

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

July 27, 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 7:00 p.m. in the District offices, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

MANAGERS PRESENT

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

MANAGERS ABSENT

Richard Miller.

OTHERS PRESENT

Eric Evenson, District Administrator; James Wisker, District Permitting Officer; Charly Wojtysiak, District Compliance Officer; Michael Panzer, District Engineer; Chuck Holtman, District Counsel.

MATTERS FROM THE FLOOR

None.

APPROVAL OF AGENDA

It was moved by Manager Keeley, seconded by Manager Casale to approve the agenda amended to reflect consideration of the Stone Bay and Feeney violation matters and deletion of the permit issuance item for Stone Bay. Upon vote, the motion carried.

COMPLIANCE HEARING, MICHAEL & PATRICIA FEENEY, PERMIT 06-263

Ms. Wojtysiak presented the matter, which concerns unpermitted riprap work on a residential property in the City of Shorewood. Ms. Wojtysiak stated that on April 20, 2006, a complaint was received about shoreline work. The next day, she inspected the site and observed that a single course of boulders had been placed in the water, with several feet of fill material behind. *It was moved by Manager Fisher, seconded by Manager Keeley to adopt the staff recommendation that (a) the Feeneys be required to modify the shoreline work in accordance with a District permit allowing a single buried course of riprap, or two courses if staff finds there is justification; (b) native vegetation*

is incorporated to preserve the natural shoreline appearance; (c) riprap does not encroach beyond the shoreline as of the date of permitting; and (d) the Feeneys are to pay Rule J fees accrued and to be accrued. In addition, the motion is to incorporate into the hearing record the July 27, 2006 Finding of Fact, associated photos and correspondence from the Feeneys. Upon vote, the motion carried.

COMPLIANCE HEARING, JOHN TERRANCE HOMES, LLC, PERMIT 02-333

Mr. Wisker presented the violation, concerning the Stone Bay development in the City of Orono. On this compact site, the permit allows buffer averaging and all land not required for the development footprint was to be protected as wetland or as wetland buffer.

Violations of the buffer requirement were observed, caused by field changes to the approved grading plan and the addition of a retaining wall. Portions of two retaining walls encroach into wetland buffer and wetland. In addition to the encroachment violation, a wetland crossing includes a pier and fill not indicated in the approved replacement plan.

Mr. Wisker presented graphics showing the site and the locations of encroachment. In one area, instead of a single retaining wall, two walls were installed, with turf grass on the area between the walls. An internal roadway encroaches on both the buffer and the wetland. Portions of two retaining walls encroach within the wetland buffer and both ends of the bridge crossing encroach on the wetland.

Manager Blixt arrived at this time.

Mr. Wisker advised that Steven Johnston, Landform Engineering, represents the developer. Mr. Wisker has met with Mr. Johnston and the City of Orono, and finds that more harm to the wetlands is likely to result if the walls are removed. Accordingly, staff recommends entering into a consent order requiring submission of a replacement plan within 60 days that provides for 5,268 square feet of New Wetland Credit and 6,955 square feet of wetland buffer within the Long Lake subwatershed; the plan would be subject to a 30-day review by the Technical Engineering Panel and Board approval. In addition, the permittee would be responsible for Rule J fees. Mr. Wisker distributed a July 27, 2006 email from Mr. Holtman containing proposed terms of an order.

Manager Fisher asked whether the developer has used the *de minimis* exemption. Mr. Wisker replied that he has not, but that under WCA rules it cannot be used when a replacement plan is required. Manager Fisher remarked that the staff recommendation appears to reward the developer for ignoring the approved plan. He therefore would encourage that the Board require at least partial restoration as well as a 2:1 buffer replacement ratio. Manager Keeley remarked that permitting replacement elsewhere within the subwatershed may set a bad precedent. Mr. Wisker replied that it may be

possible to do some partial restoration. He noted that the site suffered from erosion issues during development due to steep grades, but that retaining walls in the present locations can compromise buffer function.

Manager Casale also expressed concern with precedent. He said that contractors and surveyors clearly understand that approval of the permitting agency is needed to deviate from approved plans.

Ms. Wojtysiak noted that the development is mostly built, some homes are occupied, and residents have expressed concerns about a site change. Mr. Wisker also noted that according to the permittee, the approved plan, with just one retaining wall, would result in a steep slope at risk of failure and erosion into the wetland. Mr. Casale replied that if there is engineering validation of that conclusion, he would find the “compromise” mitigation approach acceptable. But if a proper site design could avoid unstable grades with a single retaining wall, he believes that it would not be unreasonable to require the wall and the driveway to be moved.

It was moved by Manager Fisher, seconded by Manager Blixt that District staff and the District engineer work with the permittee for the best plan to minimize encroachment and achieve the effect of the original plan as much as possible, with replacement at 4:1 for wetland impact replacement and 2:1 for buffer replacement, on site to the degree achievable .

Further Board discussion concerned the developer’s addition of a center pier to the wetland crossing. Staff was asked as to the change from the original design, the impact of the new design and whether staff would have approved the change.

Mr. Johnston appeared on behalf of the permittee. He conceded that when the District permit was issued, there were no plans for the bridge crossing and he could not say the District staff had received a cross-section showing the bridge pier. He stated that the retaining wall design change was at his direction, and that it did not occur to him that the retaining wall would be a prohibited structure within the buffer. He said that the slope was eroding and that he was concerned about losing the driveway. He believes it was a correct engineering decision, but did not think about the permitting issue. With respect to the other areas of encroachment, he stated that the landscaper worked directly with the builder and he does not know why the plan was not followed. He suspected it was changed based on experience with the other wall.

Mr. Johnston stated that the site could be redone per the approved plan, but that on the west side it would have a 3:1 slope. He expressed a concern about instability, particularly given that the site is to be seeded with native grasses rather than sodded.

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Mr. Johnston further emphasized that two or more property owners are living there and would be affected by any changes. He represented that no violations were committed with intent. He stated that the permittee finds the terms proposed in Mr. Holtman's email to be acceptable. Mr. Johnston expressed his view that the terracing actually will improve infiltration. He stated that the permittee will be happy to replant the areas between the walls with native vegetation rather than turf grass.

Manager Casale stated that he still would like validation of the engineering assertions. Even if the walls and driveway are not relocated, he would like to see significant vegetation restoration and improvement to maximize the function of the buffer. Mr. Panzer replied that 3:1 slopes are common with natural vegetation or lawns and considered safe for operation of equipment. He does not have any specific knowledge of this site, but would guess that the erosion problems may have been weather related. He also noted, however, that he tends to concur regarding the better infiltration function of terracing and does not think that the walls themselves would particularly harm the buffer if the vegetation is naturalized.

Mr. Casale suggested the need for more formalized points of inspection during the development process. Mr. Wisker indicated this is essentially a District resource issue. Manager Casale replied that additional staff costs could be recouped in permit fees.

Responding to a question from Mr. Evenson, Mr. Johnston replied that all areas of encroachment remain under control of the homeowner's association. Manager Blixt stated that the Board needs to fully discuss the inspection and violations program for budget purposes. Mr. Johnston remarked that it is a good idea to require the buffer to be identified with stakes and signs during construction. Manager Calkins agreed that the terracing is better for infiltration, and also recognized resident expectations.

Manager Calkins asked whether the Board must approve an exception or variance to authorize the existing deviations from the permit. Mr. Holtman replied that these standards don't strictly need to be met in the context of a violation resolution, but that the Board generally should apply the same criteria as it would apply in deciding on an exception or a variance. Manager Calkins asked whether the crossing also suggested a Rule G violation. Mr. Holtman replied that Rule G does apply to wetland crossings but at the time this was permitted, Rule G was not applied.

Bob Jones, Boulder Drive, appeared and stated that he lives on the eastern side of the development. He said that the understanding when he purchased his home was that he would have a sodded area near to his house. He pointed out an area adjacent to his front porch with which native vegetation would not be compatible. Manager Fisher spoke to the numerous options for native vegetation that he believes to be compatible with a residential environment.

Upon vote, the motion carried.

ADMINISTRATOR'S REPORT

Mr. Evenson referred the Board to the written report in the packet. He also announced that Lorin Hatch will be leaving the District to take a position with HDR Engineering.

REGULAR AGENDA

Minnehaha Creek Lower Glen Concept Restoration Plan.

Mr. Evenson presented a Request for Board Action authorizing the Administrator to retain Wenck Associates and Kestrel Design to develop a concept design plan and cost estimate for restoration of the Lower Glen area, for a price not to exceed \$10,000. ***It was moved by Manager Blixt, seconded by Manger Smith to adopt resolution 06-039 as requested by staff. Upon vote, the motion carried.***

Cooperative Agreement, Mound Downtown Redevelopment – Phase IV.

Mr. Wyatt presented a proposed cooperative agreement negotiated among the District, the City of Mound, and the Church of Our Lady of the Lake for installation of a 300-foot infiltration swale with native vegetation adjacent to Langdon Lake. The parking lot behind the church now sheet flows directly into the lake. Under the proposed cooperative agreement, the District would manage and pay for the construction project. The City would provide permanent maintenance, and the Church would convey an easement for the structure and ongoing maintenance. The staff request also includes the authority to agree to minor changes to the agreement that do not affect substance.

It was moved by Manager Fisher, seconded by Manager Keeley to approve the cooperative agreement as requested by staff. Upon vote, the motion carried.

Authorization to Award Contract, Mound Downtown Redevelopment – Phase IV.

Mr. Wyatt reported that District staff contacted five firms to solicit quotes for construction of the swale on the Church of Our Lady of the Lake property. Two contractors responded: LS Black at \$68,896.90 and Minnesota Native Landscapes at \$36,264.12. The engineer's estimate is \$32,678.50. Staff is asking for authorization to award the work to Minnesota Native Landscapes at the bid price, with further authority not to exceed a total of \$40,000 to allow for minor adjustments during the work.

Manager Fisher asked why the LS Black bid was twice as high. Mr. Wyatt replied that the District is asking for completion by Labor Day and the work is not high among the contractor's priorities.

Responding to Manager Fisher's question, Mr. Wyatt stated that the design provides for tire stops at the edge of the parking lot to protect the facility from mowing and plowed snow.

It was moved by Manger Fisher, seconded by Manager Casale to authorize award of the work per the staff request. Mr. Holtman noted that the cooperative agreement must be signed and contract documents in place before a contract for the work is executed. ***The motion was so amended by unanimous consent. Upon vote, the motion carried.***

Water Resources Management Plan – Budget Scenarios.

Mr. Wyatt reviewed four budget scenarios for implementation of the District's proposed water resource management plan, ranging from \$4.5 million to \$8.7 million per year of spending over the ten-year plan life. The Board discussed relevant considerations of staff ability to manage work and the property tax impacts of the scenarios.

It was moved by Manager Blixt, seconded by Manger Fisher to conceptually endorse Scenario 1, reflecting an annual levy in the range of \$8.7 million.

Manager Calkins noted that the analysis assumes that all revenues will be derived from an *ad valorem* watershed-wide levy, and that the Board still needs to discuss this. He also commented that the District needs to account for the other property tax burdens of homeowners. Manager Calkins disagrees with basing all revenues on property value, and would like to know what other options there are for District revenues. He does not think that the Scenario 1 figure is too high. He reiterated his longstanding interest in having the District's levy appear separately on the tax statement.

Mr. Evenson suggested that special taxing districts might be used for operation and maintenance to address fairness issues.

Upon vote, the motion carried.

It was moved by Manager Calkins, seconded by Manager Fisher to direct staff to pursue separate identification of the watershed district levy on the tax statement. Mr. Holtman noted that this would require a legislative change. ***Upon vote, the motion carried.***

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ADJOURNMENT

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

Respectfully submitted,

Lee Keeley, Secretary