

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

October 26, 2023

CALL TO ORDER

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order by President Sherry White at 7:00 pm on October 26, 2023, at the MCWD offices, 15320 Minnetonka Boulevard, Minnetonka, Minnesota.

MANAGERS PRESENT

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

MANAGERS ABSENT

None.

DISTRICT STAFF AND CONSULTANTS PRESENT

James Wisker, Administrator; Michael Hayman, Director of Project Planning; Abigail Ernst, Permitting Technician; Chris Meehan, District Consulting Engineer; Chuck Lutz, Consultant; Alex Sellke, Real Estate Counsel; and Louis Smith, District Counsel.

MATTERS FROM THE FLOOR

None.

APPROVAL OF AGENDA

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

CONSENT AGENDA

It was moved by Manager Hejmadi, seconded by Manager Maxwell to approve the items on the Consent Agenda consisting of approval of the October 12, 2023 Board Meeting Minutes; approval of the General Check Register, including check numbers 42395 through 42421 in the amount of \$204,968.49, electronic funds withdrawals of \$39,553.74, Managers Per Diems and Reimbursements of \$2,841.94, employee reimbursements of \$0, and payroll electronic funds withdrawals and disbursements of \$144,706.97. for a total of \$ 392,071.14; the Surety Check Register Bremer Bank fee of

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\$27.00, and payment of \$1,500 to Brush Dental Studio for permit 21-129; the Wire Check Register in the amount of \$2,461.58 to Bremer Bank for office building refinance; and the following resolution:

Resolution 23-064: 2023 American Geophysical Union Conference Attendance

NOW, THEREFORE, BE IT RESOLVED, that the MCWD Board of Managers authorizes four (4) staff to attend the American Geophysical Union National Conference for a cost not to exceed \$9,500 for registration, travel, and accommodations.

Upon vote, the motion carried 7-0.

BOARD, COMMITTEE AND TASK FORCE REPORTS

President's Report: President White reported that she had attended a briefing for the Carver County Board of Commissioners with Manager Olson and Mr. Wisker, and the quarterly Metro Watersheds meeting. She asked Manager Olson and Manager Maxwell to provide further reports.

Manager Olson reported that Mr. Wisker's presentation to Carver County included the MCWD's budget, projects completed, and plans for upcoming projects, as well as opportunities to coordinate with local communities on development opportunities. He noted that the presentation was well received by the commissioners.

Metro Watersheds Quarterly Meeting Report: Manager Maxwell reported that the Metropolitan Council provided information on water policy research and other state agencies provided updates.

Upcoming Meeting and Event Schedule: President White noted the upcoming meeting schedule.

ACTION ITEMS

Resolution 23-065: Authorization to Release Proposed Rule Revisions for Public Comment Period

Ms. Abigail Ernst appeared before the Board of Managers to review the request for board action. She traced the purpose of the rules revision undertaking, the process of engagement with the citizens advisory committee, technical advisory committee, and Operations and Programs Committee of the Board of Managers. She summarized the proposed rule revisions and requested that the Board authorize release of the proposed changes for a 45-day public comment period.

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It was moved by Manager Olson, seconded by Manager Hejmadi to adopt Resolution 23-065 as follows:

NOW, THEREFORE, BE IT RESOLVED that the MCWD Board of Managers authorizes the District Administrator to release the proposed rule revisions for public comment in accordance with Minnesota Statutes section 103D.341, and schedule and issue notice of a public hearing on the revisions as part of the January 11, 2024 meeting of the Board of Managers.

In response to a question from Manager Olson, Ms. Ernst reviewed how the original permit would be referenced for individual fast track dredging permits. Manager Olson asked whether comments could be made on the proposed rule revisions through the MCWD web site, and Ms. Ernst noted that email would be an easier process. In response to a question from Manager Maxwell, Ms. Ernst noted that there has been 100% engagement by the cities in the watershed.

Upon vote, the motion carried 7-0.

Resolution 23-066: Second Amendment to the 325 Blake Road Purchase and Sale Agreement

Mr. Michael Hayman appeared before the Board of Managers to review the status of extensions to Alatus pursuant to the purchase and sale agreement for 325 Blake Road. He noted that the second extension granted under the agreement would expire on November 3, 2023. Manager Miller noted that he intended to introduce a resolution to direct staff to work on other project priorities.

Mr. Hayman noted the presence of real estate counsel Alex Sellke and consultant Chuck Lutz. Upon recommendation of Mr. Smith, ***it was moved by Manager Olson, seconded by Manager Maxwell to move into closed session for the purpose of discussing the possible amendment of terms for the sale of 325 Blake Road in Hopkins. Upon vote, the motion carried, 7-0.***

Whereupon the Board of Managers went into closed session. The Board of Managers returned to open session.

Manager Miller introduced the following resolution, seconded by Manager Loftus:

Direction to administrator for staff to discontinue work on 325 Blake Road and reassign to other priorities

WHEREAS, in 2011 the District acquired 325 Blake Road, which was home to a large cold storage warehouse, and envisions the 17 acre site as a key piece of

the Minnehaha Creek Greenway, which will provide 109 acres of a connected corridor of restored creek and habitat through St. Louis Park and Hopkins, providing more opportunities for the public to view and access Minnehaha Creek while improving water quality;

WHEREAS, the District's approach to the redevelopment of 325 Blake Road has focused on partnerships, including working in partnership with the city of Hopkins, Hennepin County, Southwest LRT Community Works, and community groups like the Blake Road Community Collaborative; portions of this project are funded by the Minnesota Public Facilities Authority, the Clean Water, Land, and Legacy Amendment, Hennepin County, and Metropolitan Council;

WHEREAS, the District's vision for 325 Blake Road was informed by a robust community input process. The community identified wanting a sustainable development that: features Minnehaha Creek; allows public access to the creek and adjoining Minnehaha Creek Greenway, including Cottageville Park; and transit-oriented elements, including retail and parking and mixed-income housing;

WHEREAS, the District completed demolition of the cold storage facility in 2018, and has devoted considerable time and resources to ongoing planning for the redevelopment of the site, including multiple meetings and discussions with Alatus; these discussions indicate that Alatus' assessment of market conditions and its access to capital are such that it is not ready to proceed with the development at this time;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers directs the District administrator to redirect staff currently assigned to the 325 Blake Road project to work on other District priorities until such time as the administrator determines that renewed work with Alatus would be productive and lead to real, substantial progress in the redevelopment of the site.

It was moved by Manager Hejmadi, seconded by Manager Maxwell to table this resolution. Upon vote, the motion carried 7-0.

It was moved by Manager Maxwell, seconded by Manager Loftus, to adopt Resolution 23-066: Second Amendment to the 325 Blake Road Purchase and Sale Agreement as follows:

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby approves the Second Amendment to the 325 Blake Road Real Estate Purchase Agreement and authorizes the

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President to execute the amendment with any non-substantive changes in consultation with legal counsel.

It was moved by Manager Loftus, seconded by Manager Miller to amend the attached Second Amendment to the 325 Blake Road Real Estate Purchase Agreement at Section 5 to provide that the sum for the additional extension payment from additional earnest money be \$100,000 instead of \$50,000. Upon vote, the motion on the amendment carried, 7-0.

Upon roll call vote, the motion to adopt the resolution as amended carried 6-1 as follows:

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

BOARD DISCUSSION ITEMS

None.

BOARD INQUIRIES, ISSUES, AND IDEAS

Manager Miller noted for the record that he has engaged Stantec to address flooding issues at his residence.

STAFF UPDATES

Administrator's Report

Mr. Wisker reported on the following matters:

1. Water levels: Precipitation year to date is 26.5 inches, about 2 inches below normal. Precipitation in October has been 3.5 inches, about 1.4 inches above normal. Lake Minnetonka is at elevation 928.49 and the creek is flowing 85 cubic feet per second at Lake Hiawatha.
2. Minnehaha Preserve Boardwalk: Since the defective work was first identified, staff has worked with counsel to consistently communicate in writing clear expectations for resolving the defective work through the process identified in the contract. The

contractor, JTS, has proposed to correct nine of the eleven Defective Work Categories to the original design specifications. For the remaining two Defective Work Categories, JTS has proposed engineering solutions to these defective issues. To do so, in accordance with the contract documents, JTS must provide engineer drawings and calculations for SRF's review and conformance with the design.

JTS is responsible for submitting the proposed engineering solutions to St. Louis Park for State code compliance. MCWD has applied proactive pressure to try to drive pace, however, the contract documents have a clear process that must be followed. Meanwhile, MCWD has communicated the costs incurred to date by SRF and legal counsel to review the defective work and proposed corrections; as well as the liquated damages that have been accruing since the project completion date of June 30, 2023.

MCWD has communicated to JTS that it is in JTS' best interest to demonstrate efficient progress, complete the work with good quality, and complete the corrections at the earliest time. Today MCWD and SRF were informed that JTS retained an attorney. MCWD staff will work with legal counsel to outline the facts and orderly process that MCWD has run to date; and have counsel provide that to JTS' attorney. MCWD staff are hopeful that JTS' attorney will help JTS find a critical path to complete the work.

3. Carver County Presentation: As noted by President White and Manager Olson, Mr. Wisker presented an update to the Carver County Board of Commissioners on the Six Mile Creek Halsted's Bay projects, which was warmly received.

4. Carver County Transportation Improvements: the county has a series of significant infrastructure improvements planned as part of the Arboretum Area Transportation Plan, including Trunk Highway 5, County Road 11, and 82nd Avenue. MCWD is reaching out in partnership to address wetland mitigation and stormwater management issues for Highway 5. MCWD has noted Lake Zumbra residents concern for upsizing the culvert between Lake Zumbra and the Auburn wetland. Staff have engaged with the City of Victoria engineer and she is available to present to a committee meeting in the future.

5. A steering committee meeting has been scheduled for December 6 for the partnership of the City of Minneapolis, Minneapolis Park & Recreation Board, and MCWD. A cooperative agreement is being prepared for discussion at the meeting, along with plans for three pilot projects.

6. Follow up on Taft Alum Injection Project: staff have continued discussions with the City of Richfield seeking to bring the project into performance levels within designed targets. At MCWD's request, Barr Engineering was retained by the city to evaluate the project's ability to meet the targets. Barr's report is near completion and Mr. Wisker will be meeting the director of public works tomorrow and to plan next steps.

7. Conferences: MCWD staff have attended five different conferences recently and are bringing specific learnings to apply to our work. Interesting questions at the University

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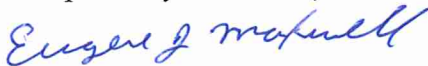
of Minnesota Water Resources conference on the Morningside project included potential downstream impacts.

8. Personnel: recent hires include Sophia Green, Planner-Project Manager; Maggie Menden, Permitting Assistant; Tessa Vacek, Administrative Services Manager; and Maia Irvin, Communications Coordinator. An internal process is being explored to fill another planning-project manager position.

Adjournment

There being no further business, President White declared the meeting of the Board of Managers adjourned at 8:59 p.m.

Respectfully submitted,



Eugene Maxwell, Secretary