

**MINUTES OF THE REGULAR MEETING OF
THE MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

June 9, 2022

CALL TO ORDER

The regular meeting of the Minnehaha Creek Watershed District was called to order by President Sherry White at 7:00 p.m. on June 9, 2022.

MANAGERS PRESENT

Sherry White, William Olson, Jessica Loftus, Eugene Maxwell, Richard Miller, Arun Hejmadi, and Stephen Sando.

DISTRICT STAFF AND CONSULTANTS PRESENT

James Wisker, Administrator; Michael Hayman, Project Planning Manager; Brian Beck, Research & Monitoring Program Manager; Gabe Sherman, Planner – Project Manager; Chris Meehan, District Consulting Engineer; Consultant Chuck Lutz; Real Estate Counsel Jay Lindgren and Alex Sellke; and Louis Smith, District Counsel.

APPROVAL OF AGENDA

It was moved by Manager Miller, seconded by Manager Olson to approve the Agenda as distributed. Upon vote, the motion carried 7-0.

MATTERS FROM THE FLOOR

None.

CONSENT AGENDA

It was moved by Manager Miller, seconded by Manager Olson, to approve the items on the Consent Agenda consisting of approval of the May 26, 2022, Board meeting minutes, and the following resolutions:

Resolution 22-034: Approval to Release Request for Qualifications for Legal Services

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the District Administrator to issue a request for qualifications for legal services.

Resolution 22-035: Authorization to Issue a Request for Proposals for Audit Services

Minutes of the Regular Meeting
Minnehaha Creek Watershed District
Board of Managers
6-9-22

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the District Administrator to issue a request for proposals for financial audit services.

Resolution 22-036: Authorization to Renew Metro Watershed Partners Membership

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize the District Administrator to spend \$6,000 to renew MCWD's Metro Watershed Partners annual membership.

Resolution 22-037: Approve Organizational Chart and Authorize Hiring of Positions

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby approves the organizational chart (Attachment B), directs that these human resource adjustments be integrated into the 2023 budget, and authorizes the District Administrator to take the steps necessary to implement the approved changes including advancing the hiring of a Planner-Project Manager and Operations Manager in 2022.

Upon vote, the motion carried 7-0.

BOARD, COMMITTEE AND TASK FORCE REPORTS

President's Report: President White noted that she and Manager Sando attended the recent presentation of the Nokomis white paper to a town hall meeting on May 31, and that all managers attended the recent meet and greet event with the Citizens Advisory Committee.

Upcoming Meeting and Event Schedule: President White directed the managers to the meetings listed on the agenda.

ACTION ITEMS

Resolution 22-038: LCCMR Grant Update for MCWD's 2D Watershed Model Build

Mr. Brian Beck appeared before the Board of Managers to review the MCWD's application for a grant from the Legislative-Citizens Commission on Minnesota Resources to build a 2D watershed model. He explained that although the Commissioner had expressed support for approving the application, the MCWD project was omitted from the legislative approval of grants due to a drafting error. LCCMR staff urged the MCWD to reapply, and this application was due on May 26. Given the Board's previous

Minutes of the Regular Meeting
Minnehaha Creek Watershed District
Board of Managers
6-9-22

authorization to submit a grant application, staff proceeded to meet the May 26 deadline and now seeks the Board's ratification of the most recent proposal. Mr. Beck explained the updated plan and timeline associated with the new proposal.

It was moved by Manager Olson, seconded by Manager Maxwell to adopt Resolution 22-038 as follows:

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby approves and ratifies the District's proposal for funding submitted on May 26, 2022 to the Legislative-Citizen Commission on Minnesota Resources in an amount of \$738,000, for the development of machine learning and 2D modeling tools.

Manager Maxwell asked whether any changes at the Legislature following the upcoming elections could affect this application's chances. Mr. Beck noted that the MCWD lobbyist Joel Carlson seems confident with the prospects at the LCCMR, given the public apology for the oversight in the previous round. Upon a question from Manager Loftus, Mr. Beck noted that it will be possible to use the upcoming Land and Water Partnership engagement process to give cities notice of this project. *There being no further discussion, upon vote, the motion carried 7-0.*

DISCUSSION ITEMS

325 Blake Road Purchase and Sale Agreement

Mr. Michael Hayman appeared before the Board of Managers to introduce a request from Alatus to revise the purchase and sale agreement for developable portion of the site, approximately 11.45 acres. He reviewed the status of the project and explained that Alatus is requesting a change to the agreement to accelerate a portion of the two-phase takedown schedule to preserve an allocation of tax exempt multifamily housing revenue bonds for the project. He noted the letter of June 9 from Alatus setting forth their proposal.

Mssrs. Bob Lux, Matt Mason and Josh Tolberg appeared before the Board of Managers on behalf of Alatus. Mr. Lux explained that in order to preserve the housing bond allocation, Alatus must acquire the land for the affordable housing development on or before July 8, 2022. Alatus is proposing to increase the earnest money deposit from \$100,000 to \$1 million and allow the deposit to be immediately nonrefundable. He reviewed the status of the other elements of the project and invited Mr. Tolberg to describe the status of raising capital investment for Building C. Mr. Tolberg stated that allowing the affordable housing portion of the project to proceed now will show momentum for the project and promote investment in Building C.

President White asked a series of questions of Alatus concerning whether there is any flexibility with the bonding authority, implications for the rest of the development, any opportunity to reapply for housing bonds in the future, and assurances to complete the whole project. In response to a question from Manager Miller, Mr. Lux explained the exclusive agreement with JLL on capital finance. In response to a question from Manager Maxwell, Mr. Lux explained that the affordable housing component is 50% of Area Median Income or less. Manager Loftus inquired about the timing of the other phases of the project and expressed concern about the risk if these other phases are not timely completed. Upon a question from Manager Maxwell, Mr. Lux affirmed that Building A will contribute its proportion to maintenance of water facilities.

It was moved by Manager Miller, seconded by Manager Maxwell to move into closed session for the purpose of discussing the terms of the offer to sell 11.45 acres of 325 Blake Road in Hopkins to Alatus. Upon vote, the motion carried, 7-0.

Whereupon the Board of Managers went into closed session.

The Board of Managers returned to open session. It was moved by Manager Miller, seconded by Manager Maxwell to adopt the following Resolution:

BE IT RESOLVED: Subject to satisfaction of the conditions set forth below, the MCWD Board of Managers will agree to accept Alatus' proposal to amend the Real Estate Purchase Agreement dated May 9, 2022 between MCWD and Alatus relating to 325 Blake Road (the "Purchase Agreement") upon the general terms set forth below, all in order to facilitate Alatus's financing and construction of 116 units of income-restricted housing in "Building A" of the Project.

Alatus Proposal:

- A. Separate the original "Phase 1 Property" into (i) the "Phase 1A Property", to consists of Lot 2, Block 2 of the Plat, and (ii) the "Phase 1B Property", to consists of Lots 1, 2, 3, and 4, Block 1 of the Plat.***
- B. Alatus and MCWD to close on the purchase and sale of the Phase 1A Property on or before July 8, 2022.***
- C. At the Phase 1A Property closing, Alatus will make a partial payment of the Phase 1 Purchase Price in the amount of \$1,000,000. The remaining \$7,000,000 of the Phase 1 Purchase Price to be payable at the closing of the Phase 1B Property at the time of the original "Phase 1 Closing".***
- D. Alatus to deposit \$1,000,000 of "nonrefundable" earnest money into escrow with the Title Company pending closing of the of the Phase 1B Property.***

- E. MCWD to grant Alatus the following easements at the Phase 1A Property closing (the "Easements"):**
- a. a 24-month temporary construction and parking easement over Outlot C and Block 2, Lot 1 to permit Buyer to construct the Building A improvements.**
 - b. an access easement for street access from Building A to Lake Street over the future street to be platted in Outlot C; and**
 - c. an easement to permit Buyer to construct the public walkways and other amenities immediately adjoining Building A, substantially in accordance with the Master Development Plan for the Project.**

MCWD Conditions:

- 1. The proposed \$1,000,000 earnest money must be additional earnest money and be applicable only to "Phase 1B" and the remainder of the Phase 1 Purchase Price.**
- 2. The original \$100,000 earnest money must still be deposited by Alatus at the Phase 1B Closing and be applicable to Phase 2 and the Phase 2 Purchase Price.**
- 3. The proposed \$1,000,000 earnest money must be refundable to Alatus only if (i) MCWD commits a material default under the Purchase Agreement that is not cured during any applicable cure period, (ii) MCWD fails to satisfy the "Watershed Readiness Condition" (as modified below) and MCWD has at least 90 days to cure any alleged failure of the Watershed Readiness Condition, or (iii) MCWD encumbers the property with new liens or encumbrances which materially and adversely affect the Project and which liens and/or encumbrances are not released before the applicable closing date. The proposed \$1,000,000 earnest money shall otherwise be nonrefundable if Alatus terminates the Purchase Agreement for any other reason.**
- 4. There must be an additional "Seller Condition" to the Phase 1B Property closing that Alatus has secured all financing and approvals to commence construction of the Building C.**
- 5. The Watershed Readiness Condition must be modified as follows:**
 - a. Alatus must acknowledge and accept MCWD's 90% construction drawings for the Watershed Project.**
 - b. Alatus must acknowledge that any changes to Alatus's Stormwater Offset plans which require a change to the Watershed Project plans will not trigger the Watershed Readiness Condition**
- 6. None of the Easements will impair MCWD ability to construct the Watershed Project.**

7. *Acknowledgment from Alatus that MCWD is not in default under the Purchase Agreement and that and no event has occurred which with notice or lapse of time or both would constitute a default under the Purchase Agreement.*
8. *General clarifications to scope and requirements of proposed Easements.*
9. *Alatus will reimburse MCWD for consultant and legal costs incurred in the review of this amendment to the Purchase Agreement.*

Upon roll call vote, the motion carried 7-0 as follows:

Hejmadi: Aye
Loftus: Aye
Sando: Aye
Miller: Aye
Olson: Aye
Maxwell: Aye
White: Aye

Minnehaha Preserve Boardwalk Update

Mr. Hayman noted that Mr. Thomas Radio was present for this discussion. *It was moved by Manager Miller, seconded by Manager Olson to move into closed session for the purpose of receiving confidential advice from legal counsel concerning litigation strategy on the Minnehaha Preserve Boardwalk lawsuit. Upon vote, the motion carried, 7-0.*

The Board of Managers went into closed session.

The Board of Managers returned to open session. It was moved by Manager Miller, seconded by Manager Olson to approve purchase of NextPoint e-discovery software for a sum not to exceed \$13,000. Upon vote, the motion carried, 7-0.

STAFF UPDATES

Administrator's Report

Mr. Wisker reported on the following items:

1. Water levels have increased with Spring precipitation approximately 12 inches above normal. Lake Minnetonka is at 929.18, and the control structure is open,

Minutes of the Regular Meeting
Minnehaha Creek Watershed District
Board of Managers
6-9-22

releasing at 12 cubic feet per second. Minnehaha Creek is flowing at Hiawatha at 26 cubic feet per second.

2. Staff are working with an interested landowner and developer near Holy Name Lake in Medina. Initial review of a proposed 5-lot subdivision revealed the opportunity to collaborate in a 16-acre wetland restoration project. Mr. Wisker has exercised his authority to waive any conflict and authorized Stantec to work with the landowner and developer to pursue this opportunity, and he wished to inform the Board accordingly.
3. MCWD is collaborating with Great River Greening for tree planting.
4. As President White noted earlier, the May 31 Nokomis town hall meeting was well attended by approximately 150 residents. Manager Hejmadi commented that he felt the meeting reflected excellent preparation, skillful facilitation of questions and answers by Mr. Meehan, and sensitive facilitation by Council Member Koski.

Adjournment

There being no further business, President White declared the meeting of the Board of Managers adjourned at 10:00 p.m.

Respectfully submitted,



Eugene Maxwell, Secretary