

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

**November 15, 2007**

**CALL TO ORDER**

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order at 7:00 p.m. by President James Calkins at the District office, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

**MANAGERS PRESENT**

James Calkins, Richard Miller, Lee Keeley, Jeffrey Casale, Mike Klingelhutz, Brian Shekleton.

**MANAGERS ABSENT**

Pamela Blixt.

**OTHERS PRESENT**

Eric Evenson, District Administrator; Michael Wyatt, District Environmental Planner; Renae Clark, District Projects Manager; James Wisker, District Permitting Officer; Michael Panzer, District Consulting Engineer; Chuck Holtman, District Counsel.

**MATTERS FROM THE FLOOR**

None.

**APPROVAL OF AGENDA**

*It was moved by Manager Keeley, seconded by Manager Miller to approve the agenda, with the addition as item 11.4.1 of a resolution urging the City of Minnetrista to enforce its ordinances regarding septic failures in the Rolling Hills subdivision. Upon vote, the motion carried.*

**CONSENT AGENDA**

*It was moved by Manager Keeley, seconded by Manager Miller to approve the consent agenda except for item 7.2, final payment and closure of Headwaters project, consisting of the minutes of October 11 and October 18, 2007; the checking, petty cash and surety registers, including checks 27765 through 27808 in the amount of \$353,671.20; and a budget amendment for demolition and debris removal at the Johnson property, Minnetrista. Upon vote, the motion carried.*

**REGULAR AGENDA**

**Permit 07-350, Larry Palm/Mitch Cook (Orono)**

Mr. Wisker described the project, consisting of the construction of two 10,000-square-foot commercial buildings and associated parking areas at the corner of Highway 12 and Willow Drive in the City of Orono. The project is subject to district erosion control and stormwater management rules. The application comes before the Board because the applicant is seeking to use a downstream regional stormwater facility in part for compliance. Mr. Wisker stated that the application has been evaluated and meets District requirements. For stormwater Best Management Practices, a part of the development will flow over ribbon curbing to an infiltration installation consisting of granite aggregate lying over a trench that will extend partly under the parking lot.

Responding to Manager Miller, Mr. Panzer estimated that the top several inches of aggregate would require replacement every 10 to 15 years. Mr. Wisker added that maintenance terms appropriate for this innovative practice would be worked out and included in the maintenance declaration.

Managers Casale and Miller expressed the importance of having a mechanism in place that would permit the District to perform maintenance of stormwater facilities and recover its costs when the property owner does not do so. Manager Casale noted the mechanism by which municipalities can assess these costs by way of the property tax levy. Mr. Holtman replied that the District does require a recorded declaration establishing a perpetual maintenance obligation, but does not impose a mechanism authorizing the District to enter a property and perform work. He indicated that statutory authorities differ as between municipalities and watershed districts and that the District may not have the same mechanism to recover costs. Manager Miller suggested that the stormwater utility mechanism be explored for this purpose.

***It was moved by Manager Miller, seconded by Manager Keeley to approve the permit in accordance with staff recommendations.***

Responding to Manager Klingelhutz, Mr. Wisker stated that the downstream regional pond was built to design and is performing as expected. Manager Calkins inquired about the hard-surface calculations. Mr. Wisker explained that the District rule requires that peak flow not increase for the 3.69-acre site and also that Best Management Practices be used. He stated that roof drainage will not go to the subsurface facility, and that the facility will treat the first half-inch of runoff for a 1.13-acre area. The other hard surface except the roof will flow to sumps and then to the stormwater basin. He affirmed that the downstream facility was designed to exceed the NURP standard for all development within the drainage area.

Manager Miller remarked that the Best Management Practice standard should help to press the baseline treatment level upward. Manager Calkins expressed the hope that the new rule would address these issues. Manager Casale urged that this issue be specifically included in the rulemaking process. ***Upon vote, the motion carried.***

***It was moved by Manager Miller, seconded by Manager Keeley that legal counsel examines the District's authority to include the right to enter and a mechanism to recover costs in its declaration language, as well as the use of a stormwater utility to perform maintenance and assess the cost against the responsible property owner. Upon vote, the motion carried.***

Final Payment, Headwater Project (Minnetonka)

Ms. Clark presented proposed Resolution 07-081 providing for Board acceptance of substantial completion and approval of final payment. Ms. Clark explained that the matter was removed from the consent agenda to request that the Board amend the second "Resolved" to authorize release only of the project performance bond and not the payment bond, which will be held until the statutory notice period has expired. ***It was moved by Manager Shekleton, seconded by Manager Casale to adopt the revised Resolution as proposed.***

Mr. Calkins asked if there is a plan to improve the quality of the buffer plants. Ms. Clark replied that the planting in question is not the responsibility of the present contractor. A five-year contract for plant maintenance expired this fall and a new contract will be negotiated. Manager Calkins noted he has observed a pile of riprap parallel to and about seven to eight feet from the shore, southwest of the boat landing. Mr. Evenson replied that staff would check this out. Ms. Clark added that this does not have a relation to the project. ***Upon vote, the motion carried.***

Contract with Bonestroo, Duke Realty Project, St. Louis Park/Golden Valley

Mr. Wisker presented proposed Resolution 07-078, authorizing staff, on advice of counsel, to retain Bonestroo and Associates in an amount not to exceed \$25,000 to develop preliminary design plans for supplemental stormwater management in the Duke Realty redevelopment project at Highway 394 and Highway 100 in St. Louis Park/Golden Valley. Mr. Wisker reported that Mr. Evenson, Mr. Wisker, Bonestroo, the developer and the City of St. Louis Park have met several times and brainstormed as to locations and types of practices. He stated that the process now needs preliminary plans that can be given to the developer and St. Louis Park. Green roofs, porous pavers, crosswalks and boulevards with porous surfaces, and trees over structural soils all are being reviewed. Mr. Evenson added that he has received letters of support from the developer and St. Louis Park. He noted also that the parties are looking at large cisterns

to collect parking ramp runoff. Manager Miller emphasized the opportunity presented by the 35-acre redevelopment within the developed area and urged the District to move forward with the process.

***It was moved by Manager Shekleton, seconded by Manager Miller to approve the proposed resolution. Upon vote, the motion carried.***

Contract Award, Swan Lake Pond Excavation

Ms. Clark reported that eighteen firms obtained plans and nine bids were submitted. The Engineering estimate was \$116,750. The low bidder is Sunram Construction at \$146,500, and the bids range up to a high bid of \$404,642.88. Ms. Clark distributed revised proposed Resolution 07-080 providing for an award of the contract to Sunram in the amount of \$146,500, authorizing the Administrator to execute a contract and otherwise administer the project, and establishing the Administrator's authority to execute change orders up to a total contract amount of \$161,150.

Manager Miller noted that the highest bidder is an experienced excavator and questioned the difference in the bids. Mr. Panzer replied that the difference relates to estimated cost for sediment disposal. He noted that the sediments, which belong to the contractor under the contract terms, have low levels of arsenic and copper and the bidders assessed the sediment disposition alternatives and costs differently. He stated that all of the contractors were very aware of this aspect of the work. He noted that Sunram is presently doing work for the District on the Gleason Lake and Painter Creek projects and is a knowledgeable and capable contractor.

Mr. Holtman recommended that the resolution be amended to authorize the Administrator to award the contract when easements for the work have been acquired. He recommended that relevant part of the first "Resolved" be revised to read: "...the MCWD Board of Managers authorizes the Administrator to award the contract for Swan Lake excavation when all required easements for the work are acquired and as defined in the technical specifications."

***It was moved by Manager Casale, seconded by Manager Keeley to adopt the proposed revised Resolution with the further amendment recommended by Counsel. Upon vote, the motion carried.***

Funds to City of Minnetonka, Burwell House Canoe Landing

Ms. Clark presented proposed Resolution 07-082, authorizing funding from the District project maintenance fund to the City of Minnetonka for repairs to the Burwell Park canoe landing in the amount of \$10,000.

Manager Calkins noted that many of the older landings have eroded on the creek bank behind the landing and asked as to the design of the proposed landing. Manager Shekleton commented that the erosion appears to be from foot traffic and the movement of canoes. Mr. Evenson indicated that the District engineer would review the design. Mr. Wyatt concurred that the landings must be sited where they will not be subject to channel flow forces behind the structure. Manager Calkins emphasized that landings should not be located on the outside of a creek bend. He asked whether the schedule affords the Board the time to review more specific design plans; Ms. Clark replied that it does. Manager Calkins remarked on the tension between a more natural design and one that is designed for easier removal of canoes from the water.

***It was moved by Manager Miller, seconded by Manager Shekleton to adopt the proposed resolution. Upon vote, the motion carried.*** Manager Casale asked that staff present the design to the Board when it is completed.

Support for Minnetrista Ordinance Enforcement, Failing Septic Systems, Rolling Hill Subdivision

Ms. Clark distributed an unnumbered resolution urging the City of Minnetrista to energetically enforce its code with respect to individual septic systems in the Rolling Hills neighborhood adjacent to the District property on Rolling Hills Drive and upgradient from the Painter Creek wetlands.

Ms. Clark reported that staff has talked with the Minnetrista consulting engineer and is reviewing a draft feasibility study prepared by the engineer for installation of a community septic system on the District property, associated conveyance structures, and additional stormwater and road improvements. The study was initiated by the City Council without a resident petition. Ms. Clark reported that the Council is looking toward mid-December for a public hearing.

Manager Miller commented that he would like a stronger statement regarding the public health issues. Manager Shekleton added that he would like specific statutory references supporting the understanding that the high-bacteria runoff is a public health concern. Mr. Panzer further added that the specific sampling data that the District has obtained could be included in the resolution as well. Responding to Manager Miller, Mr. Holtman suggested that the letter could be strengthened by stating more specifically what the District knows as to the quality of the runoff and the health risk without going beyond what the facts presently support with respect to the specific sources and potential exposures.

***It was moved by Manager Miller, seconded by Manager Shekleton to adopt the resolution with revision by staff and legal counsel to incorporate the Board's concern for stronger language as discussed.*** Manager Keeley asked how many other sites within

the District have failed septic system. Mr. Evenson replied that probably there are others. Manager Calkins also asked that the resolution identify the receiving water and clarify that *e coli* is an indicator and not itself the constituent of concern. ***Upon vote, the motion carried.***

Contract with Wenck Engineering to Complete Minnehaha Gorge Restoration Design and Provide Construction Services

Mr. Wyatt presented proposed Resolution 07-083, authorizing the Administrator to contract with Wenck Associate in an amount not-to-exceed \$95,000 to complete design and bid documents and provide construction oversight for the Minnehaha Falls/Glen restoration project.

***It was moved by Manager Miller, seconded by Manager Casale to adopt the proposed resolution.*** Manager Miller noted the need to bring project partners along, so that the District is not leading with payment. Manager Casale reminded the Board that, as it discussed during budget adoption, the District is only proceeding with certain identified parts of the project on which it determined it should proceed independent of partner assistance, other than a partial financial contribution from the Minnesota Veterans Home. Mr. Wyatt added that the Board identified \$1.1 million in improvements to be pursued and that a conversation with the Veterans Home is exploring a 70-30 split between the District and the Veterans Home for construction cost. He also noted that the District would review the final cost estimate before a cost-sharing agreement is signed. Finally, he noted that the Veterans Home does have cash in hand for its share of the cost.

Mr. Evenson further clarified that the present work does not address the WPA walls. The District is working with the U.S. Army Corp of Engineers on that element. He noted as well that the Minneapolis Park and Recreation Board has been lobbying actively for funding legislation, in light of the regional and statewide significance of the resource. He emphasized that the District wishes to maintain a leadership position on this work, including construction oversight and on the ecological restoration related to any work beyond the present scope. ***Upon vote, the motion carried.***

**DISCUSSION ITEMS**

Administrator's Report

Mr. Evenson referred the Board to the written report included in the meeting packet. He noted that on Monday he met with the MPRB and Representative Jean Wagenius. Representative Wagenius stated that she would not support the Minnehaha Glen project unless it comes with a strategy for storage on the Veterans Home property above the bluffs. Mr. Evenson will tour the site with Representative Davnie on November 29.

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Preliminary Joint Watershed Research Program Proposal

Mr. Evenson advised that the District and the Mississippi Watershed Management Organization received fourteen initial proposals totaling about \$1.4 million. He and Udai Singh met with the MWMO Administrator and narrowed the submissions to seven projects totaling about \$731,000. The program has \$400,000 available through 2008. The intent is to ask the seven proposers to provide a more complete application. The grantors will meet internally to develop the features of the request and encourage the proposers to contact others working on similar projects. Mr. Evenson said that staff is proposing a review committee comprising one manager from each organization and several experts in the field. All recommendations for final awards would come to the two Boards for approval. By unanimous consent, the Board named Manager Calkins to serve on the review panel.

**ADJOURNMENT**

There being no further business, the regular meeting of the Minnehaha Creek Watershed District Board of Managers adjourned at 9:25 p.m.

Respectfully submitted,

Lee Keeley, Secretary