

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

March 13, 2008

CALL TO ORDER

The workshop meeting of the Minnehaha Creek Watershed District Board of Managers was called to order by Vice President Pamela Blixt at 7:00 p.m. at the District offices, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

MANAGERS PRESENT

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

MANAGERS ABSENT

None.

OTHERS PRESENT

Eric Evenson, District Administrator; Mark Ten Eyck, District Land Conservation Program Manager; Ellen Heine, District Land Conservation Specialist; Udai Singh, District Water Quality Specialist; Renae Clark, District Program Manager; Michael Panzer, District Consulting Engineer; Chuck Holtman, District Counsel.

APPROVAL OF AGENDA

It was moved by Manager Miller, seconded by Manager Keeley to approve the agenda. Upon vote, the motion carried.

AUTHORIZATION TO PURCHASE CHUTE PROPERTY

Mr. Ten Eyck presented a Request for Board Action and proposed resolution authorizing the District Administrator to execute a purchase agreement for the purchase of about 22.5 acres, consisting of two parcels, owned by David and Christina Chute on Painter Creek in the City of Minnetrista. The purchase price is \$1,550,000. Mr. Ten Eyck referenced the Board's discussion of the acquisition at the previous meeting. He noted that both a Phase I environmental investigation and a survey were prepared for the property in 2003, but that those will be redone.

Manager Miller asked whether there are other parcels upstream of Painter marsh in which the District has interest. Mr. Evenson replied that there are additional parcels that would further the District's interest in restoring and managing the marsh and riparian areas.

Manager Casale asked as to the form of seller disclosures. Mr. Ten Eyck replied that the details have not yet been received from the seller. Manager Casale suggested that the regular disclosure would be preferable given that the seller has lived on the property and that the District intends to retain at least a part of the fee. He also urged that the Phase I investigation examine the surrounding properties in light of the District's experience with the Gould property.

It was moved by Manager Keeley, seconded by Manager Miller to adopt the proposed resolution with authorization to execute the purchase agreement, conditioned on confirmation that closing is contingent on a satisfactory Phase I investigation.

Manager Klingelutz asked whether the District would be signing an IRS Form 8283. Mr. Ten Eyck replied that the seller is interested in favorable IRS treatment and therefore the District would be executing that form pursuant to District policy.

Upon vote, the motion carried 5-1 (Manager Klingelutz opposed).

ROLLING HILLS SUBDIVISION SEPTIC ISSUES

Mr. Ten Eyck reviewed analytical results of *e coli* sampling at the road culvert. He stated that the houses in the subdivision were built in the 1950's-60's and many of the septic systems date from that time. He also noted that there are horses in the vicinity and some contribution may come from horse manure.

Mr. Panzer reviewed the samples taken, noting that *e coli* measurements have varied greatly from the hundreds to the hundred thousands of units per 100 milliliters. The surface flows in this case are fairly stagnant, which allows for both die-off and regrowth of the bacteria. He noted that phosphorous levels also are high, suggesting that the contamination originates from the septic systems.

Mr. Panzer reviewed the history of monitoring of *e coli* bacteria, which originally was fecal coliform and was replaced by *e coli* in 2003. The District has three years of data on Painter Creek at upstream and downstream locations. Concentrations downstream are slightly higher, indicating that there is an *e coli* input to the creek. What is not known is the connection between the subdivision and the creek; probably, stated Mr. Panzer, there is a fair amount of absorption, filtration and die-off going on. He would recommend wet weather sampling.

Mr. Panzer noted that the state has regulatory standards for *e coli* in surface waters, which would apply in Painter Creek. The creek is classified as a "protected public ditch," and probably is subject to a 30-day average *e coli* standard of 630 units per 100 milliliters, which is exceeded both upstream and downstream. He suggested that

upstream sources probably are animals. In his view, the District's proposed wetland restoration would slow bacterial transport to the creek, but could attract wildlife and slightly increase the risk of exposure to the public.

Manager Miller asked if any other agency ultimately would take action. Mr. Panzer replied that the earliest regulatory action probably would be triggered by the establishment of a bacterial TMDL. He would not say that the situation presents a health issue *per se*, as there is no measurable direct recreational contact with the creek. Mr. Ten Eyck stated that neither the City of Minnetrista nor Hennepin County is stepping forward with enforcement authority at this time.

Manager Calkins asked whether other methods could be used to determine whether the bacteria are of human origins. Mr. Panzer replied that there are some new DNA-based approaches, but these are expensive. Manager Calkins urged staff to survey options.

Responding to a question from Manager Miller, Mr. Ten Eyck estimated the cost of a community septic system at about \$25,000 per lot. With road upgrades and associated stormwater treatment, the assessment would rise to about \$37,000.

Manager Shekleton arrived at this time.

Manager Keeley asked whether there should be signage to indicate the bacteria presence. Mr. Holtman stated that it would be within District authority to provide a public warning if the Board believes it to be warranted. He stated that the District does not have a legal obligation to post signage with respect to bacteria in Painter Creek; with respect to property it owns, the District is obligated to take reasonable steps to warn of hidden hazards. He noted that these issues have been discussed at a prior meeting.

Mr. Ten Eyck reviewed the status of the District's collaboration with Doug Hoskins to seek PUD approval from Minnetrista. The plans have been reviewed by the Park Commission, Planning Commission and City Council and in January 2008 a preliminary plat application was submitted. Mr. Ten Eyck noted that on March 10 the Park Commission recommended preliminary plat approval and the question will be before the Planning Commission on March 24 and the City Council in April. If the process is successful, the City Council could act on final plat approval in May.

Mr. Ten Eyck reported that per the March 2007 Board resolution, the District's application offers the outlot acreage to Minnetrista with the District's reservation of a conservation easement. He noted that District counsel is drafting the easement, which will reserve the possibility of Minnetrista/District collaboration on a community septic system located on the outlot. Ms. Heine noted that the PUD ordinance requires an open space dedication. Manager Casale cautioned that Minnetrista at its discretion may choose between land dedication and a payment *in lieu*. Mr. Ten Eyck noted that the District is

offering more land than is required and at this time Minnetrista has not indicated any interest in an alternative payment.

Manager Blixt asked whether it was still staff's view that the fee interest should be given to Minnetrista. Mr. Ten Eyck replied that staff continues to support the original concept, that the District can accomplish its conservation goals with an easement and that it may not even care to own the land. He noted that the District has represented since 2006 that it would convey the fee to Minnetrista. Mr. Evenson offered that the conservation easement could include a sunset date for a community septic system to go forward.

Manager Casale observed that the PUD process is separate from the bacterial contamination issue. Mr. Ten Eyck reviewed the community septic feasibility study prepared by Minnetrista's consultant. He noted that the City Council is hesitant to proceed with the concept due to the displeasure of some property owners toward the notion of a special assessment. Manager Miller observed that everyone is assessed for improvements for sewage management and other infrastructure and does not see why these homeowners should be different.

At the Board's request, Mr. Holtman reviewed the regulatory authority of Hennepin County and Minnetrista to require abatement of noncompliant systems under their septic and nuisance ordinances, respectively. Mr. Ten Eyck explained that the Hennepin County Department of Public Health interprets its authority narrowly and requires a "surface expression of effluent" as a threshold. Manager Miller suggested that the District communicate with higher-level county officials. Mr. Ten Eyck noted that the narrow authority appears to relate primarily to a concern about the resources necessary to implement an active septic system compliance program. With a push to more aggressive enforcement, cities would be likely to return enforcement authority to the County, which then would be looking at a very large program.

Mr. Evenson stated that District staff is planning a meeting with Hennepin County and Minnetrista representatives based on more sampling information that Mr. Singh is collecting. He noted that each city pursues septic noncompliance with a different level of aggressiveness; Orono, for example, has an aggressive program, whereas Minnetrista has turned its authority back to the County.

Manager Blixt asked about the cost of investigating the compliance status of systems within the subdivision. Mr. Panzer replied that a maximum of \$15,000 would allow for investigation of each system. Mr. Ten Eyck opined that the lots and the subdivision as a whole are not large enough to accommodate correction within the subdivision itself.

Manager Blixt said that she understands the County's concerns and wonders whether the District can assist. Mr. Evenson suggested that the District could explore an arrangement with the County to exercise the County's enforcement authority. Manager Calkins

cautioned that watershed taxpayers who already have paid for their own proper management should not be assessed to address this noncompliance. Mr. Evenson replied that the District might cover the administrative cost of its inspections but that property owners would pay for their own systems corrections.

Manager Casale suggested that if Minnetrista is not willing to assess its homeowners, the District is unlikely to change that. He suggested the District look at how it can approach the County in a way that won't create a problematic precedent for the County. Manager Casale also said that he would not support conveying the land to Minnetrista except contingent on its collaboration in construction of a community system.

Mr. Ten Eyck recommended that the District first pursue a cooperative approach with Minnetrista. The necessary next step would be to determine the compliance status of the individual systems, but Minnetrista does not want to advance the \$15,000. Manager Miller replied that to pursue a cooperative approach he would like first to see evidence that Minnetrista is concerned that its homeowners are putting sewage into Lake Minnetonka. Manager Shekleton also prefers a cooperative approach if possible.

The Board discussed how the District's position on land dedication could affect its obligations to Mr. Hoskins under the purchase agreement. ***It was moved by Manager Miller, seconded by Manager Blixt to convene in closed session for the purpose of discussing an offer to Mr. Hoskins to revise the purchase agreement. Upon vote, the motion carried and the Board convened in closed session.***

The Board reconvened in open session. Manager Calkins stated that he supports going forward with the existing purchase agreement and existing PUD application. He stated that the District should not be confrontational with the County but that the County should be pushed to take action. The Board directed staff to continue with the PUD process and to seek cooperation with the County for diligent application of its authorities to address then noncompliant septic systems. Manager Calkins asked that staff investigate methods to distinguish human from animal sources of *e coli* and suggested that this has watershed-wide importance.

ADJOURNMENT

There being no further business, the workshop meeting of the Minnehaha Creek Watershed District Board of Managers was adjourned at 10:00 p.m.

Respectfully submitted,

Lee Keeley, Secretary