

**MINUTES OF THE REGULAR MEETING OF
THE MINNEHAHA CREEK WATERSHED DISTRICT
BOARD OF MANAGERS**

October 5, 2006

CALL TO ORDER

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order by President James Calkins at 6:45 p.m. in the District offices, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

MANAGERS PRESENT

James Calkins, Lance Fisher, Lee Keeley, Richard Miller, Ethel Smith, and Jeffrey Casale.

MANAGERS ABSENT

Pamela Blixt.

OTHERS PRESENT

Eric Evenson, District Administrator; Mike Wyatt, District Planner; James Wisker, District Field Technician; Michael Pressman, District Land Conservation Specialist; Michael Panzer, District Consulting Engineer; Louis Smith, District Counsel.

CITIZEN COMMENTS

None.

APPROVAL OF AGENDA

Mr. Wisker requested that the joint powers agreement with the Minnesota Pollution Control Agency be added to the agenda. Mr. Evenson requested that the outreach plan for the Third Generation Water Resources Management Plan be included as Discussion item 12.1 of the agenda. President Calkins directed that this item be placed on the agenda as item 11.1. *It was moved by Manager Keeley, seconded by Manager Smith to approve the agenda with these changes. Upon vote, the motion carried.*

MPCA Joint Powers Agreement

Mr. Wisker reviewed the Request for Board Action, indicating that the joint powers agreement with the Minnesota Pollution Control Agency to participate in the construction stormwater inspection partnership project will expire on October 31, 2006. Due to delays by the MPCA, the agency is proposing an extension of the agreement to November 30,

Minutes of the Regular Meeting
Minnehaha Creek Watershed District
Board of Managers
10-5-06

2007. Manager Casale asked if there is any disadvantage to the District agreeing to the extension. Mr. Wisker said that there was no disadvantage. ***It was moved by Manager Smith, seconded by Manager Casale to adopt Resolution 06-048, authorizing extension of the program and the joint powers agreement until November 30, 2007. Upon vote, the motion carried.***

Jennings Bay Improvement Project Easement Acquisition

Michael Pressman reviewed the Request for Board Action requesting that the Board of Managers authorize the District Administrator in conjunction with legal counsel to acquire easements on all parcels needed to complete the Highway 26 wetland restoration project.

Manager Fisher arrived at this time in the meeting (7:09 p.m.).

Following discussion, it was moved by Manager Keeley, seconded by Manager Smith to adopt Resolution 06-046 to authorize the easement acquisitions. Upon vote, the motion carried.

City of Minneapolis Water Resources Management Plan

Mr. Wyatt reviewed the Request for Board Action, noting that the City of Minneapolis has updated its local plan in reference to the District's 1997 Plan. Mr. Wyatt noted the revised staff recommendation, referring to the Request for Board Action dated October 5, 2006 with updated conditions.

Manager Keeley asked about the difference between the City proposing a plan that is consistent with the 1997 District Plan, as opposed to the new plan that is forthcoming. Mr. Wyatt explained that the third generation plan is currently out for review, but the District is obligated to review the City's plan under the currently adopted Plan, which is the 1997 Plan. He noted further that the 1997 standards are not as hard to meet, and that the City would also be required to update its local plan within two years of the District's adoption of its new third generation plan. Manager Keeley asked how many different watershed organizations are operating in the City of Minneapolis, and Mr. Wyatt replied that there is one watershed district and three joint powers management organizations. Manager Miller inquired why there seems to be an issue about the City's commitment to capital improvements for more than one year at a time, given the City's stormwater utility fund.

Ms. Rhonda Rae appeared on behalf of the City of Minneapolis and stated that the City has a five year capital improvement program, but only has one year of committed funding at a time, and so the City cannot obligate to five years worth of projects to the watershed district. Manager Miller stated that he has found the CLIC process utilized by the City of

Minneapolis to be reliable and should reflect a policy commitment to the necessary resources. Ms. Rae stated that the five year CIP does reflect long term commitments, and she would have no problem submitting the CIP. ***Following discussion, it was moved by Manager Fisher, seconded by Manager Smith to adopt the revised resolution of approval of the City of Minneapolis local water resources management plan with the conditions recommended by staff.***

Manager Calkins noted the issue concerning the permitting role, and asked about how developers in the City of Minneapolis are notified of MCWD permit requirements. Ms. Rae stated that there is a process that already exists to inform developers of these requirements through handouts and website links. Mr. Evenson stated that it was his understanding that the City and District will be working together on the transfer of permit authority in the future. ***There being no further discussion, upon vote, the motion carried.***

Third Generation Water Resources Plan Public Outreach

Mr. Wyatt reviewed the process of public information and involvement in reviewing the draft water resources management plan, and the role of the managers in this process. Manager Casale asked why the City of Minneapolis took nine years to implement the 1997 District Plan. Mr. Wyatt reviewed the timetable, including the process of comprehensive land use planning reviewed by the Metropolitan Council; he noted that earlier draft City plans had been reviewed and commented upon, and also that many cities within the watershed district have still not completed their local water plans. Mr. Wyatt stated that in the future it would seem that the Met Council is going to require updated local water plans as a part of their review of City comprehensive plans.

Manager Casale asked how the process assures accountability with the watershed planning process. Mr. Wyatt explained how the local plans are required to be adopted and amended to ensure compliance with the adopted watershed plans. Manager Keeley asked what happens where municipalities do not have the resources to implement and enforce these plan requirements. Mr. Wyatt explained that that can be a challenge, but generally cities that seek to assume permitting responsibility are well staffed and equipped to address these issues. He also noted the challenge with the City of Minneapolis where there are multiple watershed organizations and so more complicated annual reporting review in this process. Manager Keeley stated that she was concerned with how this process was implemented in the future, and how the District reviews for compliance. Mr. Wyatt explained that the memorandum of understanding is for the purpose of memorializing this process.

Manager Casale asked how the District might follow up on an annual basis to confirm plan compliance. Manager Miller stated that there should be some sophisticated data collection capability that would also be integrated with municipal permitting data

Minutes of the Regular Meeting
Minnehaha Creek Watershed District
Board of Managers
10-5-06

systems. He also stated he was concerned that natural resource enforcement may not have the same priority within all of the other issues addressed within cities, and so it would be important to have a system in place to track these issues.

Mr. Wyatt also noted that there is some permitting redundancy or overlap in terms of Pollution Control Agency requirements under the Clean Water Act, and there is a growing interest among all jurisdictions to make this process more integrated and effective.

Manager Miller affirmed the value of a data system to track these permitting issues, and asked whether this is addressed in the District's new water resources management plan. Mr. Wyatt explained that this is addressed as an implementation issue for 2007-2009. Mr. Wyatt and Mr. Panzer explained that there will be an annual reporting process from municipalities to address nutrient reduction responses and other related issues. Manager Smith stated that she felt that it was important that there be some recourse in the event that these plans and requirements were not being fulfilled. Manager Casale asked about the authority of the District to require reporting, and noted that annual reports could be ineffective and perhaps there was an alternative system to fulfill this need. Mr. Wyatt stated that the third generation plan is intending an annual reporting requirement. Manager Keeley stated that she was concerned that annual reports might be too infrequent if there are critical and serious issues that are not being addressed. She asked about how the District can be involved to have a closer understanding of this municipal permitting responsibility. Mr. Wyatt explained that cities within the District have a variety of styles and level of capacity in terms of water resource permitting, and the focus is how each city can work with the District to meet these requirements.

Manager Fisher stated that it was his belief that cities that seek to assume the water resource permitting responsibility are intending to perform this responsibility well, and that it is wise to avoid a duplication of efforts. It does not seem realistic to second-guess cities, but if conflicts arise there needs to be a way to get them resolved. ***It was moved by Manager Casale, seconded by Manager Miller to direct the staff to include some form of real-time monitoring in the third generation plan so that there is a more frequent notice of permits issued by cities who assume the water resource permitting responsibility.*** Manager Calkins stated that he would like to see this process address a larger discussion concerning the question of when watershed district intervention in permitting is needed and the process that should be followed. Mr. Wyatt recommended that this issue be addressed in the memorandum of understanding, which could spell out the permitting roles and procedures for resumption of permitting authority in the event that there are enforcement concerns. Manager Keeley stated that her concern is gaps in enforcement and how to address them, given that there are also a wide variety of levels of resources available to address these issues. ***Following discussion, upon vote, the motion carried.***

RULES DISCUSSION

James Wisker provided an update for the Board of Managers concerning the rulemaking issues. Mr. Wisker reviewed a proposed process for engaging stakeholders and gathering input to revise the District's rules in light of its third generation water resources management plan. Manager Fisher stated that he felt it was important that either the technical advisory committee and/or the citizen's advisory committee include someone with development expertise. Mr. Evenson stated that the District is definitely seeking a balanced perspective on these issues. Mr. Evenson also described the one-year commitment being sought to participate in this process and the goal of including members of the existing citizen's advisory committee in this process as well.

Mr. Wisker turned to reviewing policy issues under Rule F, Shoreline Improvements, to outline potential areas for rule revision. He stated that the policies in Rule F concerning preserving the natural appearance of shorelines and promoting bioengineering are policies that are not really achieved under the current Rule, because the riprap approach is always deemed to meet the rule requirements. He proposed that the District explore alternatives to more specifically achieve these stated goals, perhaps through a sequencing approach, in order to achieve alternative means of addressing shoreline erosion problems. Manager Fisher stated that he wanted to avoid decreasing flood plain storage in this process and that that should be included as a part of shoreline improvement considerations, and the other managers agreed. The managers discussed whether shoreline improvements should trigger some kind of buffer requirement. Manager Casale noted that many lakeshore lots end up finding a conflict with their usable yard and buffer requirements, so this can be a serious issue. Mr. Wisker noted that riprap can also decrease usable land as well as flood plain. Mr. Wisker stated that perhaps the technical advisory committee could provide feedback on how and where vegetation can be used successfully in shoreline improvements. Manager Fisher stated that he felt we should be careful with any buffer requirements, which may discourage more natural protection and restoration projects. Mr. Wisker also stated that given what is known about the sensitivity of the littoral zone, riprap approaches are definitely not always the minimal impact solution. Manager Casale stated that he was simply concerned that we avoid unintended consequences of creating more serious conflicts with lakeshore property owners.

Manager Fisher asked legal counsel whether there is any liability concern for failed shorelines. Mr. Smith stated that this is more a policy issue for the Board than a liability issue. Mr. Evenson stated that he would like to reach out to contractors and others familiar with development to talk about various ways to address these problems. Manager Fisher stated that he preferred more voluntarily incentives to create natural shorelines and buffer areas.

Minutes of the Regular Meeting
Minnehaha Creek Watershed District
Board of Managers
10-5-06

Mr. Wisker then turned to Rule N, the stormwater management rule, and began discussion of increasing regulatory incentives for a variety of best management practices, and improving water quality. He compared other “nondegradation” approaches, and incentives for volume control and infiltration. Mr. Evenson referred to the rulemaking by the Capital Region Watershed District and Ramsey Washington Metro Watershed Districts, and also described a possible sequencing approach for infiltration or abstraction of stormwater. Managers also discussed the potential of a stormwater impact fund in which cities and the watershed district share resources to address these issues.

ADJOURNMENT

There being no further business, the regular meeting of the Minnehaha Creek Watershed District Board of Managers was adjourned at 9:55 p.m.

Respectfully submitted,

Lee Keeley, Secretary