

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

November 1, 2007

CALL TO ORDER

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order at 6:58 p.m. by President James Calkins at the District offices, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

MANAGERS PRESENT

James Calkins, Pamela Blixt, Richard Miller, Lee Keeley, Jeffrey Casale and Brian Shekleton.

MANAGERS ABSENT

Mike Klingelhutz.

OTHERS PRESENT

Eric Evenson, District Administrator; Michael Wyatt, District Environmental Planner; James Wisker, District Permitting Technician; Michael Panzer, District Consulting Engineer; and Louis Smith, District Counsel.

CITIZENS COMMENTS

None.

APPROVAL OF AGENDA

Mr. Evenson requested that Item 11.2 concerning Rulemaking be moved to Item 12.0 on the Discussion Agenda. *It was moved by Manager Keeley, seconded by Manager Blixt to approve the agenda as distributed with this change. Upon vote, the motion carried.*

CONSENT AGENDA

It was moved by Manager Keeley, seconded by Manager Casale to approve the Consent Agenda, including the minutes of September 12, 2007; approval to hire HLB Tautges Redpath, Ltd. For the 2007 audit; and execution of a Cooperative Agreement with Methodist Hospital. Upon on vote, the motion carried.

Permits

07-108 Diana Drays (Edina)

Mr. James Wisker reviewed the permit applications and variance request as set forth in the staff report. He explained that the applicant is requesting a variance to the District two foot freeboard requirement, because the 100 year floodplain elevation will be revised by FEMA based on a study conducted by the District, and with that new elevation adopted, the proposed single family home will comply with District freeboard requirements providing four feet of freeboard.

Manager Miller asked Legal Counsel to define “unique” in terms of the hardship required under the variance rule. Mr. Smith stated that the District Rules do not provide a definition of unique, but that the Board of Managers should consider physical characteristics of the site that are unique and distinguishing from other permit applications, as well as the issue posed by the revised floodplain under the study for FEMA. The Managers discussed the history of flooding in this area and the review by the technical panel of the revised floodplain calculations in light of this history. Manager Calkins observed that the applicant must be aware and assume an increased risk of flooding by seeking this variance. Ms. Diana Dray appeared before the Board of Managers and stated she did acknowledge that her request involves increased risk, but that her site found unique hardships due to the requirement of the City of Edina and the District concerning freeboard. She stated that she was confident that there would be no flood issues arising by virtue of still having over four feet of freeboard under the new FEMA floodplain elevation. She stated that she is an attorney and is knowingly seeking this variance despite any risk of increased flooding.

Mr. Tracy Eichorn-Hicks appeared before the Board of Managers stating that he resides across the creek and is concerned historically with flood issues at this site. Mr. Hicks asked who would provide assurances that there would be no water problems in the future. Mr. Panzer stated no one could assure that the area would not experience flooding in the future, but that in this case the project under consideration would increase the volume of floodplain. By itself, this project will not fix the flooding problem, but on the other hand it will not aggravate it either.

Ms. Sara French appeared before the Board of Managers noting that she resided near the proposed site and was concerned with creek bank erosion. Mr. Panzer explained that the proposed project would not change the course of the creek.

Mr. Bert Rogers, another neighboring homeowner appeared before the Board of Managers, and also stated that his concern was that the proposed project would alter the course of the creek. Mr. Panzer again explained that the proposed project would not do so.

Following discussion, it was moved by Manager Casale, seconded by Manager Blixt to approve the requested variance and permit with the conditions recommended by staff. Upon vote, the motion carried by a vote of 5-1, with Manager Miller voting against the motion.

It was moved by Manager Casale, seconded by Manager Miller to direct the staff to investigate any possible down stream constrictions that may have contributed to flooding in this area in the past, and also consult with the City of Edina on this matter. Upon vote, the motion carried.

BOARD ACTION ITEMS

Minnesota Association of Watershed District Annual Meeting/Selection of Delegates

It was moved by Manager Casale, seconded by Manager Miller to designate Managers Blixt as the Delegate to the Minnesota Association of Watershed District Annual Meeting, and Manager Shekleton as the alternate. Upon vote, the motion carried.

DISCUSSION ITEMS

Rulemaking Update

Mr. Wisker reviewed the status of the work of the Rulemaking Taskforce, including consideration of draft language for revision to Rule B, Erosion Control; Rule C, Floodplain Alteration; and Rule G, Waterbody Crossings.

The Managers discussed erosion problems, and difficulties that the District has in effectively enforcing erosion control requirements. ***It was moved by Manager Miller, seconded by Manager Shekleton to direct legal counsel to develop recommendations for legislation to strengthen the ability of watershed districts to abate erosion problems when the property owner fails to do so and assess this cost to the property owner. Upon vote, the motion carried.***

The Managers also discussed incentives to avoid site disturbance, and the desirability of more performance based approaches to encourage good soil management practices. Manager Calkins recommended that the District review the exemption in the erosion control rule for agricultural activity.

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Managers discussed the desirability of having organic matter as a soil amendment for incorporation into existing soils when there is one inch of fill in the floodplain allowed for reestablishment of vegetation. Manager Calkins also stated that he considered riprap to be fill in the floodplain that should be mitigated. Mr. Wisker also explained that the DNR has asked the District to require a demonstrated need for shoreline improvements before allowing riprap installation. The Managers thanked Mr. Wisker and staff for the work in developing these rule amendments.

ADJOURNMENT

There being no further business, the regular meeting of the Minnehaha Creek Watershed District Board of Managers was adjourned at 10:05 p.m.

Respectfully submitted,

Lee Keeley, Secretary