

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

May 22, 2025

CALL TO ORDER

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order by President Sherry White at 7:06 p.m. on May 22, 2025, at the MCWD offices, 15320 Minnetonka Boulevard, Minnetonka, Minnesota.

MANAGERS PRESENT

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

MANAGERS ABSENT

None.

DISTRICT STAFF AND CONSULTANTS PRESENT

James Wisker, Administrator; Veronica Sannes, Permitting Technician; Chris Meehan, District Consulting Engineer; and Louis Smith, District Counsel.

MATTERS FROM THE FLOOR

None.

APPROVAL OF AGENDA

President White suggested moving Items 13 and 14 to follow immediately after Items 12.1 and 12.2. *It was moved by Manager Maxwell, seconded by Manager Olson, to approve the Agenda with these changes. Upon vote, the motion carried, 6-0 (Manager Hejmadi absent for vote).*

CONSENT AGENDA

It was moved by Manager Hejmadi, seconded by Manager Miller, to approve the items on the Consent Agenda consisting of approval of the May 9, 2025, Board meeting minutes, approval of the General Check Register, including check numbers 426571 through 42680 in the amount of \$13,774.74, electronic funds withdrawals of \$287,698.20, credit card charges of \$5,969.14, managers per diems and reimbursements of \$1,831.92, employee reimbursements of \$574.41, and payroll electronic funds withdrawals and disbursements of \$182,665.29, for a total of

\$492,513.70; the Surety Check Register including payment of \$30.00 in fees to Bremer Bank and check number 2244 for a surety return to 3100 MSP, LLC in the amount of \$3,500; wire transfers of \$ 42,768.75 to Hennepin County for 2013B bond repayment, and \$65,875.00 to Hennepin County for 2020B bond repayment; and the following resolutions:

Resolution 25-031: Authorization to Execute Grant Agreement for Watershed-Based Implementation Funding

***NOW, THEREFORE, BE IT RESOLVED** that the MCWD Board of Managers authorizes the District Administrator to execute a grant agreement with the Board of Water and Soil Resources for the above projects;*

Resolution 25-032: Authorization to Contract Sunram Construction for Maintenance of Gray's Bay Dam

***NOW, THEREFORE, BE IT RESOLVED** that the Minnehaha Creek Watershed District Board of Managers authorize the District Administrator, on advice of counsel, to execute a contract with Sunram Construction, Inc, with a not to exceed amount of \$13,662; and*

Resolution 25-033: Authorization to Purchase Replacement Equipment for the Real-Time Sensor Network

***NOW, THEREFORE, BE IT RESOLVED** that the Minnehaha Creek Watershed District Board of Managers authorize the District Administrator to purchase reserve and replacement equipment from Tech Sales in a total not to exceed \$25,000.*

Upon vote, the motion carried, 7-0.

BOARD, COMMITTEE AND TASK FORCE REPORTS

President's Report: President White noted that the proposed resolutions for the new Minnesota Watersheds process would be due June 2 and can be discussed at the Board's meeting of June 12. She noted that the annual summer tour for Minnesota Watersheds will be June 24-26, and that she and Manager Olson would be attending. President White noted that the June 26 MCWD Board meeting should have a quorum even if President White and Manager Olson are not back in time.

Policy and Planning Committee Report: Manager Miller reported that the Committee met earlier in the evening and had a staff briefing on the Land & Water Partnership Program.

President White noted the schedule of upcoming meetings presented in the agenda.

PERMITS REQUIRING A VARIANCE OR DISCUSSION

Permit 25-041: Variance Request, Whittier Park, Minneapolis

Ms. Veronica Sannes appeared before the Board of Managers to review the permit application. She explained that the Minneapolis Park & Recreation Board is proposing to reconstruct the existing playground and install two playground areas, a half basketball court, a planting area, and a filtration basin. As proposed, the project meets the requirements of the MCWD's Erosion Control and Stormwater Management rules, except for Section 6 of the Stormwater Management rule, from which the applicant is seeking a variance.

Ms. Sannes noted that Section 6 of the Stormwater Management rule requires two feet of vertical separation between the 100-year high water elevation of a waterbody or stormwater practice and the low opening of any structure, unless the structure opening is hydraulically disconnected from the waterbody or practice. The 100-year high water elevation of the proposed filtration basin is 875.4 ft and the low opening of the nearby recreation center is 876.2 ft, resulting in a 0.8 ft vertical separation between the two elevations. The structure opening is not hydraulically disconnected from the stormwater practice due to site grades and its proximity to the building. Ms. Sannes reviewed the analysis of the variance criteria and also noted that the project does not increase flooding to surrounding areas.

It was moved by Manager Miller, seconded by Manager Sando, to grant the variance based on the findings set forth in the permit report. President White noted that the recreation center was originally built by the MPRB so she did not understand the basis for the statement in the permit report that none of the causes of the practical difficulty in meeting the requirements of Section 6 of the Stormwater Management rule were created by the applicant. Mr. Wisker noted that the recreation center was constructed in the 1970s, when the flood elevation was either lower than currently set or unknown, and there likely were no freeboard clearance requirements at that time.

In response to a question from Manager Olson, Ms. Sannes stated that though she could not confirm at the meeting, she believed that the site did not flood in 2014. She added that the MPRB is well aware of the flooding risk at this site, and that this risk is not changing due to the project. Mr. Wisker noted that Mr. Cliff Swenson of MPRB was present at the meeting and available to answer any questions. Manager Hejmadi stated that given flooding risk, it seems important to have plans in place to mitigate the harms of flooding. In response to a question from Manager Maxwell, Ms. Sannes noted that

although the site will be reconfigured, the amount of hard surface will not change. *There being no further discussion, upon vote, the motion to grant the variance based on the findings set forth in the permit report carried, 7-0.*

It was moved by Manager Miller, seconded by Manager Loftus, to grant the permit with the conditions recommended by staff. Upon vote, the motion carried, 7-0.

PUBLIC HEARINGS AND PRESENTATIONS

None.

ACTION ITEMS

Resolution 25-034: Consideration of Pay Request #4 for the Minnehaha Preserve Boardwalk Reconstruction Project

Mr. Wisker appeared before the Board of Managers and noted that Pay Request #4 from JTS Contractors is for the Minnehaha Preserve Boardwalk in an amount of \$146,830.01. He stated that on advice of the project engineer, SRF, and in accordance with General Conditions 15.01 in the contract with JTS, the recommendation is not to make payment on this request at this time. Pursuant to the contract, if the Board determines to not make payment, JTS will be provided written notice which states the Board's action and reasons for it which are set forth in the proposed resolution. Some of those reasons outlined in the resolution include:

- JTS was advised in May 2023 when the pay request was originally submitted, that MCWD would hold payment pending resolution of the wide-spread defective work issues that had been discovered;
- JTS did not object at that time; since then, JTS did not mention this pay request until April 2025;
- The processing of pay requests are governed by the general conditions Section 15.01 of the contract;
 - These general conditions provide that the Board may apply a set-off against a pay request, or deny it entirely, if the work, in the engineer's judgment:
 - Doesn't conform to contract,
 - Corrective work needs performing, or
 - If MCWD has incurred costs to respond to defective work or liquidated damages.

Mr. Wisker noted that SRF the project engineer recommends that, due to the significant defective work, MCWD decline the payment in full; further, corrective work is required across the project, and MCWD has incurred liquidated damages and other costs approximating \$200,000. Accordingly, the recommendation is to deny Pay Request #4. *It was moved by Manager*

Maxwell, seconded by Manager Hejmadi, to adopt Resolution 25-034: Consideration of Pay Request #4 for the Minnehaha Preserve Boardwalk Reconstruction Project as follows:

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers, on the basis of the SRF recommendation and the Board's own consideration of factors set forth in GC 15.01, hereby determines that no payment is due on Pay Request #4 at this time;

BE IT FURTHER RESOLVED that, in accordance with GC 15.01, MCWD staff will give JTS immediate written notice, with a copy to SRF, stating the Board's action and the reasons for it.

Upon vote, the motion carried, 7-0.

BOARD INQUIRIES, ISSUES, AND IDEAS

None.

STAFF UPDATES

Administrator's Report

Mr. Wisker reported on the following items:

1. **Climate Adaptation Award:** Staff attended the Minnesota Climate Adaptation Partnerships awards for the MCWD to receive an award for collaboration with the National Weather Service and Hennepin County on forecast, rainfall measurement, and watershed response; the award also recognized how this information informs Gray's Bay Dam operations, and is distributed to local emergency managers in a changing climate;
2. **Long Lake Presentation:** Rachel Baker and Mr. Wisker presented the Long Lake Creek Roadmap to the Long Lake City Council on Wednesday evening; we noted next steps and leveraging \$170,000 in state grant funds along with opportunities to integrate regional stormwater treatment into downtown Long Lake; the Mayor and Council gave the presentation a very warm reception and adopted a resolution of support for this work; other former mayors were in the audience, including CAC member Janet Shaffer, and her husband Marty Schneider, who invited the MCWD to give this presentation to the local chamber of commerce;
3. **Tangletown Neighborhood:** Samantha Hoppe presented earlier this week to the Tangletown Neighborhood Association on the Minneapolis Partnership; she was joined by Council Member Koski Who noted that MCWD has been a catalytic leader in forming the Minneapolis water partnership;
4. **Lake Improvement Districts:** There are several efforts underway to establish two new lake improvement districts on Lake Minnetonka for Harrison's Bay (south of Jennings)

and Stubbs Bay; if approved, Harrisons and Stubbs would join Carmans and St. Albans Bays on Lake Minnetonka that already have Lake Improvement Districts; the Harrisons and Stubbs Bay efforts are not without controversy, with some questioning what they perceive as lack of need, data driven decision-making, and transparency; the MCWD will politely decline to be involved in the LID formation process;

5. **Water Levels:** With warm dry weather May 16-May 20, Lake Minnetonka levels dropped from 929.25 to 929.00; since then, a series of significant storms have provided approximately 3" of rain in the last several days; Painter Creek and other tributaries increased flows, bringing Minnetonka up to 929.35; Minnehaha Creek discharge peaked recently at 217 cubic feet per second, and has since dropped to just below 100 cfs;
6. **Flood Response Summit:** Staff is working to finalize plans with Hennepin Emergency Management and the National Weather Service for a Flood Response Summit; the purpose of the summit will be to review forecasts for the year, outline the roles and value these three partners deliver for local emergency managers before, during and after flood events; the County believes meeting on value we deliver, and what everyone's role is, is particularly important given its understanding of changes to the Stafford Act, the federal law guiding cost contribution for disaster relief and emergency assistance; the County's assessment is that damage costs per capita thresholds triggering federal assistance have increased 400%, while recent changes indicate requests for flood damage relief are being denied, and making things more challenging, state funding for disasters are pegged to thresholds identified in Stafford Act; the feedback we gather through this summit will be integrated into refinements in our flood response plan and used to define clearly the delineation between NWS/Hennepin/MCWD/City and individual property owner roles.

The managers thanked Mr. Wisker for this report.

BOARD DISCUSSION ITEMS

Minnehaha Preserve Boardwalk

Mr. Smith recommended that the Board of Managers go into closed session for the purpose of receiving confidential legal advice concerning litigation strategy in responding to the draft complaint received from the attorney for JTS Construction.

It was moved by Manager Olson, seconded by Manager Hejmadi, for the Board of Managers to move into closed session for the purpose of receiving confidential legal advice from legal counsel on litigation strategy concerning the claims made by the attorney for JTS Construction. Upon vote, the motion carried 7-0.

The Board of Managers went into closed session.

The Board of Managers returned to open session.

325 Blake Road Restoration and Redevelopment

Mr. Smith recommended that the Board of Managers go into closed session for the purpose of receiving confidential legal advice on litigation strategy to respond to the Alatus lawsuit. ***Pursuant to legal counsel's recommendation, it was moved by Manager Olson, seconded by Manager Hejmadi for the Board to go into closed session for the purpose of receiving confidential legal advice on litigation strategy to respond to the Alatus lawsuit. Upon vote, the motion carried 7-0.***

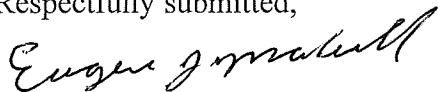
The Board of Managers went into closed session.

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 8:38 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Eugene Maxwell".

Eugene Maxwell, Secretary