

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

February 7, 2024, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

Managers:

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

Staff:

Amy Bakkum, Office Administrator
Zach Dickhausen*, Natural Resources Coordinator
Liz Forbes*, Communications Manager
Andrew Hartmann*, Water Resources Technician
Terry Jeffery, District Administrator
Eleanor Mahon*, Community Engagement Coordinator
Josh Maxwell*, Water Resources & Fisheries Manager
Dylan Monahan, Administrative Assistant
Mat Nicklay*, Natural Resources Technician
Alaina Portoghese*, Communications Specialist
Louis Smith, Attorney, Smith Partners
Scott Sobiech, Barr Engineering Company

Other Attendees:

Andrew Aller*	Shaun Redford*
Laura Biermann*	Steven Sabraski*
Chris Call*	Maya Santamaria
Rod Fisher*, EP Duck Lake Assoc	Sharleen Spear*
Dave Hawkins*	Carol Standal*
Brace Helgeson*	User875291
Jennifer Koehler, Barr	

**Attended the meeting virtually.*

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

- 1 President Dorothy Pedersen called to order the Wednesday, February 7, 2024, Board of Managers
- 2 Regular Meeting at 7:00 p.m. at the District Office, 18681 Lake Drive East, Chanhassen,
- 3 Hennepin County, Minnesota.

4 Louis Smith called attendance for the Board of Managers as follows:

5

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

6

2. Approval of Agenda

7 Manager David Ziegler moved to accept the agenda as written. Manager Tom Duevel seconded
8 the motion.

9 Manager Larry Koch requested removing Consent Agenda items 7b, 7d, 7f, and 7g.

10 Louis Smith acknowledged the Board is meeting in a hybrid format due to an abundance of
11 caution about Covid 19 and recognizing this meeting is being held in person but also, for a
12 manager that may, based on advice from a healthcare professional, have a legitimate reason for
13 not attending a meeting in a public place in person, such as Covid-19 exposure infection, and in
14 such circumstances may participate in the meeting remotely, and members of the public may
15 participate in person or may participate virtually by accessing the meeting link

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

17

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

18

3. Matters of General Public Interest

19 President Pedersen explained the procedures for raising matters of public interest.

20 Tom Lindquist of 16750 Baywood Terrace, Eden Prairie commented he and his neighbors
21 and other board members of the Eden Prairie Duck Lake Association have been following
22 with great interest the discussions regarding water level. He said looking back at data,
23 including a graph shown extremely nicely in a report from Barr Engineering tells the story
24 that the lake has really changed its personality since the outlet was changed in 2014. Mr.
25 Lindquist said the outlet change effectively clamped the water level to a level about a foot
26 lower than it had been in the past, about four years prior to the outlet change. He
27 commented he and his neighbors and other board members of the Duck Lake Association
28 are very interested in Resolution 24-017 that is in front of the Board. Mr. Lindquist said the
29 resolution holds out the chance of mimicking the behavior of the lake in prior years. Mr.
30 Lindquist asked if the verb “mimic” means something in addition to just getting the average
31 water level back to where it used to be or if there is more to it than that. He said he and the
32 other people he previously mentioned are interested in seeing the water level return to prior
33 values. Mr. Lindquist said the implementation schedule looks like this task order would be
34 completed in July of this year. He said he is concerned about the ticking clock. He said he
35 and others have been waiting for a couple of years for improvement. Mr. Lindquist said he
36 hopes it is not only possible to define the approach but also to also make a modification to
37 the outlet by the end of this summer. He said if that is possible, he thinks it would behoove
38 the District or the Duck Lake Association to speak to the Minnesota Department of Natural
39 Resources (MNDNR) fisheries staff to see if they buy in to this and would be willing to, as
40 soon as this spring, restock the lake as they used to do with the DNR’s prior fisheries
41 management plan for the lake. Mr. Lindquist said he appreciates the District’s efforts and he
42 hopes this work moves ahead and gets the lake back to where it used to be.

43 Maya Santamaria, previous president of the Eden Prairie Duck Lake Association and current
44 board member, commented the Duck Lake Association was founded in September 2022 as
45 residents felt it was needed because issues with Duck Lake seem to be compounding rather
46 than improving. She said the Association’s mission is to work together with stakeholders
47 such as the Riley Purgatory Bluff Creek Watershed District (RPBCWD) to protect and
48 enhance the water quality of the lake water, the aquatic environment, and the fish and
49 wildlife habitat of Duck Lake and its surrounding watershed. Ms. Santamaria said at the
50 Association’s full membership meetings in February and June 2023 residents asked the
51 Association board to do something to address the low water level of the lake. She
52 commented that those residents who have lived here for years know the level has been
53 lowered, which is not conducive to the Association’s mission of protecting and enhancing
54 the aquatic environment or the ecosystem that depends on it. Ms. Santamaria said the
55 Association feels the DNR and City have done the residents wrong by illegally putting the
56 culvert in at a lower level than it should have been and then by denying the actual real
57 historical levels of the water the Association knows the lake should be at and are being
58 artificially manipulated in a way that has been a detriment to fish and wildlife and interferes
59 with the natural order. Ms. Santamaria said the Association is really grateful to the Board
60 tonight for listening to us, our lake residents and lake association, and working with us. She
61 said we are grateful that the tasks 1-5 from Task Order 46 by Barr Engineering to evaluate
62 the outlet configurations will to be voted on by the District Board, and we feel heard and
63 like true stakeholders in this along with the District. Ms. Santamaria said the Association is

64 feeling that help is within reach regarding the task of being responsible stewards of the lake.
65 She said with the support of this Board, hopefully that task can be started as a resolution to
66 this issue that is so important to the residents. Ms. Santamaria said on behalf of the entire
67 membership of the Eden Prairie Duck Lake Association and over 40 households and
68 families who live around the lake who are members of the Association, we urge the Board
69 to vote in favor of Resolution 24-017, which is up for a vote at tonight’s meeting. She said
70 the Association appreciates the District’s support and promises to be good partners in this
71 and put some skin in the game along with the District in this process and to collaborate
72 where appropriate.

73

4. Presentation on Lotus Lake Water Quality Improvement Project

74 Administrator Jeffery said Jen Koehler of Barr Engineering will present a summary of the
75 Lotus Lake Water Quality Improvement Project Feasibility Study as an information-only
76 item. He said staff will come to the Board at a future meeting for a public hearing and a
77 request to order the project.

78 Ms. Koehler of Barr Engineering shared the PowerPoint presentation “Lotus Lake Water
79 Quality Improvement Project – Feasibility Study.” She explained the study took into
80 account the water monitoring data, data from site visits, and other watershed information
81 and used the District’s hydrologic and hydraulic model to understand the existing conditions
82 at the proposed project locations. Ms. Koehler said Barr evaluated the effectiveness of water
83 quality Best Management Practices (BMPs) in the potential project areas in terms of the
84 BMPs related to their cost per pound of pollutant removed. She said Barr recommends the
85 following projects:

- 86 • North Lotus Lake Stormwater Park (LL_1a/b) Infiltration System
- 87 • Channel Stabilization Downstream of Meadow Green Park Pond (LL_3b)
- 88 • Enhanced Filtration at Lower Wetlands in Meadow Green Park (LL_7e)
- 89 • Infiltration Basin on Frontier Trail Association Outlet (LL_8d)
- 90 • Kerber Pond Ravine Restoration (Concept 1)

91

92 Ms. Koehler said the combined total estimated phosphorus removed per year is 58 to 60
93 pounds per year. She stated the targeted load reduction, between the watershed load
94 reductions and the erosion sources, is approximately 56 pounds per year. Ms. Koehler said
95 theoretically with the implementation of the recommended projects, the District could
96 achieve the load reduction required by the Lotus Lake TMDL (Total Maximum Daily
97 Load).

98 Ms. Koehler said the report includes a proposed work plan, which includes tasks like
99 engineering, design, permitting, agreements, easements, bidding and award,
100 implementation/construction, monitoring, long-term inspections and maintenance. She said

101 regarding the schedule, it is being driven by trying to coordinate with the City of
102 Chanhasen in line with its street reconstruction schedule and with the goal of beginning
103 project construction in late 2025 into 2026.

104 Manager Ziegler said these projects sound great, but the District's alum treatment was not as
105 effective as anticipated. He said one of the theories as to why it was less effective is wake
106 boats' impacts on the shoreline and churning up bottom sediments. He asked if anything can
107 be done to reduce the resuspension of phosphorous caused by wake boats.

108 Administrator Jeffery said that while the Lotus Lake alum treatment was less effective than
109 the Lake Riley treatment, it was successful and achieved a 40-to-60 percent reduction in
110 total phosphorous in Lotus Lake. He said staff is seeing high release rates in the shallow
111 areas of that lake from the soil substrates. Administrator Jeffery said Joe Bischoff of Barr
112 will come to an upcoming meeting to talk about the second alum treatment on Lotus Lake
113 and staff and Barr are looking at things that could make the alum treatment more effective.

114 Manager Crafton said one thing to address before doing the next alum treatment is to stop
115 the external loading to the lake. Administrator Jeffery said the District's Use Attainability
116 Analysis and the TMDL study both said the load reduction goals cannot be met by only
117 addressing either external or internal loading. He said the District has started the internal
118 load reduction and needs to address the external loading. Administrator Jeffery said the
119 proposed projects will get the District really close to where it wants to be in terms of load
120 reduction for Lotus Lake.

121 Manager Koch said he has lived on Lotus Lake for 34 years, and in his view this has been
122 too long in coming. He asked if this project would deal with the entire length of the stream
123 because he thinks it all needs work, from the outlet of the pond all the way to where it runs
124 into the lake. Administrator Jeffery said this project will look at the entire corridor. Manager
125 Koch asked if the ponds on the east side of the lake are included in this project. He said for
126 example taking a look to see if the ponds need to be cleaned out. Manager Koch said the
127 phosphorous levels in the shallow areas of Lotus Lake are showing wake boats are having
128 an adverse effect on water quality.

129 Manager Koch said he believes the District has the ability to regulate water activities,
130 especially when the activities have an adverse impact on lake bottoms and lake shores. He
131 said we have the legal authority to address it, especially on a lake like Lotus Lake. He asked
132 if there could be a Board workshop to go into each of the BMPs proposed for this project in
133 more detail.

134 Manager Duevel asked how dependent the District is on the City of Chanhasen regarding
135 getting these projects done. Administrator Jeffery responded the District is very dependent
136 on the City of Chanhasen for the North Lotus Lake Park project. He said that project will
137 not happen without partnership with the City of Chanhasen. Administrator Jeffery said the
138 District could do some of the other projects with minor assistance from the City of
139 Chanhasen.

140 Manager Pedersen said she is happy to see that the District is working with one of its cities
 141 to accomplish more and this makes her optimistic that the District’s money will be put to
 142 greater effect by working in partnership.

143 Manager Koch asked staff to look into whether there are ponds on the east side of Lotus
 144 Lake and whether they should be evaluated. Administrator Jeffery said he will look into it
 145 and get information about it to Manager Koch.

146

5. Reading and Approval of Meeting Minutes

147 **a. Approve Minutes of the December 6, 2023, Special Meeting of the RPBCWD**
 148 **Board of Managers**

149 Manager Ziegler moved to approve the minutes of the December 6, 2023, Special Meeting
 150 of the RPBCWD Board of Managers. Manager Crafton seconded the motion. Manager
 151 Crafton noted an edit on line 50 to delete the word “the” in front of “bond.”

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

153

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

154

155 **b. Approve Minutes of the January 10, 2024, Regular Meeting of the Board of**
 156 **Managers**

157 Manager Ziegler moved to accept the minutes of the January 10, 2024, Regular Meeting
 158 of the Board of Managers. Manager Crafton seconded the motion.

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

160

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

Koch	No
Pedersen	Yes
Ziegler	Yes

161
162
163
164
165
166
167
168
169
170

c. Approve Minutes of the January 25, 2024, Board of Managers Workshop

Manager Duevel moved to accept the minutes of the January 25, 2024, Board of Managers Workshop. Manager Ziegler seconded the motion.

Manager Ziegler noted an edit to line 138 to include his comment, "...including the BMP and alum treatments in the timeline would help show the cause and effect of the BMPs and alum treatments on the water quality."

Manager Crafton noted an edit on line 202 replace "it" with "if."

Upon a roll call vote, the motion to approve the amended minutes carried 5-0 as follows:

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

171

6. Committee and Member Reports

172
173
174
175
176
177
178
179
180
181

a. Adopt Resolution 2024-012 Receiving Committee Reports.

i. Receive Citizens Advisory (CAC) Minutes and Report

Jeff Weiss reported the CAC met on January 22nd and the CAC meeting minutes are in the Board's meeting packet. He noted there were a few recent resignations of CAC members. Mr. Weiss said staff member Mat Nicklay gave a great presentation about the regulatory program and the CAC had a good discussion about it. He said the CAC did not make any motions. Mr. Weiss said CAC member Sharon McCotter shared with the Committee the update from the Board's January meeting that Riley Lake and Rice Marsh Lake are near to being delisted. He said the Committee elected officers, and Andrew Aller remains CAC

182 Chair, Bonnie Nelson is the new Vice Chair, and Andrew Peterson is the
183 recorder. Mr. Weiss said the next CAC meeting is on February 26.

184 Manager Duevel commented it will be important when the lakes are delisted that
185 the District makes it known that the District was part of the major effort in the
186 work to achieve the delisting.

187 Manager Duevel said Mat Nicklay's presentation to the CAC was very
188 informative and it would be nice to have such presentations to the Board from
189 time to time.

190 Manager Koch asked if the CAC is planning to track its requests to the Board and
191 to follow up with the Board on those items. He recommended the CAC does so.
192 Manager Koch said there has been some discussion about recording the
193 presentations made to the CAC so people could view them. Manager Crafton
194 asked if Mr. Nicklay's presentation was recorded. Administrator Jeffrey said it
195 was not.

196

197 **ii. Receive Personnel Committee Report**

198 President Pedersen said the Committee made a couple of minor changes to the
199 Employee Handbook. She noted details about the District Administrator review
200 process. President Pedersen said the Committee talked about having a salary and
201 benefits survey conducted in conjunction with other water management
202 organizations. She said she is expecting a proposal from Gallagher and will bring
203 this back to the Board.

204 Manager Koch commented he assumes President Pedersen will go back to Metro
205 Watersheds to see if it wants to participate before the District undertakes the
206 survey alone. President Pedersen said yes.

207 Manager Koch stated it has been known for a long time the Sick and Safe Leave
208 statute was going into effect in January. He said perhaps the District's policy is
209 compliant, but he wants to see something from appropriate employment law
210 because he wants to know if the District is complying with the law. He said we
211 should not be here in February discussing it. Manager Koch said regarding the
212 Employee Handbook he does not see that anybody on staff or the Personnel
213 Committee is authorized to make any changes to the Handbook or the District's
214 policies. He said they should be brought to the Board for the Board's action.

215 Manager Koch asked about a reference by Administrator Jeffery in the Committee
216 minutes regarding the Administrator review and that each manager should be kept
217 separate due to the current lawsuit. He said he is not aware of any reason why
218 these should be kept separate, especially under Minnesota government Data
219 Practices Act and he is not aware of any exception. Manager Koch said if there is
220 an exception he should expect to see basis for that exception in writing from legal
221 counsel.

222 Manager Koch said he would like to know if the Committee will meet quarterly
 223 and if the Personnel Committee meetings will be recorded.

224 Mr. Smith said Legal Counsel’s recommendation is the Board go through the
 225 Administrator Review process it has always gone through. Manager Pedersen said
 226 that it how we are proceeding.

227 Mr. Smith said Smith Partners has been involved in reviewing handbooks in
 228 relation to Earned Sick and Safe Leave and Legal Counsel can double check to
 229 make sure all is in order.

230 Administrator Jeffery said the document he presented to the Personnel Committee
 231 came from Smith Partners. Manager Koch said he expects to get something in
 232 writing from legal counsel documenting we are in compliance.

233 Manager Ziegler moved to accept the Committee Reports. Manager Duevel
 234 seconded the motion. President Pedersen said the action is to adopt Resolution 24-
 235 012 to Receive Committee Reports.

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

237

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

238

239 **b. Confirm Board Representation for February 26, 2024, CAC Meeting**

240 Manager Ziegler volunteered to be the Board representative at the February 26th CAC
 241 meeting.

242

7. Consent Agenda

243 **a. Adopt Resolution 24-013 to Approve Consent Agenda**

244 President Pedersen listed the items remaining on the Consent Agenda: 7a – Adopt
 245 Resolution 24-013 to Approve Consent Agenda, 7c – Receive January Engineer’s Report,
 246 and 7e – Approve Permit 2023-079 Grace Church Playground as Presented in the
 247 Proposed Board Action Section of the Permit Review Report

248 Manager Ziegler moved to adopt Resolution 24-013 to Approve Consent Agenda.
 249 Manager Duevel seconded the motion.

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

251

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

252

8. New Business

253 **a. Items Removed from Consent Agenda**

254 **i. Receive January Staff Report**

255 Manager Koch asked if Administrator Jeffery is proposing changes to the
 256 budget regarding the audit and budget function. Administrator Jeffery said no,
 257 he is proposing looking at the Treasurer’s Report format for clarification about
 258 committed funds.

259 Manager Koch commented regarding Local Surface Water Management Plans
 260 (LSWMP) he thinks the District has a strong argument that it has jurisdiction
 261 over activities on the water to the extent they affect the bottom of the lake and
 262 water quality. He said he thinks the Board should have legal counsel look into
 263 this because he thinks it behooves us to try to do something to stop this artificial
 264 but severe erosion caused by wake boats.

265 Manager Koch remarked he thinks the District’s website needs a lot of work.

266 Manager Koch moved to receive the January staff report. Manager Ziegler
 267 seconded the motion.

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

269

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

Koch	Yes
Pedersen	Yes
Ziegler	Yes

270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305

ii. Receive January Regulatory Report

Manager Koch asked for the report to at least include the number of permits closed out each cycle and for staff to include in the report quarterly a summary of what types of permits are being applied for. He asked for the permit violations report to also include a description of next steps.

Manager Duevel asked if the District has no regulatory enforcement authority. Mr. Smith said he vigorously disagrees that it has no regulatory enforcement authority. He said watershed districts do not have the authority to issue fines and do not have peace officers at disposal to enforce the District’s rules. He said the District does not have a DNR conservation officer at disposal to enforce the District’s rules, except there may be times in which the DNR has a joint interest. Mr. Smith said the District has authority to seek enforcement of its rules through a variety of means. He said Legal Counsel recommends typically an administrative process so there is plenty of opportunity for the alleged violators to be heard and present their side of the story. Mr. Smith said that could be with staff and if that is not effective, then typically Legal Counsel recommends elevating it to inviting the violators to speak at a Board meeting. He said if that direction from the Board is not adequate, the District has made a record of its efforts and a record of what the violations are and concerns about the impacts to water resources. Mr. Smith said then the District is in a very good position to go to court. He said taking occasional enforcement action in cases in which the District’s rules have not been complied with and good-faith efforts to seek compliance have not been productive will lead to people learning, and word getting around, that rules are enforced. Mr. Smith said that ultimately the District has full statutory authority to go to court and have the project brought into compliance and have the District’s fees and costs recovered.

Manager Pedersen asked the Administrator and Mr. Nicklay to come up with something that gets sent to Mr. Smith and then brought to the Board that will give the Board and staff some direction about what to do regarding rules violations. Manager Koch said he agrees the District should have a process documented so it can be applied in each and every case. He said he thinks it is appropriate to have staff to come up with something in collaboration with Mr. Smith and staff and present it to the Board for consideration and adoption as part of the District’s rules.

306
307
308
309

Manager Koch moved to accept the January Regulatory Report. Manager Ziegler 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

310
311

iii. Adopt Resolution 24-014 to Enter into a Cost Share Agreement with Autumn Ridge Association for \$19,475.24 for a Habitat Restoration and \$4,875 for Professional Maintenance

315
316
317

Manager Koch listed his recommended edits to the resolution.

Sharleen Spear commented she is representing the Autumn Ridge Association and she confirmed the legal name is the Autumn Ridge Association.

318
319
320
321

Manager Duevel moved to adopt Resolution approve Permit 24-014 to Enter into Cost Share Agreement with Autumn Ridge Association for \$19,475.24 for a Habitat Restoration and \$4,875 for Professional Maintenance. Manager Crafton seconded the motion.

322
323
324
325

Manager Koch moved to amend the motion to incorporate the changes he listed to the agreement as approved by and discussed by the Administrator and legal counsel. Manager Duevel and Manager Crafton consented to Manager Koch's amendment to the motion.

326
327

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

328

329

iv. Adopt Resolution 24-018 to Authorize Administrator to Enter Agreement with Carver County Soil and Water Conservation District for Technical Services

330

331

332

Manager Koch commented the agreement appeared to be very open ended as to exactly what services Carver County Soil and Water Conservation District (CCSWCD) will be performing. He said he would like the agreement narrowed as to the areas of work the CCSWCD will be doing for the District as opposed to an open ended agreement.

333

334

335

336

337

Manager Crafton said the flexibility is important. Administrator Jeffery said the District has had a contract with the Carver County Soil and Water Conservation District for ten years. Manager Koch said the number of years the agreement has been in place does not determine if the language is good or bad.

338

339

340

341

Manager Ziegler suggested adding the language “staff-requested services.”

342

343

344

Manager Ziegler moved to adopt Resolution 24-018 to Authorize Administrator to Enter Agreement as written with Carver County Soil and Water Conservation District for Technical Services. Manager Crafton seconded the motion.

345

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

346

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

347

348

b. Accept January Treasurer’s Report

349

Manager Crafton said the January Treasurer’s Report has been reviewed in compliance with our internal controls and procedures. She moved to accept the January Treasurer’s Report. Manager Duevel seconded the motion.

350

351

352

Manager Koch asked if the 4M Fund listed includes the U.S. Bank accounts.

353

Administrator Jeffery said yes.

354

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

355

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

356

357

Manager Ziegler moved to accept the September 2023 Treasurer’s report as presented and tabled at the October 2023 meeting. Manager Duevel seconded the motion.

358

359

Manager Koch moved to table the report to the Board’s next meeting so he can review the report. Manager Koch’s motion died due to lack of a second.

360

361

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

362

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

363

364

c. Adopt Resolution 24-015 Approving Payment of the Bills

365

Manager Crafton moved to adopt Resolution 24-015 Approving Payment of the Bills.

366

Manager Duevel seconded the motion.

367

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

368

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

Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

369

370

d. Approve After-the-Fact Permit 2023-053 Helgeson Lot Improvements as Presented in the Proposed Board Action Segment of the Permit Review Report

371

372

373

Administrator Jeffery said Brace Helgeson and his legal counsel Shaun Redford are attending the meeting to provide comments. Administrator Jeffery said the City of Chanhassen contacted the District regarding work being done on Mr. Helgeson’s property. Mr. Jeffery said upon investigation, it appeared a previous addition was made to the property and in total the modifications exceed the threshold for requiring a permit from the District. He said staff prepared a report and the report and plans as shown will be compliant with the District’s rules. Administrator Jeffery said Mr. Helgeson’s neighbor submitted documents regarding his concern over some cross access rights and easement rights. Administrator Jeffery said those concerns are outside the District’s purview of review and staff knows the underlying property is owned by Mr. Helgeson and the staff is moving forward on that basis.

374

375

376

377

378

379

380

381

382

383

384

Mr. Helgeson stated when he submitted for this addition with Lecy Construction in 2015, there was never anything mentioned by the City that this project needed to go to the watershed district. He said Lecy Construction was unaware and he was unaware of the District’s at-that-time new regulations. Mr. Helgeson said when it was discovered the project had exceed regulations, he complied and seeded the area around his pond with native grasses. Mr. Helgeson noted he was unaware he would be required to sign a maintenance declaration to be attached to the title. He said he is unclear about what and how much maintenance he can do. Mr. Helgeson said he has had the native grasses planted professionally and he would like to manicure it. He explained his property sits at an elevation 60 feet below Pleasantview Road. He said a ton of water comes down the hill and his shared driveway and runs into the lake without any sedimentation filter. He said he has offered to the City of Chanhassen and the District to allow them to do a submersible drainage system with filters to manage runoff, which would be far superior to the native grasses, and there has been no follow through. He said the City and the District realize there is this problem with the water barreling down through the culvert on the other side of Pleasantview Road and it washed out everything when there is a big rain. Mr. Helgeson said the native grasses will not do any good compared to the treatment that could be provided by the system he has suggested to the City and the District. He said he wants everyone to understand he is a very compliant resident and he was unaware of the District’s rules as was Lecy.

385

386

387

388

389

390

391

392

393

394

395

396

397

398

399

400

401

402

403

404 Shaun Redford said he represents the Helgesons. He highlighted that the most recent
405 project completed this last year falls well-under the 5,000 square-foot disturbed area
406 threshold that triggers the District's rules. Mr. Redford said the 2015 project was bigger
407 and his client was relying on professionals to advise him. Mr. Redford said his client is
408 now trying to fix this and reported Mat Nicklay has said his impression is the
409 Helgeson's have been trying to comply and have been cooperative. Mr. Redford said
410 one of his client's main concerns with the maintenance declaration is its ambiguity of
411 what he is able to do and not do in maintaining the native grasses. Mr. Redford said his
412 client has safety concerns regarding the height of the grasses along the pond. Mr.
413 Redford said his client would like to have the ability to do occasional cutting and
414 trimming of the native grasses. Mr. Redford said there is ambiguity about what level of
415 trimming and cutting Mr. Helgeson can do that will still allow the grasses to perform
416 their filtering function while balancing out the other factors Mr. Redford laid out for the
417 Board.

418 Mr. Redford asked for clarity about the District's condition that the site plan needs to be
419 updated and exactly what the District is asking the site plan to show. He asked for
420 clarity on the District's request for an additional permit fee deposit.

421 Administrator Jeffery responded the District's rules say the buffers must be maintained
422 as native vegetation needs that provides the ecological and habitat functions.
423 Administrator Jeffery said that would not preclude biannual cutting to foster
424 regeneration but would preclude mowing it and maintaining it as a lawn. He explained
425 regarding the length of the buffer, it must extend from property line to property line, so
426 it must encompass the wetland area that was excavated in the DNR public water.

427 Administrator Jeffery said regarding the additional fees, they are to recoup the
428 additional time and expenses of the District and the \$200 deposit is to pay for any
429 inspections that may need to occur. He said the deposit may be refunded if there is any
430 balance remaining.

431 Administrator Jeffery said he recommends this after-the-fact permit be approved with
432 the conditions as presented in the staff report in the Board packet.

433 Manager Koch said he has concerns if there is a lack of understanding by the permit
434 applicant about the requirements. He said the questions should be submitted to staff in
435 writing. He said we should not be issuing permit if there are these outstanding issues.
436 Manager Koch said there seems to be an issue raised by the neighbor as to whether
437 granting this permit would end up complying with item number 3 under Applicable
438 General Requirements. Manager Koch said he thinks the District's legal counsel should
439 review this issue and staff should be working with Mr. Helgeson and his attorney to
440 clarify the maintenance requirements.

441 Manager Koch moved to either table this after the fact permit or reject it. Manager
442 Duevel seconded the motion.

443 Mr. Redford said he is not clear what the objection is by the neighbor and asked if the
444 neighbor is present to make his objection. President Pedersen said it does not seem he

445
446
447
448
449
450
451
452
453
454
455
456
457
458

is. Administrator Jeffery said the objection is in the form of a memorandum, which is attached to the materials for this agenda item posted on the District website.

Mr. Smith said the relevant issue in front of the Board is the activity on the Helgeson property and bringing it compliant with the District’s rules. He said the activity we are describing all takes place on the Helgeson property. Mr. Smith said there apparently is an issue with a neighboring property owner and it is not within the District’s jurisdiction to adjudicate it. Mr. Smith said whatever dispute they have, they can pursue it between them.

Manager Koch asked why the District has paragraph 3 in the Applicable General Requirements. He said he does not see how the Board can go forward on this permit. Manager Koch said obviously there are still questions out there and they need to be addressed. Mr. Helgeson said he does not have questions outstanding.

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

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

459
460
461
462
463
464
465
466
467
468

Manager Ziegler moved to approve 2023-053 subject to the conditions and stipulations set forth in the recommendations section of the attached report. Manager Duevel seconded the motion.

Manager Koch said he does not see how we can vote to approve this when the evidence testimony statements before us show there is a dispute as to whether item number 3 is being complied with. He said he does not think we should approve this application, certainly not until all the “i”s have been dotted and “t”s crossed.

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

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

Koch	No
Pedersen	Yes
Ziegler	Yes

469

470

471

e. Consider Permit 2023-045 Avienda Rowhomes Variance Request from Rule B

472

473

Scott Sobiech displayed a PowerPoint presentation “2023-045 Avienda Rowhomes.” He described the proposed project to construct 53 row homes with associated streets and utilities.

474

475

476

Mr. Sobiech said the proposed project disturbs two waterbodies and one is compliant. He reported the applicant is requesting a variance from the District’s Rule B, Floodplain Management and Drainage Alterations providing compensatory storage within the same waterbody floodplain the project disturbs.

477

478

479

480

Mr. Sobiech said the project proposes to completely fill a stormwater filtration basin completed with the first permit and replace it with an underground storm water chamber system. He said the volume being provided would not be in the same floodplain. Mr. Sobiech said the applicant proposes to change some of the drainage patterns to further provide protection and mitigate the impacts of the variance request.

481

482

483

484

485

Mr. Sobiech presented the District Engineer’s review of the variance request per the District’s Rule K criteria. He said the proposed design results in a 62% shortfall from the requirement, so to offset that the applicant proposes to construct the biofiltration basin with significantly more volume, so the net increase in storage provides more flood storage than what is there today. Mr. Sobiech stated the proposed project is not likely to cause offsite adverse impacts or adversely affect offsite governmental services, water resources, flood levels, or neighboring properties. Mr. Sobiech said the proposed variance only impacts the applicant’s property. He summarized the applicant incorporated into the project plan technical measures to alleviate the practical difficulty. He said the measures include creating additional flood storage in the biofiltration basin so there is a net increase in flood storage on the site and the applicant is planning to redirect a portion of the watershed. Mr. Sobiech said the practical difficulty occurred because the applicant wants to replace the existing surface BMP with an underground BMP.

486

487

488

489

490

491

492

493

494

495

496

497

498

499

Mr. Sobiech summarized the District Engineer’s review shows there is adequate technical basis for the managers to rely on to grant the requested variance.

500

501

Manager Koch asked if pre-excavation there were wetlands on this property. Engineer Sobiech said yes, there were extensive wetlands on the property prior to the project going in. Manager Koch if it is accurate to say approving this would allow the applicant

502

503

504 to eliminate part of a wetland, as in part of the retention pond, and replace it with a tank.
 505 Administrator Jeffery said a detention pond does have some wetland characteristics, so
 506 some terrestrial benefits of that feature will be lost by putting in the stormwater chamber
 507 underground. Manager Koch said it seems to him the City would have to be involved in
 508 approving that and also it seems to him that would require compensatory wetland
 509 somewhere. Administrator Jeffery said the pond is not jurisdictional so the Board would
 510 only consider the ecological benefit of the stormwater pond. Engineer Sobiech clarified
 511 the applicant is replacing an existing filtration basin with an underground chamber. He
 512 said the plan proposes to construct a large biofiltration basin on the eastern portion of
 513 the project site as well as two areas with tree trenches, so the applicant is adding a lot of
 514 trees as well.

515 Steven Sabraski, the applicant’s consultant, said the basin being converted to an
 516 underground basin is a stormwater management facility and is not a wetland nor a wet
 517 pond but a dry filtration basin. He said the purpose of it is to solve for the constructed
 518 stormwater needs of the project site.

519 Manager Ziegler moved to adopt the variance for Permit 2023-045, resolved that the
 520 variance request for Permit 2023-045 from compliance with Rule B, subsection 3.2b is
 521 approved, based on the facts and analysis provided by the RPBCWD engineer and
 522 placed in the record at the February 7, 2024, meeting of the managers, and the
 523 managers’ findings in the record of the February 7 meeting. Manager Crafton seconded
 524 the motion.

525 Manager Koch said the Board is granting a variance based on the proposed
 526 reconfiguration that was submitted. He said he is concerned the District does not have
 527 the typical conditions and standard language in place. Mr. Sobiech said the conditions
 528 are part of the permit, which is the next item on the agenda.

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

530

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

531

532 **f. Approve Permit 2023-045 Avienda Rowhomes as Presented in the Proposed**
 533 **Board Action Segment of the Permit Review Report**

534 Manager Duevel moved to approve Permit 2023-045 Avienda Rowhomes as presented
 535 at the February 7, 2024, meeting of the Board of Managers, subject to the conditions
 536 and stipulations listed by the engineer and set forth in the Proposed Recommendations
 537 section of the Permit Review Report and resolved that on determination by the
 538 RPBCWD administrator that the conditions of approval of the permit have been
 539 affirmatively resolved, the RPBCWD president or administrator is authorized and
 540 directed to sign and deliver Permit 2023-045 to the applicant, on behalf of the
 541 RPBCWD. Manager Crafton seconded the motion.

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

543

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

544

545 Administrator Jeffery said the remaining agenda items can wait until the Board's March
 546 meeting.

547 Manager Koch moved that the remaining agenda items be put on the Board's March
 548 regular meeting. Manager Ziegler seconded the motion.

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

550

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

551

552

553 **g. Adopt Resolution 24-016 Authorizing Barr Task Order #45 to Develop a**
554 **District-wide Groundwater Monitoring Network**

555 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

556

557 **h. Adopt Resolution 24-017 Authorizing Barr Task Order #46 to Analyze**
558 **Potential Duck Lake Outlet Modification**

559 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

560

9. Discussion Items

561 **a. Hybrid Meeting Configuration - Larry Koch Critique**

562 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

563

564 **b. Update on Lawsuit Larry Koch v. RPBCWD and Terry Jeffery (the Board**
565 **may go into closed session)**

566 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

10. Member Reports

567 **• Manager Reports**

568 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

569

570 **• Administrator Report**

571 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

572

573 **• Legal Counsel Report**

574 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

575

11. Upcoming Board Topics

- 576 **• EHAP Workshop, March 11, 2024**

577

12. Upcoming Events

- 578 • February 10, 2024 – Minnetonka Farmers Market
- 579 • February 22, 2024 – Volunteer Appreciation
- 580 • February 26, 2024 – STEM on TAP
- 581 • March 2-3, 2024 – MNWA Legislative Days
- 582 • March 9, 2024 – Eden Prairie Home, Landscape, and Garden Expo
- 583 • March 14, 2024 – Cedar Ridge Science Night
- 584

13. Adjournment

585 Manager Koch moved to adjourn the meeting. Manager Ziegler seconded the motion.
586 Upon a roll call vote the motion carried 5-0 as follows:

587

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

588

589 The meeting adjourned at 10:06 p.m.

590

591

592

593

Respectfully submitted,

594

595



596

Tom Duevel, Secretary