

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

April 12, 2023, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer
 Tom Duevel, Vice President
 Larry Koch
 Dorothy Pedersen, Secretary
 David Ziegler, President

Staff: Amy Bakkum, Administrative Assistant
 Zach Dickhausen, Natural Resources Coordinator
 Liz Forbes, Communication Manager
 Terry Jeffery, District Administrator
 Louis Smith, Attorney, Smith Partners
 Scott Sobiech, Engineer, Barr Engineering Company

Other Attendees: Alaina Bonnie Nelson, CAC
 Andrew Aller Maya Santamaria
 Greg Hawks Betsy Schmiesing
 Jack Hopkins D Suchy
 David Knaeble, Civil Site Group

Note: the Board meeting was held remotely via meeting platform Zoom because it was deemed not prudent to meet in person due to the COVID-19 pandemic.

1. Call to Order of Board of Managers Regular Monthly Meeting

- 1 President Ziegler called to order the Wednesday, April 12, 2023, Board of Managers Regular
- 2 Meeting at 7:00 p.m. Mr. Smith called roll for the Board of Managers.

<i>Manager</i>	<i>Action</i>
Crafton	Present
Duevel	Present
Koch	Present
Pedersen	Present
Ziegler	Present

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Manager Koch stated the District is conducting this meeting via Zoom out of an abundance of caution due to the Covid pandemic.

2. Approval of Agenda

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President Ziegler requested adding to the agenda a discussion about the status of the Covid pandemic and the District returning to in-person meetings. He suggested adding the topic as action item 8h.

Manager Koch requested removing from the Consent Agenda items 7b – Accept March Staff Report, 7c – Accept March Engineer’s Report, 7d – Accept March Regulatory Program Report, 7e – Approve Permit #2022-068 KIWATCHI Development as Presented in the Proposed Board Action Section of the Permit Review Report; 7f – Approve Permit #2022-077 Dunibar Court Development as Presented in the Proposed Board Action Section of the Permit Review Report; 7g – Approve Permit #2022-079 CSAH 4 Culvert Lining Project as Presented in the Proposed Board Action Section of the Permit Review Report; 7h – Approve Permit #2023-005 Sunnybrook Road Culvert Replacement Project as Presented in the Proposed Board Action Section of the Permit Review Report; 7i – Adopt Resolution 23-025 Accepting Personnel Committee’s Recommendation to Approve the Administrator Work Plan as Amended by Committee, and item 7m – Adopt Resolution 23-034 Authorizing Distribution of 2022 Annual Report.

Manager Pedersen moved to accept the agenda as amended. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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3. Matters of General Public Interest

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President Ziegler announced the procedure for raising matters of general public interest. No matters of general public interest were raised.

28 Ms. Maya Santamaria reported she is president of the Duck Lake Association and three of the
29 Association's board members were at yesterday's Lake Association summit organized by the
30 District. She said she is looking forward to the next Lake Association Summit. She said the Duck
31 Lake Association (DLA) Board is interested in moving forward with the process of establishing a
32 lake management plan. Ms. Santamaria said she hopes the Board will take the Association's
33 interest into consideration and that the District can get the process started. She said the DLA is a
34 very active board and is very interested in being collaborative partners with the District about
35 Duck Lake and looks forward to getting the process started. Ms. Santamaria said the Association
36 would like to be able to put the Duck Lake inlet [outlet] on the District's agenda and hopefully
37 once and for all work on raising the water level of Duck Lake. She said the DLA has written a
38 letter to the District Board of Managers expressing the almost unanimous desire of Duck Lake
39 property owners to have the inlet [outlet] adjusted so the lake level can go back up. She reiterated
40 the DLA's request to the District to put the topic on an upcoming meeting agenda.

41 President Ziegler asked Administrator Jeffery to make note of adding to a future Board meeting
42 agenda the topic of a cost-estimate for putting together a lake management plan. Administrator
43 Jeffery said he met with Joe Bischoff and Engineer Sobiech two weeks ago, and Mr. Bischoff is
44 putting together a scope and cost estimate for a lake management plan and it will be presented to
45 the Board at a future date.

46 Manager Koch asked if the Board specifically authorized staff to engage in drafting a lake
47 management plan. President Ziegler clarified the discussion is about finding out how much it
48 would cost to draft a lake management plan. Manager Koch said he is a little concerned that
49 people are running off and doing things and they are not authorized by the Board and things are
50 not provided for by the budget. Manager Koch said items like this, in his opinion, should be
51 brought to the Board and the Board should decide if it wants to have staff look into it at all, and if
52 that is the decision by the Board, then direction should be given to staff. He said at least
53 preliminarily there should be a memo outlining what a discussion of a lake management plan
54 should entail and the cost to compile that information and develop that memorandum. He said he
55 thinks a whole step has been skipped based on what he heard and he does not think the District
56 should be operating that way, especially since one of the Board members, President Ziegler, lives
57 in the Duck Lake area, and instead he expects the Board would go through the processes step by
58 step to determine what it would entail and cost and then the Board would determine if it wants to
59 do it and where the money will come from, and then if the Board decides it wants to move
60 forward and have a plan drafted, then that would be a subsequent decision to be made.

61 President Ziegler reminded the Board it has discussed this topic several times and is proceeding
62 as Manager Koch described and figuring out what the costs are going to be for a plan for the lake.
63 Administrator Jeffery concurred that the Board directed staff to investigate a whole lake
64 management plan and staff is going to bring back to the Board the information it requested
65 regarding the costs associated with a whole lake management plan. Manager Koch asked if the
66 Board adopted a resolution to do that. Administrator Jeffery said no, it was a motion made at the
67 meeting. Manager Koch responded the motion, therefore, was not adopted – the Board did not
68 approve it. He said a resolution needs to be adopted so everyone knows, not just some people
69 know, what is going to be entailed in the work.

70 Manager Crafton noted the Board is accepting comments from the public right now on matters of
 71 public interest and asked if there is anyone else that wants to speak at this time. President Ziegler
 72 asked if there are any other comments from the public. No other matters were raised.

73

4. Presentation by CorTrust Bank – Prior Permit Application 2020-029

74 Administrator Jeffery introduced David Knaeble, who represents his client CorTrust Bank, which
 75 owns the property at 4625 County Road 101, Minnetonka. Administrator Jeffery reminded the
 76 Board that CorTrust Bank previously came to the District with a project proposal regarding
 77 redoing the bank’s parking lot. He said the Board did not approve the project permit, and Mr.
 78 Knaeble has requested to speak in front of the Board about that project on behalf of his client.

79 Mr. Knaeble reviewed the history of the property site, noting the original construction in 1998
 80 was above the existing flood plain elevation. He said the site had poor soils, so the building was
 81 situated on piles but the surrounding site features including the parking lot were not. He said over
 82 the last 25 years the site has settled and now the site is below the flood plain. Mr. Knaeble said
 83 the owners want to redo the parking lot, which would require a variance from the District’s
 84 floodplain rule. He noted the District did not approve the applicant’s previous variance request
 85 from the floodplain rule for the proposed parking lot reconstruction.

86 Mr. Knaeble displayed photographs of the property and the draft project plan. He described the
 87 property owner’s proposed project to redo the parking lot, restoring its elevation to its original
 88 elevation. Mr. Sobiech summarized the draft plan still lacks the District’s required amount of
 89 compensatory storage and that as Mr. Knaeble pointed out, a variance from the District’s
 90 floodplain rule would also be required.

91 Manager Koch said he thinks the property owner needs to submit a proposal to the District, as the
 92 District can only act on proposals. Manager Koch said once the proposal is received, the District
 93 Engineer reviews the application. Manager Koch wondered what is causing the settling on the
 94 property and stated he does not think it is a good idea for the District to approve anything that in
 95 10 years would be in the same situation. He said he thinks it is incumbent on the owners to review
 96 the District’s rules and propose a project that complies with the District’s rule.

97 Manager Crafton said she shares some of Manager Koch’s concerns. She said if the building was
 98 built on pilons, it seems the building was built a flood plain. She said she is not sure the building
 99 will not keep settling.

100 Manager Koch commented he does not think it is incumbent on the District to do the engineering
 101 on the proposed project and instead the permittee needs to submit a proposal for the permit and
 102 the appropriate fees for the District’s analysis.

103 Manager Duevel reiterated alignment with Manger Koch and Manager Crafton. He said it seems
 104 it is incumbent on the owner of the property to devise a plan and not have the District being the
 105 party to propose a fix. He said it seems Manager Koch has outlined the proper procedure for
 106 engagement with the District and the District’s review of the proposed plan.

107 Administrator Jeffery asked if the property owner has had discussions with the City of
 108 Minnetonka. Mr. Knaeble said right now the City would allow the property owner to reconstruct
 109 the project as is without needing additional approvals or entitlements through the City and would
 110 just require a construction permit to demo the parking lot, bring in dirt, and reconstruct it at the
 111 higher elevation, but to reduce any parking would require an entitlement process through the City
 112 and may require additional variances or studies to reduce parking for a building this size, per
 113 code.
 114 President Ziegler said he is sure Mr. Sobiech looks forward to receiving Mr. Knaeble’s
 115 communication and project proposal.

5. Reading and Approval of Meeting Minutes

116 **a. Approve Minutes of the March 1, 2023, Regular Monthly Meeting of the**
 117 **RPBCWD Board of Managers**

118 Manager Crafton moved to approve the minutes of the March 1, 2023, regular monthly
 119 meeting of the RPBCWD Board of Managers. Manager Pedersen seconded the motion.

120 Manager Crafton noted an edit on page 13, line 311 to remove the word “it.”

121 Manager Koch said in keeping with prior procedure he submitted comments and edits to
 122 Administrator Jeffery. He moved to incorporate his changes into the meeting minutes.
 123 Administrator Jeffery said he posted on the District website the draft minutes with
 124 Manager Koch’s proposed changes. Administrator Jeffery presented Manager Koch’s
 125 proposed changes, and the Board reviewed them.

126 Manager Pedersen accepted Manager Crafton’s edit as a friendly amendment. Manager
 127 Crafton and Manager Pedersen accepted Manager Koch’s edits as friendly amendments.

128 Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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 130 **b. Approve Minutes of the March 16, 2023, Work Session of the RPBCWD**
 131 **Board of Managers**

132 Manager Crafton moved to approve the minutes of the March 16, 2023, work session of
 133 the RPBCWD Board of Managers. Manager Pedersen seconded the motion.

134 Manager Crafton had an edit to line 177 to insert the word “is.” Manager Pedersen
 135 accepted the edit as a friendly amendment. Upon a roll call vote, the motion carried 4-0
 136 with one abstention as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Abstain
Pedersen	Yes
Ziegler	Yes

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6. Committee Report

139 **a. Acceptance of the Citizens Advisory Committee Report and Minutes**

140 Ms. Bonnie Nelson introduced herself as a new CAC member and a Chanhassen resident.
 141 She noted she recently retired from the MPCA after her 33-year career there as a permit
 142 engineer conducting regulatory technical reviews. She reported the CAC had no formal
 143 motions to bring to the Board and the CAC was not aware of any motions from the Board
 144 to follow up on.

145 Ms. Nelson said the CAC made a formal decision to not record the CAC meetings unless
 146 the Board decides the CAC should do so for some reason. She said the Board previously
 147 discussed the CAC should collate and track its past motions, and the CAC has begun a
 148 list of its motions. Ms. Nelson said the CAC will discuss at its next meeting the list and a
 149 procedure for bringing past items back to the Board’s attention.

150 Ms. Nelson said regarding the EHAP (Ecosystem/Ecological Health Action Plan), she
 151 and CAC member Mr. Jeffery Weiss are representing the CAC on the panel and are co-
 152 technical advisory members for the CAC and will be attending the meetings. Ms. Nelson
 153 said a few CAC members are trying to develop a Friends of the Watershed Board to have
 154 a sub-group that actively has events going on a regular basis such as field work
 155 opportunities to remove invasive species.

156 **b. Confirm Board Representative for April 17, 2023, CAC Meeting**

157 Manager Crafton volunteered to be the Board representative at the CAC’s April 17th
 158 meeting.

159 **c. Receive Personnel Committee Report and Minutes**

160 Manager Pedersen reported the Committee minutes are attached to the Board packet.
 161 Manager Koch said a best practice is for the Board to receive the minutes. Manager Koch

162 moved to accept the Personnel Committee report and the Governance Committee report
 163 without further comment at this time. President Ziegler seconded the motion. Upon a roll
 164 call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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167 **d. Receive Governance Committee Report and Minutes**

168 [Action taken as part if item 6c – Receive Personnel Committee Report and Minutes].

169 **e. Receive Audit and Finance Committee Report**

170 Manager Duevel reported the Committee is continuing work to evaluate how to set up
 171 incorporating electronic signatures to pay checks for the District, work to evaluate
 172 payment of monthly per diems and to consider payment of per diems so the recipients
 173 receive them on 1099s rather than as employees of the District, and continuing to work on
 174 making some changes to Table 2, and continuing to work with Barr Engineering to
 175 incorporate their billing coding on projects so they can be tracked directly to the projects.

176 President Ziegler moved to accept the verbal report by the Audit and Finance Committee
 177 as provided by Manager Duevel. Manager Pedersen seconded the motion. Upon a roll call
 178 vote, the motion carried 5-0.

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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181 Manager Crafton said the Audit and Finance Committee would really like to be able to
 182 start meeting in person, including meeting in person with the auditors and accountants.
 183 She said she brings this to the Board’s attention for future discussion.

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6. Consent Agenda

185 President Ziegler listed the items remaining on the Consent Agenda, including 7a – Adopt
 186 Resolution 23-024 to Approve Consent Agenda; 7j – Adopt Resolution 23-031 Authorizing
 187 Staff to Notice the Special Meeting of the Board of Managers on June 1, 2023, at 4:00 p.m.
 188 for Duck Lake Bridge Ribbon Cutting Ceremony; 7k – Adopt Resolution 23-032 in Support
 189 of a Minnesota GreenCorps Member for the 2023-2023 Program Year and 7l – Adopt
 190 Resolution 23-033 Authorizing the Release of Retainage to Minger Construction for St.
 191 Hubert Project.

192 Manager Pedersen moved to accept the Consent Agenda as amended. Manager Duevel
 193 seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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7. Action Items

197 **a. Items Pulled from Consent Agenda**

198 **i. Staff Report**

199 Manager Koch asked to see the examples of reports shown by Redpath to the
 200 Audit and Finance Committee so he can provide his comments. Manager Koch
 201 asked for an explanation of watershed-based implementation funding.
 202 Administrator Jeffery said it is part of the “One Watershed One Plan” initiative
 203 and funds are allocated based on watershed boundaries and those funds are to
 204 be spent in ways agreed upon by, in the District’s case, the two counties and the
 205 communities involved.

206 Manager Koch asked for an update on the status of applicants for the District's
207 assistant position and if the agreement with the Nine Mile Creek Watershed
208 District has been finalized. Administrator Jeffery said the District has received
209 at least nine complete applications.

210 Manager Koch reiterated his idea that permittees could submit photos of
211 construction projects instead of staff conducting regular in-person site
212 inspections. Administrator Jeffery said the City of Eden Prairie has a self-
213 reporting inspection program and he wants to meet with the City to learn more
214 about it. He said another way to realize some efficiencies with site inspections
215 is for the District to coordinate with other stakeholders, such as the counties,
216 regarding their inspections, for example with the Avienda project in
217 Chanhassen. Manager Koch asked for a copy of Mr. Nicklay's grading system
218 and asked if it could be part of the permitting report. Administrator Jeffery said
219 staff will bring the grading system back to the Board.

220 Manager Koch said regarding the topic of winter fish kills, does the District
221 have aeration on any lakes or does the District need to add aeration?
222 Administrator Jeffery said the District has aeration on Rice Marsh Lake and the
223 City of Eden Prairie has aeration on Round Lake. He said the District could
224 look into benefits of additional aeration but right now the carp populations are
225 under control.

226 Manager Koch asked if the District has a cost-share database. Administrator
227 Jeffery said the database exists and it still needs to be fully populated and Staff
228 Forbes will be working on that project. He explained the data can be retrieved
229 but the older grants are not yet populated in the database.

230 Manager Koch asked Staff Forbes to provide him with the two-page summary
231 of the grant program, when the summary is ready.

232 Manager Koch asked if, regarding education and outreach, staff track who
233 contacts the District for what and if so, he thinks it would be interesting from
234 time to time to get a report on who is contacting the District and for what.

235 Manager Koch said he is interested in seeing the Score your Shore graphic.

236 Manager Koch said he did not see any news or information about the District in
237 the City of Chanhassen's latest quarterly publication. He said he thinks it would
238 be good for the District to get something in each of the quarterly publications
239 and he would like to see the District's education and outreach get that done for
240 publications in all of the cities in the District. He said that way people will
241 know about the District's information and will not have any excuses.

242 President Ziegler said he would like to call the question because this discussion
243 provides good information but there needs to be a better way to communicate
244 and this report is a lot for anybody to sit through. He said there are a lot of
245 agenda items remaining for the Board to go through and he would like to call
246 the question for accepting the March staff report.

247 Manager Koch said he believes he had the floor and calling the question is to
 248 cut off debate and the Board is not debating anything. President Ziegler asked
 249 what the Board is doing. Manager Koch said the Board is getting the
 250 information from the staff report. President Ziegler responded it looks like
 251 Manager Koch is getting information from the staff report and it is good
 252 information and maybe the Board needs to know all of it, but President Ziegler
 253 is calling the question.

254 Manager Koch suggested people go take a break and have a coffee, latte, iced
 255 tea, etcetera and there may be no constituents out there but this information
 256 goes on the record and he thinks this is information to know to do the job
 257 correctly. President Ziegler called the question. Manager Koch said he has the
 258 floor. President Ziegler said he called the question so Manager Koch does not
 259 have the floor. President Ziegler asked Mr. Smith about the process of calling
 260 the question. Mr. Smith responded the action would be for a Board member to
 261 move to close the discussion of the staff report and call for a vote. He noted he
 262 does not think there is a motion on the floor to accept the staff report.

263 President Ziegler moved to close the discussion on the staff report. Manager
 264 Crafton seconded the motion.

265 Manager Koch said he wants all of the constituents out there to know that
 266 apparently the other managers do not want to take the time to obtain the
 267 information regarding what the staff has done and the details since it is not
 268 detailed enough and he really cannot expect it to be way more detailed but
 269 maybe that is what it should be because he thinks he deserves to know that
 270 information and so do the constituents. He said he knows it does not do any of
 271 the constituents any good on that basis. Manager Koch said if that is how other
 272 managers want to do their duties and if other managers think that is doing their
 273 duties, the managers can vote the way they want. He said that is not what he
 274 thinks is expected of Nine Mile Creek Watershed District managers in this case
 275 especially given the amount of information provided in the staff report, which is
 276 good, but unfortunately does not have the specific detail. Manager Koch said if
 277 the Board wants to authorize him and pay him outside of the meeting to contact
 278 Mr. Jeffery or whomever and get the answers and he would be happy to post the
 279 answers on a blog, if that is the case, but this is his opportunity to get this
 280 information and for the constituents to get this information.

281 Upon a roll call vote, the motion to close discussion carried 3-1 with one
 282 absence as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Absent

Koch	No
Pedersen	Yes
Ziegler	Yes

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Manager Pedersen moved to accept the staff report. Manager Crafton seconded the motion.

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Manager Koch repeated his comment that he thinks it is within the interest of constituents to go through this information. He said if the other managers decide they are not interested in that information, he guesses that is the other managers' decision, but that is certainly not the way he intends to operate on behalf of the District's constituents.

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Manager Duevel commented the staff report is 13 pages of detail and while he is not critiquing Manager Koch's additional questions, the Board is getting a tremendous amount of detail on all the activities of the staff.

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Upon a roll call vote, the motion to accept the staff report carried 4-1 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

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ii. Engineer Report

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Manager Pedersen moved to accept the Engineer's Report. Manager Crafton seconded the motion.

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Manager Koch asked if this would be the time for those who do not want to listen to take a break. President Ziegler stated he thinks all the managers are interested but the managers have received the reports and some managers want more detail than is included in the reports and now is the time. Manager Koch said apparently not since President Ziegler arbitrarily moved to cut off discussion. President Ziegler responded he made that motion after 10-plus minutes although he did not time the discussion [President Ziegler's motion was

309 made after 20 minutes of discussion about the staff report]. Manager Koch said
 310 there are rules and he suggested President Ziegler look at the rules for handling
 311 these types of situations but it is not Manager Koch’s job to educate President
 312 Ziegler.

313 Manager Koch voiced his questions, comments, and report format requests to
 314 Engineer Sobiech, including Manager Koch comments to:

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- 316 • Reiterate his comment that he is not in favor of any further alum
 - 317 treatments on Lotus Lake until the District has done further research to
 - 318 determine the impact of wake boats on the past alum treatment;
 - 319 • Ask for more details about the CIP project status matrix;
 - 320 • Raise his concern about having both Mr. Smith and Mr. Welch at Board
 - 321 of Managers meeting planning instead of just one of them;
 - 322 • Share report formatting suggestions that would make it easier for him to
 - 323 read the report, by after the heading noting “submitted to the Board;”
 - 324 • Ask for more details about the report item G on page 3 regarding
 - 325 potential flood mitigation and the replacement of an 18-inch culvert
 - 326 with a 42-inch culvert and the report’s statement that the change will
 - 327 not materially increase discharges at the site boundary; and,
 - 328 • Ask Mr. Sobiech to format his report topics in chronological order.

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330 Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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333 **iii. Accept March Regulatory Program Report**

334 Manager Koch asked if staff could generate reports based off the District’s
 335 regulatory program database. Administrator Jeffery said yes.

336 Manager Koch said he did information in the report about two of the permitting
 337 issues on Lotus Lake, including the one on the west side of the lake that did not
 338 get a permit for landscaping. He said regarding the matter of the after-the-fact
 339 permit application on the southeast side regarding rip rap and that was
 340 administratively approved, he would like to see the documentation on that
 341 permit. Administrator Jeffery stated that after-the-fact permit came to the Board
 342 for approval almost a year ago. Manager Koch asked to see the file on that
 343 permit.

344 Administrator Jeffery said the other property Manager Koch mentioned is 7636
 345 Southshore Drive. Mr. Jeffery reported the property owner received the notice
 346 of probable violation and to-date the application for the after-the-fact permit is
 347 not a complete application.

348 Manager Pedersen moved to accept the March Regulatory Program Report.
 349 Manager Duevel seconded the motion. Upon a roll call vote, the motion carried
 350 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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353 **iv. Approve Permit #2022-068 KIWATCHI Development as Presented**
 354 **in the Proposed Board Action Section of the Permit Review Report**

355 President Ziegler moved to approve Permit #2022-068 KIWATCHI
 356 Development as Presented in the Proposed Board Action Section of the Permit
 357 Review Report. Manager Pedersen seconded the motion.

358 Manager Koch requested a format change and asked for a one-liner at the
 359 beginning of each report saying “for the reasons stated below the Engineer is
 360 recommending” and then for the report to list the recommendations and
 361 conditions. He said he pulled this item from the Consent Agenda because of the
 362 language. He asked Engineer Sobiech for clarification about the language in
 363 paragraph 3 on page 10 stating “receipt and recordation a maintenance
 364 declaration for the operation.” Engineer Sobiech explained the language intends
 365 to say the permittee needs to provide proof of recordation. Manager Koch said
 366 his preferred language is “must submit a maintenance agreement acceptable to

367 the District.” He said 45 days seems a long time to provide for the applicant to
 368 submit the fees and asked if the District’s rules provide 45 days because he
 369 thinks 30 days is sufficient and the District may want to look at its rules about
 370 the fee submittal. Mr. Sobiech said on page 8, item L of this permit there is a
 371 statement regarding submission of the permit fee within 30 days of receiving
 372 notice. Manager Koch asked if the permit’s reference to 45 days should be
 373 revised to 30 days and said Mr. Sobiech can look into it to make sure the
 374 District is consistent.

375 Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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378 v. **Approve Permit #2022-077 Dunibar Court Development as**
 379 **Presented in the Proposed Board Action Section of the Permit**
 380 **Review Report.**

381 Manager Pedersen moved to Approve Permit #2022-077 Dunibar Court
 382 Development as Presented in the Proposed Board Action Section of the Permit
 383 Review Report. Manager Duevel seconded the motion.

384 Manager Koch asked for some semblance of standardization in the language
 385 that goes into the general requirements and recommendations. He asked if the
 386 District works off of templates and if not, he would like to see the District
 387 consider doing so because it will make the documents easier and faster for him
 388 to review. Manager Koch said he has the same question regarding language on
 389 page 11 item 3 for this permit as he had about Permit #2022-068.

390 Manager Koch moved to amend the motion to adopt the resolutions pertaining
 391 to Permit #2022-077 as set forth in the Engineer’s Report for Permit #2022-077.
 392 Manager Pedersen and Manager Duevel accepted Manager Koch’s friendly
 393 amendment.

394 Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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vi. Approve Permit #2022-079 CSAH 4 Culvert

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Manager Pedersen moved to approve Permit #2022-079. Manager Duevel seconded the motion.

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Manager Koch commented about page 5, item 2, recommending changing the language to “the applicant must enter into a maintenance agreement and inspection plan with the RPBCWD” and he recommended striking the second sentence because it is unnecessary.

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Engineer Sobiech clarified the meaning of the language as originally presented. Manager Koch said the language can remain as presented but he thinks his suggested language is simpler.

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Manager Koch moved to amend the motion to adopt the proposed resolutions set forth in the report provided to the Board and to update the Permit number to #2202-079. Manager Duevel noted the resolution already reflects the correct permit number #2022-079.

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Manager Pedersen and Manager Duevel accepted the friendly amendment to adopt the proposed resolution approving Permit #2022-079. Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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vii. Approve Permit #2023-005 Sunnybrook Road Culvert Replacement Project as Presented in the Proposed Board Action Section of the Permit Review Report.

Manager Pedersen moved to adopt Permit #2023-005. Manager Duevel seconded the motion. President Ziegler clarified that the motion is to adopt the Resolution in the Board Action Section of the Permit Review Report in the Board packet to Approve Permit #2023-005 Sunnybrook Road Culvert Replacement Project. Manager Pedersen and Manager Duevel agreed that is the motion.

Manager Koch asked about the language on page 8, item 4 referencing programmatic maintenance agreement covering city projects and said he was not aware the District had some type of generic maintenance agreement dealing with these projects. Administrator Jeffery said the District entered into a programmatic agreement with the City of Eden Prairie in 2016.

Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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viii. Adopt Resolution 23-025 Accepting Personnel Committee’s Recommendation to Approve the Administrator Work Plan as Amended by the Personnel Committee

Manager Koch moved to lay over consideration of Resolution 23-025 until the next Board meeting as the managers received the information late and he has not had sufficient time to review and comment on the plan. The motion died due to lack of a second.

Manager Pedersen moved to adopt Resolution 23-025 Accepting the Personnel Committee’s Recommendation to Approve the Administrator Work Plan as Amended by the Personnel Committee. Manager Crafton seconded the motion.

444 Manager Koch repeated his comment that he has not had sufficient time to
 445 review the workplan and there is no immediacy to adopt this plan and in his
 446 view it is inappropriate to consider and approve this work plan given the short
 447 notice and lack of time to properly review the work plan.

448 Upon a roll call vote, the motion carried 4-1 as follows:

449

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

450

451 **ix. Adopt Resolution 23-034 Authorizing Distribution of 2022 Annual**
 452 **Report**

453 Manager Koch moved to lay over this item until the next meeting because he
 454 has requested to see comments made by the other managers and he has not
 455 received those and until he has seen those comments it is not appropriate to pass
 456 this annual report other than to reiterate the comments he made. The motion
 457 died due to lack of a second.

458 Manager Pedersen moved to adopt Resolution 23-034 Authorizing Distribution
 459 of the 2022 Annual Report. Manager Crafton seconded the motion. Manager
 460 Pedersen commented there is a time deadline on submitting and distributing the
 461 annual report.

462 Manager Koch asked if the other managers have read Manager Koch’s
 463 comments, which Administrator Jeffery forwarded. No managers responded.
 464 Manager Koch said he assumes the other managers have not read his comments.
 465 Manager Koch said the annual report does not comply with the Minnesota
 466 Board of Water and Soil Resources rules and regulations and does not include
 467 an adequate discussion of permit violations. Manager Koch said he believes it is
 468 inappropriate to include an allegation that lands were stolen from Native
 469 Americans. He said he thinks it is inappropriate to interject into the report
 470 political issues that do not involve the watershed district. He said he does not
 471 believe it is appropriate for the Administrator to comment on the annual report
 472 and instead it is more appropriate for the Board President to comment or for the
 473 President and Administrator to provide a joint statement.

474 Manager Koch said he was not aware staff has the authority or rights to
 475 determine what goes into or does not go into the annual report and he thinks
 476 that authority is outside the scope of the staff’s authority and instead it is up to
 477 the Board of Managers to decide what goes in and what does not go into the
 478 annual report.

479 Manager Koch stated again that he has not received the comments on the annual
 480 report that the other managers provided. He stated this is a breach of the Data
 481 Practices Act.

482 Manager Koch said that for anybody to make decisions without having the
 483 appropriate information is, he believes, a malfeasance and misfeasance under
 484 the statutes pertaining to the ability to hold the position of manager.

485 Manager Koch moved to amend the motion to lay over the approval of the
 486 annual report until he has received all the other managers’ comments. The
 487 motion died due to lack of a second.

488 Upon a roll call vote, the motion to adopt Resolution 23-034 Authorizing
 489 Distribution of the 2022 Annual Report carried 4-1 as follows:

490

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

491

492 Manager Koch said as a point of order he asks that before speaking people ask
 493 for the floor.

494

495 **b. Accept February Treasurer’s Report**

496 Manager Crafton moved to accept the February Treasurer’s Report. Manager Pedersen
 497 seconded the motion.

498 Manager Koch asked what the payment to Carver County was for. Administrator Jeffery
 499 said the payment was for AIS inspections.

500 Manager Koch said he reiterates his request to receive a copy of a Barr Engineering
 501 invoice and a Smith Partners invoice.

502 Manager Koch asked why the report reflects a negative balance at U.S. Bank and asked
 503 the Audit and Finance Committee to look into this with the accountant because it should
 504 not be a negative balance.

505 Manager Koch asked what inputs comprise unearned revenue. Administrator Jeffery
 506 said unearned revenue is monies the District has received or will receive that have not
 507 been spent yet.

508 Manager Koch suggested the District get software that allows for commenting on and
 509 marking up documents, such as the annual report, to make commenting a more efficient
 510 process.

511 Upon a roll call vote, the motion carried 5-0 as follows:

512

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

513

514 **c. Adopt Resolution 23-026 to Approve Paying of the Bills**

515 Manager Crafton moved to Adopt Resolution 23-026 to Approve Paying of the Bills.
 516 Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as
 517 follows:

518

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

519

520 **d. Adopt Resolution 23-027 Authorizing the President to Enter into an**
 521 **Agreement with Smith Partners, PLLP to Provide Legal Services to the**
 522 **District until 12/31/2023**

523 Manager Koch moved to lay over this item because he has changes he would like to
 524 pass by Legal Counsel regarding the agreement and it seems the agreement does not go
 525 into effect until next year. President Ziegler asked if there is a timeline for this
 526 agreement. Mr. Smith said it is for 2023 services.

527 Manager Koch revised his motion to lay this item over because of issues with the
 528 agreement that he wants to go through with Legal Counsel and because based on the
 529 information provided to him, the solicitation of proposals for legal services was totally
 530 inadequate and inadequately distributed to law firms to the point that it would appear
 531 that it was done in a manner where there would be no competition to provide legal
 532 services and so he would like to lay this over until there is an adequate solicitation of
 533 proposals. The motion died due to lack of a second.

534 Manager Pedersen moved to Adopt Resolution 23-027 Authorizing the President to
 535 Enter into an Agreement with Smith Partners, PLLP to Provide Legal Services to the
 536 District until 12/31/23. Manager Crafton seconded the motion.

537 Manager Koch repeated his request to follow Roberts Rules of Order to be recognized
 538 by the President before speaking, noting that applies to motions and seconds. Manager
 539 Koch repeated his previous opinion about why the resolution should not be passed,
 540 including there are issues with the agreement and there was inadequate solicitation of
 541 proposals regarding filling this position based on the information or lack thereof
 542 provided by the Administrator. Upon a roll call vote, the motion carried 4-1 as follows:

543

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

544

545 **e. Adopt Resolution 23-028 Authorizing the Administrator to Enter into**
 546 **Agreement with Barr Engineering to Act as the District Engineer and**
 547 **Provide Engineering Services to the District Until 12/31/2025**

548 Manager Pedersen moved to Adopt Resolution 23-028 Authorizing the Administrator to
 549 Enter into Agreement with Barr Engineering to Act as the District Engineer and Provide

550 Engineering Services to the District Until 12/31/2025. Manger Crafton seconded the
 551 motion.

552 Manager Koch said there was no agreement attached to the motion. Manager Crafton
 553 and Manager Pedersen said it was attached to the materials they received. Manager
 554 Crafton said she reviewed all the pages of the agreement. Manager Koch moved to
 555 amend the motion to lay this item over until the next meeting so he has time to review
 556 the agreement. Administrator Jeffery noted the agreement would not go into effect until
 557 August 1. The motion to amend died due to lack of a second.

558 Upon a roll call vote, the motion carried 4-1 as follows:

559

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

560

561 **f. Adopt Resolution 23-029 Authorizing Administrator to Enter into**
 562 **Agreements with PLM and Midwest AquaCare to Provide Aquatic**
 563 **Vegetation Management**

564 Manager Crafton moved to adopt Resolution 23-029 Authorizing the Administrator to
 565 Enter into Agreements with PLM and Midwest AquaCare to Provide 2023 Aquatic
 566 Vegetation Management. Manager Pedersen seconded the motion. Upon a roll call vote,
 567 the motion carried 4-1 as follows:

568

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

569

570 **g. Adopt Resolution 23-030 Authorizing the Administrator to Enter into a**
 571 **Cost-Share Agreement with The Preserve Association for a Habitat**
 572 **Restoration Project**

573 Manager Pedersen moved to adopt Resolution 23-030 Authorizing the Administrator to
 574 Enter into a Cost-Share Agreement with The Preserve Association for a Habitat
 575 Restoration Project. Manager Crafton seconded the motion.

576 Manager Koch said he thinks the same result could be accomplished in a less expensive
 577 way. He said he is concerned about a lack of ability to adequately maintain the plants,
 578 and he said the project should include a sign denoting the District’s significant
 579 contribution to the project. Manager Koch said he thinks the Board should not approve
 580 this project as proposed. He said he is not sure why the members of the association are
 581 not contributing more to the project.

582 Manager Koch asked about the agreement with the Association. He said he thinks the
 583 District needs to require a maintenance agreement with the Association and that
 584 agreement would include the District’s right to recoup its money should the Association
 585 fail to maintain the project as required. Ms. Forbes said the District has a draft standard
 586 grant agreement for this grant and it includes the maintenance agreement and she
 587 apologized for not including the agreement in the Board meeting packet.

588 Manager Pedersen said she thinks this is a good project and she stands behind it.
 589 Manager Crafton concurred.

590 Manager Koch said he questions the District investing in something that is such a short-
 591 lived proposition. He said he thinks this whole thing needs to be looked at to make sure
 592 the District is being explicit enough in the requirements. He said he has his doubts about
 593 these types of grants because the District ends up doing landscaping for people and the
 594 projects do not last. Upon a roll call vote, the motion carried 4-1 as follows:

595

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	No
Pedersen	Yes
Ziegler	Yes

596

597

8. Discussion Items

598 a. Covid Pandemic and District Meetings

599 President Ziegler noted U.S. President Biden has signed paperwork declaring the Covid
600 pandemic officially over. President Ziegler asked Mr. Smith for comments and direction
601 for the District regarding its meetings.

602 Mr. Smith said while the declaration by the Federal Government about the pandemic is
603 informative, the District is not bound by a national assessment of pandemic conditions.
604 He said if the District as a local unit of government has a basis for being concerned
605 about the pandemic, the District can continue to conduct remote meetings. He said most
606 of the local governmental units that he is aware of are conducting in person meetings,
607 but it is the Board's assessment of local conditions to determine whether to continue to
608 meet remotely or not.

609 President Ziegler said he thinks any District meetings after May 1 should be in person.
610 Manager Duevel asked if Administrator Jeffery has gathered information or investigated
611 technology to facilitate hybrid meetings.

612 Administrator Jeffery responded he has not received quotes for a full audio-visual
613 system but has looked into products and those costs range from \$3,500 to \$50,000-plus.
614 He said live streaming meetings is no problem but it gets more complicated to
615 accommodate having some managers participating in the meeting remotely. Mr. Smith
616 said some local government units are looking at situations in which a manager is out of
617 town or has another reason to participate remotely. He reported the Open Meeting Law
618 does provide for that situation subject to the requirements that at least one Board
619 member must be participating from the organization's meeting location, all managers
620 need to be able to see and hear each other, and any Board members not meeting in the
621 organization's public meeting location need to be at a place that is noticed, including
622 address, and publicly accessible.

623 Manager Koch said he thinks District meetings should remain remote. He asked if the
624 ventilation system at the District's meeting location is HIPAA compliant and if not,
625 when will it be.

626 Mr. Smith said the pandemic provision of the Open Meeting Law says the presiding
627 officer, chief legal officer, or chief administrative officer of the governing body can
628 determine an in-person meeting is not practical or prudent because of a health pandemic
629 or an emergency has been declared under state of emergency law. He said if the
630 District's Board President, Administrator, or chief legal officer believes pandemic
631 conditions still exist that make meeting in person not practical or prudent, then the
632 governing body would make those findings in a declaration and that is the basis for
633 holding remote meetings.

634 Mr. Smith said the Board can continue to assess what the pandemic conditions look like
635 and determine whether it is practical or prudent to hold in-person meetings. He said as
636 far as when there is not a pandemic situation, the Open Meeting Law allows for remote

637 participation in a non-public setting for three times if the member of the governing body
 638 is either in active military duty service or there is a pandemic health emergency declared
 639 and the member has a letter from a healthcare professional stating the member has been
 640 advised by a healthcare professional against being in a public place for personal or
 641 family medical reasons and this clause only applies when a state of emergency has been
 642 declared under Minnesota Statutes Section 12.31 and expires 60 days after the removal
 643 of the state of emergency. Mr. Smith said he believes Governor Walz lifted the state of
 644 emergency some time ago, so he does not believe the provision would still be available
 645 as a basis.

646 Manager Duevel made a general comment about the state of the technology and how the
 647 pandemic outlined some technology benefits. He also noted the difficulties the Audit
 648 and Finance Committee have by not being able to meet in person to work on operational
 649 issues, so he thinks it would be a great thing for the watershed to be able to meet in
 650 person, and he thinks it would be good to figure out how to accommodate hybrid
 651 meetings.

652 Mr. Smith stated Smith Partners drafted for one client a resolution that was a declaration
 653 about the pandemic and made it clear that for some members of the body there was a
 654 heightened level of concern about exposure to the pandemic and while others were
 655 comfortable meeting in person it was not practical and prudent for all members to meet
 656 in person. Mr. Smith said given the existence of the pandemic generally, there was a
 657 basis under the pandemic provision to allow some members to participate remotely. He
 658 said he thinks that provision might be on the edges of what he thinks the State
 659 Department of Administration might be comfortable with but Smith Partners has seen a
 660 legal basis for it.

661 President Ziegler moved to direct Mr. Smith to look into more details regarding the law
 662 and if there is a way for the District to meet in hybrid format, meaning allowing for
 663 some of the managers to participate remotely. Manager Koch seconded the motion with
 664 the friendly amendment to direct Administrator Jeffery to look into the condition of the
 665 District's HVAC system and the cost to bring the system to meet HIPPA and OSHA
 666 requirements.

667 Administrator Jeffery asked for clarification on what the Board wants in terms of the
 668 meeting technology capabilities. Manager Koch made the friendly amendment to direct
 669 Administrator Jeffery bring a memorandum back to the Board regarding the meeting
 670 technology options, including how people can participate and costs. President Ziegler
 671 accepted Manager Koch's friendly amendment. Upon a roll call vote, the motion carried
 672 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes

Koch	Yes
Pedersen	Yes
Ziegler	Yes

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President Ziegler said it is important for Administrator Jeffery to get that information as soon as possible. The Board agreed by consensus to hold the Board’s May regular meeting as a remote meeting and to discuss the topic at the May workshop. Mr. Smith noted the District will want to determine an approach that will cover Board meetings and committee meetings in a consistent way.

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681

b. Manager Koch’s Grievance with Administrator Jeffery

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Manager Koch asked if Administrator Jeffery wants to go into closed session.

683

Administrator Jeffery said he does not. Manager Koch said in his opinion Administrator

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Jeffery has three times engaged in unprofessional emails, with the latest being sending

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an email in response to Manager Koch’s request about a questionnaire on the annual

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report, stating the questionnaire was created internally in response to indefatigable

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critique, obviously, in Manager Koch’s opinion, aimed at him. Manager Koch said he

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believes on that basis that three times is enough and Mr. Jeffery has continued,

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apparently, not to understand what it is to be professional.

690

Manager Koch stated he offered Mr. Jeffery an opportunity to rethink his email and got

691

no response. Manager Koch said he takes it that Mr. Jeffery did not rethink his email.

692

Manager Koch said on that basis he believes Mr. Jeffery should be removed as District

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Administrator as well as for reasons he has said previously regarding Manager Koch’s

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multiple requests for information under the Minnesota Data Practices Act, which Mr.

695

Jeffery has not responded to in a timely manner as required under the Minnesota Data

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Practices Act, and because Mr. Jeffery has been in violation of the Open Meeting Law

697

on a continuous basis by not having materials available to participants in the meeting for

698

their review during the meeting. Manager Koch moved to remove Terry Jeffery as the

699

District’s Administrator. The motion died due to lack of a second.

700

701

c. Closed Session to Discuss the Potential for Acquisition of Property Located at 9955 and 9875 Spring Road, Eden Prairie, MN [and PID 2811622320005]

702

Mr. Smith said he defers to Mr. Jeffery on the status of his report and if Mr. Jeffery has a report, then it would be appropriate for the Board to go into closed session for the purpose of developing a potential offer for the potential acquisition of property located at 9955 and 9875 Spring Road, Eden Prairie, MN, and property ID 2811622320005.

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Manager Pedersen moved for the Board of Managers to go into closed session to discuss

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the potential acquisition of property located at 9955 and 9875 Spring Road, Eden

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Prairie, MN, and PID 2811622320005. Manager Crafton seconded the motion. Manager

710 Koch moved to amend the motion to include the specific recitation by Mr. Smith
 711 regarding the purpose of the discussion. Manager Pedersen and Manager Crafton
 712 accepted Manager Koch’s friendly amendment. Upon a roll call vote, the motion carried
 713 5-0 as follows:

714

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

715

716 The Board moved into closed session at 10:39 p.m.

717

718 The Board reconvened the public regular monthly Board meeting at 11:15 p.m.

719

720 Manager Koch moved to continue this meeting to 6:00 p.m. on April 20. Upon a roll
call vote, the motion carried 5-0 as follows:

721

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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723 At 11:16 p.m. the meeting was continued to April 20th.

724

9. Manager Reports

[Item continued to the April 20th Board meeting continuation.]

10. Administrator Reports

725 [Item continued to the April 20th Board meeting continuation.]
726

11. Legal Counsel Reports

727 [Item continued to the April 20th Board meeting continuation.]
728

12. Upcoming Board Topics

729 [Item continued to the April 20th Board meeting continuation.]
730

13. Upcoming Events

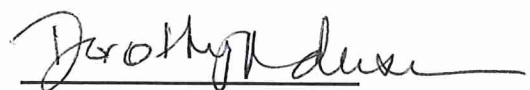
- 731 [Item continued to the April 20th Board meeting continuation.]
732
733
 - Turf Maintenance Workshop – April 13, 2023
 - RPBCWD Board Workshop – April 20, 2023
 - Cedar Ridge Elementary Science Night – April 20, 2023
 - Eden Prairie Eco Expo – April 22, 2023
 - Resilient Shoreline Workshop with NMCWD, Eden Prairie and Blue Thumb – April 26, 2023
 - Arbor Day Walk and Green Fair with Eden Prairie, NMCWD, and LMRWD

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14. Adjournment

741 [Item continued to the April 20th Board meeting continuation.]
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Respectfully submitted,



Dorothy Pedersen, Secretary