

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

4
5 **April 24, 2025**

6
7 **CALL TO ORDER**
8

9 The regular meeting of the Minnehaha Creek Watershed District Board of Managers was
10 called to order by President Sherry White at 7:03 p.m. on April 24, 2025, at the MCWD
11 offices, 15320 Minnetonka Boulevard, Minnetonka, Minnesota.
12

13 **MANAGERS PRESENT**
14

15 Sherry White, William Olson, Richard Miller, Jessica Loftus, Arun Hejmadi, Eugene
16 Maxwell, and Steve Sando.
17

18 **MANAGERS ABSENT**
19

20 None.
21

22 **DISTRICT STAFF AND CONSULTANTS PRESENT**
23

24 James Wisker, Administrator; Veronica Sannes, Permitting Technician; Kailey Cermak,
25 Planner – Project Manager; Rebecca Neal, Policy Planning Coordinator; Michael
26 Hayman, Director of Project Planning; Chris Meehan, District Consulting Engineer; and
27 Louis Smith, District Counsel.
28

29 **MATTERS FROM THE FLOOR**
30

31 None.
32

33 **APPROVAL OF AGENDA**
34

35 President White suggested adding a new Item 12.1, Permitting Briefing, to the Discussion
36 Items, before the discussion of 325 Blake Road Restoration and Redevelopment and the
37 Preserve Boardwalk, and moving Items 13 and 14 to follow immediately after new Item
38 12.1. *It was moved by Manager Miller, seconded by Manager Maxwell, to approve the*
39 *Agenda with these changes. Upon vote, the motion carried, 6-0 (Manager Hejmadi*
40 *absent for vote).*
41

42 **CONSENT AGENDA**
43

44 *It was moved by Manager Miller, seconded by Manager Olson, to approve the items on*
45 *the Consent Agenda consisting of approval of the April 10, 2025, Board meeting*
46 *minutes, approval of the General Check Register, including check numbers 426547*

47 *through 42670 in the amount of \$ \$104,121.31, electronic funds withdrawals of \$*
48 *\$308,933.10, credit card charges of \$5,531.09, managers per diems and*
49 *reimbursements of \$5,236.52, employee reimbursements of \$1,216.40, and payroll*
50 *electronic funds withdrawals and disbursements of \$172,588.92, for a total of*
51 *\$597,427.34; the Surety Check Register including payment of \$30.00 in fees to Bremer*
52 *Bank; and wire transfers of \$40,678.74 to Bremer Bank for office building loan*
53 *principal and \$11,782.84 for office building loan interest.*

54
55 *Upon vote, the motion carried, 6-0 (Manager Hejmadi absent for vote).*
56

57 **BOARD, COMMITTEE AND TASK FORCE REPORTS**

58

59 President's Report: President White reported that she and Managers Olson and Maxwell
60 attended the recent meeting of the Metro chapter of Minnesota Watersheds, which
61 Manager Olson will report on below. She also attended the annual State of the Parks
62 meeting of the Three Rivers Park District with Managers Sando and Maxwell, where the
63 theme was collaboration. Manager Sando said that he appreciated the strong
64 presentations and emphasis on partnerships.

65
66 Policy and Planning Committee Report: Manager Miller reported that the Committee
67 met earlier in the evening and had a staff briefing on planning and options for moving
68 forward with the MCWD's projects at 325 Blake Road.

69
70 Minnesota Watersheds Metro Chapter Report: Manager Olson reported that he chaired
71 the meeting, which included a presentation by the League of Women Voters and their
72 outreach work to watershed districts, a presentation by the Minnesota Department of
73 Transportation on their coordination of watershed permitting, a presentation by the
74 Minnesota Pollution Control Agency on stormwater management, and a review of the
75 new Minnesota Watersheds resolution process.

76
77 President White noted the schedule of upcoming meetings presented in the agenda.
78

79 **PERMITS REQUIRING A VARIANCE OR DISCUSSION**

80

81 None.

83 **PUBLIC HEARINGS AND PRESENTATIONS**

84

85 None.
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87
88
89

ACTION ITEMS

2024 Financial Audit and Fund Transfers

Mr. Andy Hering of Redpath appeared before the Board of Managers to present a review of the 2024 Financial Audit. He reviewed the components of the annual financial report and stated that the audit presented a clean opinion with no findings or issues to report. Manager Miller stated that he felt the usual review of the audit by the Executive Committee was missing from the process.

Resolution 25-025: Review and Approve 2024 Financial Audit

It was moved by Manager Olson, seconded by Manager Sando, to adopt Resolution 25-025: Review and Approve 2024 Financial Audit as follows:

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby accepts the 2024 Annual Financial Report and directs the District Administrator to transmit it to the Minnesota State Auditor, the Minnesota Board of Water and Soil Resources, and Hennepin and Carver County.

Upon vote, the motion carried 6-0, with Manager Miller abstaining.

Resolution 25-026: Review and Approve 2024 Fund Transfers and Account Closures

Mr. Wisker appeared before the Board of Managers and noted that consistent with past practice, staff identified year-end transfers between sub-funds for the purposes of closing out sub-funds that are no longer needed or to remove negative balances within sub-funds. Staff discussed these transfers with Redpath and Company, and they are reflected in the audit. He referred to the list of transfers presented in the proposed resolution. ***It was moved by Manager Hejmadi, seconded by Manager Loftus, to adopt Resolution 25-026: Review and Approve 2024 Fund Transfers and Account Closures as follows:***

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby accepts the proposed transfers and fund closures within the Management Planning Fund.

Upon vote, the motion carried 7-0.

County Road 6 Pond Retrofit Project

Ms. Kailey Cermak and Ms. Veronica Sannes appeared before the Board of Managers. Ms. Cermak presented background information on this project to improve the

performance of the MCWD's stormwater management pond at County Road 6 in Orono. She noted that this project is a high priority within the Long Lake Creek Subwatershed Roadmap. She reviewed the 90% design and the various refinements to the project components.

Permit 25-141: County Road 6 Pond Retrofit

Ms. Sannes reviewed the MCWD's application for a District permit and the application of MCWD rules to the project. She noted that MCWD's Erosion Control, Waterbody Crossings and Structures, Floodplain Alteration, Wetland Protection, and Dredging Rules apply to the project. MCWD permitting staff and District Engineer have reviewed the project and concluded that it meets the applicable MCWD rules. ***It was moved by Manager Miller, seconded by Manager Hejmadi to approve the permit application with the conditions recommended by staff in the permit report.***

Manager Miller asked about the extent to which the project would improve water quality in Tanager Lake. Ms. Cermak stated that impact was not known, but the project would reduce phosphorus loading to Long Lake by 40 pounds, or 20% of the direct external loading to Long Lake. In response to a question from Manager Olson, Ms. Cermak explained that the clay material and liner would keep the filter material in place, notwithstanding the installation of drain tile below the filter media. President White inquired about any impacts to turtles, and Ms. Cermak noted that no Blanding's turtles have been cited in the area and the Department of Natural Resources will also offer best practices guidance in its permit review. ***There being no further discussion, upon vote, the motion to approve the permit with the conditions recommended by staff carried 7-0.***

Resolution 25-027: Approval of 90 Percent Design Plans for the County Road 6 Pond Retrofit Project and Authorization to Solicit Bids

Resolution 25-028: Authorizing Land Alteration and Flowage Agreement for the County Road 6 Pond Retrofit Project

Ms. Cermak reviewed the proposed land alteration and flowage agreement with the landowners in order to optimize the project through pond expansion onto their property at the northwest corner of the pond. She also reviewed the cost estimates for the project at the 90% design, maintenance plans, and the feedback received at the April 4 community open house about the project. She reviewed the next steps in the process and plans for the project to be complete by March 2026.

It was moved by Manager Sando, seconded by Manager Hejmadi to adopt Resolution 25-027: Approval of 90 Percent Design Plans for the County Road 6 Pond Retrofit Project and Authorization to Solicit Bids as follows:

176 ***NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek***
177 ***Watershed District Board of Managers approves the 90 percent design for the***
178 ***County Road 6 Pond Retrofit Project and directs the engineer to prepare***
179 ***conforming final plans for the purpose of soliciting bids;***
180

181 ***BE IT FURTHER RESOLVED that the MCWD Board of Managers authorizes***
182 ***the District Administrator, on advice of counsel, and once an agreement is in***
183 ***place with the owner of the property onto which the basin is to be extended, to***
184 ***solicit bids for construction during the appropriate bid period to allow Project***
185 ***construction during the winter of 2025-2026.***
186

187 In response to questions from Managers Maxwell and Olson, Ms. Cermak reviewed the
188 Class 5 gravel material for the trail adjacent to the pond. In response to a question from
189 Manager Sando, Ms. Cermak noted that there would be no public access to the pond or
190 the trail. Manager Hejmadi asked about disposal of the dredging spoils and Mr. Meehan
191 noted that the sediment has been tested, found not to be contaminated, and would be
192 disposed at the discretion of the contractor. ***Upon vote, the motion to adopt Resolution***
193 ***25-027 carried 7-0.***
194

195 In response to a question from Manager Miller, Mr. Wisker noted that the other potential
196 projects would be discussed in a review of the Roadmap with the City of Orono in May.
197 In response to a question from Manager Maxwell, Ms. Cermak reviewed the status of
198 permit applications for the project to the Department of Natural Resources and the Army
199 Corps of Engineers. ***It was moved by Manager Miller, seconded by Manager Hejmadi,***
200 ***to adopt Resolution 25-028: Authorizing Land Alteration and Flowage Agreement for***
201 ***the County Road 6 Pond Retrofit Project as follows:***
202

203 ***NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek***
204 ***Watershed District Board of Managers authorizes the District Administrator, on***
205 ***advice of counsel, to execute an agreement for land alteration and flowage with***
206 ***the adjacent property owners, to allow for construction of the County Road 6***
207 ***Pond Retrofit Project as designed.***
208

209 Mr. Smith noted that the situation with these landowners is unique. Ordinarily, the
210 MCWD will seek a recordable easement for construction of an improvement on private
211 property, but in this situation the layout of the project, topography of the site, and
212 ongoing regulatory restrictions all supported the conclusion that a recordable easement
213 was not necessary. Manager Olson asked if the Epleys would be able to place a dock into
214 the pond and Ms. Cermak noted that the agreement provided that they may maintain a
215 removable dock below the basin top of bank. ***There being no further discussion, upon***
216 ***vote, the motion carried 7-0.***
217

Resolution 25-029: Authorization to Apply for Watershed-Based Implementation Funding

Ms. Rebecca Neal appeared before the Board of Managers to review the request for board action. She noted that the fourth round of Watershed-Based Implementation Funding is available through the Board of Water and Soil Resources (BWSR). Funds are allocated on a watershed basis, and the Minnehaha Creek watershed area has \$424,534 available to fund eligible projects/activities for implementation in 2025-2027. Ms. Neal reviewed the two projects that were submitted for consideration and the recommended funding allocation for these projects, to allocate \$224,534 toward Cedar-Bloomington Stormwater BMP and \$200,000 toward the Montgomerie Ave Project.

It was moved by Manager Hejmadi, seconded by Manager Sando, to adopt Resolution 25-029: Authorization to Apply for Watershed-Based Implementation Funding as follows:

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize staff to apply for grant funding through the BWSR Watershed-based Implementation Funding Program for the aforementioned projects.

In response to a question from President White, Ms. Neal explained that this funding is not paid on a reimbursement basis. *There being no further discussion, upon vote, the motion carried 6-0 (Manager Miller absent for vote).*

BOARD DISCUSSION ITEMS

Permitting Briefing

Ms. Veronia Sannes appeared before the Board of Managers and provided a briefing on the permitting program. She noted that 210 permit applications have been received so far in 2025, and 137 permits have been issued. She noted seasonal trends in permit activity, and the geographic distribution of permit applications throughout the watershed. Ms. Sannes reviewed major upcoming projects to be reviewed by the permit team and development of important partner relationships, including the Metropolitan Council and annual meeting coordination with the policy team. The managers thanked Ms. Sannes for her presentation.

BOARD INQUIRIES, ISSUES, AND IDEAS

None.

STAFF UPDATES

Administrator's Report

Mr. Wisker reported on the following items:

1. MCWD staff will make a presentation for the annual meeting of the League of Women Voters on April 30;
2. Staff will attend the annual meeting of the Tangletown neighborhood association on May 19 and present an update on projects planned for the Minnehaha Creek corridor, including the Nicollet Hollow project;
3. MCWD will present an update on the Long Lake road map to the Long Lake City Council on May 20;
4. The join Citizens Advisory Committee – Board of Managers field trip is planned for June 5;
5. Mr. Wisker plans to submit an application to the Attorney General's Task Force on Water Resources;
6. Lake Minnetonka is at an elevation of 929.1; the Grays Bay dam stop logs have been removed, but the gates are currently closed; maintenance work is planned for the control structure; downstream creek flow varies from 12-40 cubic feet per second;
7. Noting Manager Miller's concern about Executive Committee review of the annual audit, notes from last year indicate that the Committee recommended that such review was not necessary, but this practice can always be reconsidered; and
8. Tessa Vacek has announced that she will be leaving the MCWD at the end of May; she has greatly contributed to improving operational capacity of the District, including hiring and onboarding processes and attention to MCWD culture; she will be greatly missed.

The managers thanked Mr. Wisker for this report.

BOARD DISCUSSION ITEMS

325 Blake Road Restoration and Redevelopment

Mr. Michael Hayman appeared before the Board of Managers and requested that the Board of Managers go into closed session for staff to provide an update on redevelopment and the MCWD project at 325 Blake Road in Hopkins. *Pursuant to legal counsel's recommendation, it was moved by Manager Hejmadi, seconded by Manager Maxwell, 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 6-1, with Manager Miller voting against the motion.*

The Board of Managers went into closed session.

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The Board of Managers returned to open session.

Minnehaha Preserve Boardwalk

Mr. Wisker provided a detailed review of the construction issues for the Minnehaha Preserve Boardwalk. He noted that in Q2 of 2023, the MCWD communicated to the St. Louis Park building inspector that the project was near completion. The City's inspection then revealed numerous construction defects. A series of meetings with all parties ensued for the remainder of 2023, but no progress was made with the contractor, JTS Construction, on resolving the defective work.

Mr. Wisker reviewed in detail the eleven categories of defective work, including photo examples. As discussions continued in 2024, by Q4 JTS had developed a field test plan to test the alternative means of compliance they proposed. Mr. Wisker reviewed the photographs and various problems encountered in the field test conducted on December 19, 2024. The parties held a debriefing on the field test on January 13, 2025, and MCWD issued Change Order #2, which contained all of the direction to address the construction defects. The next step was then for JTS to present its implementation plan for Change Order #2.

On April 1, 2025, the attorney for JTS sent a letter outlining its implementation plan but also stating that it will not sign the change order or perform the corrective work until MCWD has paid an amount that JTS believes to be outstanding under the contract (about \$238,000), and MCWD has agreed to pay an additional \$250,000.00 to perform the corrective work and complete the contract. He noted that the amount outstanding under the contract is subject to offsets for reasonable costs incurred over the past two years for MCWD to respond to the defective work, and for liquidated damages. He asked Mr. Smith to address the legal demands made by the attorney for JTS.

Mr. Smith noted that the attorney for JTS stated in his letter that he was authorized to commence litigation in the event MCWD refuses to pay these amounts or "otherwise refuses to discuss a reasonable and mutually acceptable resolution." Mr. Smith noted that providing advice to the Board of Managers on its options in responding to these demands and threat of litigation requires an evaluation of the claims and possible defenses, the likelihood of JTS success with its claims, and strategic consideration of the MCWD's options. He noted caution in using the attorney – client privilege as a basis for a closed meeting, but here the Board is not exercising its regulatory power or other public function, but rather considering strategy in responding to a contract dispute and threat of litigation from a private contractor. He noted that the Minnesota Supreme Court has observed that a public body's strategy in this context may be impaired if the discussion is available for the benefit of opposing parties who may have as a purpose a private gain in contravention of the public need as construed by the agency. Accordingly, he recommended that the Board of Managers move into closed session for the specific

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purpose of receiving confidential legal advice on litigation strategy concerning the JTS claims.

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.

Adjournment

There being no further business, President White declared the meeting of the Board of Managers adjourned at 10:12 p.m.

Respectfully submitted,

Eugene Maxwell, Secretary