

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

December 21, 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 6:52 p.m. at the District offices, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

MANAGERS PRESENT

James Calkins, Pamela Blixt, Jeffrey Casale, Lance Fisher, Ethel Smith.

MANAGERS ABSENT

Richard Miller, Lee Keeley.

OTHERS PRESENT

Eric Evenson, District Administrator; Michael Wyatt, District Planner; James Wisker, District Permitting Officer; Renae Clark, District Projects Coordinator/Technician; Michael Panzer, District Consulting Engineer; Louis Smith, Michael Welch, District Counsel.

MATTERS FROM THE FLOOR

None.

APPROVAL OF AGENDA

Manager Calkins requested that Agenda Item 6.1, Checking, be removed from the consent agenda. *It was moved by Manager Fisher, seconded by Manager Smith, to approve the agenda as amended. Upon vote, the motion carried.*

CONSENT AGENDA

It was moved by Manager Fisher, seconded by Manager Smith, to approve the Consent Agenda, consisting of the Minutes of the September 7, 2006, and October 19, 2006, meetings; the Petty Cash and Surety check registers; and the Contingent Levy. Upon vote, the motion carried.

REGULAR AGENDA

Administrator's Report

Mr. Evenson distributed a revised Administrator's Report, noting the addition of the project-tracking whiteboard to the wall behind the managers in the meeting room. Relevant to paragraph 7 on the Administrator's Report, Manager Blixt indicated her continuing interest in keeping the monitoring station at the sheriff's office in Spring Lake Park.

Watershed Management Plan Update Public Hearing

Manager Calkins opened the public hearing on the Watershed Management Plan. Mr. Wyatt provided handouts including the comments in a new format, all of the letters received and the responses thereto, and an errata sheet. Mr. Wyatt also provided copies of additional comments from the City of Minnetonka, Mr. Augburg and Steve Moan.

Mr. Wyatt noted that the concerns roughly fell into three areas: the rules; load allocations getting ahead of TMDLs; and the capital improvements program. Mr. Wyatt noted that he would focus on the errata sheet and changes thereto, and that the request for Board action is an approval of Resolution 06-073, authorization to update the Plan in response to the comments, and send it to the state agencies.

The Managers discussed whether to act on the Request for Board Action at that meeting or to delay to a later meeting. In light of the recent letter to Hennepin County and the information supplied by Mr. Evenson noting that there were additional persons and organizations that wished to comment on the plan who were not able to make it to the meeting that evening, the Managers noted that they were inclined to delay action on the resolution to approve the plan.

Manager Calkins solicited comments from those in attendance. Jim Johnston, Lyman Development Company, noted that he appreciated staff meeting with him one-on-one. He asked the Board to think through all the ramifications of imposing the proposed abstraction standards. He noted that there would be an impact on future residents and that the ability to infiltrate is very low because of clay soils in the northern part of the District. He noted that he appreciated the need to remove phosphorous from stormwater runoff, but that the burden to do so needed to be shared. He added that homes would cost an extra five figures in Minnetrista while others in the District blew grass clippings into the street as a way to illustrate his issue with regards to fairness of the abstraction burden.

Jamie Vagle, Builder's Association of the Twin Cities, noted that he appreciated working with staff on the preliminary review and stormwater management requirements in the Plan, and that the revised versions were vast improvements. Mr. Vagle noted that his

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focus in his comments this evening were on the rulemaking process and that his organization was particularly interested in ensuring that the process included meaningful opportunities for stakeholders to have input on the issues. He noted the buffer standard in particular, and stated that the proposed 300 ft. width is scientifically debatable. He noted that the Builder's Association was working with the Met Council to complete a study on buffer width. Mr. Vagle noted that he realized the Plan was not final, but wondered where it sits in relation to the rulemaking and wanted clarity in that regard.

Mr. Wyatt noted that the rulemaking process would be discussed later in the agenda, and added that the Builder's Association had made helpful suggestions for rulemaking.

Matt Goldstein, a developer, thanked staff for their time. Mr. Goldstein noted that the detailed approach to matters of policy in the plan makes them look like rules. He asked the Board to avoid relying on the plan during the rulemaking process and to avoid being confined to particular rules because of the Plan.

Lee Gustafson, City of Minnetonka, noted that his staff had found errors in a map late in the day, and that Minnetonka had not had a chance to review the responses it had received from the District. Mr. Gustafson noted further that he had hoped to hear the managers thoughts on the comments received to this point, and he noted that he did not want the issues to be a done deal when it came to rulemaking. Manager Calkins noted that comments and the responses thereto had been discussed at last week's meeting and will be discussed that evening. He understands concerns that have been expressed, but notes that though the Plan is guidance, it is important guidance because the District has put a great deal of effort into the Plan. He noted that the rulemaking process will be different and that the Plan is a starting point for that process.

Manager Fisher asked whether the Plan, with regard to municipalities, would be enforceable. Mr. Evenson noted that, yes, it would be. Manager Fisher continued noting that he understood the rulemaking process was separate, but he was unclear as to the line between enforceable provisions and other components of the plan.

Mr. Smith noted that an analogy to comprehensive land use plans and zoning ordinances. Policies in the Plan will serve as guides going into the rulemaking process, but the rules had to be adopted in order to exercise regulatory authority to implement these policies. Mr. Smith noted that the rulemaking process will require the managers to consider the plan, yet stay open to possible changes. He noted several examples where the District commits to abstraction and buffer policies in the Plan, but rulemaking is required to develop specific regulatory requirements. Mr. Smith noted that the Board should reach a point at which it was comfortable to submit the plan to state agencies. Manager Fisher asked if the plan was enforceable. Mr. Smith noted that within two years of the approval of the plan the municipalities must have updated their local water management plans. Manager Blixt noted that Mr. Gustafson should understand that the Board had been very

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involved in the process of putting the plan together and that the Board supports the policies in the plan.

Mr. Gustafson continued with his comments. He noted that the plan failed to include the Minnesota Department of Transportation and the county in its assignment of load reduction requirements. Mr. Gustafson noted that all agencies should play a part in reduction of pollutant loading. Mr. Gustafson also noted that while he realized abstraction would be addressed in the rulemaking process, a policy that applied everywhere in the District requiring abstraction was not logical or reasonable because of differences in soil types throughout the District. Mr. Gustafson noted that flexibility could be addressed in the rulemaking process to account for different soil types and other conditions in the District. He noted that the goal was great, and if the approach taken was reasonable, the City of Minnetonka would support it. Manager Calkins noted that abstraction may have been understood to be infiltration only, but he noted that there were other ways that abstraction could be accomplished. Mr. Gustafson agreed and noted that there are site-specific ways that stormwater can be managed. Manager Fisher noted that if the policy were clearer in requiring abstraction where it was practical or feasible that may speak to Mr. Gustafson's comment. Mr. Gustafson noted that a flexible policy that left the door open for future technology would indeed be acceptable. He also noted that it would allow staff at the city to work out abstraction applications on site-specific basis with District staff.

Mr. Gustafson next noted concerns with the requirement to have developers submit concept plans early in the site-development process. Mr. Gustafson noted that site plans change frequently during development. Mr. Gustafson asked if the policy could be written to allow a city, when it doesn't have staff in a particular area, to work with District staff and the developer. Otherwise, he noted, there was too much burden on the developer to deal with multiple regulatory bodies throughout the process. Manager Fisher responded, noting that the intent of the Board was to flesh out concept plans rather than throw them out. The idea was to bring issues out earlier in the process. Manager Fisher asked Mr. Gustafson where the right place in the site development process was for the District review. Mr. Gustafson answered that the District should review site development concept plans at the same time it goes to the city planning commission. Mr. Gustafson noted that the concept for site development plans gets pretty close to final when it goes to a planning commission. Mr. Gustafson added that townships and smaller cities, which lack staff, may want District review earlier in the process, such as when a site development concept is first received.

Mr. Gustafson noted as well that Minnetonka has its own buffer policy and that he looked forward to discussing the buffer standard with the District in the rulemaking process.

Mr. Gustafson next discussed landlocked basins. He noted discrepancies between the city's information and the Plan's. He noted three basins listed in the Plan as

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“landlocked” but have outlets according to the city’s records. Mr. Gustafson noted as well that the policy in the Plan is very restrictive.

Manager Fisher asked whether errors found in the future could be fixed. Mr. Smith noted that the Plan can be amended to fix errors. There was further discussion of the District’s intent to avoid directing all flow of stormwater to water bodies. The District is trying to develop a policy whereby landlocked areas deal with stormwater runoff onsite. Mr. Evenson noted that the draft plan could be revised to reflect the policy intent. Manager Fisher noted that the fix should reflect the fact that the District has no intent of preventing repair in a basin that is overtopping. Mr. Gustafson noted that he would find the language to which Manager Fisher is referring in the plan and suggest a revision. Mr. Evenson noted that District staff would work with City of Minnetonka staff to resolve the matter.

Bo Spurrier, Water Resources Engineer, City of Minneapolis, noted that his office had received responses to its comments from District staff only that afternoon. He requested additional time to respond, and noted that Minneapolis staff, with multiple departments weighing in, would have a hard time responding by January 4. Further, Mr. Spurrier noted that he and his staff had met with District staff regarding the Capital Improvements Program and had submitted a list of projects for consideration. He was curious about the status of the submission. Mr. Evenson noted that another meeting with city staff had been arranged to review the city’s submission. Mr. Spurrier noted city concerns about coordinating the City’s combined sewer overflow, on which the City of Minneapolis is facing a potential \$7 million surcharge, and concerns with properties that have gutters hooked into the City’s storm sewer system. Mr. Spurrier also noted the need to coordinate timing with the city staff and District staff to get the Capital Improvements Program to match the city’s plans.

Manager Calkins asked Mr. Spurrier’s perspective on the relationship between the City of Minneapolis and the Minneapolis Park and Recreation Board. Mr. Spurrier described the City’s responsibilities as bringing runoff to a water body, at which point responsibility shifted to the Park Board. The City of Minneapolis is the local government unit, but the city charter clearly defines lines of responsibility. Any responsibility related to water quality on a water body within a park boundary is the Park Board’s.

Mike Salchert, Rice, Michels & Walther LLP, representing the Minneapolis Park Board, addressed the park board’s legal status. He noted that while the Park Board did not fall within the traditional definition of the local government unit, it was not settled as to whether the Park Board can be treated as an LGU. The Park Board has its own elected body, and may wish to have its own LGU status. Mr. Salchert acknowledged the comprehensive work that the District has undertaken, and that the Park Board wanted to work with the District as long as its plans were consistent with the Park Board’s plans.

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Mr. Salchert noted his concern with process. He noted that the Park Board had received a “flash flood” of information in the responses from the District that it has not had time to deal with them. Mr. Salchert urged the District to stay in contact with the Park Board to ensure that things are not been missed during the rulemaking process. He offered a hand of cooperation from the Park Board. He noted that the Park Board wanted to be involved in the process, and would rather discuss issues with the District than fight over them.

The managers discussed whether to close or continue the public hearing. Manager Blixt noted her concern that it would not be possible to get responses in and the public involvement process completed by January 4. She questioned whether there would be a deadline problem with continuing to the following week. Mr. Evenson said there would not, and noted that staff could start the budgeting process whether or not the Plan was finalized. ***Manager Fisher moved to continue the public hearing until the 18th of January and to keep the record of the public hearing open until that time. Manager Casale seconded the motion. Upon vote, the motion carried.*** Mr. Evenson noted that the Board had a discussion of the rulemaking process on its agenda that evening and encouraged audience members to stay for that discussion.

Managers and staff discussed the need to ensure clarity in the Plan regarding the abstraction policy. Staff agreed to review the Plan and ensure that it was clear that abstraction would be pursued where reasonable and with a flexible approach. Manager Calkins noted the need to ensure that there was a definition of abstraction in the Plan as well.

Manager Fisher raised the issue of the distribution of load allocation burdens on the Minnesota Department of Transportation and Hennepin and Carver Counties. He noted that for purposes of permitting and planning and regulatory impact on water quality, MnDOT and the counties and the Minneapolis Park Board were a unique class of developers. He added that he did not see how the District could allocate a load reduction requirement to these entities. Manager Blixt agreed, but noted that the Plan assigns different responsibilities to different types of entities. Managers and staff noted that MnDOT and the counties are MS4s, which means they own and manage storm sewers and therefore must address TMDL requirements. The Plan is tailored toward cities. Mr. Panzer pointed out that the cities are required to prepare local surface water management plans which are consistent with District policies as stated in the watershed plan.

Manager Blixt noted that there was some confusion as to whether the Minneapolis Park Board was an LGU independent of the city of Minneapolis. Mr. Wyatt noted that for purposes of the Plan the city of Minneapolis is the LGU and that there were not load allocations assigned to the Park Board. Mr. Wyatt noted that the status of various entities as local government units or not will be clarified in the Plan.

Manager Blixt asked, per Mr. Vagle's question, when the Plan becomes effective. Mr. Evenson noted that the Plan is effective when it is approved by the Board of Water and Soil Resources. After approval by BWSR, the Plan would be returned to the Board of Managers to be adopted. Mr. Evenson noted that the issues that had been raised were related more to the capital projects than to the rules. He further noted that in the rulemaking process the District goes far beyond the requirements for cities with regard to public involvement and outreach. He noted also that the rulemaking process can be controversial.

Manager Blixt asked whether the current rules would remain in effect until new rules were enacted. Mr. Evenson noted that, yes, the current rules would remain in effect.

Manager Fisher raised the issue of drain tiles. He noted that commenters raised the issue of the difficulty of identifying drain tiles in some circumstances. Mr. Evenson noted that while older drain tiles can be a challenge, for the most part identification of drain tiles on properties to be developed is not an onerous requirement. He noted that drain tile identification is part of a field survey that is an important part of property development. Manager Fisher added that he felt it was important to ensure that the plan does not impose a requirement on cities to identify drain tiles before development.

Manager Calkins solicited any further comments from the Board or the audience. Hearing none, he proceeded to item 6.1 on the Agenda, the approval of the check register. Mr. Evenson noted that three checks had been drafted by the District after the packets had gone out to the Board members: 27009, 27010, 27011. Mr. Evenson noted that the treasurer had reviewed the checks and approved them. ***Manager Blixt moved and Manager Fisher seconded that the check register be approved, with these additions for checks 26928 through 27011 in the total amount of \$345,674.91. Upon vote, the motion carried.***

Sunram Construction Agreement for Phase 1 of the Painter Creek Project

Ms. Clark reviewed the history of the Sunram construction agreement and the Painter's Creek Improvement Project. The District had solicited bids and hired the contractor, Sunram, for work in the Painter's Creek improvement area. Ms. Clark reviewed the communications with the seven landowners for the nine properties in the project area. She noted that the District had received verbal approvals of the easement agreement with the landowners, surveys had been completed, and legal easements had been drafted when bids were solicited and Sunram had been hired. Because of erroneous information the District had received with regard to ownership of the Oakview Corporation properties, numbers 6 and 10 in the project area, all easement agreements had not been signed. Ms. Clark noted that the request before the Board was to approve a negotiated agreement with the contractor to keep him onboard while the agreements are finalized. She noted that the agreement had been reviewed by district counsel and the engineer. Ms. Clark noted that

the request was to approve the resolution to provide the District the option to proceed next year with the project.

Manager Fisher asked if there was any chance that the project would be completed this year. Ms. Clark said there was not. ***Manager Blixt moved approval of the Request for Board action and Resolution 06-072. Manager Fisher seconded the motion.*** Manager Blixt questioned whether the work proposed had to be completed in wintertime. Ms. Clark indicated that some preparatory work could be done in the fall, but that the primary work had to be done in winter. ***Upon vote, the motion carried.*** Mr. Evenson commended staff for their efforts to keep the project moving.

DISCUSSION AGENDA

RULEMAKING PROCESS

Mr. Wisker provided the Board with a brief overview of the rulemaking and rule revision process and the public involvement process, noting that the process would be fleshed out fully in the coming months.

Mr. Wisker reviewed the handout he had provided to the managers.

Mr. Evenson noted that while the task force review was indeed a technical one indicating, for example, where infiltration might work, it is also appropriate for task force members to comment on the impact of the proposed rules on their organizations. Also, Mr. Evenson noted that the task force can ask general questions of the Board.

Manager Blixt asked about the consultant to the task force and the staffing of the task force. Mr. Wisker noted that the Board would appoint the members and that he had hoped two of the managers would be members of the task force. Manager Blixt asked whether Mr. Wisker would be using the services of counsel and the engineer for the task force. Mr. Evenson noted that Mr. Whisker would not be staffing the task force by himself and that other staff and counsel would be engaged as needed. Manager Blixt noted that based on her prior experience, it was critical to have the resources necessary to address concerns that arise during the course of the rulemaking process. Mr. Evenson explained that in some cases staff would answer questions from the task force on the spot, and in others it would be necessary for staff to consult with legal or engineering experts and get back to the task force. Manager Fisher noted his agreement with Manager Blixt as to the necessity of legal counsel and other professional assistance. Manager Casale and Manager Smith agreed that staffing of the task force was critical, that the task force should not be understaffed, and that District staff should not be overburdened in the process.

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Manager Blixt asked about the form of recommendations to the whole Board, whether it would be general guidance or specific language. Mr. Wisker indicated that the Board would give overall direction on the rule and comment on particular standards for the rule. From there, specific rule language would be drafted. Manager Blixt asked whether work product would be brought to the Board as it is developed. Mr. Wisker indicated that the process would be clearly outlined in the agendas and that recommendations would be developed and brought to the Board. Mr. Evenson added that the Builder's Association of the Twin Cities is particularly interested in clear agendas and deadlines.

Manager Blixt underscored the need for deadlines, so the rulemaking process does not drag out. Manager Blixt also noted the importance of inviting the Army Corps of Engineers to participate in the task force. Mr. Evenson indicated that the Army Corps would be invited.

Manager Fisher noted that it was important for the task force not to feel that it needed to reach consensus on each issue. The Board would weigh the various considerations. Manager Fisher also noted that it would be important for the facilitator to post draft rule language as it is developed, to maintain understanding that it was not the task force's job to write rules but to provide input, to give the task force a chance to add new rules if necessary, and that the rules needed to work together as a whole. Mr. Evenson highlighted that it would indeed be a process that would include opportunities for public input and that it is unlikely that consensus would be reached on every issue.

Manager Calkins solicited comments from those in attendance.

Mike Salchert noted that he was nervous about the enormity of the rulemaking process, and the fact that the public would not have a chance to comment until the third phase of the rulemaking. Mr. Salchert felt that rather than the task force following staff direction alone, the draft rules could be posted to the web as a way to invite public participation throughout the rulemaking process.

Bo Spurrier noted that local government representatives to the task force should be encouraged to bring other staff with expertise for discussion of specific issues. He noted that doing so would provide greater knowledge and experience to the process as the task force proceeds.

Lee Gustafson commented that the time for the task force meetings had already been set and wondered whether city or agency staff might more easily participate if the meetings were earlier in the day, at 3 p.m. Mr. Evenson noted that the District had considered convening two task forces. But, he noted, the decision was made to have a single task force because members of the staff force want to be involved in both policy and technical issues. With regard to scheduling, Mr. Evenson had noted that the fourth Thursday of the

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month had been selected to allow Board members who participate to report back to the full Board from the task force process.

Mr. Gustafson noted that the earlier meetings would not preclude the private sector from participating. Those who had a keen interest in the rules would find a participant to attend.

Mr. Gustafson noted that it was important to allow people to sit in on the meetings and hear the debate, and that having pre-set agendas allowed persons with specific interests to attend specific meetings and in that sense is very helpful.

Manager Casale noted that he had not been involved in the rulemaking process before, but that he agreed with Manager Blixt's comment about the Board not redoing the whole process over again. Manager Casale felt that it was important that the task force felt that it was heard by the Board.

Manager Calkins noted that it was important that the task force be informed on the policies and goals that the Board hoped to achieve. He added that the task force should not come back with reasons why certain policies and goals could not be achieved, but rather it should come back with creative ways to achieve the goals.

Manager Fisher noted that he supported the idea of broad involvement of the public in the process, and that the facility chosen for the task force meeting should be able to accommodate additional participants. Manager Fisher also noted that where the task force was in agreement with a particular position it was important that it explain its rationale.

ADJOURNMENT

There being no further business, the regular meeting of the Minnehaha Creek Watershed District Board of Managers was adjourned at 9:54 p.m.

Respectfully submitted,

Lee Keeley, Secretary