

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

May 5, 2021, RPBCWD Board of Managers Workshop and Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer
Larry Koch
Dorothy Pedersen, Vice President
Dick Ward, President
David Ziegler, Secretary

Staff: Amy Bakkum, Administrative Assistant
Zach Dickhausen, Water Resources Technician II
Liz Forbes, Grant Coordinator
Terry Jeffery, Interim District Administrator and Watershed Planning Manager
Josh Maxwell, Water Resources Coordinator
Louis Smith, Attorney, Smith Partners
Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Jeff Abrahamson* Mary Krause*
Andrew Aller* Sarah Lloyd*
Pat Andrican* Dean Lotter*
Chad Ayers* Jesse Mercado*
Sue Bennet* Justin Nilson*
Andrew Berg* Tim Olson*
Robert Ellis* Mark Rausch*
Heidi Groven * Rod Rue*
Greg Hawks* Sadie Seaborn*
Elizabeth Henley* Emily Shaw
Pavel Heuer Leslie Stovring*
Ahsan Ijaz* Marilyn Torkelson*
Teri Willow*

**Indicates attendance only at the Regular meeting*

Note: this meeting was held remotely via meeting platform Zoom in abidance with state mandates in response to Covid-19.

1. Workshop: Overview of District's 10-Year Plan

2 President Ward opened the workshop, which was held remotely via meeting platform Zoom.
3 Interim Administrator Jeffery said the purpose of the workshop is to provide an overview of the
4 District's 10-Year Plan and to focus on District project prioritization.

5 Engineer Sobiech shared a PowerPoint presentation about the plan, including when and how it
6 was developed, stakeholder and community outreach involved, the prioritization tool, including
7 metrics, CIP ranking, and project coordination, logistics, and timing.

8 Engineer Sobiech talked in depth about the community survey results and public input and how it
9 helped structure the plan. He reviewed the prioritization inputs, including Use Attainability
10 Analysis studies, the Creek Response Action Survey, Total Maximum Daily Load studies, areas
11 studies such as the Chanhassen Stormwater Retrofit and paleolimnology, feasibility studies, and
12 Local Governmental Unit studies such as vegetation surveys. Engineer Sobiech described the
13 process of prioritizing the projects to include in the plan by evaluating projects based on nine
14 metrics:

- 15 •Number of 10-Year Plan water resources goals addressed
- 16 •Sustainability
- 17 •Volume management
- 18 •Pollutant management
- 19 •Habitat restoration
- 20 •Shoreline/ streambank stabilization
- 21 •Watershed benefits
- 22 •Partnership opportunities
- 23 •Public education.

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25 Engineer Sobiech went through the initial project prioritization process, the revised prioritization,
26 and the prioritization based on the three major creek watersheds via the major watershed one
27 water approach. He described project logistics that were considered, such as partnerships,
28 accessibility, and cost effectiveness among other logistics. Engineer Sobiech displayed a map
29 showing the distribution of Capital Improvement Projects (CIP) across the watershed and shared
30 the list of the 34 CIP projects identified for implementation. He walked the group through the
31 District's CIP implementation process and displayed the District's decision tree for that process.
32 Engineer Sobiech noted that the District does a biennial re-evaluation of projects, and he said this
33 process is overdue as it has been roughly four years since the most recent re-evaluation.

34 Engineer Sobiech went through the District's stream management decision tree, groundwater
35 decision tree, and lake management decision tree and noted staff is working toward putting in

36 place this year a shoreline assessment rating. Manager Ziegler asked a question about adaptive
37 management of lakes and Manager Crafton added comments about soil health and ecosystems as
38 well as the factor of community engagement and thanking volunteers. Interim Administrator
39 Jeffery thanked them for their comments and said he wanted this workshop to provide the
40 managers with an understanding of how the District developed its current decision tree and an
41 opportunity to discuss if there are new opportunities to consider or items to reconsider.

42 Engineer Sobiech briefly summarized the District's other programs, including data collection,
43 aquatic invasive species, education and outreach, cost-share/stewardship grants, and the
44 regulatory program. Engineer Sobiech said he will provide this PowerPoint presentation to
45 Interim Administrator Jeffery for distribution to the managers. Interim Administrator Jeffery said
46 he will also post the presentation to the District's website.

47 Manager Koch said the District is required to have all its presentations available to the public at
48 the meeting and the District needs to comply with the requirement. He shared his opinion that it
49 doesn't count to have the presentation available on the website after the meeting. Manager Koch
50 said the District's plan is better than nothing, but the fact is that the CAC at that time was
51 instrumental to making sure there was an economic analysis to projects going forward and a
52 method to evaluate creeks. Manager Koch said it was proposed at that time that there be an
53 evaluation method for lakes, which didn't happen. He said he thinks the District has lost track of
54 its goals and should go back to those goals on a year-to-year basis to determine what do. Manager
55 Koch remarked there was little to no consideration of public comments once the plan was
56 underway. He said in his view, once people comment, there was little or no consideration of those
57 comments once the plan was underway, and certain people had their ideas about developing this
58 plan and took little consideration of others' comments. Manager Koch said he had to literally
59 fight to get certain projects moved up, otherwise it would have been another seven or ten years
60 until those projects had gotten done. He said he thinks the District should look at its goals, look at
61 whether the current plan is accomplishing those goals, and then how to make sure those goals are
62 implemented. Manager Koch raised his concerns about the District having rules but having no
63 way to enforce them. He also commented on how the District is behind schedule in reviewing its
64 plan and doesn't have checklists. Manager Koch recommended the Board continue this review of
65 the plan, and he wants the slide deck because he wants to make sure the District is accomplishing
66 its goals for the creeks.

67 Manager Pedersen asked for staff input on whether they see projects that should be moved up.
68 President Ward directed staff to consider the question and report back at the Board's June
69 meeting.

70 The workshop ended at 6:04 p.m.

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2. Call to Order of the Regular Meeting of the RPBCWD Board of Managers

72 President Ward called to order the Wednesday, May 5, 2021, Board of Managers Regular
73 Meeting at 7:00 p.m. The meeting was held remotely via meeting platform Zoom.

3. Approval of Agenda

74 Manager Ziegler moved to approve the agenda. Manager Crafton seconded the motion.
75 President Ward requested laying over Agenda item 9k – Authorize staff and attorney to prepare
76 contract documents and award the St. Hubert Opportunity Project to Apparent Low Bidder upon
77 appropriate vetting – until the continuance of this meeting on Monday, May 10 at a time the
78 Board sets tonight. He explained bids were due today, so SRF wasn't ready to provide the District
79 the information on the bid numbers and lowest bidders in time for this evening's Board meeting.
80 Manager Koch requested pulling from the Consent Agenda and adding to Action Items 8d -
81 Approve Cost Share with Shorewood in the Amount of \$50,000 for the installation of sump
82 manholes and SAFL baffles tributary to Silver Lake. He requested adding an Action item about
83 the District's 10-Year Plan to authorize and direct staff and Barr to review the plan and bring
84 recommendations to the Board.
85 Attorney Smith reminded staff it is requesting laying over until the meeting continuance items 9d
86 – Approve contract with SRF for Design and Construction Administration Services for the St.
87 Hubert Opportunity Project and 9e – Approve Cooperative Agreement with St. Hubert and
88 Authorize the President to Sign.
89 Manager Ziegler and Manager Crafton accepted the friendly amendments to the motion. Upon a
90 roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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4. Auditor Presentation of Annual Audit

94 Interim Administrator Jeffery introduced Mr. Justin Nilson of ABDO, Eick & Meyers LLC to
95 present the 2020 audit opinion and responsibility and the 509 Implementation Fund results.
96 findings.
97 Mr. Nilson shared a PowerPoint presentation and reported a clean unmodified audit opinion for
98 2020. He presented the audit, and shared the one 2020 audit finding, which is a repeat finding

99 from 2019: compliance finding regarding timing of payments per MN Statute 471.425. Mr.
100 Nilson said from the sample of 25 payments, 4 were paid late, ranging from 2 to 40 days. He
101 recommended the District purchase a stamp to document when bills are received to add a layer of
102 control. Mr. Nilson said MN Statute requires payment by 35 days of the District's receipt of the
103 bill.

104 Mr. Nilson highlighted improvement in 2020 over 2019, explaining the 2020 audit required no
105 material audit adjustments, compared to 2019 in which an adjustment was needed regarding the
106 recognition of grant revenue. He talked about the 2020 509 Implementation Fund results, noting
107 reserves are sufficient. Mr. Nilson said a recommendation moving forward is for the District to tie
108 the reserve funds to a future spending plan, which the District has in future budgets. Mr. Nilson
109 discussed the 509 Implementation Fund Budget to Actual.

110 Manager Koch commented he submitted several pages of multiple questions about audit issues
111 and wanted to know if the auditor received those questions and have answers. Mr. Nilson said
112 yes, the questions have been received and responses are in the process of being prepared.
113 Manager Koch asked clarifying questions about the details of the 509 Implementation Fund
114 Budget to Actual and asked how the District spent over its 2020 budget. Mr. Nilson reminded the
115 Board the audit focuses strictly on one year, and the budget includes one year, and the District has
116 multi-year projects. Manager Crafton said the annual audit captures the transactional data of one
117 year. Manager Koch clarified that the auditor is looking at this data as an income statement. Mr.
118 Nilson responded yes.

119 Manager Koch had further questions. President Ward asked Manager Koch if he could take his
120 questions offline from this meeting and directly to the auditor. Manager Koch responded yes.
121 Manager Koch raised the topic of the District paying interest on the contracts the District paid
122 late. Manager Crafton said the District wasn't asked to. Manager Koch said the statute is clear
123 about paying interest and the District needs to address this and follow up on it. Manager Koch
124 remarked he previously asked, and the District's Legal Counsel agreed, to look at the District's
125 contracts to amend or add a provision to the contracts so the District could avoid this issue. He
126 said the Board can cover this in a discussion with Legal Counsel.

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5. Matters of General Public Interest

128 No matters were raised.

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6. Reading and Approval of Meeting Minutes

130 a. **April 7, 2021, RPBCWD Board of Managers Regular Meeting including April 13, 20,**
131 **and 26 Continuances**
132 Manager Ziegler moved to approve the minutes. Manager Pedersen seconded the motion.
133 Manager Ziegler noted an edit on the April 7th minutes, line 110 to remove the duplicate
134 "and" and on line 170 to remove the duplicate "it." He asked the attendee list on the April

135 13th continuation minutes be revised to reflect the attendance at the meeting. Manager
136 Crafton noted an edit on the April 7th minutes, line 7 to replace the word Administrator
137 with President. Manager Ziegler and Manager Crafton accepted the friendly amendments.

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

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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7. CAC

142 Ms. Heidi Groven, new CAC Chair, introduced herself. She reported on the April 19th CAC
143 meeting, sharing that District staff Mr. Maxwell and Mr. Jeffery each presented at the meeting.
144 Ms. Groven said the bulk of the CAC's time at the meeting was spent on watershed education and
145 outreach and the CAC's process. She reported there are no citizens issues the CAC is bringing to
146 the Board this evening.

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8. Consent Agenda

148 Manager Crafton moved to approve the Consent Agenda. Manager Pedersen seconded the
149 motion. Manager Koch made the friendly amendment to clarify this agenda accepts the April staff
150 report, the April Engineer report, and the April construction report, which is the violations, and
151 that the approval of the three permits are approval of the staff recommendations and resolutions
152 included in those reports. Manager Crafton and Manager Pedersen agreed to the friendly
153 amendment. The items on the Consent Agenda included: 8a – Accept t April Staff Report, 8b –
154 Accept April Engineer's Report, 8c – Accept April Construction Report, 8e – Authorize
155 Administrator to Sign FY 2021 Watershed-Based Grant Agreement with the Minnesota Board of
156 Water and Soil Resources for the St. Hubert Opportunity Project, 8f – Approve permit 2021-008
157 for Minnetonka High School Momentum Building Addition with Staff Recommendations, 8g –
158 Approve Permit 2020-051 for Biolyph Addition with Staff Recommendations; 8h – Approve
159 Permit 2021-019 for Lake Riley Park Playground with Staff Recommendations.

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

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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9. Action Items

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

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- i. Approve Cost Share with Shorewood in the Amount of \$50,000 for installation of sump manholes and SAFL baffles tributary to Silver Accept March Construction Inspection Report**

Manager Koch wanted details about the amount and what is being approved. Mr. Jeffery said he would like Board input about the amount, because it was written in the bids as 50% or \$50,000 whichever is less. He asked if the Board wants to focus on incentivizing the cities to come to the District with opportunity projects. Mr. Jeffery said right now the language in the proposed cost share states \$50,000; however, \$50,000 would exceed 50% of the bid for the project. He asked if the managers want to leave it at \$50,000 or decrease to 50%. Manager Koch said he thinks the District is bound by its cost share rules, and this project could instead be considered for opportunity project funds. Manager Koch moved to approve the cost share with Shorewood for the lesser of \$50,000 or 50% and authorize staff to reach out to Shorewood to encourage the City to apply for opportunity project funds. Manager Ziegler seconded the motion.

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

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye

Pedersen	Aye
Ward	Aye
Ziegler	Aye

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b. Accept March Treasurer’s Report

Manager Crafton stated the report has been reviewed in accordance with internal controls and procedures. She moved to accept the March Treasurer’s Report. Manager Pedersen seconded the motion.

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

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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c. Approve Paying of Bills

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

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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198 **d. Approve Contract with SRF for Design and Construction Administration**
199 **Services for the St. Hubert Opportunity Project**

200 [Item laid over until the meeting continuance on May 10th.]
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202 **e. Approve Cooperative Agreement with St. Hubert**

203 [Item laid over until the meeting continuance on May 10th.]
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205 **f. Consider Variance from Discharge Rate Criteria of Rule J for 2021-016**
206 **Duck Lake Road**

207 Engineer Sobiech reminded the Board this project has been ongoing for several years,
208 has been discussed by the Board, and is part of a cooperative agreement. He shared a
209 PowerPoint presentation. Engineer Sobiech provided project background and
210 summarized the project components, including reconstruction of 1,900 feet of Duck
211 Lake Road, construction of 2,100 feet of five-foot sidewalk and 1,700 feet of multi-use
212 trail, restoring the Duck Lake outlet to MnDNR permitted condition, dedication of
213 wetland buffer, construction of a French drain, constructing a stormwater infiltration
214 basin, and proprietary hydrodynamic separator, and four proprietary pretreatment
215 structures, constructing or reconstructing five outfalls into Duck Lake, and replacing the
216 existing 12-inch culvert under Duck Lake Road.

217 Engineer Sobiech went through the resource and site summary, describing potential
218 water resource impacts to Duck Lake and the wetland 05-33-A on the western portion of
219 Duck Lake. He provided information about the Duck Lake Outlet and the work to
220 determine appropriate outlet elevation in east Duck Lake. Engineer Sobiech stated part
221 of this project is to restore the outlet to its permitted control elevation.

222 Engineer Sobiech reviewed the project's rule compliance summary, explaining the
223 applicant is requesting variances from three stormwater management criteria, including
224 peak discharge rate, treating offsite runoff, and 10-year bounce. He talked about the
225 District's Rule K – variance criteria and listed the District's criteria against which
226 assessment of practical difficulty is conducted.

227 Regarding the applicant's variance request 1 for rate control, Engineer Sobiech
228 presented the Engineer's review against the District's criteria and found the variation
229 from District standards is not substantial, has a relatively low flow impact on the creek
230 and low potential to adversely impact government services or flood elevations and
231 channel stability in Purgatory Creek. Engineer Sobiech explained the technical method
232 that would alleviate the practical difficulty would be to replace the existing culvert in
233 kind, which would not achieve the project flood reduction goal or restore a portion of
234 the lakebed. He stated the practical difficulty occurred as the applicant created the
235 circumstances leading to the compliance shortfall but did so to restore a portion of the

236 Duck Lake lakebed, reduce flooding, and improve safety. Engineer Sobiech
 237 summarized that the Engineer finds adequate technical basis for the District to find the
 238 practical difficulty outweighs the significance of the deviance from District standards.
 239 He responded to managers’ questions about flow and discharge increase. Manager Koch
 240 said he thinks this variance is premature without the data about what would happen to
 241 Duck Lake flood elevations if outflow is restricted. Manager Ziegler talked about the
 242 weir design and purpose and how it’s an improvement.

243 Manager Ziegler moved to approve variance 1 based on staff’s technical review and
 244 recommendations and conditions as presented. Manager Crafton seconded the motion.
 245 Upon a roll call vote, the motion carried 4-1 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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g. **Consider Variance from Treating Off-site Run-on Criteria of Rule J for 2021-018 Duck Lake Road**

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 249 Engineer Sobiech presented the Engineer’s review against the District’s criteria and
 250 found the deviation from the standards to be substantial. He explained the project
 251 proposes to treat 24% of the site, but because the applicant is proposing to treat runoff
 252 from a portion of the adjacent school property to the required annual total suspended
 253 solids and total phosphorous removal requirements, the proposed alterations won’t
 254 adversely affect governmental services, water resources, flood levels, or neighboring
 255 properties. Engineer Sobiech pointed out the practical difficulty is due to the limited
 256 area available to provide water quality treatment on the project site and the topography
 257 challenge to route the runoff to areas suitable for construction of best management
 258 practices. He pointed out the project design provides additional resource protection
 259 because it provides treatment in excess of the requirements.

260 Engineer Sobiech summarized the Engineer finds adequate technical basis for the
 261 District to grant the variance to allow the treatment of the offsite runoff in lieu of strictly
 262 treating site runoff, as long as the City enters into an agreement with the school district
 263 to commit to maintenance of the drainage right-of-way necessary for continuing
 264 compliance with the permit and District regulatory requirements.

265 Manager Ziegler moved to approve variance 2 based on staff’s recommendation and
 266 conditions as presented. Manager Crafton seconded the motion. Manager Koch asked

267 for more details about the applicant’s proposal to treat runoff from the school parking
268 lot and the risk of offsite treatment if the offsite area is somehow redeveloped. Engineer
269 Sobiech provided details, addressing the potential net shortfall when considering the
270 school campus in combination with the roadway project. Manager Koch commented he
271 finds granting variances for this project unpalatable.

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

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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275 **h. Consider Variance from Wetland Protection Criteria of Rule J for 2021-016**

276 Engineer Sobiech stated variance 3 is related to the District’s wetland protection criteria
277 and achieving the 10-year bounce. He presented his review of the District’s criteria. He
278 reminded the Board that one of the goals of the project was to reduce the upstream flood
279 levels and protect property.

280 Engineer Sobiech explained that by doing so, the project exceeds the allowable half-foot
281 change in the 10-year bounce by 0.43 feet, which is about 1.86 times that allowable
282 amount. He stated the proposed alterations will reduce flooding frequency of
283 governmental services and increase flood protection for neighboring properties.

284 Engineer Sobiech said the changing bounce is not reasonably likely to have an adverse
285 impact on the wetland.

286 Engineer Sobiech clarified the only technical measure to eliminate the need for the
287 variance would be to replace the existing culvert in kind, which would not achieve the
288 project flood reduction goal or restore a portion of the lakebed. He stated the applicant
289 created the circumstances leading to the variance in order to restore a portion of the
290 lakebed of Duck Lake, reduce flooding problems west of Duck Lake Road, and improve
291 pedestrian and vehicular safety. He summarized the Engineer finds adequate technical
292 basis for the District to rely on to grant the variance.

293 Manager Ziegler moved to approve variance 3 based on staff’s recommendation.
294 Manager Crafton seconded the motion. Manager Koch asked clarifying questions about
295 the project and variance. Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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i. Approve Permit 2021-016 for Duck Lake Road with Staff Recommendations

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Manager Ziegler moved to approve Permit 2021-016 Duck Lake Road with staff recommendations and conditions. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 4-1 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	No
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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j. Consider Request for Modification of Financial Assurance for 2019-051 Berrospid Addition

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Engineer Sobiech reported the District received a request from the applicant requesting a reduction in the project's financial assurance requirement. Engineer Sobiech said there are three elements to the request:

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- The applicant now has an actual contractor's quote for the construction of the stormwater management facilities and is asking the District to use the number from that quote
- The applicant is asking for the removal of the sediment control and erosion elements from the financial assurance requirement because the City is also holding funds to cover those features

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- The applicant is asking for the removal of the \$5,000 assurance associated with the chloride management plan, because he submitted a chloride management plan communicating he doesn't intend to use chlorides on the private street.

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319 Engineer Sobiech summarized that at this time the Engineer is not recommending a
320 change from what was approved regarding the assurance for the sediment and erosion
321 control elements because the financial assurance sitting with the City does not provide
322 for the District to access those funds should they be needed. Engineer Sobiech
323 recommended the request to use the contractor's quote to compute the financial
324 assurance for the construction of the stormwater management facilities be allowed. He
325 said the Engineer suggests that the \$5,000 financial assurance for the chloride
326 management plan could be eliminated with the caveat that the chloride management
327 plan be recorded as part of the maintenance declaration to make sure property complies
328 with this plan should the properties change ownership. Engineer summarized the
329 Engineer's recommendation is that the financial assurance be reduced from \$64,629 to
330 \$46,845.

331 Manager Ziegler moved to reduce the financial assurance to \$46,845 for permit 2019-
332 051 on the condition to the chloride provision as presented by the Engineer. Manager
333 Pedersen seconded the motion. Manager Koch remarked if the applicant had time to get
334 a quote, he had time to get a contract, and the quote means next to nothing. He moved to
335 amend the motion to provide that the Rule J amount be adjusted to the 125% of a signed
336 and delivered contract by the contractor and we keep in place the fee for the chloride
337 management plan until he records the plan as part of the maintenance declaration.
338 President Ward seconded the motion. Upon a roll call vote, the motion to amend failed
339 2-3 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	No
Koch	Aye
Pedersen	No
Ward	Aye
Ziegler	No

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341 Manager Koch asked about the District's enforcement abilities regarding the chloride
342 management plan. Interim Administrator Jeffery said this topic would be a good Board
343 workshop topic. He explained the purpose of the chloride management provision was to
344 educate property management on what chloride management means and incentivize
345 people to do the Pollution Control Agency training on chloride management. Interim

346 Administrator Jeffery said right now the District doesn't require the chloride
347 management plan to be recorded with the property. Engineer Sobiech reminded the
348 Board that the District holds all permits until all the conditions are fulfilled. He
349 explained that with Manager Ziegler's motion, in order for the applicant to start
350 construction, he would need to record the chloride management plan with the
351 declaration and provide that information to Interim Administrator Jeffery before the
352 permit is released.

353 Attorney Smith said in this case, this applicant is seeking to be released from the \$5,000
354 financial assurance regarding the chloride management plan and is willing to record to
355 the property that there won't be any salt use. Attorney Smith said the ultimate goal is to
356 reduce chloride use, and if someone is willing to record on the property that no chloride
357 will be used, the District's goal is met. He said the broader issue being raised is does the
358 District want to require all permit applicants to record on the property the chloride
359 management plan.

360 Manager Koch made the friendly amendment to the motion on the table that the
361 declaration must be signed and recorded before signing and issuing the permit.
362 Managers Ziegler and Pedersen accepted the friendly amendment. Upon a roll call vote,
363 the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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366 President Ward directed Interim Administrator Jeffery to bring the broader topic again
367 to the Board for future discussion.

368 **k. Authorize Staff and Attorney to Prepare Contract Documents and Award**
369 **the St. Hubert Opportunity Project to Apparent Low Bidder Upon**
370 **Appropriate Vetting.**

371 [Item to be discussed at the meeting continuation.]

372 **l. District's 10-Year Plan**

373 Manager Koch moved to authorize and direct staff and Barr to confer, review the 10-
374 Year Plan, and bring recommendations to the Board. Manager Pedersen seconded the

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motion. Manager Ziegler made the friendly amendment to the motion to also direct staff to review the soil health in regard to the District's 10-Year Plan and how to incorporate soil health into the Plan. Managers Koch and Pedersen agreed to the friendly amendment. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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10. Discussion Items

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a. Draft Cooperative Agreement Between Bearpath Golf and Country Club and RPBCWD; Overview of 90% Plans for Middle Riley Creek Stabilization Project; Land Use Agreement for Use of Private Road for Middle Riley Creek Stabilization Project

Engineer Sobiech said the draft cooperative agreement included in the packet is revised from the draft agreement the Board saw last year. He reported the project is at the 90% design level and said Bearpath is willing to work with the three private property owners where the District would need a temporary license for construction access.

Engineer Sobiech said Bearpath indicated this week an interest to incorporate additional language that would show the District and Bearpath's interest to continue long-term and holistic approach to the golf course management. Attorney Smith described the interest in the holistic approach as communicated by Bearpath and said Bearpath is providing general language for the District to consider.

Manager Koch said he wants to make sure this agreement has the appropriate conditions that the District is not obligated unless and until it has required all the rights it needs to do the work and whatever other conditions may be appropriate, so that it is up to the District to decide when and whether to move forward. He asked if the agreement has language to minimize the possibility of the District being held liable for defective design. Engineer Sobiech said he and Attorney Smith can review the agreement for these items.

Engineer Sobiech said Bearpath would like to allow the District to get into doing the streambank work sooner and before Bearpath does its work on the golf course restoration. Manager Koch said the agreement needs to have an adequate schedule of work, incorporate the respective plans, and make sure there is no conflict between the plans.

403 President Ward asked about the District's timeline for the project. Engineer Sobiech said
404 staff plans to bring the bid package to the Board in June and solicit for bids in June with
405 the intent of awarding the project in July. He said staff anticipates construction starting
406 late August or early September, starting and finishing the north site before moving to the
407 south site.

408 Manager Jeffery noted this agenda item was an update to the Board, and if members of
409 the public have comments, to please contact him or submit comments to him in writing.

410 **b. Discuss Permit Application #2021-012 Noble Hill**

411 Engineer Sobiech shared a map and pointed out the proposed project site north of Flying
412 Cloud Drive and the proposed development of the 32-acre site into 50 single-family lots.
413 He pointed out the location of the high-value wetland adjacent to the creek on the project
414 property and pointed out where Fredrick Miller Spring is in relation to the proposed
415 project site. Engineer Sobiech summarized existing versus proposed conditions. He
416 talked about the proposal to buffer the steep slope, noting there is one high-risk erosion
417 area along that slope.

418 Interim Administrator Jeffery reported Pulte Homes hired a geological engineer who
419 determined the source of the spring is on the west side of spring Road. He talked about
420 the recharge area lying west of the creek. Manager Koch asked staff to ask the applicant
421 for a map that lays the proposed project plan over the topographic map. He asked where
422 water from the hard surfaces will discharge and what will protect the slope and creek
423 from erosion. Interim Administrator Jeffery went into detail about the District's Rule J
424 and proposed site infiltration.

425 Manager Pedersen brought up the loss of trees proposed with the project and how the
426 slopes will stay put once the trees are removed. Interim Administrator Jeffery said much
427 of the tree removal is removing the tree farm, and the project proposes retaining walls to
428 stabilize the slope.

429 Manager Koch asked if there could be an opportunity project with this project that would
430 help achieve goals not otherwise able to be achieved thorough the District's rules. Interim
431 Administrator Jeffery said he will bring it up with the applicant.

432 .

433 **c. Attorney Report**

434 Attorney Smith said regarding the finding in the District's 2020 audit about the payments,
435 he has been in discussion with Interim Administrator Jeffery about a proactive way to
436 address the issue. He explained that for those vendors with whom the District has
437 services agreements, an easy solution provided for under statute is to provide for a longer
438 period of time until due, such as 45 days instead of 35 days.

439 Attorney Smith raised the topic of the statutory requirement of keeping a journal of votes.
440 He said the District's adopted Bylaws state the minutes approved by the managers serve
441 as a journal of votes. He reminded the Board it decided last year not to seek an advisory

442 opinion about the keeping of a journal of votes. Attorney Smith reported another entity
443 sought an advisory opinion on the topic, and in January 2021, the opinion provided was a
444 public body must keep a journal of votes separately from its minutes. He said that opinion
445 is now irrelevant because today the legislature presented the Governor legislation stating
446 the obligation is to keep either a journal of votes or minutes, and the minutes are an
447 adequate record of votes for the public body. Attorney Smith said he will keep the Board
448 apprised, as the legislation will become law unless the Governor vetoes it or doesn't sign
449 the legislation.

450 **d. Administrator Report**

451 Interim Administrator Jeffery talked about topics for a future workshop. The Board and
452 staff agreed to hold its next workshop in July and for a draft preliminary 2022 budget to
453 be ready for Board review and discussion in July. Interim Administrator Jeffery
454 announced the District has hired an Education and Outreach Coordinator.

455 **e. Managers' Report**

456 Manager Crafton raised the topic of a letter from Metro MAWD regarding issues causing
457 friction between Districts and BWSR. She asked that the District support Metro
458 MAWD's letter. Interim Administrator Jeffery said he received that letter this afternoon
459 and will forward it to the managers. Manager Crafton asked if this topic could be
460 discussed in Monday's continuance of this meeting. Attorney Smith said this matter
461 could be considered in the continuance under the managers' reports.

462 Manager Ziegler thanked staff for their work with the minutes.

463 Manager Koch said he thinks the Board needs to address its outstanding data practices
464 requests. He said another issue is that the District is required to have a copy of materials
465 the Board considers available to the public during the meeting. Manager Koch asked that
466 the District follow the requirements of the law and post those materials. He asked that
467 today's presentations get posted. President Ward said the District's legal counsel looked
468 into this issue Manager Koch is raising. Attorney Smith said the Open Meeting Law
469 requires the materials that are part of the Board's printed meeting packet be distributed
470 either beforehand or be available after to the public, and he wouldn't understand
471 PowerPoint slides to be part of those printed materials. He said the public has the same
472 access as the managers to the PowerPoints, and as a courtesy the District could provide
473 those, but he doesn't see it as a requirement. Attorney Smith said as a practical matter,
474 the PowerPoint presentations aren't always developed at the same time as the meeting
475 packet. He said the key is that the public have access to it the same as the managers.

476 Manager Koch expressed his disagreement with Attorney Smith's statements. He said he
477 believes Attorney Smith is wrong and a copy of the PowerPoint has to be available for
478 inspection at the meeting and displaying a PowerPoint on the screen is not making a copy
479 available to the public for their inspection. He said that's his position, and Attorney Smith
480 can have his position, and it can be seen how far that goes. Manager Koch said the
481 presentations can be available on the website and to come up with a lame excuse is not
482 very professional.

483 Manager Koch said regarding payment of interest on invoices that were not paid by the
 484 District within 35 days. He said the District has an obligation to pay interest, and the
 485 District doesn't have to like it. He said the minimum the District has to do is follow
 486 statute, and the statute is to pay interest if the District doesn't pay invoices on time.
 487 Manager Koch asked the accountants on whether anyone contacted them about this issue,
 488 and contrary to what people said, nobody asked the accountants. He said the District
 489 needs to pay its contractors what its due. He said over a year ago he asked and Legal
 490 Counsel agreed to review District contracts to see if there is a way to put a provision in
 491 the contracts to eliminate this issue. Manager Koch said that needs to be done.
 492 Manager Koch asked Manager Ziegler to clarify if he has signed all the minutes.
 493 Manager Ziegler said he has signed all approved minutes.
 494

11. Upcoming Board Topics

495 President Ward noted upcoming events and clarified Manager Crafton is the liaison at
 496 the next CAC meeting. President Ward said the Board will hold a workshop at 5:00 p.m.
 497 on June 2nd with the topic to be determined and will hold a budget workshop prior to the
 498 Board's July meeting.
 499

12. Upcoming Events

- 500 • CAC Meeting, May 17, 2021, 6:00 p.m., virtual
- 501 • Board of Managers Regular Meeting, June 2, 2021, 7:00 p.m.

13. Action to Continue Meeting

502 Manager Koch moved to continue the meeting to Monday, May 10 at 8:30 a.m. Manager Ziegler
 503 seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

504

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

505

506

The meeting was continued at 9:43 p.m.

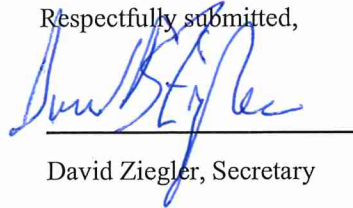
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509

Respectfully submitted,

510



511

512

David Ziegler, Secretary

