

**MINUTES OF THE REGULAR MEETING OF
THE MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS
August 2, 2007**

CALL TO ORDER

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order at 6:50 p.m. by President James Calkins at the District offices, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

MANAGERS PRESENT

James Calkins, Pamela Blixt, Lee Keeley, Jeffrey Casale, Mike Klingelhutz.

MANAGERS ABSENT

Richard Miller, Brian Shekleton.

OTHERS PRESENT

Eric Evenson, District Administrator; Michael Wyatt, District Environmental Planner; James Wisker, District Permitting Officer; Michael Panzer, District Consulting Engineer; Michael Welch, Associate District Counsel.

MATTERS FROM THE FLOOR

None.

APPROVAL OF AGENDA

Manager Keeley moved to approve the agenda, seconded by Manager Klingelhutz. Upon vote, the motion carried.

CONSENT AGENDA

Manager Calkins asked that June 14, 2007, minutes be removed from the consent agenda and added to the action items. *Manager Keeley moved, seconded by Manager Casale, to approve the consent agenda as amended, of the June 21, 2007, June 5, 2007, and July 12, 2007, meeting minutes. Upon vote, the motion carried.*

PERMITS REQUIRING A VARIANCE OR BOARD DISCUSSION

Permit 07-007, Dan Scharf (St. Albans Bay)

Mr. Wisker described the proposed project, which involves the dredging of 27 cubic yards of accumulated sediment from in and around the mouth of Greenwood Channel on St. Albans Bay. The project is designed to maintain navigational access to the channel. Mr. Wisker displayed a picture of the project location and described the history behind the project, including prior permits issued in 1998 and 1989 by the Department of Natural Resources for dredging of the channel. Mr. Wisker described that the site plan, explaining that at its mouth the channel will be dredged to 15 feet wide, with side slopes at a ratio of 3 to 1. He indicated that the bottom elevation will be 925.5 feet, and noted that the public waters designation applies at or below 929.4 feet.

Mr. Wisker stated that the applicant has provided information on watercraft using the channel to allow staff to determine the minimal impact solution to the sedimentation of the channel, in keeping with District Rule E. In response to a question from Manager Casale, Mr. Wisker said there would be 10.8 inches of clearance at normal water levels, and that at the current water elevation, navigation would be very tight through the channel even after the dredging. Mr. Wisker explained in response to another question from Manager Casale that the DNR had permitted dredging to 924.4 feet.

Mr. Wisker went through in detail arguments against the proposed dredging presented in a letter from a neighbor, Mr. Charles Wendle. Mr. Wisker explained that staff consider Mr. Wendle to have made a request for a public hearing on the application.

First, Mr. Wisker said that staff does not share Mr. Wendle's assessment that the applicant grossly misrepresented the relevant side slopes.

Mr. Wisker addressed Mr. Wendle's arguments that a District decision allowing dredging will set an "ugly precedent." Mr. Wisker reviewed past District consideration of dredging pressure on backwater areas, which had resulted in passage of Resolution 06-030. Mr. Wisker discussed the resolution's direction regarding consideration, in the context of a dredging permit request, of the management classification of an affected wetland, the passage of time since dredging had last occurred, and the expectation of navigational use of a channel. Mr. Wisker said staff has determined that allowing dredging of the Greenwood Channel will not set a precedent for future dredging. Mr. Wisker went on to address Mr. Wendle's arguments with regard to previous illegal dredging, the accuracy of photos submitted by the applicant in representing the mouth of the channel, the steep side slopes of Mr. Wendle's property, and the possibility of pollutant migration from the Carmichael wetland into the lake. Mr. Wisker explained that staff has addressed each of Mr. Wendle's points of concern. In response to a question from Manager Casale, Mr. Wisker said no prior records of complaints about

illegal dredging in the channel have been provided to staff, and staff has no knowledge of past violations of District rules by the applicant. Mr. Wisker emphasized that staff has required the applicant to take extensive steps to address the possibility of pollution migrating into the lake. Staff directed the applicant to go through the Minnesota Pollution Control Agency's State Disposal System permitting process. The SDS program requires a notice of intent, not a permit, for disposal of less than 3,000 cubic yards of material. Nonetheless the applicant had borings conducted by Braun Intertec at three locations in the channel. The SDS test is, if less than 5% of the samples pass through a number 200 sieve, no further testing for contaminants is required. Mr. Wisker stated that the samples from Greenwood Channel had passed this test. In addition, Mr. Wisker pointed to a 1991 DNR letter that indicated dredging would not have an adverse effect on the rate and quality of water entering Lake Minnetonka.

With regard to Mr. Wendle's argument that a 1993 permit for dredging had been denied, Mr. Wisker stated that the District has no record of such a denial. Mr. Wisker stated that the natural meander of the shoreline would not be affected. With regard to Mr. Wendle's concern that the project would result in the future accumulation of sediment and an ongoing need to dredge to maintain navigation, Mr. Wisker indicated that the applicant had demonstrated eligibility to dredge under the defined criteria of Rule E. He said traffic passing through the channel would have to do so at slow speeds to minimize shoreline erosion, and that Mr. Wendle has riprap on his shoreline now that will act to further limit erosion. Manager Casale asked if the sand blanket in the area is natural. Mr. Wisker said he is unsure but guesses that it is not, adding that placement of sand blankets is subject to District permitting and should be allowed only at certain times.

Addressing Mr. Wendle's concern that he was not given adequate notice of the permit hearing, Mr. Wisker recounted the series of events leading to the hearing, noting that Mr. Wendle has received extensive response from staff with regard to his concerns. Manager Casale asked if in fact Mr. Wisker had responded to comments from Mr. Wendle 17 times, plus a number of telephone calls and voice mails. Mr. Wisker indicated that that is a minimum number. Manager Keeley asked about compliance with statutory notice requirements. Mr. Wisker replied that appropriate notice had been given.

Mr. Wisker stated that the postcard mailed to property owners in the area states the address of the applicant, not an incorrect address as indicated in Mr. Wendle's letter. Again addressing the issue of sand blankets, Mr. Wisker indicated that despite Mr. Wendle's assertion, there are sand blankets in the area that staff believes likely to have contributed to the deposition of sediment in the mouth of the channel. Mr. Wisker addressed Mr. Wendle's statement that the original DNR permit was granted to Channel Drive Homeowners Association not Key Construction. Mr. Wisker also disputed Mr. Wendle's accusation that staff had misrepresented an administrative law judge's findings and conclusions in its staff report, reporting that staff had quoted almost directly from the Office of Administrative Hearings' decision in the matter. With regard to Mr. Wendle's

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accusation that no alternatives had been considered as part of the Scharf application, Mr. Wisker indicated that Rule E requires that the project present a minimal impact solution to a specific need with respect to other reasonable alternatives. Mr. Wisker said that the scope and depth of dredging have been limited to minimize impact, and that no reasonable alternatives exist. Again addressing the issue of erosion causing increasing frequency of maintenance in the channel, Mr. Wisker stated that ensuring that sand blankets are not installed without a permit will limit sediment accumulation, but the tendency of sediment to accumulate in channels makes it virtually impossible to prevent accumulation altogether. Finally Mr. Wisker addressed Mr. Wendle's statement that the administrative law judge in the earlier permit hearing had determined that the proposed permit would extend riparian rights to nonriparian landowners. Mr. Wisker stated that the commissioner of the DNR made a finding that the project would not extend the riparian rights to nonriparian landowners.

Mr. Wisker stated that he has no information that would allow him to answer Manager Keeley's query as to why previous applicants would not have completed dredging for which they had received permits. Mr. John Sayer, a resident who lives on Channel Drive and has property abutting the channel itself, addressed the Board and stated that the dredging had been stopped by neighbors in canoes because the permit had been secured by developers who wished to extend the channel to new property. Mr. Sayer also told the Board that the sand in the area is not natural and that the bottom of the channel is in fact clay. He described the previous condition of the channel, with cattails and weeds that had been removed in the 1980s. He also stated that Mr. Wendle's house is on fill.

Manager Keeley asked if there were other instances around the District where the lake wants to fill in a channel. Mr. Panzer answered by noting that the lake fetch will bring sand into the mouth of the channel. He stated that he was confident that in the case of the Greenwood Channel the natural drift of sand placed on shorelines is causing the sedimentation in the channel, and his experience indicates that such sedimentation cannot be stopped, just slowed. Mr. Sayer stated that there are other channels where this occurs, some of which are routinely dredged. Mr. Panzer added that there are a number of channels between lakes that are maintained by Hennepin County.

Manager Blixt arrived at this time.

In response to Manager Casale's question about how the 15-foot bottom width proposed for the channel relates to the existing riprap, Mr. Wisker explained that the dredging would not affect the riprap because it would occur below the ordinary high water level, and there would be a bench established under that level, before the location of the riprap. Mr. Wisker also clarified that a portion of the channel would be dredged to a width of 9 feet. Manager Calkins asked what assurance the District had that the riprap now in the channel would not be undermined. Mr. Panzer assured the Board that in his professional option, the riprap would not be undermined. Mr. Panzer referenced a representation of

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the channel to illustrate his determination that prop wash is maintaining a narrow channel through the channel, and he explained that the dredge line will flatten out that prop channel. He stated that based on his numerous visits to the site, he did not believe the stability of the riprap would be affected. Manager Keeley asked how the Board can promote responsible boat use. Mr. Evenson indicated that it was up to the sheriff to enforce restrictions on boat use.

Manager Calkins asked whether the dredging is being proposed because the boats using the channel now are larger than the watercraft that used the channel in the past. Mr. Wisker indicated that he was unaware of the specifics of prior boats, but the watercraft that now use the channel have 3-foot drafts and the permit application is not motivated by a desire to accommodate larger boats. Mr. Sayer added that 3 feet is the standard draft for boats that have used the channel in the past.

Mr. Evenson stated that the length of docks controls the size of boats, and that's regulated by the Lake Minnetonka Conservation District. Manager Keeley asked about the strength of the neighborhood association along the channel. Mr. Doug Podolak, who lives on Channel Drive but not on the channel itself, addressed the board. He stated that he supports the grant of the permit and that people who live in the area do not use their watercraft irresponsibly.

Pat Livingstone, who lives on Greenwood Channel opposite of Mr. Wendle, spoke to the Board and stated that the dredging permit is a no-brainer. She feels that no harm will come to her property by letting neighbors use the lake.

Doug Plocek, who lives on the channel, spoke to the Board and indicated that he has to put away his boat earlier and earlier every year because of the sediment in the channel. He said that neighbors have been on the bay a long time and deserve to use their watercraft.

Randy Hoff approached the Board, indicating that he lives next to Doug Plocek. He stated that the proposed dredging is reasonable and he strongly supports the granting of the permit.

Chris Hintz, another area resident, presented to the Board. He stated that property owners play by the rules, but the channel gets smaller when no one is looking. He can't think of any reason not to grant the permit.

Manager Keeley asked who would perform the dredging and whether it would just have to be done again in a few years. Mr. Wisker stated that a condition of permit issuance will be identification of a contractor and a spoils disposal site, and that future sedimentation is probably inevitable. Mr. Evenson added that in addition to encouraging

compliance with District regulation of sand blanket placement, homeowners could implement sedimentation-reducing practices on their properties.

Manager Casale asked the applicant whether, given the history and difficulties associated with the permit, he considered dredging wider and installing riprap on either side of the channel. Mr. Scharf approached the Board and answered that he did consider making the mouth of the channel larger, but as they went through the process the mouth got narrower such that the shoreline is not being touched, eliminating the need for installing riprap. Manager Casale asked whether the District could grant approval of the permit based on a wider channel width and installation of riprap. Mr. Wisker stated that the intent of the dredging rule is to require the minimal impact solution, and that staff's recommendation is in keeping with that provision. Mr. Welch added that the Board should approve or approve with conditions or deny the permit as proposed. Mr. Wisker added that the staff finding that dredging should be completed to an elevation of 925.5 will provide appropriate protection while meeting the needs of the applicant and other residents. He stated that deeper dredging would not be a minimal impact solution in staff's opinion.

Manager Calkins stated that the Board needs to weigh the dredge depth and width proposed now verses repeated need for dredging in the future. Mr. Panzer stated that his view was that the minimal impact solution has to fit the historical use of the channel, and that he does not necessarily view dredging on some interval as damaging when sediment deposition is continuing. He added that requests for dredging permits historically have been most significantly affected by lake levels – when lake levels are low, access is harder and there are more requests for dredging. With regard to the issue of prop mining, causing channeling at the bottom of the channel, Mr. Evenson stated that responsible boating is an important part of the equation, because irresponsible boat use is extremely damaging and something that homeowners can effectively control. Manager Keeley urged the residents in attendance to organize. Mr. Hoff approached the Board and requested consideration of permitting ongoing dredging on some regular basis, so that future dredging does not have to come before the Board. Mr. Sayer added that he appreciated Mr. Panzer's observation that dredging is not inherently bad, and that dredging the channel would improve fishing.

Manager Keeley moved to approve permit 07-07 with the conditions outlined in the staff report as well the requirement that the applicant identify the contractor and the spoils disposal site before issuance of the permit, seconded by Manager Klingelutz.

Manager Casale noted that as a matter of disclosure, he is a neighbor for the project, because he lives off Manor Road. Also, in his capacity as a real estate agent he has represented properties in the area in the past, but has no client on the channel or nearby at this time. He added that the St. Albans Green Homeowners Association has had deed restrictions providing for navigability of the channel dating back to the 1920s. The restrictions require homeowners to allow dredging.

Manager Calkins asked if the rules allowed for dredging just because the level of the lake is low. Mr. Wisker answered that they do not, the rule on dredging is based on the ordinary high water mark.

Upon vote, the motion carried.

Permit 07-236, Acme Holding Company (Minneapolis)

Mr. Wisker described the proposed project, which entails construction of a parking lot at 2338 Fremont Avenue South in Minneapolis. The project site totals approximately 1.6 acres of the 2800 block between Girard Avenue South and Fremont Avenue South. The existing conditions include concrete, bituminous and open turf, with approximately 26 percent impervious surface. The proposed development will result in the creation of a 174-space parking lot on 1.2 acres of impervious surface, surrounded by a landscaped border, screen fence and an infiltration basin, totaling 0.4 acres of green space. Mr. Wisker stated that the project meets the requirements of District Rule B and Rule N. Mr. James Henderson requested the Board hearing and had several questions and comments as the proposal was being reviewed by staff, but he is not available to attend this evening. Mr. Wisker has been in contact with him and indicated that Mr. Henderson has no further comments on the project. Mr. Wisker stated that staff recommends approval of the permit with conditions including a recorded declaration for the maintenance of the proposed infiltration basin.

Manager Blixt asked about the current condition of the property. Mr. Wisker described the current site conditions. Jim Maloney, RLK Inc., the engineer on the project, added that the building shown on site has already been torn down and that the area where it was is now grass. He added that the project was modeled with the building site as green space, not as hard surface. Mr. Wisker added that the existing drainage conditions are shown in Exhibit 1 in the Board packet. In response to a question from Manager Blixt, Mr. Wisker indicated that the project is right along the Midtown Greenway. Manager Blixt asked what was south of the Midtown Greenway at the project location. Mr. S. J. Morgan, from the Ackerberg Group, presented to the Board. Mr. Morgan noted that the Ackerberg Group was authorized by the property owner to seek permits for the proposed project. It is the lessee on the site and would be building the parking lot. He answered Manager Blixt, indicating that south of the greenway is a surface parking lot with approximately 275 spaces that is the site of a proposed development that Ackerberg Group will be building. It will include homes and shops, as well as a four-story underground parking lot. Construction will start in a month or two, he said. He noted that the north parcel, with the project that the Board is considering this evening, will be a temporary parking facility to replace some of the spaces lost during the 15 to 24 months of construction on the south parcel.

Manager Blixt asked about the long-term plan for the north property. Mr. Morgan said he did not know, though his understanding is that the owner of the property plans mixed-use retail and residential for the site. He understands that such plans will be developed as Ackerberg is working on the site to the south. Mr. Evenson added that the project, an interim parking lot use, troubled him somewhat because it would be approved based on the current impervious calculations, then turned over for additional development in a short time. He wondered if the Board should recommend that if this project is approved as is, the owners or developers should be bound by the current green space requirements and calculations, rather than increasing the imperviousness now, then coming back an increasing it more with the next development. Mr. Wisker wondered whether the District can require that perviousness of the property be maintained at the percentage permitted. In response to questions from managers and staff, Mr. Welch indicated that the current application should be judged based on the current conditions of the site, and that if there is a future application, it should be judged based on the conditions of the site at that time. Mr. Evenson said the proposal describes an interim use, and in the past the District has permitted the long-term use of the site, not the interim use. But here, he said, the District does not know the long-term plan for the site. In response to a request for clarification from Manager Casale, Mr. Evenson said his concern is that a subsequent proposal for the site will be based on the much more impervious condition proposed by the current applicant, including a pond that will be considered impervious, and the site will be allowed to be developed so that it will be completely impervious.

Mr. Wisker indicated the application of the rules to the proposal in front of the Board is based on the largely pervious, revegetated current condition of the site. Mr. Wisker pointed out that the current proposal will provide significant rate control and volume reduction. Mr. Wisker indicated that he is not sure whether reverting to pre-existing conditions for consideration of the next permit will result in better stormwater management. Manager Casale stated that it was important not to penalize potential applicants, via the stormwater rule, for tearing down derelict buildings.

Mr. Maloney stated that the applicant had complied with the District's rules to the fullest extent. He said that the applicant did not go back to the preexisting conditions at the site, that is with the building in place, to get the site conditions grandfathered, so the applicant is exceeding standards. Manager Calkins wondered what the imperviousness of the site would be after the proposed project. Mr. Wisker indicated approximately 1.2 acres will be impervious, with 0.4 acres of pervious. Mr. Maloney added that that will be roughly 75 percent. Mr. Wisker stated that the District rule called for review of the project based on existing conditions, so the rates applied on this project were based on the current perviousness of the site, so a subsequent development would have to match the rates and volume control proposed by the current applicant. Manager Calkins added that he did not believe that any of the site is actually pervious under existing conditions and that the applicant is going well beyond rule requirements because of that. But at a different site, an interim use could increase imperviousness to a point where a subsequent use that

further increases imperviousness does so without triggering District stormwater rate and volume control requirements. He stated that this is not an issue necessarily at this site but it could be a big deal at other sites. Manager Blixt agreed and stated that she has no problem with the current proposal, but wonders if imperviousness will be increased by a future use without triggering District requirements. Manager Casale asked if the issue Manager Blixt is raising might not be better addressed in the rulemaking process. Manager Blixt noted that the issue she was raising has always been a problem in the current rules, and that the District used to have a rule requiring site conditions to be improved, not just match existing conditions. Manager Calkins said that under the District's new watershed plan, that situation will be rectified in the rulemaking. Manager Casale noted that the situation presented by the present permit should be noted by Mr. Wisker for discussion in the rulemaking.

Manager Blixt asked if there could be a condition tied to the Acme ownership, a requirement in the permit that goes on the deed and states that the permit applicant should be required to meet the previous perviousness of the site. Mr. Evenson said he understands that the current situation is better than what the District is asking for. Mr. Wisker indicated that under the current rule an applicant has to limit rates to existing conditions, and a future development will have to meet rates established by the proposed project, which are lower than under existing conditions. But he is concerned that an applicant is not required to meet a water quality treatment standard, rather just provide BMPs, so there could be backsliding in that regard. Volume and the level of phosphorus removal are concerns for him, not rate.

Manager Casale asked what kind of usage of the site could worsen water quality more than a parking lot. Mr. Panzer responded that parking lots and traffic areas generate some of the worst water quality runoff. Manager Casale noted therefore that the next use is likely to improve water quality. Mr. Welch indicated that he does not know of a means by which the District could apply a pre-existing condition to a future use of a site, and that he would have to research the issue to provide a definitive answer.

Manager Calkins asked if the site drains to Lake of the Isles or Lake Calhoun. Mr. Wisker indicated that he was not sure. Mr. Maloney stated that the existing storm sewer drains north to Lake of the Isles, by his understanding. Mr. Maloney added that the current proposal would infiltrate the entire 2.5 inch rainfall. He stated that geotechnical borings had been conducted as part of the application and discovered coarse alluvium below the proposed infiltration basin, which was designed based on conservative estimates. The infiltration system proposed is very good and will capture loading from the first flush, 2.5-inch storm. Mr. Morgan stated that the proposed project is not adding loading to the stormwater system. Manager Klingelutz noted that there was a mistake in the conditions in the staff report, and that the erosion control surety should be \$1,500, not \$2,500, based on Mr. Wisker's presentation. Mr. Wisker indicated that the surety condition should note \$1,500.

Manager Blixt moved approval of the permit with the staff recommended conditions and an additional condition requiring that the property owners be notified that the District rules would be applied to a future development proposal based on the current perviousness of the site. Mr. Evenson stated that such a condition may create an expectation that will be inappropriate after the rules are revised. Manager Keeley suggested that the District simply ask for notification when the land use changes. Mr. Wisker stated that a proposal that involved a change of land use could be required to come before the board for a hearing. After some discussion, **Manager Blixt moved approval with the conditions in the staff report, as corrected, and with the condition that a letter be sent to the property owner requiring that the District be notified when the property use changes and noting that an associated application to the District will be subject to a public hearing.** Manager Casale confirmed that Manager Blixt wished to have a hearing even if the proposed project meets the rules requirements. **The motion was seconded by Manager Keeley.** Manager Klingelhutz noted that he felt the condition is somewhat onerous. Mr. Evenson added that a Board member or a member of the public could call for a hearing on a permit at any time, so the condition was not onerous.

Mr. Morgan asked whether the property can be legally burdened with such a condition. Mr. Evenson explained that all permits can be subject to a public hearing. Mr. Morgan asked what was special about the property before the Board and the current application that merit that burden. He added that the current proposal exceeds all of the District requirements and he did not understand why a future application would be automatically subject to a Board hearing. Mr. Evenson reiterated that the condition was not unique and that any permit could be subject to a Board hearing. Mr. Morgan noted that there is no development proposal for the Board to have a hearing on. Manager Keeley stated that the condition was related to any change of land use for the property. Manager Calkins asked counsel whether this was a condition being placed on the permit or this was simply a communication to the property owner. Mr. Welch stated that he understood that the letter described would be sent and, in response to the applicant, that the Board's approval with the notification requirement is based on the presentation made to the Board. Manager Casale added that he did not think that the condition was onerous; rather it was nothing more than a tickler in the District's file. Manager Calkins added that he also thought that the condition was not onerous. **Upon vote, the motion carried.**

Permit 07-255, U.S. Homes, 853 Unit Single Family Home Subdivision (Minnetrista)

Brian Glock from Three Rivers Park District approached the Board with a request to speak on the application before Mr. Wisker's presentation of the project, which proposes 853 single-family homes on four separate parcels comprising 270 acres located between Kings Point Road and Lotus Drive, north of Highway 7 in Minnetrista. Mr. Glock noted that Mr. John Barten, the park district water-quality specialist, is on vacation and has not been able to review the proposal, and therefore the park district is not able to detail its

concerns with the project. But, Mr. Glock added, the park district is concerned about the impact of the development on park district properties and water bodies. The park district outlined a number of proposed conditions in a letter it sent to the City of Minnetrista, which urged the city to require the project to conform to the park district's nondegradation policy, avoid routing runoff to Lake Zumbra and downstream sites, and not create or exacerbate erosion channels in Carver Park. Mr. Glock indicated that the park district also is concerned that the project will degrade water quality in and increase nutrient-loading to park water bodies. The park district is also concerned that increased runoff volumes will intensify existing flooding problems. He requested that the District require that the developer demonstrate that there would be no increase in loading to park water bodies, and that the Board delay action on the permit to give the park district an opportunity to respond to the District staff report on the project, to work with District staff, and to provide finalized commits to the Board.

Manager Blixt stated her interest in honoring the park district's request. The Board discussed its obligations under Minnesota Statute 15.99 and determined that it had adequate time to act on the permit at a future meeting. ***Manager Blixt moved to table consideration of permit 07-255, seconded by Manager Keeley.*** Manager Calkins confirmed with counsel that the motion to table was not subject to discussion. ***Upon vote, the motion carried, Manager Klingelutz voting against.***

ACTION ITEMS

Minutes of the June 14, 2007 meeting

Manager Calkins offered a correction to the minutes, indicating that he did not state that the Minnetonka Mills location was inappropriate under any circumstances for the District offices, but rather that he did not believe the District should be involved in a project creating additional impervious surface next to the creek. ***Manager Casale moved, seconded by Manager Klingelutz to approve the minutes as corrected. Upon vote, the motion carried.***

DISCUSSION ITEMS

Managers Casale and Blixt left at this time.

Minnehaha Glen Restoration Project

Mr. Wyatt presented the Minnehaha Glen feasibility study. He stated that the project had been presented to the public at a meeting on Tuesday, July 24, in Minneapolis. Mr. Wyatt stated that the District and project team, which includes Wenck and the Kestrel Design Group, received valuable feedback during the meeting and attendees generally support the project. Mr. Wyatt also indicated that he attended a Minneapolis Park and

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Recreation Board hearing August 1, at which the MPRB approved a resolution in support of the project. He added that he has also spoken with some Minneapolis City Council members who were also supportive of the project, as well as the Nokomis East Neighborhood Association. He stated that staff and the consultants need feedback from the Board tonight, and will return in approximately a month to seek approval of the feasibility study and designs, allowing the project to proceed in 2008.

Mr. Wyatt introduced Doug Van Valkenburg and Tim Erkkila from the Kestrel Design Group to present the project. Mr. Van Valkenburg walked the Board through a PowerPoint presentation of the feasibility study, which addresses stream channel repair and restoration, stormwater runoff management, erosion control, access improvements, recreational improvements, safety, historic preservation and habitat improvement.

Managers Casale and Blixt returned at this time.

Manager Casale confirmed with Mr. Van Valkenburg that while oak woods are preferred in some areas, black ash seems are an important part of the glen ecosystem.

With regard to the accessibility improvements in the Wabun area, Mr. Evenson confirmed that the proposed project meshes with work that is already under way. With regard to recreational opportunities and access in the area, Mr. Evenson asked about the removal of a boardwalk trail in the project area. Mr. Van Valkenburg indicated that it was unclear whether the boardwalk trail would be removed. Mr. Wyatt added that an elevated boardwalk would work better because the area is all wetland. Manager Casale added that there were some very nice designs for elevated boardwalks in the Lotus Hills development. Manager Calkins asked if the MPRB has a policy on mountain biking. Mr. Wyatt indicated that mountain biking is discouraged but not altogether prohibited.

Mr. Evenson noted that he feels a naturalized look to the glen area should be maintained. Mr. Van Valkenburg stated that attendees at the public meeting had indicated that they feel the same way; they enjoy picnicking in the area, but don't want elaborate shelters, instead preferring a natural feel to the area.

Manager Casale asked if the park is open 24 hours a day. Mr. Van Valkenburg indicated that it was not but people go into the park at all hours anyway. He added that the park police patrol the area because crime is a concern; the park police also want their ability to access the park preserved. Manager Blixt stated that she was under the impression that the public is opposed to adding lighting on all trails in the glen, because that would increase crime because there would be more people in the remote areas of the glen. Mr. Van Valkenburg indicated that the feasibility study envisions limited additional lighting in the glen, such as around the bathroom areas.

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Mr. Van Valkenburg added that a draft feasibility study would be completed August 15, and that the Board would vote September 6 on the project. Based on Board approval of the final plans, bidding and construction could ensue in the fall and winter.

Mr. Wyatt added that it was important to remember that all parts of the project would not be funded by the District. The idea of the feasibility study is to develop an entire plan for what could be done so that the District could sit down with the MPRB, the city, the Veteran's Home and perhaps the Corps of Engineers and figure out who would take on which parts of the project. Manager Blixt asked if the feasibility study had been presented to the MPRB. Mr. Van Valkenburg indicated that it had not, rather the MPRB simply passed a resolution in support of the project that had been forwarded by the District. In response to a question from Manager Blixt, Mr. Wyatt confirmed that the MPRB has not committed any funding to the project, except that the Wabun restoration had begun already. Manager Blixt confirmed that staff's hope is that the MPRB will budget for some of the work in the future. She noted that it is critically important to include the City of Minneapolis in the plans for the restoration of the glen because the city owns the pipes and has funding and therefore represents a potentially stronger partner than the MPRB. Manager Blixt stated that the District simply building projects on MPRB property is not really a partnership, but rather a straight contribution.

Manager Klingelhutz asked about rain gardens in animal shapes visible from above. He wondered if Mr. Van Valkenburg had a justification for such extra expense. Mr. Van Valkenburg indicated that this is a nod to earth-building cultures that historically lived along the creek, while conceding that they were mound builders rather than depression builders. Manager Klingelhutz asked if the shapes added significant expense and wondered whether the shapes improve performance or are otherwise worth the additional expense. Mr. Van Valkenburg promised to address these questions in finalizing the feasibility study.

Mr. Evenson noted the aggressive schedule for the project in light of the District's intent to finalize its 2008 budget September 13. He noted his concern that the final plans will not be ready till October, with bidding to follow; he wondered if staff and consultants plan to ask the approval of the feasibility study, then issue RFPs for design. Mr. Van Valkenburg indicated that the plan is to get started on stream restoration work this winter, so there would not be final plans and bids for the entire project this fall. Mr. Evenson stated that the project requires a great deal of additional citizen input on design. He also noted that some of the stormwater features, including gabions in the area need to be fixed and a budget needs to be established for such work. He stated that he does not think it is possible to fund the entire project in September. Instead, he said, it is more realistic to get further feedback on the project through 2008 and continue design work, then seek funding for 2009. He stated that this will also allow additional partners to be secured, as well as legislative funding if necessary. Mr. Panzer stated that there is a natural sequence

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to some of the project work proposed. He noted that rain gardens cannot be constructed until all the runoff problems at the Veteran's Home are solved.

Mr. Evenson indicated that when the final feasibility study is completed in September, projects should be ordered based on what realistically can be completed in 2008. Mr. Wyatt stated that the budget for the entire project is \$1.7 million, but he anticipates that additional partners will pick up part of that cost. Right now he said the District needs seed funding to get other partners on board, and that as soon as the project is ordered discussions can start with others, who may react to the cost of the project with sticker shock or may be excited.

In response to a question from Manager Calkins, Mr. Wyatt stated that by September 6 staff will have a list of all of the components of the project, with costs and a final total price tag. He said roles and responsibilities of the various components likely will not be assigned at that time, but would need to be determined as the project moves along.

Manager Blixt asked if the MPRB has received a permit from the District for the work going on in Wabun area. Mr. Evenson indicated that an application has been completed, but the permit has not been issued because the Park Board has not signed a cooperative agreement for maintenance. Manager Blixt noted that there are bulldozers moving significant amounts of dirt in the project area, and she noted that she is contemplating a motion to issue a stop work order because the MPRB is notorious for not securing permits and the work now under way encroaches in the floodplain.

Manager Keeley wondered if the Board should give staff the option to issue a stop work order after additional processes has taken place, noting she does not want to make an adversary of the MPRB. In response to Manager Calkins, staff indicated that the MPRB is not again maintaining that it does not need permits from the District. Manager Calkins stated that nonetheless, the work without a permit should not be allowed. Manager Casale asked what the purpose of the cooperative agreement was. Mr. Wyatt indicated that it is maintenance agreement. Manager Casale asked why the MPRB was refusing to sign. Mr. Evenson stated that the argument the MPRB has offered is that it cannot commit future boards' to maintenance obligations. Manager Casale indicated that the District should not commit its funding for projects in the future if the MPRB cannot commit to working with the District for maintenance.

Manager Keeley indicated that if Manager Blixt advanced a motion to issue a stop work order, she would second the motion. Manager Klingelhutz asked whether issuance of a stop work order could be delayed until August 10. Manager Blixt stated that the MPRB was working in the area now. Manager Casale noted that he was serious about the District's funding, and that if the cooperative agreement is not signed the District should not contribute further funding to projects on MPRB property. Manager Calkins noted that the work under way now was not funded by the District.

The Board discussed the viability of issuing a stop work order. Mr. Evenson indicated that the District would need a court to enforce the stop work order and that was unlikely given that the only outstanding issue is the MPRB's noncompliance with an administrative condition – there is no environmental damage occurring that mandates immediate action. He suggested that the Board have the MPRB come before the Board at the August 9 meeting and explain why it does not want to sign the cooperative agreement.

Manager Calkins asked whether at the open Wabun site, the MPRB is following District requirements. Manager Casale indicated that he is not comfortable issuing a stop work order. He asked if the cooperative agreement was for the glen project or all projects with the MPRB.

Manager Keeley moved that a stop work order issue for the work at Wabun on August 10 at noon if the MPRB has not signed the cooperative agreement, seconded by Manager Klingelutz. Manager Blixt asked staff to visit the Wabun site to ascertain whether the MPRB is managing the site according to District requirements. Manager Casale also asked counsel to be prepared to discuss whether the MPRB cannot legally sign the cooperative agreement. ***Upon vote, the motion carried.***

Greenwood Channel Dredging

Manager Keeley noted that on the presentation of the St. Albans Bay/Greenwood Channel dredging project she felt that the comments made in the letter to the Board by Mr. Wendle directed at Mr. Wisker were completely inappropriate. She commended Mr. Wisker for nonetheless giving fair consideration to Mr. Wendle's arguments and responding to them. She stated that Mr. Wisker deserves high compliments for his professionalism in the matter.

ADJOURNMENT

There being no further business, the regular meeting of the Minnehaha Creek Watershed District Board of Managers adjourned at 10:40 p.m.

Respectfully submitted,

Lee Keeley, Secretary