

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

November 17, 2005

Draft

CALL TO ORDER

The regular meeting of The Minnehaha Creek Watershed District Board of Managers was called to order by President James Calkins on Thursday, November 17, 2005 at 6:59 p.m. at the Minnehaha Creek Watershed District office in Deephaven, Minnesota.

MANAGERS PRESENT

James Calkins, Richard Miller, Ethel Smith, Pamela Blixt, Scott Thomas, Lance Fisher and Lee Keeley.

OTHERS PRESENT

Eric Evenson, District Administrator; Michael Pressman, Land Conservation Specialist; Julie Westerlund, District Education Specialist; Renae Clark, District Field Technician; Mike Wyatt, District Planner; Michael Panzer, District Consulting Engineer; and Louis Smith, District Counsel.

CITIZEN COMMENTS

None.

APPROVAL OF AGENDA

Mr. Evenson requested that Item 12.2, Family Insurance Coverage for District employees, be pulled from the agenda and that discussion of the 2006 Legislative Agenda be inserted in its place. *It was moved by Manager Blixt, seconded by Manager Smith to approve the agenda with these changes. Upon vote, the motion carried.*

CONSENT AGENDA

It was moved by Manager Fisher, seconded by Manager Keeley to approve the Consent Agenda as distributed, including the approval of the check register, with check numbers 26042 – 26101. Upon vote, the motion carried.

ADMINISTRATOR'S REPORT

Mr. Evenson reviewed staff activities as described in the Administrator's Report. He also noted that a special meeting of the Board of Managers will be scheduled for November 29 at 6:45pm in the District offices for a workshop session on the water resources management plan.

PERMITS

O5-431 Paul, Bobby and Steve's Auto World

Ms. Renae Clark reviewed the permit application as set forth in the staff report. She noted that following the hearing on November 3, 2005, the applicant submitted all necessary exhibits for a complete permit application, and the staff recommends approval. ***It was moved by Manager Miller, seconded by Manager Fisher to approve the permit application as recommended by staff.***

Ms. Karen Marty, attorney for the applicant appeared before the Board of Managers noting that there had been a series of miscommunications between the permit applicant and the District. Ms. Patricia Lange, neighborhood resident, appeared before the Board of Managers and asked for an explanation of the Stop Work Order enforcement procedures followed by the District. President Calkins asked District Counsel to explain this process. Mr. Smith explained that following the staff issuance of a Stop Work Order, a hearing is scheduled before the Board of Managers to hear all available information and determine appropriate action. The Board of Managers may confirm the issuance of the Stop Work Order, modify the order, or lift the Stop Work Order if the project is brought into compliance. An applicant or party failing to comply with a Stop Work Order approved by the Board of Managers is subject to civil action in district court. Mr. Evenson explained that District policy is to seek voluntary compliance by all applicants, and also go through a thorough public process so that all relevant information is brought to the attention of the Board of Managers.

Ms. Alice Little, neighborhood resident, appeared before the Board of Managers and noted that from her observation, since November 3, no construction activity stopped at the site, work continued even on Saturdays. Manager Miller asked that the staff explain the status of work activity at the site given the Stop Work Order. Mr. Evenson explained that enforcement action in district court did not seem warranted given that the applicant was bringing the site into compliance with the permit application. Manager Blixt stated that she was concerned that failure to enforce the Stop Work Order in court rewarded the violation. Manager Fisher stated that he felt that board policy should be to seek aggressive enforcement of Stop Work Orders.

Ms. Lange again appeared before the Board of Managers and noted long-standing neighborhood opposition to the gas station project. She stated that she was not aware of

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the details of the stormwater management plan submitted with the permit application. Ms. Clark reviewed the site plan and storm water management plan, explaining that the proposed approach went well beyond the requirements of District Rules because even though the site is a redevelopment it complies with rate requirements for a new site.

Manager Thomas inquired whether the grass area identified on the south part of the site would remain as grass or become impervious in the future. Mr. David Phillips, the architect for the applicant, appeared before the Board of Managers. He apologized for the confusion in the permitting process, and noted that part of the changes over time were the result of the applicant being willing to design a storm water management plan that exceeds the requirements of the City of Minneapolis and the District. He explained that the site has been designed to provide for storm water treatment for the entire area being impervious. Manager Thomas asked whether Mr. Phillips understood on behalf of the applicant that a new permit would be required if the grassy area were changed to impervious surface in the future. Mr. Phillips replied that he so understood, but that the underground stormwater tank had been properly sized to accommodate this additional hard surface. Manager Thomas asked whether the underground tank was going to be subject to a specific maintenance schedule, and Mr. Phillips replied that it would be. Manager Fisher inquired whether the District staff and consultants had reviewed the permit application with the understanding that in the future the entire site would be impervious. Mr. Panzer replied that was the case.

Manager Blixt asked legal counsel whether it would be possible to delay the effective date of the permit in order to compensate for the time in which the applicant had worked without a permit. Manager Miller stated that he felt that would be too punitive, and noted that the site is now brought into full compliance with District Rules. President Calkins asked the applicant whether work had ever stopped, pursuant to the Stop Work Order. Mr. Paul Warnert appeared before the Board of Managers and stated that the grading work at the site did stop, but construction of concrete blocks and other related work to the building did continue. Manager Miller inquired of legal counsel whether the District has authority to stop all work at the site. Mr. Smith explained that the Stop Work Order only applies to work regulated by the watershed district; in the case of concrete blocks the construction of the building may create further impervious surface and be subject to the stormwater management planning requirements of District Rules. Ms. Clark reviewed the application process for this site and noted that the initial application was incomplete and missed a variety of required exhibits.

Ms. Karen Marty, legal counsel for the applicant, again appeared before the Board of Managers and reviewed the application process noting that the application was complete by November 3, and that no water resource damage had occurred, but rather only violations of procedure. Manager Smith inquired whether all fees and permit conditions have been met, and Ms. Clark replied that they had. Manager Fisher asked legal counsel what his response was to Manager Blixt's question concerning the delayed effective date of the permit. Mr. Smith stated that a formal opinion would require further review, but as a preliminary matter, once a permit applicant has met all requirements of District Rules,

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the District is likely obligated to issue the permit. Ms. Patricia Lange asked whether the District could assess some type of penalty or fine, and President Calkins explained that watershed districts lack the authority to issue fines for violations. ***Following discussion, upon vote, the motion carried by a vote of 6-1, with Manager Blixt voting against the motion.***

Manager Fisher noted that he felt it was important for the board to develop a policy regarding enforcement of Stop Work Orders. Mr. Smith explained that it was important to leave enforcement discretion to the staff and counsel depending upon frequently changing circumstances, and Mr. Evenson stated that the staff is committed to aggressive and reasonable enforcement of the District's Rules. ***Following discussion, it was moved by Manager Fisher, seconded by Manager Miller to request that the staff draft an enforcement policy for consideration by the Board of Managers at a future date. Upon vote, the motion carried.***

Cynthia Krieg Memorial Stewardship Fund Requests

Ms. Julie Westerlund appeared before the Board of Managers and presented recommendations for the Fall 2005 grant cycle of the Cynthia Krieg Memorial Stewardship Fund. Ms. Westerlund noted that a revised report had been distributed to the Board of Managers, and that the Christ Lutheran Church of Maple Plain had been determined not to be located within the watershed district and thus the recommendation for approval was withdrawn. President Calkins inquired about the change in recommendation for the Great River Greening grant request. Ms. Angela Hammers of the District staff appeared before the Board of Managers and explained that the initial proposal did not involve planting of trees, and the proposal was revised to fit the District's grant criteria. Ms. Westerlund also noted that a grant request from an organization, Tonka Blue, had been submitted but the recommendation was to deny the request. She noted that members of this organization were present and wished to address the Board of Managers.

Mr. Jacob Loftman and Mr. Justin Hickman appeared before the Board of Managers. They described their organization, Tonka Blue, as a new non-profit organization seeking to appeal to youth and promote environmental stewardship through a variety of creative projects. They explained that the request to the District was their first grant proposal and they were eager to receive feedback. Manager Miller stated that he felt that the concept of Tonka Blue was really cool, but that the specific grant proposal needed to be developed further. Manager Fisher suggested that the Tonka Blue representatives meet further with District staff to develop a project which could be eligible for District funding. Mr. Evenson and Ms. Westerlund stated that they would be pleased to meet with Tonka Blue representatives for this purpose. ***It was moved by Manager Miller, seconded by Manager Keeley to invite reconsideration of the Tonka Blue request based upon staff meeting with the organization and developing a new grant proposal. Upon vote, the motion carried.***

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It was moved by Manager Fisher, seconded by Manager Smith to approve the remaining grant recommendations as set forth in the revised staff report. Manager Keeley stated that she was affiliated with the Gleason Lake Association and would like to be able to vote on the other grant requests but not the Gleason Lake project. ***It was moved by Manager Miller, seconded by Manager Fisher to amend the motion approving all of the grant requests as recommended by staff, except for the Gleason Lake Improvement Association project. Upon vote, the motion carried.***

It was moved by Manager Miller, seconded by Manager Fisher to approve the grant request of the Gleason Lake Improvement Association. Upon vote, the motion carried by a vote of 6 – 0, with Manager Keeley abstaining.

Asset Disposition Policy

Mr. Michael Pressman appeared before the Board of Managers and reviewed a revised draft of the proposed Asset Disposition Policy distributed at the meeting. He explained that this policy is intended to guide the sale of real estate interests when the District acquires property for land conservation purposes, typically imposes a conservation easement, and then resells the property subject to that easement. Manager Fisher asked whether the District would always require an appraisal prior to disposing of real estate interests. Mr. Pressman referred to the appraisal policy adopted by the Board of Managers and asked for Mr. Smith to comment. Mr. Smith stated that the appraisal policy could be reviewed for consideration in its application to disposition of assets, and that generally it would be prudent for the District to require an appraisal prior to disposing of real estate. Manager Miller stated that he thought that was a good idea and that the District should establish very high standards for the procedures utilized for the land conservation program and felt that an appraisal should be required in all cases unless the Board of Managers specifically approves otherwise. President Calkins stated that he felt that the policy should also be changed so that it clearly states that the District will impose and record its conservation easement interests prior to selling any real estate so that this provision of the policy is more clearly stated. ***Following discussion, it was moved by Manager Miller, seconded by Manager Fisher to approve the draft Asset Disposition Policy as recommended by staff, with two further changes, that the District require appraisals in all cases unless the Board of Managers specifically approves otherwise, and that the District imposes its conservation easement interests prior to asset disposition. Upon vote, the motion carried.***

Mound Cooperative Agreement for Lost Lake, Langdon Lake, Cooks Bay Improvement Project

Mr. Evenson clarified that while the agreement had been listed as a discussion item, the staff is requesting board approval of the proposed agreement at this meeting. Mr. Mike Wyatt reviewed the proposed agreement as set forth in the staff report.

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Manager Blixt asked whether there were any plans for monitoring the performance of the stormwater facilities. Mr. Wyatt stated that monitoring would be considered and developed in further detail, both on-site and for Lost Lake water quality. No specific monitoring plan or financial commitment has been made yet, but that the ability to incorporate a monitoring plan is provided for in the agreement. Manager Miller asked for further explanation of the costs and benefits of the storm water management approach reflected in this cooperative agreement. Mr. Wyatt explained that the storm water facilities are expected to achieve 76% removal efficiency, which is much higher than typical. Mr. Evenson stated that he felt that this would be one of the premier storm water management approaches in the county. Manager Miller requested that the staff keep the consultants engaged at a high level to assure a successful performance of this initiative as we move forward. ***Following discussion, it was moved by Manager Fisher, seconded by Manager Smith to approve the resolution authorizing the execution of the cooperative funding agreement between the District, the City of Mound and Mound Harbor Renaissance Development Group. Upon vote, the motion carried.***

Manager Miller asked whether such an approach would be possible in cooperation with cities and developers elsewhere in the Lake Minnetonka area, such as in the Wayzata Bay Center redevelopment project. Mr. Evenson stated that he and Mr. Wyatt are exploring this approach in Wayzata as well as elsewhere around Lake Minnetonka, including Long Lake. The approach the District is taking is that the District would be willing to expand opportunities for funding for those stormwater management plans that exceed District requirements. ***It was moved by Manager Miller, seconded by Manager Blixt that the staff continue to pursue this policy for stormwater management initiatives in larger municipal redevelopment projects that exceed District Rules. Upon vote, the motion carried.***

2006 Legislative Agenda

Mr. Joel Carlson appeared before the Board of Managers and reviewed a draft list of items considered by the legislative committee for the 2006 legislative session. Mr. Evenson mentioned that the land conservation program has an interest in the ability of the District to acquire riparian lands, for example along Minnehaha Creek, when a public entity such as a city desires to sell such holdings. The Board of Managers discussed alternative approaches for addressing this issue. Mr. Carlson recommended that it would be feasible to seek legislation for more specific approaches to this issue that may include the Department of Natural Resources. ***It was moved by Manager Fisher, seconded by Manager Thomas to authorize Mr. Carlson to explore these possibilities as it relates to Minnehaha Creek. Upon vote, the motion carried.***

Mr. Carlson noted that there are also capital budget possibilities which he will explore and discuss with the Board of Managers in late December or early January. Mr. Evenson and Mr. Smith reviewed proposed revisions to the Wetland Conservation Act. The Board of Managers requested that Mr. Evenson, Mr. Smith and Mr. Carlson work with staff to prioritize and develop these initiatives further.

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ADJOURNMENT

There being no further business the meeting of the Board of Managers was adjourned at 9:45 p.m.

Respectively submitted,

Scott Thomas
Secretary