

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

4
5 **June 9, 2022**

6
7 **CALL TO ORDER**

8
9 The regular meeting of the Minnehaha Creek Watershed District was called to order by
10 President Sherry White at 7:00 p.m. on June 9, 2022.

11
12 **MANAGERS PRESENT**

13
14 Sherry White, William Olson, Jessica Loftus, Eugene Maxwell, Richard Miller, Arun
15 Hejmadi, and Stephen Sando.

16
17 **DISTRICT STAFF AND CONSULTANTS PRESENT**

18
19 James Wisker, Administrator; Michael Hayman, Project Planning Manager; Brian Beck,
20 Research & Monitoring Program Manager; Gabe Sherman, Planner – Project Manager;
21 Chris Meehan, District Consulting Engineer; Consultant Chuck Lutz; Real Estate
22 Counsel Jay Lindgren and Alex Sellke; and Louis Smith, District Counsel.

23
24 **APPROVAL OF AGENDA**

25
26 *It was moved by Manager Miller, seconded by Manager Olson to approve the Agenda*
27 *as distributed. Upon vote, the motion carried 7-0.*

28
29 **MATTERS FROM THE FLOOR**

30
31 None.

32
33 **CONSENT AGENDA**

34
35 *It was moved by Manager Miller, seconded by Manager Olson, to approve the items on*
36 *the Consent Agenda consisting of approval of the May 26, 2022, Board meeting*
37 *minutes, and the following resolutions:*

38
39 *Resolution 22-034: Approval to Release Request for Qualifications for Legal Services*

40
41 *NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek*
42 *Watershed District Board of Managers hereby authorizes the District*
43 *Administrator to issue a request for qualifications for legal services.*

44
45 *Resolution 22-035: Authorization to Issue a Request for Proposals for Audit Services*

46 ***NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek***
47 ***Watershed District Board of Managers hereby authorizes the District***
48 ***Administrator to issue a request for proposals for financial audit services.***
49

50 ***Resolution 22-036: Authorization to Renew Metro Watershed Partners Membership***

51
52 ***NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek***
53 ***Watershed District Board of Managers authorize the District Administrator to***
54 ***spend \$6,000 to renew MCWD’s Metro Watershed Partners annual***
55 ***membership.***
56

57 ***Resolution 22-037: Approve Organizational Chart and Authorize Hiring of Positions***

58
59 ***NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek***
60 ***Watershed District Board of Managers hereby approves the organizational***
61 ***chart (Attachment B), directs that these human resource adjustments be***
62 ***integrated into the 2023budget, and authorizes the District Administrator to***
63 ***take the steps necessary to implement the approved changes including***
64 ***advancing the hiring of a Planner-Project Manager and Operations Manager***
65 ***in 2022.***
66

67 ***Upon vote, the motion carried 7-0.***

68
69 **BOARD, COMMITTEE AND TASK FORCE REPORTS**

70
71 President’s Report: President White noted that she and Manager Sando attended the
72 recent presentation of the Nokomis white paper to a town hall meeting on May 31, and
73 that all managers attended the recent meet and greet event with the Citizens Advisory
74 Committee.
75

76 Upcoming Meeting and Event Schedule: President White directed the managers to the
77 meetings listed on the agenda.
78

79 **ACTION ITEMS**

80
81 Resolution 22-038: LCCMR Grant Update for MCWD’s 2D Watershed Model Build

82
83 Mr. Brian Beck appeared before the Board of Managers to review the MCWD’s
84 application for a grant from the Legislative-Citizens Commission on Minnesota
85 Resources to build a 2D watershed model. He explained that although the Commissioner
86 had expressed support for approving the application, the MCWD project was omitted
87 from the legislative approval of grants due to a drafting error. LCCMR staff urged the
88 MCWD to reapply, and this application was due on May 26. Given the Board’s previous

89 authorization to submit a grant application, staff proceeded to meet the May26 deadline
90 and now seeks the Board’s ratification of the most recent proposal. Mr. Beck explained
91 the updated plan and timeline associated with the new proposal.

92
93 *It was moved by Manager Olson, seconded by Manager Maxwell to adopt Resolution*
94 *22-038 as follows:*

95
96 ***NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek***
97 ***Watershed District Board of Managers hereby approves and ratifies the***
98 ***District’s proposal for funding submitted on May 26, 2022 to the Legislative-***
99 ***Citizen Commission on Minnesota Resources in an amount of \$738,000, for the***
100 ***development of machine learning and 2D modeling tools.***

101
102 Manager Maxwell asked whether any changes at the Legislature following the upcoming
103 elections could affect this application’s chances. Mr. Beck noted that the MCWD
104 lobbyist Joel Carlson seems confident with the prospects at the LCCMR, given the public
105 apology for the oversight in the previous round. Upon a question from Manager Loftus,
106 Mr. Beck noted that it will be possible to use the upcoming Land and Water Partnership
107 engagement process to give cities notice of this project. ***There being no further***
108 ***discussion, upon vote, the motion carried 7-0.***

109
110 **DISCUSSION ITEMS**

111
112 **325 Blake Road Purchase and Sale Agreement**

113
114 Mr. Michael Hayman appeared before the Board of Managers to introduce a request from
115 Alatus to revise the purchase and sale agreement for developable portion of the site,
116 approximately 11.45 acres. He reviewed the status of the project and explained that
117 Alatus is requesting a change to the agreement to accelerate a portion of the two-phase
118 takedown schedule to preserve an allocation of tax exempt multifamily housing revenue
119 bonds for the project. He noted the letter of June 9 from Alatus setting forth their
120 proposal.

121
122 Msrs. Bob Lux, Matt Mason and Josh Tolberg appeared before the Board of Managers
123 on behalf of Alatus. Mr. Lux explained that in order to preserve the housing bond
124 allocation, Alatus must acquire the land for the affordable housing development on or
125 before July 8, 2022. Alatus is proposing to increase the earnest money deposit from
126 \$100,000 to \$1 million and allow the deposit to be immediately nonrefundable. He
127 reviewed the status of the other elements of the project and invited Mr. Tolberg to
128 describe the status of raising capital investment for Building C. Mr. Tolberg stated that
129 allowing the affordable housing portion of the project to proceed now will show
130 momentum for the project and promote investment in Building C.

131

132 President White asked a series of questions of Alatus concerning whether there is any
133 flexibility with the bonding authority, implications for the rest of the development, any
134 opportunity to reapply for housing bonds in the future, and assurances to complete the
135 whole project. In response to a question from Manager Miller, Mr. Lux explained the
136 exclusive agreement with JLL on capital finance. In response to a question from Manager
137 Maxwell, Mr. Lux explained that the affordable housing component is 50% of Area
138 Median Income or less. Manager Loftus inquired about the timing of the other phases of
139 the project and expressed concern about the risk if these other phases are not timely
140 completed. Upon a question from Manager Maxwell, Mr. Lux affirmed that Building A
141 will contribute its proportion to maintenance of water facilities.

142
143 *It was moved by Manager Miller, seconded by Manager Maxwell to move into closed*
144 *session for the purpose of discussing the terms of the offer to sell 11.45 acres of 325*
145 *Blake Road in Hopkins to Alatus. Upon vote, the motion carried, 7-0.*

146
147 *Whereupon the Board of Managers went into closed session.*

148
149 *The Board of Managers returned to open session. It was moved by Manager Miller,*
150 *seconded by Manager Maxwell to adopt the following Resolution:*

151
152 ***BE IT RESOLVED: Subject to satisfaction of the conditions set forth below, the***
153 ***MCWD Board of Managers will agree to accept Alatus' proposal to amend the Real***
154 ***Estate Purchase Agreement dated May 9, 2022 between MCWD and Alatus relating to***
155 ***325 Blake Road (the "Purchase Agreement") upon the general terms set forth below,***
156 ***all in order to facilitate Alatus's financing and construction of 116 units of income-***
157 ***restricted housing in "Building A" of the Project.***

158
159 ***Alatus Proposal:***

160 ***A. Separate the original "Phase 1 Property" into (i) the "Phase 1A Property", to consists***
161 ***of Lot 2, Block 2 of the Plat, and (ii) the "Phase 1B Property", to consists of Lots 1, 2,***
162 ***3, and 4, Block 1 of the Plat.***

163
164 ***B. Alatus and MCWD to close on the purchase and sale of the Phase 1A Property on or***
165 ***before July 8, 2022.***

166
167 ***C. At the Phase 1A Property closing, Alatus will make a partial payment of the Phase 1***
168 ***Purchase Price in the amount of \$1,000,000. The remaining \$7,000,000 of the Phase 1***
169 ***Purchase Price to be payable at the closing of the Phase 1B Property at the time of the***
170 ***original "Phase 1 Closing".***

171
172 ***D. Alatus to deposit \$1,000,000 of "nonrefundable" earnest money into escrow with the***
173 ***Title Company pending closing of the of the Phase 1B Property.***

174

175 **E. MCWD to grant Alatus the following easements at the Phase 1A Property closing (the**
176 **“Easements”):**

- 177 **a. a 24-month temporary construction and parking easement over Outlot C and**
178 **Block 2, Lot 1 to permit Buyer to construct the Building A improvements.**
179 **b. an access easement for street access from Building A to Lake Street over the**
180 **future street to be platted in Outlot C; and**
181 **c. an easement to permit Buyer to construct the public walkways and other**
182 **amenities immediately adjoining Building A, substantially in accordance with the**
183 **Master Development Plan for the Project.**

184
185 **MCWD Conditions:**

- 186 **1. The proposed \$1,000,000 earnest money must be additional earnest money and be**
187 **applicable only to “Phase 1B” and the remainder of the Phase 1 Purchase Price.**
188
189 **2. The original \$100,000 earnest money must still be deposited by Alatus at the Phase 1B**
190 **Closing and be applicable to Phase 2 and the Phase 2 Purchase Price.**
191
192 **3. The proposed \$1,000,000 earnest money must be refundable to Alatus only if (i)**
193 **MCWD commits a material default under the Purchase Agreement that is not cured**
194 **during any applicable cure period, (ii) MCWD fails to satisfy the “Watershed**
195 **Readiness Condition” (as modified below) and MCWD has at least 90 days to cure any**
196 **alleged failure of the Watershed Readiness Condition, or (iii) MCWD encumbers the**
197 **property with new liens or encumbrances which materially and adversely affect the**
198 **Project and which liens and/or encumbrances are not released before the applicable**
199 **closing date. The proposed \$1,000,000 earnest money shall otherwise be nonrefundable**
200 **if Alatus terminates the Purchase Agreement for any other reason.**
201
202 **4. There must be an additional “Seller Condition” to the Phase 1B Property closing that**
203 **Alatus has secured all financing and approvals to commence construction of the**
204 **Building C.**
205
206 **5. The Watershed Readiness Condition must be modified as follows:**
207
208 **a. Alatus must acknowledge and accept MCWD’s 90% construction drawings for**
209 **the Watershed Project.**
210 **b. Alatus must acknowledge that any changes to Alatus’s Stormwater Offset plans**
211 **which require a change to the Watershed Project plans will not trigger the**
212 **Watershed Readiness Condition**
213
214 **6. None of the Easements will impair MCWD ability to construct the Watershed Project.**
215

- 216 7. *Acknowledgment from Alatus that MCWD is not in default under the Purchase*
217 *Agreement and that and no event has occurred which with notice or lapse of time or*
218 *both would constitute a default under the Purchase Agreement.*
219
220 8. *General clarifications to scope and requirements of proposed Easements.*
221
222 9. *Alatus will reimburse MCWD for consultant and legal costs incurred in the review of*
223 *this amendment to the Purchase Agreement.*
224

225 *Upon roll call vote, the motion carried 7-0 as follows:*
226

227 Hejmadi: Aye
228 Loftus: Aye
229 Sando: Aye
230 Miller: Aye
231 Olson: Aye
232 Maxwell: Aye
233 White: Aye
234

235 Minnehaha Preserve Boardwalk Update
236

237 Mr. Hayman noted that Mr. Thomas Radio was present for this discussion. *It was moved*
238 *by Manager Miller, seconded by Manager Olson to move into closed session for the*
239 *purpose of receiving confidential advice from legal counsel concerning litigation*
240 *strategy on the Minnehaha Preserve Boardwalk lawsuit. Upon vote, the motion*
241 *carried, 7-0.*
242

243 *The Board of Managers went into closed session.*
244

245 *The Board of Managers returned to open session. It was moved by Manager Miller,*
246 *seconded by Manager Olson to approve purchase of NextPoint e-discovery software for*
247 *a sum not to exceed \$13,000. Upon vote, the motion carried, 7-0.*
248

249
250 STAFF UPDATES
251

252 Administrator's Report
253

254 Mr. Wisker reported on the following items:
255

- 256 1. Water levels have increased with Spring precipitation approximately 12 inches
257 above normal. Lake Minnetonka is at 929.18, and the control structure is open,

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6-9-22

258 releasing at 12 cubic feet per second. Minnehaha Creek is flowing at Hiawatha at
259 26 cubic feet per second.

260

261 2. Staff are working with an interested landowner and developer near Holy Name
262 Lake in Medina. Initial review of a proposed 5-lot subdivision revealed the
263 opportunity to collaborate in a 16-acre wetland restoration project. Mr. Wisker
264 has exercised his authority to waive any conflict and authorized Stantec to work
265 with the landowner and developer to pursue this opportunity, and he wished to
266 inform the Board accordingly.

267

268 3. MCWD is collaborating with Great River Greening for tree planting.

269

270 4. As President White noted earlier, the May 31 Nokomis town hall meeting was
271 well attended by approximately 150 residents. Manager Hejmadi commented that
272 he felt the meeting reflected excellent preparation, skillful facilitation of questions
273 and answers by Mr. Meehan, and sensitive facilitation by Council Member Koski.

274

275 **Adjournment**

276

277 There being no further business, President White declared the meeting of the Board of
278 Managers adjourned at 10:00 p.m.

279

280 Respectfully submitted,

281

282

283

284 Eugene Maxwell, Secretary