



REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, November 8, 2023

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

Meeting also conducted by alternative means
(teleconference or video-teleconference) from remote locations

Minutes

CALL TO ORDER

Vice President John Waller called the meeting to order, a quorum being present, at 9:00 a.m. He explained that President Michael Bradley was present at today's meeting, but had laryngitis, so he had been asked to run the meeting in his stead.

ROLL CALL

Present: President Michael Bradley, 1st Vice-Pres. John Waller, 2nd Vice-Pres. Steve Wagamon, Treasurer Marcie Weinandt, and Secretary Jess Robertson

Absent: None

Staff Present: District Administrator Nick Tomczik, Permit Coordinator/Wetland Specialist Patrick Hughes, Watershed Technician/Inspector Will Roach, Technician/Inspector Terrence Chastan-Davis, Communications and Outreach Specialist Kendra Sommerfeld (video-conference), Public Drainage Inspector Ashlee Ricci, and Office Manager Theresa Stasica

Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); District Attorney Louis Smith from Smith Partners (video-conference); John Kolb from Rinke Noonan (video-conference)

Visitors: None

SETTING OF THE AGENDA

District Administrator Tomczik suggested a rearrangement of the agenda to address subsequent meeting potential scheduling conflicts, in particular that Action Items #4 and #5 be moved to the top of the agenda.

Motion by Manager Weinandt, seconded by Manager Robertson, to approve the agenda, as revised. Motion carried 5-0.

READING OF THE MINUTES AND THEIR APPROVAL

Minutes of the October 25, 2023 Board of Managers Regular Meeting. Motion by Manager Robertson, seconded by Manager Wagamon, to approve the minutes as presented. Motion carried 5-0.

4325 Pheasant Ridge Drive NE #611 | Blaine, MN 55449 | T: 763-398-3070 | F: 763-398-3088 | www.ricecreek.org

BOARD OF
MANAGERS

Jess Robertson
Anoka County

Steven P. Wagamon
Anoka County

Michael J. Bradley
Ramsey County

Marcie Weinandt
Ramsey County

John J. Waller
Washington County

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

No.	Applicant	Location	Plan Type	Recommendation
23-060	Escape Properties LLC	Columbus	Final Site Drainage Plan	CAPROC 8 items
23-063	Wayne Kelly	Lino Lakes	After the fact Land Wetland Alteration	CAPROC 2 items Development
23-066	Anoka County Highway Department	Blaine & Lino Lakes	Final Site Drainage Plan Street & Utility Wetland Floodplain Alteration	CAPROC 7 items Construction Alteration

Permit Coordinator/Wetland Specialist Hughes stated there appeared to be some technical difficulties and the people attending the meeting remotely are unable to hear the meeting.

Manager Wagamon noted that he would like to discuss Permit No. 23-060 in the future. He stated that this water is being sent to an area that they are considering flooded with basically no drainage and noted that he did not understand what the District did there. He stated that he would like to talk to somebody about it so he can understand it better because he believes that there will be more of these coming through.

President Bradley stated that he was under the impression that Manager Wagamon had wanted to table Permit No. 23-060.

Vice-President Waller clarified that Manager Wagamon just wanted the Board to have a discussion on the issue for the outlet and to have a better explanation at a future meeting.

President Bradley asked for confirmation that Manager Wagamon was in support of the Board approving the CAPROC.

Manager Wagamon confirmed that he would be in support of this particular permit application, but reiterated that he would like to have additional discussion in the future because he was not quite sure he understands it, which was why his initial thought had been to vote in opposition of this item. He reiterated that he wanted to make sure he truly understood it better because he expects there to be a bunch more of this type of application coming through.

It was moved by Manager Wagamon and seconded by Manager Bradley, to approve the consent agenda as outlined in the above Table of Contents in accordance with RCWD District Engineer's Findings and Recommendations, dated October 26 & 31, 2023. Motion carried.

OPEN MIC/PUBLIC COMMENT

None.

ITEMS REQUIRING BOARD ACTION

1. 2023 MN Watersheds Resolutions – RCWD Voting and Delegation Decision Action

District Administrator Tomczik stated that at the workshop there was discussion that the proposed delegates would be President Bradley and Manager Weinandt with Manager Waller as an alternate.

Motion by Manager Weinandt, seconded by Manager Bradley, to designate Manager Bradley and Manager Weinandt as the delegates to the 2023 MN Watersheds business meeting, with Manager Waller as the alternate. Motion carried 5-0.

District Administrator Tomczik referenced the Watersheds annual meeting agenda and the recommendations from the Resolutions Committee. He reviewed what he understood the Board's position to be based on their workshop discussion: #1 – recommend support; #2 – do not recommend support; #3 – recommend support; #4 – recommend support; #5 – recommend support. He noted that their discussion did note that it may be problematic, but supported the idea; #6 – recommend support.

District Attorney Smith stated that regarding item #1 he thinks there is broad support for having the DNR get watershed district permits, but the caution he offers is the view that all State agencies must get permits from watershed districts and not just some State agencies, such as the DNR. He explained that he would recommend support of #1, with the change in the language to make it clear that it should be all State agencies and not just the DNR.

President Bradley stated that when he attempted to amend the language on the fly last year, he was told that they would not accept amendments.

Vice-President Waller asked if the Resolution Recommendation Committee would meet prior to the Watersheds business meeting.

District Attorney Smith noted that he was unsure if there would be another Resolution Recommendation Committee meeting, but the Board would meet and review the resolutions, so he thinks comments like these would still be timely to them prior to the business meeting.

Vice-President Waller suggested that they try to get that feedback to the Recommendations subcommittee prior to it coming to the floor.

Motion by Manager Bradley, seconded by Manager Weinandt, to instruct the delegates to vote in accordance with the stated RCWD positions related to the six resolutions, budget, and bylaw on the agenda at the 2023 MN Watersheds business meeting.

With regard to proposed Resolution #1, Manager Wagamon stated that he thought the District had taken the position that they did not need a permit from the DNR.

President Bradley clarified that Resolution #1 is saying the DNR needs a permit from the District.

President Bradley noted that last year, District Administrator Tomczik did an excellent job of getting up and explaining their support for one of the past resolution items. He stated

that he thinks that District Administrator Tomczik handling the explanation and narrative went over well and he would support a continuation of his handling this effort.

Vice-President Waller stated that he would like to make sure the Board has copies of the language for the resolutions.

Motion carried 5-0.

Manager Weinandt stated that they should also bring their information along to the meeting because she did not believe they were planning to distribute any paper copies.

District Administrator Tomczik noted that the Open Meeting law declaration came up at the workshop as an item of interest. He noted that the District's resolution on Open Meeting Law is that the District, itself, has declared the emergency and it is Covid based. He clarified that the District can declare an emergency regardless of the State's position and explained that he believed the District's declaration of an emergency seems to have a sound basis given the continuation of COVID matters and they can continue with it.

District Attorney Smith stated that the Board did not need to take action on this item but wanted to clarify that they were not talking about the District declaring an emergency, but that pandemic conditions are such that the District believes that it is not prudent to have all in-person meetings.

Vice-President Waller stated that this means that the District has the authority to call for a hybrid meeting if they felt it was necessary.

District Administrator Tomczik stated that he wanted to affirm his position that the District 'has' declared a situation under which they believe it is important to offer the opportunity for hybrid meetings for the public and the Board.

The Board discussed the Open Meeting Law declaration and various ways it could be understood including its specificity relating to Covid.

District Attorney Smith explained that the law currently provides for participation with active technology apart from the pandemic as long as you provide notice and are in a publicly accessible location. He noted that not participating in person because of a Covid related illness is a separate basis under the Open Meeting law for remote participation.

Manager Robertson stated that she thinks the Board is talking about two separate issues. She noted that when she was going through the orientation for serving on the Board, she was advised that the only way she could participate electronically was if she had Covid.

District Administrator Tomczik stated that both provisions provide a basis for a Manager to meet remotely, although the circumstances are different for each.

Manager Wagamon asked if the Board members could vote if they noticed the meeting appropriately and participated remotely.

President Bradley stated that they would be eligible to vote in both those circumstances. He explained that the purpose of the legislation was to eliminate the necessity of finding a public place and publishing the notice of their location.

Manager Robertson stated that she understands that and reiterated that she was under the impression that the only way that she could participate electronically in the full capacity as a Manager was under the Covid guideline. She expressed frustration because she had to miss a Board meeting in October because she was out of town at a conference and explained that she would have been happy to advise the District about her location in order to be able to participate.

Manager Weinandt stated that she thinks it also comes back to the Covid issue and gave the example of waking up one morning and not feeling well but were unsure if it was Covid. She stated that in this fictitious example, her mind is working well enough to participate in the meeting, but would not want to expose herself to others because she doesn't know if she has Covid. She stated that it once again comes back to the need for a doctor's note, which, in her opinion, seems very elementary school.

District Administrator Tomczik read aloud from the current declaration which says, 'based on advice from a healthcare professional.' He stated that he did not read that to say that they would need to have a note from the doctor because the general guidance is to treat it as though it may be Covid would be clear. He apologized to Manager Robertson if there had been a miscommunication or misunderstanding about her ability to fully participate remotely because there have been times in the past where Board members have participated remotely with proper published notice for other public locations.

District Attorney Smith offered a historical footnote that there are some boards that take the position that meetings should only be by people meeting in person. He noted that this Board has a history of taking that position, but it has evolved over time so they are now in the position where if someone is not able to be here in person, but can work with staff to provide appropriate notice for a public location, then it is a legitimate reason for remote participation.

District Administrator Tomczik referenced the Watersheds Legislative Platform that they intend to adopt. He directed the Board to page 199 of the packet and item 'd' at the top of the page. He noted that staff has worked with the consultant and explained that they do not see a duplication of those standards and gave a brief explanation of their reasoning. He stated that the thought is that the RCWD rules are not a duplication, but an advancement on the items, specific to the goals that the District is trying to achieve.

Lake and Stream Program Manager Kocian briefly recalled past Board discussions regarding water quality issues, specifically dredging. He noted that the item in the Watershed Legislative Platform specifically mentions management of internal loading which he thinks is good. He stated that strong technical justification is necessary prior to taking action. There should be scientific data to back up the idea that dredging will address the issue and has the likelihood of achieving an outcome that all of the partners are seeking.

President Bradley stated that the language in this documents states that it supports dredging as 'a' best management practice and not 'the' best management practice. He

asked if there can be multiple best management practices when they are looking at a problem.

Lake and Stream Program Manager Kocian confirmed that dredging is one of many available tools that could be used to address internal phosphorus loading.

Manager Wagamon stated that within this document there was also a mention of limited liability for the commercial salt applicators and he still has a problem with that. He stated that he wasn't sure why they didn't do their studies beforehand because, in his opinion, if they need limited liability then they haven't done enough research.

Vice-President Waller stated that he has been watching this for a number of years and feels this is a dead issue. He stated that the Board is probably supporting something that will really not go anywhere.

Lake and Stream Program Manager Kocian referred to page 200 of the packet, item 1.d., stated that because he has worked on the District's carp management program, he would be supportive of this item, but would suggest that they do not focus on any specific permit application for rough fish management, but instead have a broad focus on all of the different management actions available. He clarified that he was not suggesting any change to the verbiage, but as it was being discussed to add the thought process for a broader view.

2. Citizen Advisory Committee Appointment

District Administrator Tomczik stated there were still technical difficulties, so Communications and Outreach Coordinator Sommerfeld was not able to hear the Board. He stated that the information on the proposed appointment for the vacant Washington County position on the CAC was included in the packet.

Motion by Manager Waller, seconded by Manager Weinandt, to appoint Richard Thompson for membership on the Citizen Advisory Committee for 2023-2024.

Manager Weinandt noted that she believed that filling this vacancy would mean that all the vacancies would be filled. She asked if Manager Waller knew Mr. Thompson.

Vice-President Waller stated that he has not spoken with him yet but would most likely chat with him in the future. He noted that there has been a vacancy on the CAC for a long time and felt that if there was a volunteer willing to serve, that they should allow them to move forward.

Motion carried 5-0.

3. Ramsey County Ditch 4 – Accepting Repair Report and Preliminary Charge Allocation Recommendation

Public Drainage Inspector Ricci briefly outlined the resolution that accepts the District Engineer's repair report and water management district charges. She reminded the Board that they had discussed this at their recent workshop and noted that accepting this resolution would also set the Public Hearing for December 7, 2023 at 6:30 p.m. in the Roseville City Hall Council Chambers.

Motion by Manager Weinandt, seconded by Manager Bradley , to adopt Resolution 2023-10 Accepting the Engineer’s Repair Report And Charge Allocation Recommendation and Directing Further Repair Proceedings.

THEREFORE, the Rice Creek Watershed District Board of Managers makes the following:

ORDER

- A. The Board of Managers accepts the engineer’s Technical Memoranda for both the repair of RCD 4 and the allocation of charges for the costs of the repair.***
- B. The recommended scope of repair and charge allocation are subject to modification and final Board approval after public hearing.***
- C. The Board of Managers directs its administrator to notice acceptance of the Technical Memoranda and to set and notice a final hearing on both the repair and charge allocation at which the Board shall take public comment and consider an order directing construction of the repair and adoption of the charge allocation to be held on December 7, 2023 in the Council Chambers, Roseville City Hall, 2660 Civic Center Drive, Roseville, MN at 6:30 p.m.***
- D. Notice of the final hearing shall be provided as required by statute and District policy.***

ROLL CALL:

***Manager Bradley – Aye
Manager Robertson – Aye
Manager Waller – Aye
Manager Weinandt – Aye
Manager Wagamon – Aye
Motion carried 5-0.***

4. Stormwater Management Grant – Extension City of Fridley

Watershed Technician/Inspector Roach explained that the City of Fridley was requesting an extension for their 2021 Stormwater Management Grant Agreement for their University service road project. He noted that they would like to have a one year extension and reviewed the scope of the project. He stated that staff was recommending approval and that the new expiration date be December 27, 2024.

Motion by Manager Robertson, seconded by Manager Weinandt, to Amend the 2021 Stormwater Management Grant Agreement between the Rice Creek Watershed District and the City of Fridley by Amending the Expiration Date to December 27, 2024, and Delegate Signature Authority of Extension Memo to the District Administrator.

Manager Robertson asked if there was a policy established by the Board regarding requests for extensions on grants. She stated that she was in favor of granting this particular extension because it appears to be a legitimate hardship but cautioned that every time they say ‘yes’ they were setting some type of precedent. She stated that the

Met Council ran into trouble when they started saying yes to extensions without any real basis or policy. She shared the example of a project that was delayed until 2028 and noted that she was uncomfortable just extending a grant when a project was clearly not really ready to go. She suggested that if there is not already a policy in place, that the Board consider reviewing this issue.

District Administrator Tomczik stated that the District does not have a formal policy for granting extensions of grants and extensions have been considered on a case by case basis in the past based on the rationale provided and shared with the Board. He noted that in their budget process, these grant and cost-share funds are designated as ‘committed’, so they are retained for that specific purpose. He stated that Manager Robertson had made a valid point about the possibility of there being another need that has a greater priority when considering an extension.

Motion carried 5-0.

5. Washington Conservation District Contract Inspections Services

Technician/Inspector Chastan-Davis stated they were looking to extend the agreement for Inspection Services with Washington Conservation District (WCD) through 2024. He noted that they have been very pleased with the services provided by the WCD and have not exceeded the ‘not to exceed’ amount for their services.

Motion by Manager Waller, seconded by Manager Weinandt, to authorizing the administrator to amend the Washington Conservation District inspection service agreement for a term extension through December 31, 2023 to December 31, 2024, with an aggregate spending authority not-to-exceed \$40,500. Motion carried 5-0.

6. November 22, 2023 Check Register – Resolution Authorizing Treasurer Approval

District Administrator Tomczik explained that this resolution is presented because the Board only has one regular meeting in November and this action would authorize the Treasurer to approve the November 22, 2023 Check Register for payment.

Motion by Manager Bradley, seconded by Manager Wagamon, to adopt Resolution 2023-11 Authorization For Payment Of November 22, 2023 Check Register

THEREFORE BE IT RESOLVED that the Board of Managers authorize the District Treasurer to review and approve payment of the November 22, 2023 check register in an amount not to exceed \$400,000 for operating expenses, and \$150,000 surety returns.

ROLL CALL:

Manager Bradley – Aye

Manager Robertson – Aye

Manager Waller – Aye

Manager Weinandt – Aye

Manager Wagamon – Aye

Motion carried 5-0

Manager Weinandt noted that the Board would see this same type of resolution in December because there was also only one regular Board meeting in December.

7. **Check Register Dated November 8, 2023, in the Amount of \$121,615.67 Prepared by Redpath and Company**
Motion by Manager Weinandt, seconded by Manager Robertson, that she reviewed and approves the check register dated November 8, 2023, in the Amount of \$121,615.67 as prepared by Redpath and Company. Motion carried 5-0.

Manager Weinandt noted that there would be a quarterly treasurer's meeting on December 6, 2023.

ITEMS FOR DISCUSSION AND INFORMATION

1. District Engineer Update and Timeline

District Engineer Otterness gave a brief update on construction projects around the District including: ACD 53-62 – punch list items have been completed and the Board will be seeing the final payment/project close-out; JD 3 – Branches 1, 2, and 4 – excavation of the ditch began last week.

2. November/December Calendar

Vice-President Waller noted that later today the District's city/county partners meeting would be held in New Brighton.

District Administrator Tomczik noted that the December 13, 2023 Board meeting would be held in the evening in order to hold the Truth in Taxation meeting.

3. Administrator Updates

District Attorney Smith noted that the Minnesota Watersheds and the Red River Watershed Management Board have asked the Smith Partners and Rinke Noonan to assist in going through an old list of housekeeping changes to the Watershed Act in order to bring it up to date and deal with some longstanding ambiguities that need clarification.

District Administrator Tomczik attended the Washington County Board meeting along with President Bradley and Vice-President Waller. He noted that following the December 11, 2023 workshop meeting, there would be a small holiday gathering with pizza, provided by President Bradley. He stated that he was planning to pursue the payment of the Minnesota Watersheds annual dues for 2024 in the amount of \$12,500. He stated that he was not feeling well and would not be attending the City/County partners meeting this afternoon, but was confident that staff would be able to handle things in his absence.

4. Managers Update

President Bradley stated that he wished all counties would request annual updates from their water management organizations as Washington County does, because he thinks it is great. He stated that one of his big take-aways was that the Washington County Board were supportive of all the districts. He noted that the District's proposed tax increase of 6.2% fell in the middle of what others had proposed.

Manager Waller stated that he attended the Washington County meeting and gave an overview of some of the items that were discussed related to street sweeping. He noted that the Legislative Committee on water would be held on November 14, 2023 at 9:00 a.m. where they will be discussing the White Bear Lake situation. He stated that they held a meeting last week with Commissioners Miron and Karwoski and passed along various pieces of information but also encouraged the District to submit proposed legislation to them. He noted that he had a discussion with the Washington Conservation District Administrator and heard wonderful comments about the District staff.

District Administrator Tomczik stated that the Mn Pollution Control Agency is coming out with some possible grants and his hope is that the District first Resiliency Grant would be seen as foundational and will help them be successful in receive grant funds for RCD 2, 3, and 5 projects.

The Board noted the importance of the upcoming Veteran's Day.

ADJOURNMENT

Motion by Manager Robertson, seconded by Manager Wagamon, to adjourn the meeting at 10:15 a.m. Motion carried 5-0.