

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

March 2, 2016, Board of Managers Monthly Meeting and Public Hearing

#### PRESENT:

Managers: Richard Chadwick

Jill Crafton, Treasurer

Perry Forster, President

Leslie Yetka, Vice President

Staff: Claire Bleser, RPBCWD Administrator

Michelle Jordan, RPBCWD Water Quality & Outreach Coordinator

Josh Maxwell, District Technician and Compliance Officer

Louis Smith, Attorney (Smith Partners)

Scott Sobiech, Engineer (Barr Engineering Company)

Other attendees: Bob Adomaitis, CAC, LRIA, SW Lakes Coalit. Sharon McCotter, CAC

Paul Bulger, CAC

Lisanne Oster

John Bushy, Eden Prairie Resident

Dorothy Pedersen, CAC

Laurie Hable, CAC

Laurie Susla, CAC, LLCA

Pete Iversen, CAC

Dennis Yockers, CAC

Larry Koch, CAC

David Ziegler, CAC

Ted Kowalski

#### 1. Call to Order

President Forster called the Wednesday, March 2, 2016, Board of Managers Monthly Meeting to order at 7:06 p.m. at the RPBCWD District Office at 14500 Martin Drive, Suite 1500, Eden Prairie, MN 55344.

#### 2. Approval of the Agenda

President Forster added to the agenda to immediately follow Approval of the Agenda an item to appoint a Secretary Pro Tem. He also announced that the agenda item ó Variance Request 2015-056 Oster Property ó would move ahead in the agenda to immediately follow item 4 ó Reading and approval of minutes. President Forster requested the addition to the agenda of the following Discussion items: Upcoming meetings; Update on the Governor's Water Summit; Update on the opening of the Aquatic Invasive Species Research Center at the University of Minnesota; Letter writing to invite legislators to the Minnesota Association of Watershed Districts legislative reception/breakfast in St. Paul on March 30 and 31. President Forster noted that the Board would move into closed session after handling the Discussion items in order to receive updates on the CH2M Hill and the Post Development matters.

Manager Crafton moved to approve the agenda as amended. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

### 3. Appointment of Secretary Pro Tem

President Forster moved to appoint Manager Chadwick as Secretary Pro Tem. Manager Crafton seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

### 4. Hearing and Discussion of Matters of General Public Interest

Larry Koch of 471 Bighorn Drive in Chanhassen thanked the District staff for the meeting materials PDF document that included the bookmarks, which made it easy for him to find information. He asked when there would be a review of the 2015 actual expenditures as compared to the 2015 budget. Mr. Koch requested that the invoices of the engineers and legal counsel either be included in the board packet or be made available on the District's website. Mr. Koch requested that the detailed financial report be included in the Board packet or on the website. He requested that at least each quarter there be a financial overview of each project.

### 5. Reading and Approval of Minutes

#### a. February 3, 2016, RPBCWD Board of Managers Monthly Meeting and Public Hearing

Manager Chadwick noted that on page 6, item 13 Engineer's Report, the end of the last sentence in the section references the Lower Minnesota River Watershed District's plan. He said he thinks reference should be to the RPBCWD's plan.

Manager Crafton moved to approve the minutes as amended. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

### 9a. Variance Request 2015-056 Oster Property

Engineer Sobiech said that in front of the Board tonight is a permit request from property owner Lisanne Oster at 9008-9010 Riley Lake Road in Eden Prairie for the tear down and construction of a single family home on a combined parcel. He reported that the applicant is asking for a variance from the minimum buffer width requirement of 40-feet with an average width of 80-feet for an exceptional value wetland located on the property. Engineer Sobiech explained that the applicant is proposing to provide a 10-foot minimum, 20-foot average width buffer instead of the required 40-feet, 80-feet combination. He said that the proposed buffer meets 25% of what is required. Engineer Sobiech explained that the practical difficulties on this property are related to an existing long-established gravel road on the property that bisects it. He noted that the access road is intercepting drainage and directing it away from the wetland. Engineer Sobiech stated that installing a buffer upgradient/ upstream from the existing access road wouldn't really provide much more protection for that wetland than what is already there.

Engineer Sobiech reported that the City of Eden Prairie is requiring the property owner to slightly realign the gravel road to remove it from the City's conservation easement. He went into detail about the applicant's proposed treatment of stormwater runoff. He said that a granting of this variance would not impact any neighboring properties. Engineer Sobiech mentioned that the applicant reconfigured two existing lots that the applicant owned into a single lot and by doing so essentially said that construction on the property will be limited to one house instead of two. He noted that this is another way the applicant is mitigating potentially adverse effects from development.

Engineer Sobiech took comments and questions. There was discussion of the essence of the term practical difficulty and the due diligence in the District's review of the variance request.

Engineer Sobiech announced that the applicant made a second request in the variance request to ask for a waiver from the requirement to provide permanent free-standing markers at the buffer edge. He said that the City of Eden Prairie requires, as part of its conservation easement, signage to be placed along the buffer edge. However, he explained, the City's signage lacks a couple of key elements that the District's rules require on the signage. Administrator Bleser noted that the City of Eden Prairie communicated to her today that it is working to have its signage align with the signage requirements of the District. There was a discussion about the signage and possibilities for not needing to duplicate signage while still meeting the City's and the District's signage requirements.

Manager Chadwick moved that the Board grant the variance from compliance with Rule D criteria related to minimum and average buffer width and buffer markers and with the condition that the project will otherwise conform to Rule D if the Rule-specific permit condition listed above is met. He commented that his intent with the motion is that it would waive the District's marker requirements if the property complies with the City's markers and the City's markers meet the District's requirements. Manager Crafton seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

Manager Chadwick moved that the Board approve permit 2015-056 with the conditions as recommended by staff. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

## 6. Consent Agenda

President Forster read aloud the Consent Agenda items: a. Award Wenck Associates the Lake Riley Alum contract; b. Approve Extension Request 2015-055 Hampton Inn; c. Approve Permit 2015-58 Park Nicollet; d. Approve Extension Request for Permit 2015-060 Optum; e. Approve Extension Request for Permit 2015-061 Ingram Property; f. Approve Engineer's Report; g. Approve Staff Report.

Manager Chadwick requested the Board modify Consent Agenda items f. and g. so that the Board accepts rather than approves the Engineer's Report and Staff Report. Manager Crafton moved to approve the Consent Agenda as amended. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

## 7. Citizen Advisory Committee (CAC)

Dorothy Pedersen thanked Administrator Bleser and Manager Chadwick for attending the most recent CAC meeting. She said that the CAC is looking forward to improving communications between the Committee and the Board. Ms. Pederson reported that the CAC continues its work on the lake matrix. She talked about the welcome kit the CAC is developing, which will help communicate to new lakeshore residents the watershed's rules. President Forster requested that the CAC consider including in the kit information about steps that residents should take regarding FEMA (Federal Emergency Management Agency) letters. Manager Chadwick stated that the District shouldn't give legal advice but should suggest the residents contact the District and consult a legal advisor.

## 8. Treasurer's Report

Manager Crafton stated that the District has received the Treasurer's Report and it is submitted to the Board for approval. Manager Chadwick said that he seconds the motion that the Board accepts the Treasurer's Report. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

Manager Crafton moved to approve paying the bills. Manager Chadwick seconded the motion. Upon a vote, the

## 9. Action Items

### b. Variance Request 2015-062 MN Department of Transportation Trunk Highway 5

Engineer Sobiech explained that MnDOT has submitted a permit application for work it wants to do along Highway 5 in Chanhassen between Highway 101 and Market Boulevard. He said that MnDOT is adding acceleration lanes to address public safety issues. Engineer Sobiech reported that the permit application is in compliance with erosion control and stormwater but asks for a variance from the minimum buffer width on the property. He said that the wetland on the property is designated high-quality, which requires a 30-foot minimum buffer and 60-foot average. Engineer Sobiech explained that MnDOT at its narrowest buffer width would provide 23.5 feet. He said that the acceleration lane encroaches into that 30-foot minimum. He reported that staff recommends approval of the variance request.

Manager Chadwick moved to grant the variance. Manager Yetka seconded the motion. President Forster asked if MnDOT plans to mitigate somehow for the loss of the wetland buffer. Engineer Sobiech responded that MnDOT is providing additional buffer to the west of the project area.

Manager Crafton moved to approve permit 2015-062. Manager Yetka seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

### c. Approve Plan Amendment – Regulatory Program

Attorney Smith stated that this item has to do with how watershed districts' 10-year plans line up with cities' local water management plans. He explained that the rules guiding that process have been revised and have set a schedule whereby cities have to produce their local water plans by 2018. He said that once cities do so, their plans can be in place for 10 years. Attorney Smith explained that watershed district plans generally require that the local city plans conform to the watershed plans. He pointed out that there could be an issue in terms of the rules and permitting program that the District operates and the timing.

Attorney Smith noted that the cities are free to decide to develop a local plan that conforms and to decide that they'd like to assume the permitting role exclusively, which they can do so as long as the cities put forward their ordinances that meet the standards of the District and the District approves them.

He said that what he is concerned about is that the District is going through a watershed plan amendment process that will continue through 2017, but the District will start seeing local water management plans later this year or early next year and there will be a schedule coordination issue. Attorney Smith said that if the District doesn't act to get this amendment into the District's plan, the District runs the risk of some cities' local plans seeking a permitting role and then not having to update their ordinances for 10 years. He explained that this amendment anticipates that and engages with the cities in a coordinated permitting program so that everyone knows how it is going to work.

Attorney Smith recommended the District put out an amendment to its plan now to give everyone notice about this issue and require that after the District reviews and approves a local water plan, the cities must adopt and implement it within 120 days and decide if it wants to adopt its official local controls and ordinances to take over that regulatory role or defer that role to the District. He continued by saying that as a condition of the approval of the plan, it is understood that the City will keep its ordinances up-to-date to conform with the District's requirements or otherwise just defer to the District.

Attorney Smith remarked that if the Board is interested in starting the amendment process tonight, it would not be approving the amendment tonight but would authorize issuing the draft plan amendment to

start the 60-day comment period.

Attorney Smith responded to questions and comments from the Board and CAC members.

Manager Crafton moved that the District start the 60-day process. Manager Yetka seconded the motion.

Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote].

## 10. Discussion Items

### a. CAC/Board Communication Process

Administrator Bleser stated that the meeting packet materials included the notes from last month's CAC and Board workshop as well as a draft diagram of a communication process that has been developed. She went into detail about the draft communication process. She said that she would like the Board to discuss whether it would like to appoint one manager to attend the CAC meetings or develop a rotating attendance schedule for the managers to attend CAC meetings.

Attorney Smith pointed out a correction to be made to the footnote to indicate that the number of Board managers attending the CAC meetings cannot exceed two unless noticed.

Manager Yetka remarked that she thinks it would be valuable to have a Board member attend the CAC meetings and that the Board should identify the role the manager will have at those meetings.

There was discussion. The Board decided to continue the discussion at the next meeting that all five managers are in attendance. President Forster said that a Board member would attend the CAC's next meeting.

### b. MAWD Survey

Administrator Bleser reported that the Minnesota Association of Watershed Districts (MAWD) sent out two surveys, one regarding MAWD strategic planning and one regarding education and outreach. She said it is highly recommended that the Board members fill out both, and she requested the Board members to contact her if they do not have the links to those surveys.

### c. Update on Eden Prairie Soil and Water Management Plan

Administrator Bleser said that the District hasn't yet received a revised version of the City of Eden Prairie's Soil and Water Management Plan. She noted that the City's Environmental Coordinator said that the District should receive it shortly and the Board will receive an update once the District has received it and staff has reviewed it.

### d. Update on the Bluff Creek Fish Barrier Project

Administrator Bleser reported that the project is moving forward. She said that the City of Chanhassen is in discussion with the property owner about the part of the property that would have the fish passage and about some stabilization of Bluff Creek. She reminded the Board that Bluff Creek is impaired for lack of fish going upstream. She reported that Lower Minnesota River Watershed District has committed funds in the amount of \$50,000 toward this project as has the Hennepin County Regional Rail Authority and the City of Chanhassen for approximately the same amount. She said that the District was awarded \$150,000 in Clean Water Legacy Funds as well for the project. Administrator Bleser noted that the District needs to contribute \$37,500 as its match for the Clean Water Legacy grant funds, and the District will know more about the project costs after the feasibility study. She said that the District budgeted \$115,000 for the project. Administrator Bleser responded to questions.

Engineer Sobiech remarked that assuming the City of Chanhassen is successful in getting property access,

the District would then start and proceed with design, which would begin by collecting survey and soil boring information.

**e. Update on Governor’s Water Summit**

President Forster and Manager Crafton reported on the Governor’s Water Summit in St. Paul on February 27<sup>th</sup> that they attended.

**f. Update on UMN’s AIS Research Center**

President Forster reported on his experience at the opening of the Aquatic Invasive Species Research Center on the University of Minnesota’s St. Paul Campus earlier in the day.

**g. Letter Writing to Legislators**

President Forster announced that MAWD is hosting a legislative reception and breakfast at the state Capitol on March 30 and 31. He said that he is interested in writing letters on behalf of the Board to encourage the District’s legislators to come to one of those events. President Forster added that managers are welcome to attend and that a fee is associated with the events. He noted that he and Manager Crafton will be attending.

**h. Upcoming Meetings**

Administrator Bleser said that the Board needs to hold a special meeting to approve going out for a bid for the alum treatment. She suggested the week of March 14. The Board agreed on holding a special meeting of the Board on Monday, March 14 at 4 p.m.

## 11. Upcoming Events

- Special Meeting of the Board, Monday, March 14, 2016, 4:00 p.m., RPBCWD District Office
- CAC Meeting, Monday, March 21, 2016, 5:30 p.m., RPBCWD District Office
- DIY Organic Lawn Care Workshop, March 31, 7:00 p.m., Nine Mile Creek Watershed District, 12800 Gerard Drive, Eden Prairie, MN
- Board Meeting, Wednesday, April 6, 2016, 5:30 p.m., RPBCWD District Office
- CAC Meeting, Monday, April 18, 2016, 5:30 p.m., RPBCWD District Office
- Board Meeting/Evening with the Watershed, Tuesday, May 3, 2016, 7:00 p.m., Chanhassen American Legion
- Urban Waters Forum, Saturday, April 23, 8:30 a.m. ó 12:30 p.m., Minnesota Landscape Arboretum
- Bluff Creek Watershed, May 11, 6:30 p.m. ó 8:30 p.m., Chanhassen Recreation Center, 2310 Coulter Boulevard, Chanhassen MN 55317
- Riley Creek Watershed, May 18, 6:00 p.m. ó 8:00 p.m., Chanhassen Public Library, 7711 Kerber Boulevard, Chanhassen, MN 55317
- Purgatory Creek Watershed, May 24, 6:30 p.m. ó 8:30 p.m., Eden Prairie Community Center, 16700 Valley View Road, Eden Prairie, MN 55436

## 12. Closed Session

Manager Crafton moved that the meeting move into closed session to discuss litigation with Post LLC in regards

Final Board-approved Minutes of 3/2/16 RPBCWD Board of Managers Monthly Meeting to Purgatory Creek 2<sup>nd</sup> Addition (permit 2015-014) and CH2MHill settlement offer. Manager Chadwick seconded the motion. Upon a vote, the motion carried 4-0 [Manager Bisek absent from vote]. The meeting moved to closed session at 8:47 p.m.

### **13. Adjourn**

The meeting adjourned at 9:07.

Respectfully submitted,

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Richard Chadwick, Secretary Pro Tem