

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

July 14, 2015, Board of Managers Special Meeting

PRESENT:

Managers: Mary Bisek, Vice President
Perry Forster, President
Leslie Yetka, Secretary Pro Tem

Staff: Claire Bleser, RPBCWD Administrator
Michael Welch, Attorney (Smith Partners)
Scott Sobiech, Engineer (Barr Engineering Company)

Other attendees: Kristina Elfering Elfering & Associates
Justin Schmidt, Life Time Fitness
Steve Segar, Engineer, City of Bloomington
Jason Warne, Wenck Associates, Inc.

1. Call to Order

President Forster called the Tuesday, July 14, 2015, RPBCWD Board of Managers Special Meeting to order at 4:09 p.m. at the RPBCWD District Office at 14500 Martin Drive, Suite 1500, Eden Prairie, MN 55344.

2. Approval of Agenda

Manager Yetka moved to approve the agenda as presented. Manager Bisek seconded the motion. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencl absent from vote].

3. Board Action

a. Consent Items

Administrator Bleser requested the removal of Consent Item 3aiii – Purgatory Creek 2nd Addition – from the agenda. Manager Bisek moved to approve Consent Agenda items 3ai–2015-027: Bloomington Hyland Greens Pond and 3aii – 2015-028: Bloomington–Dakota Road. Manager Yetka seconded the motion. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencl absent from vote].

Aiii. Purgatory Creek 2nd Addition

Administrator Bleser reported that the permit applicant has requested an extension to December 31, 2016, for issuing a permit. She explained that the applicant makes this request because the applicant thinks that the contractor will not be able to complete the project this year. Manager Bisek asked if staff had any concerns about the requested extension. Engineer Sobiech responded that staff believes it is a reasonable extension. President Forster commented that it would need to be made clear that the permit expires on December 31, 2016. Engineer Sobiech said that it will clearly state the expiration date on the permit. Manager Bisek moved to approve permit 2015-014 Purgatory Creek 2nd Addition with the change in the end date to December 31, 2016. Manager Yetka seconded the motion.

Administrator Bleser reminded the Board that the applicant submitted two variance requests. She recommended the Board clarify for the record that the Board isn't approving the applicant's second variance request because now the applicant is meeting the District's rules. Manager Bisek made the friendly amendment to her motion to indicate that the Board isn't approving the applicant's second variance request because now the applicant is meeting the District's rules. Manager Yetka accepted the friendly amendment. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencil absent from vote].

[Attorney Welch arrives.]

b. 2015-011 – Eden Prairie Pond Clean Out Project – Extension Request

Engineer Sobiech explained that the applicant has outstanding information that needs to be submitted to the District, so staff is asking for a 60-day extension. Manager Yetka moved to approve the extension request for permit 2015-011 for another 60 days. Manager Bisek seconded the motion. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencil absent from vote].

c. 2015-025 – Life Time Fitness at Prairie Center Drive – Variance

Engineer Sobiech displayed a map showing the location of the Life Time Fitness facility at Prairie Center Drive and the boundaries of proposed project. He described the proposed project and explained that the project complies with all of the District's rules except the buffers rules. Engineer Sobiech described the wetland that is adjacent to the facility and the proposed project. He explained that under District rules, a wetland buffer would be required along the entire property. Engineer Sobiech stated that the applicant has assumed that the wetland adjacent to the property is rated an exceptional wetland, meaning an 8-foot buffer is required. Engineer Sobiech talked about the applicant's variance request. He displayed a map showing the property, the proposed project footprint, the wetland delineation, and proposed buffers. He detailed the difficulties the applicant would have meeting the 8-foot buffer requirement in areas of the proposed project. Engineer Sobiech presented an alternative buffer width and stated that the proposed alternative buffer versus the 8-foot buffer results in 3,600 square feet fewer of buffer. He reported that staff recommends approval of the variance request.

There was discussion. Manager Bisek asked if there is an opportunity for education and outreach signage in the project area. Engineer Sobiech said yes, there is an opportunity, which would need to be addressed with the property owner.

Manager Bisek moved to approve the variance request for permit 2015-025 for Life Time Fitness at Prairie Center Drive, with the caveat that staff contact the property owners to see if they'd be amenable to interpretive signage for the buffer area. Manger Yetka seconded the motion. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencil absent from vote].

d. 2015-026 – Bloomington – Colorado Pond – Variance

Engineer Sobiech displayed a map of Bloomington, showing Hyland Lake and showing Colorado Pond to the lake's south. Engineer Sobiech explained that the City of Bloomington proposes to replace an existing storm sewer line that discharges into Colorado Pond, which is a DNR-protected wetland. He explained that the applicant is the City of Bloomington, which is asking for a variance from the buffering requirement. Engineer Sobiech stated that the buffer requirement would require a 40-foot buffer around the entire pond. He displayed a map. He indicated on the map the location of the applicant's easement. Engineer Sobiech indicated on the map where a 20-foot buffer could exist along the applicant's drainage and utility easement and of which the property owners in this area would be allowed to have a 12-foot path. Engineer Sobiech explained how this would decrease the overall buffer width. He described other

challenges to creating buffering in the area. He reported that the applicant is asking that no buffer be required for this project. There was discussion. Attorney Welch pointed out that there is a structure built into the District's rules to provide for the Board considering practical difficulties.

Mr. Segar of the City of Bloomington provided remarks about the project and responded to questions. Manager Yetka recommended the City incorporate education measures to make sure the residents around the pond understand the benefits of the buffer.

Manager Yetka moved to approve the variance request for permit 2015-026 for Bloomington Colorado Pond with the caveat that the applicant talk to the residents and educate them on buffers and inform them that if they want to increase the buffer, the District has a cost-share program. Manager Bisek seconded the motion. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencil absent from vote].

e. 2015-030 – Chanhassen Specialty Retail – Variance

Engineer Sobiech described the property location. He explained that although the property currently is vacant, a past development attempt included land alteration that resulted in a pond. Engineer Sobiech stated that the first variance request by the applicant is regarding consideration of how existing conditions is defined. He explained that the District defines existing conditions as the way the property sits when the rules were done. Engineer Sobiech described how this definition would affect the proposed project and how it would make this parcel extremely difficult to develop. Engineer Sobiech reported that staff recommends approval of the variance request to determine existing conditions to assume that the pond is not there.

Engineer Sobiech explained that the second variance request from this applicant is regarding rate control. He talked about the areas along the perimeter of the site in which the applicant is unable to meet rate control at all discharge areas from the site. Engineer Sobiech described the proposed construction and displayed a map of the property. He spoke in detail about the proposed construction, described the proposed discharge rates, and noted the location of the discharge points. He stated that the variance request is for allowing discharges that are less than 1 cubic foot per second total and less than that in terms of an increase discharging in each direction. Engineer Sobiech described the discharge points and the water flow from those points. He said that in aggregate, meaning looking at the site as a whole, the proposed project would meet rate control requirements. Engineer Sobiech remarked that for the reasons discussed, staff recommends the Board approve the variance request.

He responded to questions about the property's soil type, the proposed underground storage, the proposed infiltration, and where water runoff from the building would go. Attorney Welch mentioned the District Engineer's proposed permit condition about performance monitoring.

Manager Bisek asked if the City of Chanhassen is aware of the plan for the flow going out into the street and if so, is the City ok with the plan. Engineer Sobiech said that he hasn't had that discussion with the City, but the applicant will go through the City as part of the proposed development process. He said that in his opinion the City will be ok with the plan. Manager Bisek recommended that the District communicate with the applicant about an opportunity for interpretive signage with this project. There was discussion.

There was a discussion about maintenance of the pervious pavement. Engineer Sobiech noted that the applicant will be required to develop a maintenance agreement. He said that a draft of the agreement will be reviewed by the District. He emphasized that it is a condition of the District's permit to have the maintenance agreement in place before the District releases the permit.

Manager Yetka moved to approve the variance request for 2015-30, which includes two variances, with the conditions recommended by staff and by Manager Bisek. Manager Bisek seconded the motion. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencil absent from vote].

f. 2015-031 – 10089 Purgatory Road Slope Stabilization

Engineer Sobiech reminded the Board that the City of Eden Prairie talked to the Board about this project in January. He spoke briefly about the history of the site, the slope failure, and exposed soil on the site. He explained that the site is extremely difficult to access, and he discussed the proposed access route. Engineer Sobiech talked about erosion control measures that will be installed.

Engineer Sobiech reported that the project meets the District's rule requirements with the exception of a couple of rules under the District's Shoreline Streambank Rule F. He announced that just before today's meeting, the Minnesota Department of Natural Resources (DNR) communicated to staff that the DNR will issue a permit to the applicant. He stated that since the applicant will be receiving a permit from the DNR, the applicant doesn't need a permit from the District.

Engineer Sobiech went into further detail about the variance request. He said that one of the District's rules requirements is to grade slopes at a ratio of 3:1 horizontal to vertical. Engineer Sobiech explained that the applicant proposes a 1:1 slope so that a large enough mass, e.g., rip rap, can provide weight in this area so that if the bank wants to move, the movement is offset by the weight. Engineer Sobiech reported that the second variance request for this permit is to allow the rip rap to extend three feet above the 100-year elevation. He said that the District's rules would limit the rip rap to extend no further than two feet above the 100-year elevation. Engineer Sobiech said that this request is tied to the mass of rip rap needed to stabilize the slope.

Attorney Welch recommended the Board enter the DNR's communication into today's meeting record, approve the Rule F permit variance conditional on the point that when the DNR issues a permit, the DNR's permit supersedes the District's permit. He explained that this is because the District's rules state that the DNR's permit supersedes the District's permit. Attorney Welch said that the District would retain its buffer approval, floodplain, erosion and sediment control even if the DNR does issue a permit. He said the Board could move to approve the permit conditional on revision of permitting records to remove approval under District rules F and K on issuance of permit covering same project area and work scope by the DNR.

Engineer Sobiech remarked that regarding buffering requirements, staff has worked with the applicant to establish what staff considers are reasonable areas for buffer. He displayed a map indicating the proposed buffer markers. He talked about the proposed buffers. Attorney Welch pointed out that staff believes the buffers as proposed are the best application of the buffer requirements under the circumstances of the project site.

Manager Bisek moved the motion recommended by District Legal Counsel for permit 2015-31 for 10089 Purgatory Road slope stabilization and removing the sections regarding Rules F and K in acknowledgement of when the DNR issues its permit. Manager Yetka seconded the motion. Upon a vote, the motion carried 3-0 [Managers Crafton and Wencil absent from vote].

g. Storm Water Infrastructure Maintenance Rules Requirement

Attorney Welch said that this item is a discussion item but staff would like to receive direction from the managers regarding challenging circumstances regarding buffers and variances. He talked about how the District is following the mantra of a little buffer is better than no buffer. He noted that when a city is operating under a drainage utility easement, the city will fight the District on this mantra due to

circumstances such as the property owners would not want the buffer. Attorney Welch explained that the District has a few options to consider regarding how it handles such cases: grant a variance, conduct an individual analysis on each set of property circumstances, adopt a policy that says the District will require buffers when it is reasonable, or the District could do housekeeping on its rules at the end of the year to modify the rules to state the District only will require a buffer when the applicant owns a free interest in the property.

Attorney Welch said that he recommends that for now the Board reviews these cases as variance requests and the Board then makes the best decision it can under the circumstances. He recommended also that the District does not pull the District Legal Counsel in for property rights reviews.

There was discussion.

President Forster said he thinks the District should look at these cases on a variance basis through a period of time such as through the end of 2016. The Board indicated agreement.

4. Upcoming Events

- CAC Meeting, Monday, July 20, 2015, 6:30 p.m., District Office
- NEMO Workshop on the Water, July 22, 2015, 7:00 p.m.
- Watershed Tour, July 27, 2015, 4:00 p.m.
- Budget Workshop & Regular Board Meeting, August 5, 2015, 5:00 p.m.
- Public Hearing & Regular Board Meeting, September 2, 2015, 7:00 p.m.
- Clean Water Summit, September 15, 2015, University of Minnesota Arboretum, all-day

5. Adjourn

President Forster moved to adjourn the meeting. Manager Yetka seconded the motion. Upon a vote, the motion carried 3-0. [Managers Crafton and Wencil absent from vote]. The meeting adjourned at 5:40 p.m.

Respectfully submitted,

Leslie Yetka, Secretary Pro Tem