

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

December 7, 2016, Board of Managers Monthly Meeting and Public Hearing

PRESENT:

Managers: Mary Bisek, Secretary

Richard Chadwick

Jill Crafton, Treasurer

Perry Forster, President

Leslie Yetka, Vice President

Staff: Claire Bleser, District Administrator

Zach Dickhausen, District Staff

Elizabeth Henley, Attorney, Smith Partners

Michelle Jordan, District Technician and Compliance Officer

Josh Maxwell, District Technician II

Louis Smith, Attorney (Smith Partners)

Scott Sobiech, Engineer (Barr Engineering Company)

Other attendees: Bob Adomaitis, CAC

Dave Modrow, City of Eden Prairie

Paul Bulger, CAC

Dorothy Pedersen, CAC

John Bushey, SWMLC

David Raby

Chris Freeman, Bongardsø Creameries

Jeff Weiss, Barr Engineering Co.

John Kirk, Resident; Eden Prairie
Planning Commission

Dennis Yockers, CAC

Larry Koch, CAC; Chanhassen Resident

David Ziegler, CAC

Matthew Kumka, Barr Engineering Co.

Linda Loomis, Lower MN River
Watershed District

1. Call to Order

President Forster called to order the Wednesday, December 7, 2016, Board of Managers Monthly Meeting and Public Hearing at 7:06 p.m. at Eden Prairie City Hall, 8080 Mitchell Road, Eden Prairie, MN 55344.

2. Approval of the Agenda

President Forster requested moving Action Item 8b ó 2017 CAC Applications ó to Discussion Item 9d. Administrator Bleser stated that item 6j ó Advertise the Permit and Professional Coordinator Position ó should be pulled from the Consent Agenda and it will be part of the Board's January monthly meeting agenda. She requested that Consent Agenda item 6g ó Permit 2016-037 Prestige Day Care ó be pulled from the Consent

Agenda and added as an Action Item. She also requested the addition of an Action Item for the Purgatory Creek Approval of Payment Application Number 1.

Manager Yetka moved to approve the agenda as amended. Manager Crafton seconded the motion. Upon a vote, the motion carried 5-0.

3. Public Hearings

President Forster explained the procedure the Board would follow for tonight's series of public hearings. He opened up the public hearing for the **Scenic Heights Plan Amendment**.

Administrator Bleser stated that this project is the Scenic Heights Elementary School Forest, a restoration and water quality improvement project. Administrator Bleser, using a PowerPoint presentation, identified the location of the project. She reported that the site has been designated a Department of Natural Resources School Forest since 2006. She talked about how the school and public utilize the School Forest.

Administrator Bleser said that the plan is for the District to partner with the City of Minnetonka and the Minnetonka School District 276 to restore the School Forest, to improve the water quality in the Purgatory Creek subwatershed, and to restore an ecologically diverse outdoor learning environment for current and future generations. She noted that the project will include the removal of invasive species, improve the pond and wetland through the construction of vegetated swales and other measures to reduce erosion and improve local water quality.

She opened the floor for questions and responded to questions about the size of the site in acres, the ownership of the project site's property, whether the DNR grant for the project has been approved, and whether the school district would be responsible for maintenance. There was discussion about how the District will be recognized as a project partner such as through interpretive signage, using a focus group to include members of all of the stakeholder groups, and having access to use the space for some of the District's educational programming.

Dr. Dennis Yockers, a Minnetonka resident, offered comments in support for the project. He stated that the project is necessary because it is critical to restore the ecological integrity of the Purgatory Creek area but that purpose is secondary to the educational potential and purpose of the project. Dr. Yockers provided examples of ways students could be actively engaged in the project such as establishing goals and participating in the restoration work. He noted that the School District should train its land crews on how to manage native areas.

Mr. Paul Bulger, an Eden Prairie resident and CAC member, asked about the grant application process. He said that it looks like the grant was denied, and he asked what happens if grant funding for the project is denied a second time.

Administrator Bleser recounted her conversation with the DNR staff member who handles this grant program. She said that because this project had a cost higher than \$4,000 per acre, the District's grant application was separated into a different category. Administrator Bleser said that in light of this the District is looking at a Hennepin County grant for \$100,000. She explained that the estimated project cost has decreased to \$260,000 and the District is still working with the DNR to see if it has grant funds available for this project. She noted that the DNR has encouraged the District to apply again for grant funds for this project. She stated that the School District has offered to contribute \$45,000 over three years, and the District has reached out to the City of Minnetonka regarding a possible funding contribution as well. Administrator Bleser said that she will update the Board on the project's funding status at the Board's January or February monthly meeting.

Mr. Bulger requested that Administrator Bleser outline the project timeline, which she did.

President Forster called multiple times for additional questions and comments. Upon hearing none he requested a motion to close the public hearing on the Scenic Heights Plan Amendment. Manager Crafton moved to close the public hearing on the Scenic Heights Plan Amendment. Manager Yetka seconded the motion. Upon a vote, the motion carried 5-0.

President Forster opened the public hearing for **Ordering of the Chanhassen High School Stormwater Reuse Project.**

Administrator Bleser stated that the site uses approximately 3.8 million gallons per year of potable water to irrigate the school's sports fields. She talked about how the project would develop a way to utilize water from the on-site storm water pond to irrigate 11.1 acres of school fields. Using a PowerPoint presentation she displayed the proposed project site. She explained that the project would reduce the amount of storm water runoff reaching Bluff Creek, which is listed as impaired, and the project would reduce the amount of ground water used for irrigation.

Administrator Bleser reported that this project is in partnership with the City of Chanhassen and the Eastern Carver County School District and that the estimated project cost is \$385,000. She pointed out that the Metropolitan Council awarded the project a grant in the amount of \$200,000 and the District's local match to the grant is \$50,000. She said that the remaining project funds will come from the City of Chanhassen. She stated that Eastern Carver County School District will take on the project maintenance.

President Forster opened the floor for questions. Attorney Smith stated that one other step, in addition to amending the District's plan to include the project and ordering the project, is developing the Cooperative Agreement to define all parties' roles and responsibilities and financial and maintenance commitments and so on. He reported that the District's Legal Counsel, Administrator, and Engineer are working to develop a Cooperative Agreement for this project and other projects and the Cooperative Agreement is separate from today's public hearing process.

President Forster called multiple times for additional questions and comments. Upon hearing none he requested a motion to close the public hearing on the Ordering of the Project for the Chanhassen High School Stormwater Reuse Project. Manager Crafton moved to close the public hearing on the Ordering of the Chanhassen High School Stormwater Reuse Project. Manager Chadwick seconded the motion. Upon a vote, the motion carried 5-0.

President Forster opened the public hearing for the **Ordering of the Fire Station 2 Rainwater Reuse Project.**

Administrator Bleser described the project. She said that the project will capture rainwater from the fire station's rooftop to be used for site irrigation, fire truck washing, and tanker filling. She noted that the site will educate the public about water conservation techniques that can be implemented at home. Using a PowerPoint presentation she displayed the proposed location of the cistern. Administrator Bleser said that the estimated project cost is \$137,700. She reported that the Metropolitan Council awarded the project a storm water grant in the amount of \$99,287 with a requirement of a 25% match, which will be split between the District and the City of Eden Prairie.

President Forster opened the floor for comments and questions. He called several times for comments and questions and upon hearing none he called for a motion to close the public hearing. Manager Crafton moved to close the public hearing for the ordering of the Fire Station 2 Rainwater Reuse Project. Manager Bisek seconded the motion. Upon a vote, the motion carried 5-0.

President Forster opened the public hearing for the **Ordering of the Lower Riley Creek Restoration Project**. Administrator Bleser introduced Jeff Weiss of Barr Engineering to present on the project.

Mr. Weiss, using a PowerPoint presentation, summarized the project's feasibility study. He talked about the creek's three sub-reaches and described the project's scope of work, the erosion assessment, and sediment loading. He talked about the study's work to quantify the sediment loading in the reach and shared the results: 1,070 tons of sediment loading per year; 2,193,700 pounds per year of total suspended solids; and 1,260 pounds per year of total phosphorous.

Mr. Weiss talked about the project's goal of reducing erosive pressures on this reach of the creek and described the concept designs that were investigated. He provided the recommended concept of raising the stream/ravine bed with constructed riffles and minimizing floodplain excavation, completing scarp stabilization where possible, and installing toe stabilization where scarp stabilization is not possible due to site constraints.

Mr. Weiss noted that the estimated project cost is \$1,515,000.00, which is a cost of \$250 per foot including design, permitting, and construction, \$0.05 per pound of removal of total suspended solids, and \$84 per pound of removal of total phosphorous.

President Forster opened the floor for comments and questions. Mr. Weiss responded to questions about the movement of biota in streams with constructed riffles and he described the use of dead pools.

Mr. Larry Koch of Bighorn Drive, Chanhassen, asked Mr. Weiss to describe the methodology of raising the creek bed. Mr. Weiss described the process of constructing riffles. Mr. Koch asked about any effects the project will have downstream and asked about the tree clearing involved in the project. Mr. Weiss described how the project will lessen erosion downstream and how the project will only need to remove trees as required for project site access. Mr. Koch asked if Mr. Weiss has looked at upstream reaches to determine if it would be more beneficial to do work upstream prior to this proposed project. Mr. Weiss responded that yes, the upstream reaches have been looked at and currently staff is examining where water can be slowed down before it reaches the creek.

Mr. Paul Bulger, Eden Prairie resident and CAC member, asked if the District considered any type of downstream retention pond to capture sediment. Mr. Weiss responded that the concept of a sedimentation basin at Flying Cloud Drive was examined but was not recommended because of the large size of basin that would need to be constructed in order to handle the high volume of water and provide opportunity for anything to settle out. Mr. Bulger asked if damage to creek through the project's construction was assessed. Mr. Weiss responded that the upstream reach doesn't have thick forest so the project should only need to remove a tree here and there and then in the downstream end the project is going to want to clear out the buckthorn. Mr. Bulger voiced his concern that the Engineer's report on this item was not available prior to tonight's meeting. Administrator Bleser responded that the report should have been posted on the website in the Riley Creek folder and she will check to make sure it was posted. Mr. Bulger asked if additional technical review will take place. Administrator Bleser stated that this discussion is about the project feasibility, which happens before the project is ordered and designed. Mr. Bulger said that this was not clear and recommended that the District make it clear in the resolution.

Attorney Smith addressed Mr. Bulger's last comment by laying out the District's process, which includes amending its watershed plan to add a project, assessing the feasibility of a project, holding a public hearing to determine whether to order a project and once a project is ordered, proceeding with design, at which point there is Board review and perhaps other technical review, and finally ordering the project to bid. He added that there are more steps to come in this project's process.

Ms. Linda Loomis, Administrator of the Lower Minnesota River Watershed District, stated that it was fortunate that the Lower Minnesota River Watershed District worked with the RPBCWD on this project's feasibility study and that the Lower Minnesota Watershed's Board looked at the study. She said that the Board noticed the difference in the cost per pound of sediment removal in their District compared to the cost per pound of removal in the RPBCWD and that the Lower Minnesota Watershed's Board thought that the RPBCWD was getting a good deal in terms of cost. Administrator Loomis stated that her Board is considering what actions to take in that District because the Board realizes that if actions aren't being taken upstream of their District then there isn't much sense in doing downstream work. She said for that reason the Lower Minnesota River Watershed District is interested in partnering with the RPBCWD on this project and is interested in discussing to what extent the Lower Minnesota River Watershed District will participate and contribute funding. Administrator Loomis said that her District constantly is looking for ways to reduce sediment loading to the river and supports the Lower Riley Creek Restoration Project.

President Forster called several times for additional comments. Upon hearing none, he called for a motion to close this public hearing. Manager Crafton moved to close the public hearing on the Ordering of the Lower Riley Creek Restoration Project. Manager Bisek seconded the motion. Upon a vote, the motion carried 5-0.

President Forster said that now it is time for action on the items presented in the public hearings. He read aloud the resolving statements of **Resolution 16-09 - Resolution to Adopt Plan Amendment to Watershed Management Plan for Scenic Heights Elementary School Forest Project Forest Restoration and Water Quality Improvement Project.**

Attorney Smith recommended, due to the comments tonight about project funding, adding to the plan amendment on page 3, the last paragraph concerning funding, prior to the last sentence the statement: "The District will pursue other funding sources in addition to the DNR." The Board indicated consent to adding this language.

Manager Chadwick moved to table the amendment

President Forster said he opposes that motion because the District needs the project in its watershed plan in order to receive project money. The motion died due to lack of a second.

Manager Yetka moved to approve Resolution 16-09 to adopt the amendment, including the addition of the sentence as read by Attorney Smith, to the District's watershed plan. Manager Crafton seconded the motion. There was a brief discussion of the project funding. Upon a roll call vote, the motion carried 5-0.

Manager	Aye	Nay	Abstain	Absent
Bisek	X			
Chadwick	X			
Crafton	X			
Yetka	X			
Forster	X			

President Forster read aloud the resolving statements of **Resolution 16-10 Resolution to Order the City of Chanhasen Stormwater Capture and Reuse System Project.**

Manager Bisek moved to approve Resolution 16-10 Resolution to Order the City of Chanhasen Stormwater Capture and Reuse System Project. Manager Crafton seconded the motion. Manager Bisek asked Administrator Bleser to confirm the project cost. Administrator Bleser said that it is \$384,000 as stated in the resolution. Upon a roll call vote, the motion carried 5-0.

Manager	Aye	Nay	Abstain	Absent
Bisek	X			
Chadwick	X			
Crafton	X			
Yetka	X			
Forster	X			

President Forster read aloud the resolving statements of **Resolution 16-11 Resolution to Order the City of Eden Prairie Fire Station #2 Water Harvesting and Reuse Project.**

Manager Yetka moved to approve Resolution 16-11 Resolution to Order the City of Eden Prairie Fire Station #2 Water Harvesting and Reuse Project. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 5-0.

Manager	Aye	Nay	Abstain	Absent
Bisek	X			
Chadwick	X			
Crafton	X			
Yetka	X			
Forster	X			

President Forster read aloud the resolving statements of **Resolution 16-12 Resolution to Order the Riley Creek Water Quality Improvement Project.**

Manager Crafton moved to approve Resolution 16-12 Resolution to Order the Riley Creek Water Quality Improvement Project. Manager Yetka seconded the motion. President Forster said that the resolution states that the District will pay the cost of the project but tonight the Lower Minnesota River Watershed District offered to partner in the project and cost. He asked if this resolution will come back at a later date to amend it. Attorney Smith said that once the District has a clear idea of the funding arrangement, a cooperative agreement will be developed and if the cooperative agreement significantly changes the project to be ordered, the Board could consider amending the order or otherwise consider typical implementation of a project.

Manager Chadwick asked if it would be appropriate to add to the motion that the Board directs the Administrator to pursue a cost sharing partnership for this project with the Lower Minnesota River Watershed District. Attorney Smith said yes and recommended that the resolution be amended to include a paragraph stating: "Be it further resolved that the Board of Managers directs the Administrator to pursue project cost sharing partnerships."

Managers Crafton and Yetka approved the friendly amendment to the motion.

Upon a roll call vote, the motion carried 5-0.

Manager	Aye	Nay	Abstain	Absent
Bisek	X			
Chadwick	X			
Crafton	X			
Yetka	X			
Forster	X			

4. Matters of General Public Interest

President Forster opened the floor to matters of general public interest.

Mr. Bob Adomaitis of Highview Drive, Eden Prairie, raised the topic of budget management and oversight by the Board of Managers. He said that on page 49 of the District's Governance Manual there is a section entitled Internal Controls and Procedures for Financial Management. He said that part 1 of that section, paragraph B, states that, "Actual expenditures may not materially deviate from the amount in an approved budget category." Mr. Adomaitis stated that in all of the years that he has attended RPBCWD meetings, he can't recall an instance where there was discussion about actual performance in the budget and about actual versus budgeted. He explained that he's bringing this up because for this year the Permit Review and Inspection budget is \$100,000 and actual is \$148,000 as of October 31. Mr. Adomaitis said it is a moot point this year because there are only three weeks left in the year. However, he said he brings this issue to the Board's attention to suggest that for 2017 the Board of Managers takes this fiduciary responsibility and if there are budget items that are materially

deviating from the budget then there is a discussion about it and some attempt to manage that aspect of the project.

Mr. Paul Bulger, Eden Prairie resident and CAC member, stated he wanted to follow up on the resolution the Board just passed regarding Riley Creek. He said that the language in the resolution, which discusses that the Administrator will present plans and specs to the Board for its approval and for authorization to solicit bids for work, seems to contradict what was presented during the public meeting, which was just the project's feasibility, and he asked the managers to look closely at that contradiction.

5. Reading and Approval of Minutes

a. April 11, 2016, RPBCWD Board of Managers Special Meeting

Manager Yetka moved to accept the minutes as presented. Manager Chadwick seconded the motion. Upon a vote, the motion carried 5-0.

b. November 2, 2016, RPBCWD Board of Managers Regular Monthly Meeting

Manager Bisek requested a spelling correction on page 4. Manager Crafton requested a correction on page 5 under item 8f to insert the word "report," and she requested the correction of the dates of MAWD conference as listed on page 6 to reflect that the conference was 12/1-12/3. Manager Crafton move to accept the minutes as amended. Manager Bisek seconded the motion. Upon a vote, the motion carried 5-0.

6. Consent Agenda

President Forster read aloud the Consent Agenda items: a. Accept Engineer's Report (with attached inspection report); b. Accept Staff Report; c. Approve Paying of the Bills; d. Accept Treasurer's Report; e. Approve Hire for Water Resources Technician; f. Approve Salary Adjustment for Water Resources Coordinator (Data Collection and Fisheries Supervisor) h. Permit 2016-041 Chanhassen West Water Treatment Plant; i. Permit 2016-043 Bongards Redevelopment.

Manager Yetka moved to approve the Consent Agenda as read aloud by President Forster. Manager Crafton seconded the motion. Upon a vote, the motion carried 5-0.

7. Citizen Advisory Committee (CAC)

President Forster noted that Dorothy and David attended the MAWD conference and thanked them for attending.

Break in Meeting

At 9:00 p.m. President Forster requested a 10-minute break in the meeting to provide the managers with an opportunity to review documents for an upcoming agenda item.

President Forster reconvened the meeting at 9:10 p.m.

8. Action Items

a. Office Space Update – Letter of Intent Southwest Tech Center A

Administrator Bleser reported that the Scenic Heights office space discussed at a previous monthly Board meeting is not an option for the District's office space. She announced that there is an available office site at the southwest corner of Highway 5 and Dell Road in Chanhassen. Administrator Bleser described the

space and the cost and responded to questions.

Attorney Smith went through the chronology of the District's current office space and the District's use of, issues with, and actions regarding that space. He then reviewed the law specifically involved in the office issues including constructive eviction. He presented the District's legal options including constructive eviction.

President Forster opened the floor to comments from the CAC about how their meetings have been impacted by the noise at the District's current office space.

Ms. Dorothy Pederson, CAC Chair, stated that the noise from the neighboring dance studio has been detrimental to the CAC. She said that the noise has led to longer meetings for the CAC. She said that the CAC attempted to hold their meetings offsite but the free space they utilized closes at 8 p.m., which doesn't allow the CAC to complete its business, and the other meeting space options required payment. Ms. Pederson said that the CAC can't function in the District's office space with the level of noise from the next-door-neighbor and that the CAC is in support of the District moving to another office location.

Mr. Larry Koch of Big Horn Drive, Chanhassen and member of the CAC, commented that the noise from the District's next door office neighbor is so loud that it is almost impossible to hear one's own thoughts. He said that the noise was not conducive to discussions, the noise was irritating, and he frequently commented during meetings that it was difficult to hear and concentrate. Mr. Koch said that a CAC member used a decibel reader during one CAC meeting and the decibels rose over 85 at times. He said that the noise presents horrible conditions for the public at meetings and it sheds a bad light on the District. Mr. Koch said he thinks the District owes it to the public to hold its meetings in a decent space. He commented that the one time the representative of the landlord was present at the District office during a meeting the noise was tolerable but as soon as the representative left, the noise level increased.

Mr. David Ziegler of Baywood Terrace, Eden Prairie and CAC member stated that he agreed with the comments of the other CAC members. He added that even with the use of microphones, the CAC was unable to conduct business due to the noise.

The Board discussed the noise issue with the District's current office space and the District's options.

Attorney Smith said that the Board has in front of it a proposal for the office space at the Southwest Tech Center in Chanhassen. He stated that if the Board wants to move to that space, the next appropriate step is to direct President Forster to sign the proposal. Attorney Smith clarified that the proposal is not a lease but is a proposal to enter into a lease based on the terms in the proposal. Attorney Smith stated that the Board should direct its Legal Counsel and Administrator to work with the Southwest Tech Center to develop a lease for its review and consideration at the Board's January monthly board meeting. He said that the Board also would direct Legal Counsel to communicate with the current landlord about the District's current plans to vacate the space on Martin Drive on or around March 1.

Manager Yetka moved to authorize the President of the Board to sign the letter of intent for the office space in Chanhassen and to authorize the Legal Counsel and Administrator to notify the District's current landlord of the District's plans and to work with the Southwest Tech Center to develop a lease for Board review. Manager Bisek seconded the motion. Upon a vote, the motion carried 5-0.

b. 2015-016 Reduce Financial Assurance Blossom Hill

Administrator Bleser said that there was a request from Blossom Hill to reduce the financial assurance for this project. She announced that staff is not recommending reducing the amount of the financial assurance.

Administrator Bleser said that staff does not recommend it because of information contained in a letter from City of Eden Prairie technical staff stating that the storm water facility has not been constructed in accordance to the terms of the permit and the District rules.

Manager Crafton moved to direct staff to send a letter explaining the rationale of the Board's denial of the request to reduce the financial assurance based on the fact that the facility has not been fully constructed or installed as per the terms of the permit. Manager Bisek seconded the motion. Upon a vote, the motion carried 5-0.

c. Purgatory Creek Approval Application No. 1

Engineer Sobiech noted that tonight he handed out a revised staff report that include one change, which is a correction to the name of the applicant. He said that the Board has received a payment request from Minnesota Native Landscapes for the work performed on the Purgatory Creek Stabilization Project. Engineer Sobiech described the work completed by Minnesota Native Landscapes. He said that Minnesota Native Landscapes is asking for the first payment application in the amount of \$183, 944.37. He stated that the District Engineer recommends approval of this payment application. Responding to a question, Engineer Sobiech described change order number 1.

Manager Crafton moved to approve payment in the amount of \$183,944.37 to Minnesota Natural Landscapes. Manager Bisek seconded the motion. Upon a vote, the motion carried 5-0.

d. Permit 2016-037 Prestige Day Care

Engineer Sobiech responded to questions from President Forster. Manager Bisek moved to approve permit 2016-037 contingent upon the Engineer's recommendations. Manager Crafton seconded the motion. Upon a vote, the motion carried 5-0.

9. Discussion Items

a. Cost-Share Program

Ms. Jordan presented the idea of increasing the cap on the local government and commercial tier of the District's cost-share program. She explained that currently the cap is \$20,000 up to 50% with a required 50% match. Ms. Jordan stated that staff recommends increasing the cap to \$50,000 with the 50% percent match. She provided the reasoning behind the recommendation and said that the increase would encourage more project applications and projects with greater water quality benefits. She said that this item is for the Board's consideration and will come back in front of the Board in January.

President Forster asked if there is enough money in the budget to accommodate this change. Administrator Bleser responded that the District did include increases to the cost-share program budget for 2017. There was discussion.

b. Governance Manual

Administrator Bleser announced that she would bring the Governance Manual and the Employee Handbook to the January monthly meeting

c. Upcoming Meetings

No meetings were specifically announced and it was mentioned that upcoming meetings were listed in the Upcoming Events section of the meeting agenda.

d. CAC

President Forster said that between now and the Board's next monthly meeting, he would like to meet with

the Chair of the CAC to gather and discuss ideas about 2017. Ms. Jordan said this is a great idea and fits in with the timeline of the CAC appointments. Ms. Jordan summarized the CAC applications that the District received for the 2017 CAC.

10. Upcoming Events

- District Regular Board Meeting, Wednesday, January 4, 2016, Eden Prairie City Hall, 7:00 p.m.

11. Adjourn

President Forster announced that the District was named 2016 District of the Year by the Minnesota Department of Natural Resources.

Manager Chadwick moved to adjourn the meeting. Manager Yetka seconded the motion. Upon a vote, the motion carried 5-0. The meeting adjourned at 10:08 p.m.

Respectfully submitted,

Mary Bisek, Secretary