

MEMORANDUM

TO: Minnehaha Creek Watershed District Board of Managers

FROM: Jeff Spartz, District Administrator

DATE: September 22, 2014

RE: Status of Citizens Advisory Committee Motions and Requests

The Citizens Advisory Committee (CAC) members serve at the pleasure of the MCWD board of managers and are charged by statute to “advise and assist the managers on all matters affecting the interests of the watershed district and make recommendations to the managers on all contemplated projects and improvements in the watershed district.” As you know, the CAC has devoted a substantial amount of its time on issues relating to the board’s decision to discharge the previous administrator.

At your request, here is a status report on the various motions and requests from the Citizens Advisory Committee.

1. **CAC and Data Practices Requests:** the CAC has requested that all government data practices requests sent to the CAC be accompanied by the actual document requesting the data, unless the document is legally deemed “private”; the MCWD use due diligence to confirm the scope of a government data practices act request; and the MCWD carefully explain its role in providing legal assistance to the CAC to ensure compliance with any data request.

Status: District Counsel has advised that the legal requirements of the Data Practices Act have been followed as to the CAC and that no further action is needed.

2. **“Deficiency” of Manager Casale’s Letter of Apology:** the CAC listed ways in which it found Manager Casale’s letter of July 31 deficient.

Hennepin County Commissioners Opat and Callison have each written letters acknowledging Manager Casale’s letter of apology, and it appears from those letters that they found this apology to be adequate.

Status: No further action is required; the CAC’s advisory comments have been received.

3. **“Inadequacy” of Commissioner Opat’s Letter:** the CAC requested that notwithstanding Commissioner Opat’s letter of August 22, 2014, the Hennepin County board reconsider the position expressed in that letter that Manager Casale’s conduct simply does not rise to a level that would justify removal from the board of managers.

Status: Commissioner Opat's office requested a copy of the CAC's motion and is reviewing it. No further action is required by the board of managers.

4. **CAC Members Speaking at Board of Managers meetings:** the CAC has requested that any CAC member be allowed to speak at any open Board of Managers meeting.

The Board's Bylaws provide that the President shall preside at meetings and preserve order, deciding questions of order subject to appeal to the Board. The Bylaws do not provide that a CAC member or any other member of the public may speak at a board meeting; nevertheless, the Board's standing agenda provides for open citizen comments at the beginning of each meeting, and also includes a status report from CAC.

Status: No further action required; any specific rulings by the President are always subject to appeal to the Board.

5. **"No Confidence," Independent Review by Counties, and Suspension of Administrator Search:** the CAC on July 22 adopted a motion expressing "no confidence" in the current Board, requesting the Hennepin and Carver County Boards to initiate independent review of the Board's actions, and a suspension of the search for a new District Administrator.

While there has been no correspondence or action from the Carver County Board, Hennepin County Commissioners Opat and Callison have written letters expressing deference to the personnel decisions of the board of managers and support for a mediation process to improve relationships among board members and with members of the CAC. On September 11, 2014, the Board of Managers voted 6-0 to commence the Administrator Search process.

Status: No further action required.

6. **Itemized Accounting:** The CAC requests that the MCWD render an itemized accounting of costs related (directly or indirectly) to the dismissal of Eric Evenson-Marden, including but not limited to out-of-pocket costs and staff time.

Status: District staff is working on this request and will provide this information within a reasonable time.

7. **CAC Request that the MCWD and Eric Evenson-Marden work together to release all documents relied upon by the Board of Managers to fire Eric Evenson-Marden and requests that each party provide a progress report at their earliest convenience; and CAC request that the release of said documents not be conditioned upon Eric Evenson-Mardens' release of the MCWD from all liability:**

Status: Mr. Evenson-Marden's employment agreement with the District provided that he "will serve at the pleasure of the Board and may be dismissed with or without cause."

This means that his employment was subject to termination without a reason to explain dismissal. Accordingly, the termination decision was the result of an act of judgment by each member of the board of managers. A majority of the MCWD Board concluded we needed new leadership to take the organization to a higher level of effectiveness in future years.

The District sought a cooperative approach to release of information but to date that effort has not been successful. If Mr. Evenson-Marden wants a copy of his personnel file released to other people, he merely has to make a formal request in writing and the District will comply. The District has never required a waiver of liability as a condition of releasing information upon request. There is no disagreement from the District that this is his right to receive or distribute this information without a waiver or release of liability. That is not the current situation, however.

The confusion about transparency and compliance with the Data Practices Act revolves around the following set of facts:

- At the June 25th meeting of the MCWD Citizens Advisory Committee (CAC), it was reported that Mr. Evenson-Marden had released his personnel file to some or all members of the CAC. In the interest of transparency, the CAC passed a resolution requesting that “the [MCWD] Board and Mr. Evenson-Marden work together to release all of the documents that were relied on by the Board in making its decision to terminate Mr. Evenson-Marden.”
- After the June CAC meeting, the MCWD legal counsel was asked to review the personnel file released by Mr. Evenson-Marden and it was determined the file was woefully incomplete, missing over 30 relevant documents, including most of his performance evaluations. By a unanimous 7-0 vote, the Board of Managers directed that the missing documents be included in Mr. Evenson-Marden’s personnel file.
- Since April, individual MCWD board members have been questioned about this employment decision, in a context where very limited information has been allowed to become public, and then met with ensuing claims that to decline to answer on the grounds of privacy is not open government. In response to these demands for transparency, the District proposed that Mr. Evenson-Marden sign a draft Consent, Waiver, and Release of Claims so that all relevant information concerning his employment be provided, not just documents selected by him. The Release also would allow open discussion of this information by the Board without the threat of litigation. With Mr. Evenson-Marden making claims of defamation through his lawyer, the District reasonably concluded it needed to be protected from litigation in order to meet the public demands for more transparency.
- Despite various communications between the District’s legal counsel and his lawyer, Mr. Evenson-Marden to date has been unwilling to release his entire

personnel file or other related performance information so as to allow for a fully transparent discussion of the basis for the Board's decision. The District has offered to entertain revisions to the Waiver document, but Mr. Evenson-Marden has refused the District's offer to negotiate an acceptable document and has refused to sign a proposed consent and waiver document. Rather Mr. Evenson-Marden, through his lawyer, has stated that he will decide which documents he wishes to release of the documents that the Board identifies it relied on to make its decision.

If Mr. Evenson-Marden and his supporters want transparency regarding the issues involved with his termination, the public has a right to review the entire personnel record, not just a select and sanitized version provided by Mr. Evenson-Marden. The request by the Board for a waiver of liability by the MCWD is not a violation of the Data Practices Act or any other law; rather, this is a prudent action by a government agency to protect the public from unnecessary litigation and costs.



BOARD OF HENNEPIN COUNTY COMMISSIONERS
A-2400 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0240

August 22, 2014

Minnehaha Creek Watershed District
Citizens Advisory Committee
c/o Jeff Spartz, MCWD Interim Administrator
15320 Minnetonka Boulevard
Minnetonka, MN 55345

Dear MCWD Citizen Advisory Committee (CAC) members:

This letter is in response to the July 22 CAC resolution asking the Hennepin County Board to initiate a review of the Minnehaha Creek Watershed District (MCWD) Board of Managers' removal of Eric Evenson-Marden as executive director. It is also a response to subsequent emails requesting the removal of one of the MCWD managers, Jeffrey Casale.

In short, I do not support the Hennepin County Board taking action that would undermine the autonomy of the MCWD Board to make their own personnel decisions. The executive director position is an at-will position and the Hennepin County Board has faith in our appointees' ability to effectively manage the watershed district and advance the best interests of its residents.

I also do not support the Hennepin County Board taking any action to remove Mr. Casale as a MCWD Manager. Mr. Casale was originally appointed by the Hennepin County Board in 2006. In that time, he has served as an effective negotiator for the District and has been highly and consistently recommended for reappointment. While by most accounts the July 17 incident with Mr. Monson was unfortunate and seemingly unnecessary, Mr. Casale has publicly acknowledged and apologized for his behavior. Mr. Casale's conduct simply does not rise to a level of "malfeasance, nonfeasance, or misfeasance" that would justify removal from the MCWD Board.¹

¹ "A manager of a watershed district or a member of a joint powers board may be removed from the position by the appointing authority before term expiration for violation of a code of ethics of the watershed management organization or appointing authority or for malfeasance, nonfeasance, or misfeasance, after being provided an opportunity for hearing before the appointing authority. Managers holding the position as an elected official who are not reelected, or are serving an indefinite term at the pleasure of the appointing authority, may be removed by the appointing authority at will. A decision of the appointing authority may be appealed to the Board of Water and Soil Resources." Minnesota Rule 8410.0040



It is apparent that there are unresolved disagreements among MCWD Managers and between some Managers and the CAC. Policy decisions about District management and water quality have obviously been impassioned to the point of becoming personal. However, in the normal course of policy-making, strong personalities clash and Boards sometimes struggle to reach consensus. I trust that the current clashes in the MCWD can be worked through internally.

The CAC's resolution stating its lack of confidence in the MCWD Board should send a strong message to the Managers that they have some work to do to repair that relationship. I am hopeful that the third-party mediator being sought by the MCWD Board will be a good first step towards a healthier atmosphere for everyone.

I hope this letter clarifies my current position. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Mike Opat". The signature is written in a cursive, slightly slanted style.

Mike Opat, Chair
Hennepin County Board of Commissioners

CC: Hennepin County Board of Commissioners
Sherry Davis White, MCWD Board President



BOARD OF HENNEPIN COUNTY COMMISSIONERS
A-2400 GOVERNMENT CENTER
MINNEAPOLIS, MINNESOTA 55487-0240

August 26, 2014

Jeff Spartz, Interim District Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345



Dear Mr.  Spartz:

Thank you for forwarding to me the July 22, 2014 Citizen Advisory Committee (CAC) resolutions relating to the removal of Eric Evenson-Marden as executive director of the Minnehaha Creek Watershed District (MCWD) and to certain actions attributed to Jeff Casale. Thank you also for subsequently sending me Mr. Casale's apology. I have followed these issues closely and have received a variety of emails and other contacts regarding them. From these I am aware of the strong emotions that are at play within the MCWD. I do not believe, however, that action on either of these matters by the Hennepin County Board is appropriate. This conclusion is offered not because I am unconcerned about what has transpired in the MCWD but because I believe that the requests being made by the CAC are not in the public interest.

Mr. Evenson-Marden was an at-will employee of the MCWD. As such, the Board of Managers had the legal authority to make the decision that it made. The CAC has asked for an investigation into the Board's actions. My expectation, however, is that such an investigation would confirm the Board's authority. It would not restore Mr. Evenson-Marden to his position and it would not assist in the immediate challenge before the MCWD and the CAC, which is to refocus on protecting and improving the waters of the Minnehaha Creek watershed.

Mr. Casale's actions vis-à-vis Mr. Monson appear to have been inappropriate and I am pleased that he has apologized for them. The standard, however, for removing a watershed commissioner is "malfeasance, nonfeasance, or misfeasance." (Minnesota Rule 8410.0040) I do not believe Mr. Casale's actions rise to this level nor do I believe that the precedent that would be set by removal would be a positive one for watershed governance.

MCWD has been in many ways an exemplary watershed district and deserving of its recognition by the DNR as the 2013 Watershed District of the Year. Thanks go to the Board, the CAC, district staff, and staff leaders including Mr. Evenson-Marden. I hope that the Board and CAC will find a way to pull together to continue MCWD's tradition of excellence. This will require all parties to reflect upon their past actions and to recommit to moving forward in a spirit of good will and cooperation.

August 26, 2014
Jeff Spartz
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Please feel free to share this letter as you believe it is appropriate to do so.

Regards,



Jan Callison
Hennepin County Commissioner
District 6

Cc: Sherry Davis White (MCWD)