevent that.

Permit Coordinator/Wetland Specialist Tomczik stated that excavation in the wetland would be a regulated activity, however, excavation inside of the wetland itself doesn’t serve any floodplain mitigation because it is already wet at the normal water level. He stated that the landowner could explore the piping idea that Manager Bradley recommended. He noted that the Board has adopted a standard rule requiring compensatory mitigation and to review it on a case-by-case basis makes the potential for multitudes of these situations where the Board would have to assess in that manner; a larger burden for the District. He noted that it is written in a way that it is more of a blanket rule that we maintain the storage that is available on the landscape today and therefore stem any future problems.
President Preiner stated that she feels the Board needs to look at the cumulative effect and not the property effects.

Manager Haake asked if the Board denied this request if the RCWD would still work with the applicant to try to find someplace to accommodate the requirements.

Permit Coordinator/Wetland Specialist Tomczik stated that the applicant currently has a valid permit to provide mitigation in the location that is called “location A”. He noted that the applicant is welcome to amend that if he finds a better area that meets the design requirements and noted that the permit term may need to be extended.

District Attorney Holtman stated that he would counsel that the Board action be based on a resolution with findings, whether the Board chooses to deny the variance or approve it, which will minimize the chance that it will constitute a precedent for future cases. He suggests that the Board direct staff to come back at the next meeting with a proposed resolution or alternative resolutions to formalize the decision. He stated that the Board could move to postpone the matter to the next Board meeting and direct staff to return with both a completed record on open questions, as they are able, and a proposed resolution.

**Motion by Manager Bradley, seconded by Manager Waller, to deny the variance request due to: this request not being to solve the problem, but ignore it; a District-wide problem within this watershed to protect against flooding with new construction; the permit was granted on the assumption that the landowner felt this problem was solvable; trees are used as a buffer to control runoff and not to control flooding and the city’s purpose for the trees doesn’t solve the reason for the RCWD rule.**

Manager Wagamon stated that he was still ambivalent but at this time would side with the landowner.

Manager Haake stated that she feels Manager Bradley’s motion is very reasonable and there may still be something that can be done to find a spot for everything. She reiterated that she does not want to do anything that will set a precedent for future permits.

District Attorney Holtman asked if Manager Bradley’s motion is for the Board to take action today or for staff to come back to the next Board meeting with a resolution and findings of fact.

Manager Bradley stated that the purpose of his motion is to provide the necessary direction to staff to draft a resolution for the Board to consider at its next meeting, in order to take action on the request at that time.

Manager Waller concurred in Manager Bradley’s characterization of the motion.
**ROLL CALL:**

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

Motion carried 4-1.

Manager Waller clarified that a denial would be for this particular variance application and not to bear on any other future variance applications. He noted that there are numerous areas where the information the applicant has provided is incomplete or missing.

Mr. Segler stated that what he is hearing is that he will need to spend more money to hopefully get a different answer from the Board. He stated that he does not want to go broke doing this and it costs $500 each time his paperwork is reviewed.

President Preiner stated that Mr. Segler is welcome to use his own staff and bring the RCWD the information.

Manager Waller stated that all of the information will need to be reviewed by the District Engineer and legal department.

Mr. Segler asked if he would need to pay another $1,500 retainer to have Houston Engineering look at the new application information.

Manager Bradley reminded Mr. Segler that he has a valid permit to move his utilities and put the mitigation in location “A”.

Water Resource Specialist Kyle Axtell clarified that the RCWD requires the additional fees and upfront payments for variance review, but that if Mr. Segler determines how to comply with the permit through a permit amendment, these fees and payments would not be required.

Permit Coordinator/Wetland Specialist Tomczik affirmed that there would be no change in fees to do a permit amendment, however a variance requires payment in $1,500 increments from now on because Mr. Segler has exhausted the initial $1,500 as well as the $500 from the District.

Water Resource Specialist Axtell stated if Mr. Segler’s future intent is to provide for a different mitigation area entirely to meet the original permit requirement that would not require a variance or additional funding.

Permit Coordinator/Wetland Specialist Tomczik confirmed that this was correct.
Technician Berger noted that the application fee would be needed if Mr. Segler wanted to change the variance.

Mr. Segler asked what would happen if it came to the worst-case scenario and he just cannot move forward financially. He noted that District already has his surety and his fees.

Manager Waller stated that it will get more expensive and will eventually be added to his land taxes.

Permit Coordinator/Wetland Specialist Tomczik stated that the District holds escrow under an escrow agreement, however when projects are not in compliance, after the expiration of the permit and it is clear that the work is not in compliance with the permitted action, then the District does hold a compliance hearing and look for the work to be completed and the process escalates from there and would go to court. He stated that part of this may be that the District would enter the property and do the work itself as minimally invasive as possible, but there may be tree loss.

Manager Waller asked if Mr. Segler had looked into purchasing wetland credits.

Mr. Segler stated that he had purchased wetland credits for this project and believes that he has a surplus because they ended up having less impact than expected.

Permit Coordinator/Wetland Specialist Tomczik stated that the wetland credits are not the issue at hand but floodplain mitigation and there needs to be a replacement of impacted floodplain adjacent to the flooding water body.

District Attorney Holtman offered an observation not as Mr. Segler’s attorney, but noted that if his contractor was required to build the project in accordance with permits but placed the utilities where the permit required him to do the flood storage volume replacement, it appears as though his contractor or his engineer, if the engineer directed it, may have created some of this problem. He suggested that if so, they may want to help him out with some of these issues.

Mr. Segler asked if he would get a list from staff on the things that needed clarification and additional information.

President Preiner asked staff if they could provide this information to Mr. Segler.

Permit Coordinator/Wetland Specialist Tomczik stated that the Board’s discussion has explored a number of potential alternatives and based on that, staff can try to come up with a list but cautioned that it not become something that implies if the listed items are answered then the Board would approve the variance.
Manager Haake informed the Board that the video technician, Doug Setley, needs to leave the meeting at 11 a.m., and asked if the Board is comfortable continuing the meeting with audio which will be made available to the public upon request. The Board by consensus agreed.

District Administrator Belfiori requested Board discussion item #1 be the next agenda item so it may be televised. The Board by consensus agreed.

**ITEMS FOR DISCUSSION AND INFORMATION**

1. **Staff Reports.**
   Administrator Belfiori read the following statement:
   The Rice Creek Watershed District is currently developing its next 10-Year Watershed Management Plan. Residents of the District are invited to submit comments about their priorities and concerns within the watershed district. These comments will be considered by the Board of Managers. To be considered, comments should be submitted to wmp@ricecreek.org by December 31, 2018.

**ITEMS REQUIRING BOARD ACTION**

1. **Consider BWSR Watershed-Based Funding Pilot Program (WBFPP) Grant Agreement and Workplan. (Catherine Nester).**
   District Technician Catherine Nester explained that a draft work plan and grant agreement has been developed for the Watershed-Based Funding Pilot Program as integrated into the District’s existing Urban Stormwater Remediation Cost Share Program. She noted that the work plan is due October 3, 2018 and staff is recommending the Board authorize staff to submit the draft work plan and approve with non-material changes. She stated that staff is also recommending that the Board authorize District Administrator Belfiori to execute the grant agreement after the work plan is approved by BWSR.

   *Motion by Manager Bradley, seconded by Manager Wagamon, to authorize staff to submit the draft Work Plan to BWSR and approve with any non-material changes.*
   *Motion carried 5-0.*

   *Motion by Manager Bradley, seconded by Manager Wagamon, to authorize the Administrator to execute the grant agreement after the Work Plan is approved by BWSR. Motion carried 5-0.*

   Permit Coordinator/Wetland Specialist Tomczik informed the Board that a gentleman in the audience would like to address the Board as part of open mike and noted that he is here to speak on behalf of a permit applicant.

**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.**

Matt Wolsvik, Solution Blue Inc., stated that he represents Dr. Ong of Silver Lake Smiles Family Dentistry at 2350 Palmer Drive, New Brighton, MN. He stated that he believes Mr. Ong has submitted a variance request and was planning to attend today but was called to a dental emergency. He asked if Mr. Ong has submitted a variance request.

Permit Coordinator/Wetland Specialist Tomczik stated that the District has received an application and a variance application for the site. He stated the application process is complete and under the typical process of review, the variance application still needs a number of items and staff will be in communication with the applicant regarding that information. He stated that he believes the applicant is concerned about the timeframe and being able to break ground quickly and noted that staff will do their best to review this application as quickly as possible.

Mr. Wolsvik stated that the site has some challenges including the fact that there is no storm drain infrastructure and noted that it is currently a parking lot next to a service station. He noted that the soils in the area are not conducive to infiltration so it is difficult to meet the rate control and water quality provisions from the RCWD as well as the city.

Manager Bradley noted that Dr. Ong had called him to discuss his concerns and he directed him to contact Permit Coordinator/Wetland Specialist Tomczik and Technician Berger.

Permit Coordinator/Wetland Specialist Tomczik stated that they have been discussing these issues with the applicant. He stated that there is a trigger of the subdivision of the parcel itself and it is not necessarily just the piece of property he is buying. The rule would look at the remnant that the original owner retains and whether there is an option for any treatment on that portion.

**ADDITIONAL ITEMS REQUIRING BOARD ACTION-continued**

2. **Consider Final Payment to New Brighton for Hansen Park dredge spoil storage.**

Water Resource Specialist Kyle Axtell noted the project plans involve storage of dredged soil material from the pond on park property, which will be the location of two former youth ballfields. He stated that the grading has essentially been completed and the District Engineer has surveyed the stockpile dimensions, and certified the total volume to be 18,915 cubic yards in place and noted that the first 10,000 cubic yards are free. He stated the total paid for 8,915 cubic yards is $66,862.50.

**Motion by Manager Haake, seconded by Manager Waller, to approve a final payment for onsite sediment storage of $66,862.50 to the City of New Brighton pursuant to the February 23, 2016 Project Agreement. Motion carried 5-0.**
Manager Bradley noted that the contract would have allowed the District to pay up to $250,000, so this is quite a bargain.


District Technician Lauren Sampedro stated that the City of Arden Hills submitted its LWMP for consideration on January 31, 2018 and after comment submitted a final draft on September 19, 2018. She gave an overview of some of the water resource issues within the city such as water quality impairments, localized flooding and a volume debit with the District. She noted that the city is involved in the Southwest Urban Lakes TMDL and the Upper Mississippi River Bacteria TMDL. She noted that the city would like to partner with the District on some projects and highlighted a few of them for the Board. Staff finds that the City of Arden Hills LWMP is consistent with the District’s watershed management plan and State requirements and recommends approval.

Manager Bradley asked about problem 4.5E on page 100 regarding a volume debit with the District’s CWD and as a corrective action they note that the District passed allowances that a debit or credit could be addressed or utilized in non-public linear projects. It goes on to say that the City of Arden Hills will consider potential projects to address this debit as part of future street reconstruction and redeveloping areas, where feasible and cost effective. He asked if that proposed solution is consistent with District policy.

District Administrator Belfiori stated that about a year or two ago, the Board did pass a modification of the policy that would allow for use of both linear and non-linear projects to meet the debit, so it is consistent with the policy.

Motion by Manager Haake, seconded by Manager Waller, to adopt Resolution 2018-27: Approving Arden Hills Local Water Management Plan.

THEREFORE, BE IT RESOLVED that the RCWD Board of Managers hereby approves the City of Arden Hills local water management plan, as submitted on September 19, 2018.:

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

Motion carried 5-0.
4. **Consider Submission of Minnesota Association of Watershed Districts (MAWD) Resolution.**

Administrator Belfiori noted that just before the meeting a new packet of information on this item was distributed that replaces what was originally sent in the packet. He noted that the Board had directed staff to complete the background information and the resolution for Board consideration to utilize House File 2687 and Senate File 2419 which is what is before the Board for consideration. Staff recommends approval.

*Motion by Manager Haake, seconded by Manager Waller, to approve submittal of the proposed resolution, “MAWD Support of New Legislation in the 2019-2020 Biennium Modeled After HF2687 and SF2419 (2018) Regarding DNR Authority over Public Drainage Maintenance and Repairs” to the MAWD resolution committee before October 1, 2018, with non-substantial changes prior to submission based on coordination with other watershed district staff. Motion carried 5-0.*

Manager Haake stated that she believes other watershed districts will want to get involved and suggested that when the Board has MAWD resolutions that we have some of them stand with us and say that they support it.

District Administrator Belfiori stated every year, before the annual meeting, the Board of Managers will review the MAWD resolutions and will have an opportunity to consider them for the Board’s support and telling the delegate/proxy how they would like them to vote.

5. **Consider Revised 2018 Board Calendar.**

Administrator Belfiori informed the Board that It has come to the attention of staff that the Board approved 2018 calendar has Friday, November 9 scheduled for the observance of Veteran’s Day (Veterans Day is Sunday, November 11). He stated that it is required by law to change the Veterans Day observance to Monday, November 12, 2018 which will require moving the Board Workshop to Tuesday, November 13, 2018.

*Motion by Manager Waller, seconded by Manager Wagamon, to designate Monday, November 12 to observe Veterans Day and reschedule the Board’s Workshop to Tuesday, November 13, 2018. Staff will proceed with the proper noticing. Motion carried 5-0.*

6. **Consider Check Register dated September 26, 2018, in the amount of $374,480.53 prepared by Redpath and Company.**

*Motion by Manager Wagamon, seconded by Manager Haake, to approve check register dated September 26, 2018, in the amount of $374,480.53, prepared by Redpath and Company. Motion carried 5-0.*
ITEMS FOR DISCUSSION AND INFORMATION

2. October Calendar.
Administrator Belfiori stated that at the workshop, the Board decided to add a watershed planning workshop meeting on October 22, 2018, 1:00 p.m. at the District offices.

3. Managers Update.
None at this time.

ADJOURNMENT

Motion by Manager Waller, seconded by Manager Bradley, to adjourn the meeting at 11:02 a.m. Motion carried 5-0.