

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

September 12, 2024

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 p.m. on September 12, 2024, at the MCWD offices, 15320 Minnetonka Boulevard, Minnetonka, Minnesota.

MANAGERS PRESENT

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

MANAGERS ABSENT

Arun Hejmadi.

DISTRICT STAFF AND CONSULTANTS PRESENT

James Wisker, Administrator; Michael Hayman, Director of Project Planning; Veronica Sannes, Permitting Technician; Chris Meehan, District Consulting Engineer; and Louis Smith, District Counsel.

APPROVAL OF AGENDA

It was moved by Manager Olson, seconded by Manager Miller, to approve the Agenda as distributed. Upon vote, the motion carried, 6-0 (Manager Hejmadi absent).

MATTERS FROM THE FLOOR

None.

CONSENT AGENDA

It was moved by Manager Sando, seconded by Manager Maxwell, to approve the items on the Consent Agenda consisting of approval of the August 22, 2024, Board meeting minutes, and the following resolutions:

Resolution 24-049: Authorization to Release RFP for Audit Services

***NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek
Watershed District Board of Managers hereby authorizes***

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the District Administrator to issue a request for proposals for financial audit services.

Resolution 24-050: Citizens Advisory Committee Member Appointment Adjustment

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby appoints Emily Balogh as a non-resident member of the CAC, with a term expiring on December 31, 2024.

Upon vote, the motion carried 6-0.

BOARD, COMMITTEE AND TASK FORCE REPORTS

President's Report: President White reported that she recently joined Mr. Wisker and Ms. Hoppe in meeting with Hennepin County Commissioner Heather Edelson to brief her about the work of the District.

President White noted the upcoming meeting schedule presented in the agenda.

PUBLIC HEARINGS & PRESENTATIONS

None.

PERMITS REQUIRING A VARIANCE OR DISCUSSION

Permit 23-367: Forest Lake Hydraulic Dredging

Ms. Veronica Sannes appeared before the Board of Managers to review the permit application. She reviewed the background on the location and proposed scope of the dredging project, the proposed hydraulic method for dredging, the application of MCWD rules to the proposed project, and the requested rule exception to allow use of a geofabric bag to contain dredging spoils instead of the required earthen dike. Ms. Sannes noted that historic aerial imagery indicates that the channel was first dredged for navigation between 1957 and 1964. The Minnesota Department of Natural Resources issued a dredging permit in 1989, and an application was submitted for an MCWD permit, but there is no evidence that an MCWD permit was issued or that dredging occurred at that time. Over time, lakebed material and/or sediment has moved into the originally dredged area, impeding navigational access and prompting the Applicant's proposal for the Project.

Following discussion, it was moved by Manager Miller, seconded by Manager Olson to approve the requested exception, finding that the Applicant has provided sufficient

evidence that the proposed project will achieve water resource outcomes at least equivalent to an earthen dike, within the meaning of section 5(a) of the Dredging rule. In response to a question from Manager Olson, Mr. Corey Truebenbach of Twin City Outdoor Services appeared before the Board of Managers to discuss their preparation and planning for using the geofabric bag. In response to a further question from Manager Olson, Ms. Sannes explained that the landlocked parcel owner was not a part of the application because they did not have riparian access. Manager Maxwell asked about the removal of the dredging spoils and Ms. Sannes and Mr. Truebenbach explained that it takes two to six weeks for the sediment to dry and there is an incentive for everyone to remove the spoils as soon as possible.

President White noted that 1989 was a drought year and that is a likely explanation for why the permitted dredging project did not proceed at that time. In response to a question from Manager Olson, Ms. Sannes noted that the three alternative locations for disposal of the spoils will depend on the contents and existence of any contamination. In response to a question from Manager Loftus, Ms. Sannes and Mr. Meehan reviewed the 3:1 side slopes, the 15 foot width of the channel, and the volume calculations for sediment removal. In response to a further question from Manager Loftus, Mr., Truebenbach noted that his company had no prior experience with such a project but was undertaking a similar project now for a commercial client. Manager Miller expressed his appreciation for Ms. Sannes' presentation and review of the application; he stated that he felt comfortable that all relevant aspects of the project had been reviewed. Mr. Smith noted that while this appears to be the first application for hydraulic dredging in recent memory, he recalled a few such projects in the 1980s. *There being no further discussion, upon vote, the motion to approve the exception carried 6-0.*

It was moved by Manager Olson, second by Manager Maxwell to approve the permit application with the conditions recommended by staff. Upon vote, the motion carried 6-0.

ACTION ITEMS

Adoption of the 2025 Budget and Certification of the 2025 Tax Levy

Mr. James Wisker appeared before the Board of Managers to review the request for board action. He reviewed the MCWD budget process and provided a summary of the proposed 2025 budget and tax levy.

It was moved by Manager Sando, seconded by Manager Loftus, to adopt Resolution 24-051: Adoption of the 2025 Budget and Workplan, and Notice of November 21, 2024 Public Meeting as follows:

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby adopts the 2025 budget of \$14,420,445 and associated workplans and fund transfers, presented to the Board on September 12, 2024; and

BE IT FURTHER RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby announces a public meeting for further comment on the 2025 budget, scheduled for November 21, 2024.

Upon roll call vote, the motion to adopt Resolution 24-051 carried, 6-0 as follows:

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

It was moved by Manager Loftus, seconded by Manager Sando to adopt Resolution 24-052: Minnehaha Creek Watershed District Board of Managers Certified 2025 Tax Levy as follows:

NOW, THEREFORE, BE IT RESOLVED that the Secretary, in accordance with Minnesota Statutes, shall certify to the Auditors of Hennepin and Carver Counties, in amounts bearing the same proportion to the total levy as the net tax capacity of the area of county within the watershed bears to the net tax capacity of the entire watershed district, the following sums to be raised by a levy on all taxable property in the Minnehaha Creek Watershed District Number 3 for the year 2025 and the purposes noted below.

2025 Levy: \$9,869,513 for the purpose of paying the cost of watershed management and implementation as provided by Minnesota Statutes, Sections 103B.241 and 103B.251.

Upon roll call vote, the motion to adopt Resolution 24-052 carried, 6-0 as follows:

Maxwell: Aye
Olson: Aye
Miller: Aye
Sando: Aye
Loftus: Aye

Hejmadi: Absent
White: Aye

Prior to the closed session on 325 Blake Road, President White turned to the other remaining agenda items.

STAFF UPDATES

Administrator's Report

Mr. Wisker reported on the following items:

1. With warm and dry weather recently, Lake Minnetonka elevation is now at 929.12. The Gray's Bay Dam is now discharging at 50 cubic feet per second in anticipation of bringing the Lake Minnetonka level to 928.6 for the winter. Minnehaha Creek is flowing at 111 cubic feet per second at Hiawatha.
2. Mr. Wisker recently participated in a panel discussion on stormwater infrastructure pressures and climate action at a conference sponsored by the Minnesota Stormwater Coalition and the St. Anthony Falls Laboratory.
3. Three new staff will be starting at the MCWD in the coming weeks: Eva Bacmeister (Water Resource Scientist), Andrew Stephenson (Permitting Program Manager) and James O'Brien (Outreach Coordinator).

BOARD INQUIRIES, ISSUES, AND IDEAS

None.

BOARD DISCUSSION ITEMS

325 Blake Road Restoration and Redevelopment

Mr. Michael Hayman appeared before the Board of Managers to provide an update on redevelopment and the MCWD project at 325 Blake Road in Hopkins. He noted an upcoming meeting of the project liaisons with Hopkins and Alatus representatives in the next week, and a looming November 1 deadline for Alatus under the 3rd Amendment to the Purchase and Sale Agreement.

Mr. Hayman noted that MCWD acquired this site to treat regional stormwater, restore Minnehaha Creek, create access to the Creek and the Minnehaha Creek Greenway. He

reviewed the developer selection process which led to selection of Alatus in June 2021 and identified Wellington as an alternative developer. The MCWD hosted a design charette in July 2021 in partnership with the City of Hopkins and Hennepin County in order to have key agency partners inform a master plan and the negotiation of a purchase and sale agreement with Alatus. The Purchase and Sale Agreement was executed May 9, 2022, and provided a 12-month feasibility period for due diligence inquiry. Pursuant to the agreement Alatus exercised a right to a first extension of this period from May 9, 2023, to August 7, 2023, and then a second extension from August 7, 2023, to November 5, 2023. The agreement was first amended on June 23, 2022, to accommodate Alatus' request to proceed with the purchase and development of the Chorus affordable housing development parcel out of sequence with the original phased process provided under the Purchase and Sale Agreement. In order to provide Alatus additional time to pursue the city bonding and to facilitate development of the project components by secondary developers Ron Clark and Artessa, a second amendment was negotiated effective November 3, 2023, to July 1, 2024. Alatus did not obtain necessary project financing within this period provided in the second amendment. Not receiving any communication from either Alatus or Hopkins as the Agreement was set to expire, the MCWD unilaterally elected to provide a third amendment to the Agreement to offer Alatus one further opportunity to obtain necessary financing by November 1, 2024, and provided for MCWD to have exploratory discussions with other developers.

Mr. Hayman noted that Alatus has \$1 million in earnest money at risk if they are unable to deliver the project as provided in the agreement. Ron Clark Townhomes have committed in a letter of intent to pay MCWD \$2 million to acquire and develop the townhome parcel of Phase 1B, and Artessa has committed in a letter of intent to pay MCWD \$2 million to acquire and develop the senior housing parcel of Phase 1B. The MCWD is ready to proceed with its stormwater management project with funding provided through the Minnesota Public Facilities Authority. In order for MCWD, Ron Clark and Artessa to proceed, however, a road must be constructed through the site. This road construction is supported by bonds issued by the City of Hopkins and paid through assessments on Buildings C and D, which includes the tower development in Phase 2 of the project. As this finance arrangement is currently structured there will be no road and no development at the site until the Buildings C and D are financed and ready to go.

Mr. Hayman noted that the MCWD now needed to consider its options to consider how much longer the District should defer its stormwater management and creek restoration project. He recommended that the Board of Managers ask counsel to guide them into closed session to consider the ongoing negotiations, the upcoming meeting with project liaisons on September 18, and the potential termination of the Agreement on November 1. ***Pursuant to legal counsel's recommendation, it was moved by Manager Maxwell, seconded by Manager Loftus for the Board to go into a closed session for the purpose of discussing the potential expiration or revision of terms of the Purchase and Sale Agreement of 325 Blake Road in Hopkins. Upon vote, the motion carried 6-0.***

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The Board of Managers went into closed session.

The Board of Managers returned to open session.

Adjournment

There being no further business, President White declared the meeting of the Board of Managers adjourned at 9:16 p.m.

Respectfully submitted,

 10-23-2024

Eugene Maxwell, Secretary