

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

November 20, 2014

CALL TO ORDER

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order by President Sherry White at 6:45 p.m. in the District offices, 15320 Minnetonka Boulevard, Minnetonka, Minnesota 55345.

MANAGERS PRESENT

Sherry White, Brian Shekleton, Richard Miller, Jeffrey Casale, Pam Blixt, James Calkins.

MANAGER ABSENT

William Olson.

OTHERS PRESENT

Jeff Spartz, Interim District Administrator; Becky Christopher, District Lead Planner – Project Manager; Brett Eidem, District Cost Share Grant Administrator; Laura Domyancich, District Project and Land Technician; James Wisker, District Planning and Projects Director; Chris Meehan, District Consulting Engineer; Michael Welch, Assistant District Counsel.

MATTERS FROM THE FLOOR

None.

APPROVAL OF THE AGENDA

Manager White noted that item 11.1 – Arden Park Neighborhood Partnership Proposal is not an action item and should be moved to the discussion agenda. *Manager Miller moved, seconded by Manager Shekleton, to approve the agenda as amended. Upon vote, the motion carried 6-0.*

INFORMATION ITEMS AND CORRESPONDENCE

Manager White noted the receipt by the District of a letter from the City of Edina on its development of a programmatic maintenance agreement with the District, and a resolution from the Citizens Advisory Committee proposing mediation to improve the relationship between the board and the CAC.

CONSENT AGENDA

Manager White listed the items on the consent agenda. Michael Welch stated that the District Governance Manual is on the consent agenda for approval shows changes made pursuant to board direction. The policies also include changes that respond specifically to new legislation or other updated information. He said the resolution rescinds any policies not included in the manual, including the Communications Policy, the principal components of which have been integrated into the Governance Policies. ***Manager Miller moved, seconded by Manager Calkins, to approve the consent agenda, consisting of approval of the November 13, 2014, minutes of the meeting of the Board of Managers; approval of the check register for the surety account and the general checking account, the latter including checks 35041 through 35134 for a total of \$548,203.63, payroll direct deposits totaling \$211,349.89 and electronic fund withdrawals totaling \$842,830.02 for a total expense amount for the period October 24 through November 2, 2014 of \$1,602,383.54; acceptance of the 325 Blake Road checking account report; and adoption of the following:***

Resolution 14-094, Authorization to Demolish Identified Structures at 8251 State Highway No. 7, Minnetrista

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby awards the demolition contract to Dale's Contracting in the amount of \$12,500 and authorizes the Interim Administrator to execute a construction contract for the demolition and site restoration; and

BE IT FUTHER RESOLVED, that the Minnehaha Creek Watershed District Board of Managers authorize the Interim Administrator, on advice from District Counsel to take all actions required to accomplish demolition and removal of identified structures at 8251 State Hwy No. 7, Minnetrista, including, but not limited to, entering into agreement(s) and expenditure of funds with a total not-to-exceed amount of \$13,750.

Resolution 14-096, Authorization to contract with Wenck Associates, Inc. for Consulting Services for the Ecosystem Evaluation Program for January 1, 2015 – June 30, 2016

NOW, THEREFORE, BE IT RESOLVED, that the MCWD Board of Managers authorize the District Administrator to execute a contract with Wenck Associates, Inc. for the development of the Ecosystem Evaluation Program for January 1, 2015-June 30, 2016 not to exceed \$230,000.

Resolution 14-090, Authorization to Renew the Contract with Freshwater Society for the Watershed Association Initiative

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to enter into a contract not to exceed \$31,500 with Freshwater Society to continue the Watershed Association Initiative;

BE IT FURTHER RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to reimburse funds, not to exceed a total of \$5,000 to citizen groups according to the parameters set in the Watershed Association Initiative Mini Grant Program;

BE IT FINALLY RESOLVED that the District Administrator is authorized to sign necessary documents to carry out the Watershed Association Initiative, pending approval of form and execution by the District counsel.

Resolution 14-097, Board of Managers Action on Video Taping of Board Meetings

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers approve the recommendation to begin videotaping Board Meetings in December of 2014 by using the You Tube option for a cost not to exceed \$5,500 and then evaluate the process as part of the 2015 workplan and budget process.

Resolution 14-098, Building Project Close out and Remaining Issue Delegation

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers approve the closeout of the Building Project and that the remaining work to be delegated to the Acting District Administrator, upon recommendation from the Owners Representative, to complete the remaining building issues including the authorization of the expenditures from the contingency fund.

Resolution 14-099, Adoption of Update Amendments to District Governance Policies and Comprehensive Governance Manual

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers adopts the attached policies, as amended, and Governance Manual, and consolidates any and all District governance materials therein and rescinds adoption of any board governance documents not included therein; directs the District administrator to ensure the manual is maintained, updated in accordance with its terms and applicable state law and readily available to District managers, staff and consultants;

THEREFORE BE IT FURTHER RESOLVED that the Board of Managers directs the administrator, on advice of counsel, to make such administrative changes as necessary to finalize the manual and to take such further steps necessary and required to comply with state law governing the filing, review and approval of District governance documents and schedules.

Resolution 14-091, Authorization to Terminate Contract with Barr Engineering for Professional Services to Develop Interpretive Signage for the Reach 20 Education Area

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to terminate a contract with Barr Engineering for professional services to develop interpretive signage for the Reach 20 education area.

Resolution 14-092, Authorization to Execute Contract with DogTooth Design for Professional Services to Develop Interpretive Signage for the Reach 20 Education Area

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to execute a contract for professional design services with DogTooth Design for an amount not-to-exceed \$12,400 to develop interpretive signage for the Reach 20 education area.

Upon vote, the motion carried 6-0.

REGULAR AGENDA

Board, Committee and Task Force Reports

Manager White reported that the 2015 meeting schedule included in the packet is for the managers' review and consideration; the schedule will be finalized and approved in December. Manager White noted that there are three months in which there is a fifth Thursday in 2015 and these could be used for board retreats. Manager Blixt stated that it is important to have the Legislative Committee meet in time for the Minnesota Association of Watershed Districts' legislative meeting in the early spring.

Manager White reviewed the upcoming meeting and event schedule, noting no changes to the schedule included in the agenda.

Public Hearings and Presentations

Public Comment Period on Purpose Budget and Levy

Jeff Spartz stated that the managers have a couple of options with regard to the budget and levy. If there are no comments this evening from the public, the managers could go ahead with the budget and levy as finalized in September. If there are comments, the managers could adopt a revised resolution lowering the levy at a meeting in December. In response to questions from the managers, Mr. Spartz noted that the public comment opportunity has been on the District agenda since early November. In response to a question from Manager Blixt, Mr. Welch explained that the public comment period has been added to the District's annual schedule to respond to a change to the Truth in Taxation Law. The District finalized its budget and levy in September in accordance with watershed law, and if no further action is taken to lower the levy, that is the levy that will be implemented by the counties. Manager Blixt wondered whether the public has an expectation of an opportunity to comment on the budget and levy. Mr. Welch stated that since this is a new requirement and a new aspect of state law, it may be that the public has not yet developed an expectation that it would apply to watershed districts.

There were no public comments on the District's budget and levy.

Action Items

Reach 14 Construction Contract

Laura Domyancich explained to the Board of Managers that because of the very high water along the creek in the summer of 2014, many of the plants the District planted as part of the Reach 14 stabilization project did not survive. She stated that the project contingency budget was sufficient to provide for emergency reseeding in October, but additional funds are needed to grow replacement plants over the winter for planting in the spring. She said there also will be additional mobilization costs because Minnesota Native Landscapes, which is under contract to the District for the work on Reach 14, will need to get back out to the site in the spring. She said the item is on for action tonight because Minnesota Native Landscapes would like to start growing plants to maturity for better survival rates in the spring. ***Manager Shekleton moved, seconded by Manager Miller, to adopt Resolution 14-093, authorizing the administration to execute an amendment to the construction contract with Minnesota Native Landscapes for the Reach 14 Streambank Stabilization project for a total not to exceed \$58,576, and to establish an additional construction budget in the amount of \$64,434. Upon vote, the motion carried, 6-0.***

DISCUSSION ITEMS

Arden Park Neighborhood Partnership Proposal

Becky Christopher presented a discussion of a funding opportunity in the Arden Park neighborhood in Edina. Ms. Christopher explained that the city adopted a policy in 2013 of balancing the needs of motorists, bicyclists, pedestrians and transit riders to provide general improvements to safety and community. She stated that as part of the reconstruction of the streets in the area, the city has an opportunity to install some significant stormwater management features. The work could result in a total of 14 acre feet of retained stormwater, reduction of 11.6 pounds of phosphorous in runoff and reduction of 6,538 pounds of total suspended solids. She stated that the project, because it reduces street widths throughout the area, is not subject to the District's stormwater rule. She explained the three elements of the project: a subsurface infiltration trench under Halifax Avenue, a new and innovative pervious paver system in Jay Place, and the placement of sump manholes at three different locations within the neighborhood. She said this would all be in addition to the improved stormwater management resulting from the city's reduction of the road widths.

Ms. Christopher said that if the managers favor the concept, staff will return with further details, including a proposed not-to-exceed amount of cost-share funding. That amount, she said, would be reduced if the Clean Water Legacy grant funding that the city and District applied for comes through. She explained that the city will hold a hearing on the overall project prior to review by the District's Citizens Advisory Committee on December 10. She anticipated that the project could come back to the managers for a public hearing, consistent with District policy and state law and approval of funding in January. She added that the District will know whether or not state grant funding has been received at the end of January, and the work should be implemented in summer 2015.

Manager Miller stated that he is impressed with the way staff has been able to engage citizens in the project and notes that this area flows directly to the creek, therefore he supports the request. In response to a question from Manager Miller, Ms. Christopher stated that District staff is anticipating a request for funding of 50 percent of the project costs, roughly \$88,000. If the Clean Water Legacy grant is received, that request would be diminished. In response to questions from Manager Blixt about long-term maintenance of the features, Ms. Christopher and Mr. Welch explained that with any agreement to provide cost-share funding, the District incorporates maintenance requirements in the funding agreement. In response to a question from Manager Calkins, Ms. Christopher stated that not all of the infrastructure in the area will need to be reconstructed, and she will have to follow up with city staff to determine exactly how much of the area will be included. In response to a further question from Manager Calkins, Ms. Christopher stated that the District and city looked at options for using public space adjacent to the creek for additional stormwater treatment, but high

groundwater in the area is a limiting factor. Manager Calkins stated that he believes the project presents an opportunity to maximize stormwater management in this area.

Manager Miller moved, seconded by Manager Casale, to direct staff to prepare and present a request for funding for the Arden Park neighborhood project. In response to a question from Manager Blixt about sidewalks in the redevelopment, Mr. Welch noted that sidewalks bordered downgradient by pervious surfaces are exempt from the District's stormwater rule. ***Upon vote, the motion carried 6-0.***

Presbyterian Homes – Wayzata Bay Center

James Wisker and Chris Meehan appeared before the Board of Managers with John Mehrkens of Presbyterian Homes to review the history and present future plans for the redevelopment of the Wayzata Bay Center area for purposes of possible District cost-share funding. Mr. Wisker reviewed the history of the redevelopment plans and implementation of those plans at the property on Superior Boulevard in Wayzata. He stated that Gleason Creek, which runs through the area, has long been encased in an underground pipe. The Presbyterian Homes organization and its designer, LHB architects, approached the District in 2007 with a concept for managing the entirety of the 100-year storm event on site through implementation of variety of best management practices. The Wayzata City Council approved the plan implementing this concept under planned unit development approval at the time.

The site proved to be more challenging than anticipated, with subsidence issues, high groundwater and historic wetland deposits. Presbyterian Homes engaged a number of entities, including District staff, in a peer review of plans and all parties involved agreed that management of the 100-year storm was not feasible, and the one-year storm was probably more realistic. Three basins were proposed to handle the bulk of the stormwater management. As the project progress, the stormwater pond in the southeast corner of the area was reintegrated into the plans, consistent with city approval.

The District sent a letter to Presbyterian Homes and LHB indicating that the project was consistent with the District's low-impact development cost share-funding program in September 2011, and the board reviewed the project at a meeting in April 2012. The board directed that cost-share funding be allocated for the project, contingent on review by the Citizens Advisory Committee and finalization by the Board of Managers in light of that review. The project and funding proposal, however, have not come back to the board until tonight.

An agreement for funding was never entered and the developers went ahead with phases I and II of the redevelopment. Phase III, Mr. Wisker explained, has not yet commenced. He added that the portions of the redevelopment that have been completed to date include a number of practices consistent with the District's interest in innovative approaches to stormwater management, including the integration of a geothermal system for melting snow along with infiltration galleries and a pretreatment vault. Mr. Wisker showed

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pictures of a number of the stormwater features on the property during construction. In response to questions from the managers, Mr. Wisker stated that the filtration system implemented along Mill Street in the redevelopment is approximately 40 by 200 feet and receives runoff from a 5-acre catchment. The facility is constructed over engineered fill. Mr. Wisker pointed out that the east block pond included in the project plans will be underground and will take 10 acres of stormwater runoff. The project also includes green roofs and the geothermal system for melting snow reduces contribution of chloride to Wayzata Bay and subsequently Minnehaha Creek. Mr. Wisker stated that the project exemplifies the District's holistic approach to water quality improvement.

Mr. Wisker stated that at the April 2012 meeting, the managers approved \$585,000 in funding for phase I, then amended the motion to include funding up to \$1 million over two years for the first two phases contingent on CAC review. The CAC raised questions with regard to the financing of the project. Mr. Wisker stated that for reasons that he is not entirely clear on, the project was never brought back to the board for review again after April 2012.

Mr. Mehrkens stated that he agreed with Mr. Wisker's description of the events. He stated that at the meeting in April 2012 pursuant to the board direction, the CAC was disappointed that the 100-year storm event would not be treated and expressed some lack of confidence that the second and third phases of the project would happen. Presbyterian Homes decided to go ahead with the first phase to show its dedication to the project.

In response to a question from Manager Miller, Mr. Wisker confirmed that the project has not been reviewed by the board since 2012 and that the applicant only raised the idea of funding again after it had started the second phase. At that time, Presbyterian Homes discussed options for funding with Steve Christopher and Eric Evenson-Marden, both of whom are no longer with the District. In response to the meeting with District staff, the Presbyterian Homes folks dedicated some space in the redevelopment project to education and demonstration of the stormwater facilities, and made space available for meetings and other educational forums about stormwater management. In September 2013, Mr. Mehrkens reported, he received a letter stating that the project was no longer eligible for funding from the District. After several months staff responded to inquires about why the project was not eligible for funding any more with an indication that staff was re-reviewing the project for possible funding. Mr. Mehrkens stated that Presbyterian Homes meanwhile went ahead and started the second phase of the project.

Mr. Wisker stated that when the matter was brought to him, he met with the District engineer, Chris Meehan, to analyze the performance of the stormwater-management system against requirements in the Stormwater Management Rule that the District updated in June 2011. Mr. Wisker said that the stormwater management performance was not a factor in the city's approval of the PUD for the redevelopment. He said that the city exercises sole regulatory authority for stormwater, but that under the city council's approval of the project, stormwater management specifics in keeping with city code were

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left to staff. He said that the requirement was 60 to 65 percent phosphorus removal from all new hard cover. In other words, the city ordinances did not require anything beyond the District's rule.

Mr. Wisker stated that tonight staff would like direction from the managers on where to go with a proposal for District funding of the project. He said the District's low impact development program is structured to reimburse partners for prospective work once that work is completed. He said that the phase III work Presbyterian Homes is to undertake will provide 0.6 pounds of phosphorus removal beyond what would be required under the District rule, along with 0.9 pounds per year of phosphorus reduction from runoff from off-site. The project would also reduce chloride in runoff and provide volume management. Mr. Wisker stated that staff reviewed prior LID funding projects and found that generally the District has paid around \$50,000 a pound for phosphorus removal. Mr. Wisker added that if the District funded the future work at the Wayzata Bay Center redevelopment, it would achieve this \$50,000 per pound phosphorus removal rate, at a funding level of \$125,000 to \$135,000. Mr. Wisker emphasized that he is looking primarily for direction from the managers as to whether they wish to fund only future work and also whether they want to look at analysis beyond dollars per pounds of phosphorus removal in considering funding of the work. He added that whatever the board's direction, staff's next step will be to refine the recommendation and analysis and present a draft resolution for funding work on the project. In keeping with District policy and state law on cost-share funding, the District will need to notice and conduct a public hearing because the proposed funding exceeds \$50,000, so the earliest the matter could be undertaken again would be at the December 18 meeting.

Mr. Meehan stated that in the interest of full disclosure he wished to notify the managers that Norm Wenck from Wenck Associates is likely to be appointed to the Presbyterian Homes board in January.

Manager Miller stated that he is more excited than ever about the project and believes that the work completed already has accomplished more than the managers even anticipated or expected. He said that while District dedication of funding to phases I and II would appear to be retroactive, he noted that the Board of Managers actually approved funding several years ago. In response to a question from Manager Casale, Mr. Wisker stated that the District stormwater rule was revised and updated in June 2011. He does not know, however, when the city last updated its relevant ordinances.

In response to a question from Manager Blixt about the basis for past District dedications of funding under the LID program, Mr. Wisker explained that the basis for awards has been something of a moving target. Manager Blixt noted that consideration should be given to the precedent that would be set by the funding the District provides to the already constructed portions of this particular project, if any. Manager Shekleton stated that his view is the board's intent with regard to this project in 2012 was clear and he does not wish to ignore the April 2012 motion. He said he is willing to fund up to 50

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percent of the phase II work done. Manager Miller stated that there were technical issues that created problems in the history of this project and the reality is that there was no agreement to provide funding. He said the project is complicated and includes many elements, none of which were brought to the board after the April 2012 meeting. He does not wish to be reckless with funding, but believes the District has obligations that should be honored. In response to a question from Manager Calkins, Mr. Meehan said that the project will provide 1.55-acre feet of retention on site, above the 1.2 acre feet that would be required under the District rule. He said that the filtration system counts toward volume reduction at a 50 percent rate, per the District rule. Manager Calkins notes that the chloride reduction achieved is terrific, but it is not a benefit to the creek because the runoff enters the lake too far away from the creek. But, he said, it does serve well as a demonstration. He also said that he wants staff to look into pursuing movie theater trailers as an option for education on the project. He expressed interest in seeing some data on how the District has valued phosphorus reduction, and wants the analysis coming back to the board to recognize that the education and demonstration values of a project go away over time. Finally, he noted that while green roofs are valuable to developers, they really don't provide substantial water quality improvement.

Manager Casale said that he noted the 2012 approval was based on the board's understanding that the 100-year stormwater event would be retained on the property, but nonetheless he supports staff working with the applicant to put together a proposal that acknowledges all of the work completed on the Wayzata Bay Center redevelopment. Manager Blixt agreed. She wants to see a very strong statement supporting the District's commitment of funding, including the identification and analysis of what elements of the project go above and beyond District regulatory requirements. Manager Miller said staff also should account for offsite drainage treated on the site. Mr. Wisker noted that the offsite drainage management on this property was required by the city. Manager Shekleton noted the importance of the minutes of the April 2012 meeting at which the project was discussed and directed staff to ensure that that discussion and those minutes are included in the record supporting the forthcoming proposal. Manager Calkins encouraged staff to work with Presbyterian Homes to look at the treatment of stormwater from the neighborhood to the north and opportunities in Superior Street for additional stormwater management.

In response to a request from Mr. Wisker, Manager Miller said he'd be willing to approve up to \$585,000 for the project. Mr. Mehrkens stated that Presbyterian Homes could structure the reimbursement over two years, if that helps. ***Manager Miller moved, seconded by Managers Shekleton, to direct staff to prepare a recommendation and resolution consistent with the board discussion for consideration at a future meeting. Upon vote, the motion carried 6-0.***

Minnesota Association of Watershed Districts Resolutions

Manager White said that four resolutions have been advanced with recommendations from the MAWD Resolutions/Policy Committee for consideration at the MAWD conference the first week of December. She wanted the managers to weigh in on the resolutions.

The first, sponsored by the Prior Lake-Spring Lake Watershed District, seeks support for PLSLWD's efforts to seek funding to cover costs to repair flood damage to the Prior Lake channel and outlet that are not covered by federal dollars. Manager Calkins said that he served on the MAWD resolutions committee, and noted that PLSLWD also would contribute funding for the repairs. The managers expressed support for the resolution.

Another resolution from PLSLWD would require the Department of Natural Resources to issue a license and assign more than one commercial fisherman per lake to remove carp. The managers expressed interest in the proposed action, but wanted its delegates to the conference to hear from DNR on the underlying policy.

Manager White said the third resolution directs MAWD to work more closely with districts in developing and implementing a legislative agenda, with accompanying social media strategy. The managers concurred that the approach is logical.

Finally, the Sauk River Watershed District is seeking support for a resolution to allow a reduction in property valuation for the purposes of taxation for conservation restriction and water-quality easements. The managers noted some confusion in the wording of the summary of the resolution, but supported the intent as they understand it.

Manager Calkins said two other resolutions came late to the committee – one regarding appointments to the Board of Water and Soil Resources and another on leasing of lands purchased with bond obligation dollars – and will be discussed at the conference.

Manager Blixt, White, Miller and Calkins indicated that they would be attending the conference. ***Manager White moved, seconded by Manager Shekleton, to authorize Managers White and Blixt as delegates from the District to the conference, with Managers Olson and Miller as alternates. Upon vote, the motion carried 6-0.***

STAFF UPDATES

Administrator's Report

Mr. Spartz stated that in cooperation with the Department of Natural Resources, the District is seeking a permit from the Environmental Protection Agency to use potassium chloride in Christmas Lake to control zebra mussels. In its possible that the potassium

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chloride will need to be applied through the ice, but staff and DNR are confident it will work.

Mr. Spartz introduced a memo, responding to a recent email sent to staff by Manager Blixt, before providing the memo to the managers. He reviewed the memo, concluding with his strong recommendation that the managers take affirmative steps to resolve the rifts among board members related to the dismissal of the former administrator. ***Manager Shekleton moved, seconded by Manager Miller, to hire the Office of Collaboration and Dispute Resolution to develop a list of recommended mediators for the District.*** The managers discussed the cost that would be allocated for the work, agreeing that between \$5,000 and \$10,000 has been previously identified. In response to a question from Manager Blixt about whether mediation with the Citizens Advisory Committee also would be included, the makers of the motion indicated that they did not intend to include that in the motion. The managers agreed that the scope is to identify the issues that need to be resolved among the managers and identify mediator candidates. Mr. Spartz recommended that if the board wishes to work with the CAC, it undertake that separately from their work with the mediator on board issues. ***Upon vote, the motion carried 5-1, Manager Calkins voting against.***

ADJOURNMENT

There being no further business, the regular meeting of the Minnehaha Creek Watershed District Board of Managers adjourned at 9:09 p.m.

Respectfully submitted,

Jeff Casale
Secretary