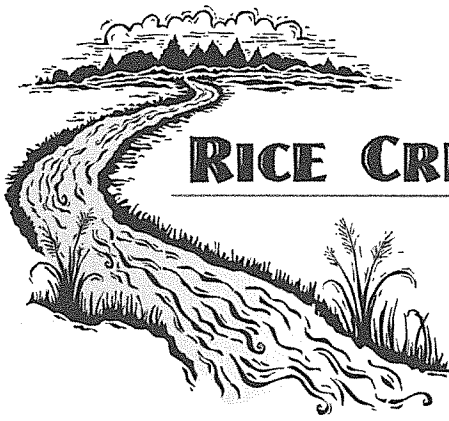


Approved



# RICE CREEK WATERSHED DISTRICT

4325 Pheasant Ridge Dr. NE #611 • Blaine, MN 55449-4539

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www.ricecreek.org

## REGULAR MEETING OF THE RCWD BOARD OF MANAGERS

Wednesday, May 22, 2013

Shoreview City Hall Council Chambers  
4600 North Victoria Street, Shoreview, Minnesota

### Minutes

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#### **ROLL CALL**

Present: President Patricia Preiner, 1<sup>st</sup> Vice-Pres. Barbara Haake, 2<sup>nd</sup> Vice-Pres. John Waller, Secretary Harley Ogata, and Treasurer Steve Wagamon.

Absent: None.

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Water Resource Specialist Kyle Axtell, Office Manager Theresa Stasica, Technician/Inspector Jordan Kudrna..

Consultants: District Engineers Mark Deutschman and Greg Bowles, Houston Engineering, Inc. (HEI); District Attorney Chuck Holtman from Smith Partners.

Visitors: None.

#### **CALL TO ORDER**

President Preiner called the meeting to order, a quorum being present, at 9:00 a.m.

#### **SETTING OF THE AGENDA**

District Administrator Belfiori added under consent permits 13-039, Garden Creek Park Playground Replacement.

Under items for discussion, add number 2 below presentation: Discussion on proposed variance fee, permit fee revisions, and rule guidance.

Under Items for Discussion, add number 3: Follow-up discussion on Rule Revision related to protecting phased development from rule changes.

Permit Coordinator/Wetland Specialist Tomczik stated there was another permit to be added: 13-046, The Mud Games.

***Motion by Manager Ogata, seconded by Manager Wagamon, to adopt the agenda as amended.***

***Motion carried 5-0.***

BOARD OF  
MANAGERS ➤

Barbara A. Haake  
Ramsey County

Steven P. Wagamon  
Anoka County

Harley M. Ogata  
Ramsey County

Patricia L. Preiner  
Anoka County

John J. Waller  
Washington County

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**READING OF THE MINUTES AND THEIR APPROVAL**

**Minutes of the May 6, 2013, Board of Managers Meeting Workshop Meeting.**

*Motion by Manager Wagamon, seconded by Manager Ogata, to approve the minutes as presented. Motion carried 5-0.*

**Minutes of the May 8, 2013, Board of Managers Regular Meeting.**

*Motion by Manager Wagamon, seconded by Manager Ogata, to approve the minutes as amended. Motion carried 5-0.*

**CONSENT AGENDA**

The following applications have been reviewed by the District Engineer and Staff and will be acted upon without discussion in accordance with the Engineer’s Recommendation unless a Manager or the Applicant or another interested person requests opportunity for discussion:

**Table of Contents**

**PERMIT APPLICATIONS REQUIRING BOARD ACTION**

<b>No.</b>	<b>Applicant</b>	<b>Location</b>	<b>Plan Type</b>	<b>Recommendation</b>
13-027	Cummins Power Generation	Fridley	Final Site Drainage	CAPROC 6 items
13-028	Roberts Management Groups, LLC	Arden Hills	Final Site Drainage	CAPROC 7 items
13-030	Kwik Trip	Blaine	Final Site Drainage	CAPROC 7 items
13-031	Trammell Crow Company	Roseville	Final Site Drainage	CAPROC 6 items

Manager Haake asked where this was located. District Engineer Greg Bowles responded the Midtown Business Center was located in Roseville at 2305 Walnut Street, which was north of where 35W and 280 came together. He noted this lot was part of a three-lot area that had been redeveloped where the buildings had been removed. He stated each lot had been developed separately after the demolition. He noted this was the last lot to be redeveloped, which comprised of almost 13 acres.

Manager Haake asked if the water went into Jones Lake. District Engineer Bowles responded that was correct.

Manager Haake asked if the water was going to be treated. District Engineer Bowles replied the water would be treated with the water eventually running to Jones Lake.

Manager Haake asked if there was more treatment on this proposed development than there was before the development. District Engineer Bowles replied that there was more water treatment with the new proposed development. He noted the rate of runoff was going to be reduced substantially from the 2 and 100 year than it was presently.

78 Manager Haake asked if Jones Lake was involved in the flooding area. District Engineer Bowles responded he did not recall,  
79 but he believed this eventually flowed into RCD-2.

80  
81 Manager Haake asked if the consequences downstream had been looked at. District Engineer Bowles replied they were  
82 going to reduce the 100-year storm by 80 percent.

83  
84 Manager Haake asked if the reduction was voluntary and what rule were they going by. District Engineer Deutschman  
85 responded the proposed rule currently proposed a reduction by 20 percent by the current rate of run-off and they were  
86 going from 80 to 12, which was an 80 percent reduction so they were going beyond the current rule.

87  
88 Manager Haake asked what the new rule was going to be. Engineer Bowles responded the new rule would be a 20 percent  
89 reduction in the proposed, so they would be at 80 percent of the existing, which was better than what they had today.

No.	Applicant	Location	Plan Type	Recommendation
90				
91	13-032 City of New Brighton	New Brighton	Street & Utility Construction	CAPROC 4 items
92				

93 Manager Haake stated this was going into Silver Lake and Silver Lake had a very impaired lake. She asked if this was being  
94 done under more stringent rules and what where they doing with holding the water. District Engineer Bowles responded  
95 this project was a public linear project, which involves utility construction. The drainage from the streets would be going  
96 to an existing pond already in place. The City was going to clean out the sediment in the pond and putting in an  
97 infiltration into the pond. The treatment would be 9,000 cubic feet. The run-off would be decreased.

No.	Applicant	Location	Plan Type	Recommendation
99				
100	13-039 White Bear Township	White Bear Township	Final Site Drainage	CAPROC 3 items
101				
102	13-046 Busy Body Promotions	Blaine	Bridge/Culvert Crossing Temporary	APPROVAL
103				
104				

105 Permit Coordinator/Wetland Specialist Tomczik stated permit 13-046 was unique in that it was a crossing of a ditch  
106 system and it had not been delegated to the administrator for approval.

107  
108 Water Resource Specialist Axtell stated since last fall the Metro Gun Club has been working on their Mud Games event  
109 with Busy Body Promotions. He stated the event was not triggering any permits, but obtaining access to the site for  
110 patrons there was not enough parking, so they were going to park at the CSM site and there would be a walking path to  
111 the Gun Club. In order to do this, they needed to put a bridge over the ditch on private Gun Club property to allow them  
112 to access the site. Technically, the private ditch was defined as a major watercourse, which triggered Rule G. To place the  
113 temporary bridge required a permit. He stated this would be a temporary timber bridge structure, which would be in  
114 place for approximately one week. He stated this structure would not have any impact on flood plain.

115  
116 Permit Coordinator/Wetland Specialist Tomczik stated this document was a working document until the Board approved  
117 it. He changed the Stipulation to read: "The temporary clear span timber bridge structure..."

118  
119 **Motion by Manager Ogata, seconded by Manager Wagamon, to approve the consent agenda as outlined in**  
120 **the above Table of Contents in accordance with RCWD staff and District Engineer's Findings and**  
121 **Recommendations, dated May 13, 14 17, &21, 2013. Motion carried 5-0.**

122  
123

124 **PERMIT APPLICATIONS REQUIRING BOARD ACTION**

125	No.	Applicant	Location	Plan Type	Recommendation
126	13-038	Freeway Mini Storage	Columbus	Final Site Drainage	CAPROC 5 items

127  
128

129 President Preiner stated this project was owned by her family so she would be stepping down and turned the meeting  
130 over to Manager Haake.

131  
132

132 Permit Coordinator/Wetland Specialist Tomczik stated this permit was ready for CAPROC approval with five items.

133  
134

134 Acting President Haake asked if this would be done under the current rules. Permit Coordinator/Wetland Specialist  
135 Tomczik responded that was correct.

136  
137

137 Acting President Haake inquired about the memory care unit going under the current rules. Permit Coordinator/Wetland  
138 Specialist Tomczik responded this was not uncommon to have these types of projects and this project had been reviewed  
139 and found to be consistent and he noted the current rules would apply.

140  
141

141 Acting President Haake asked if memory care would be under the current rules also. Manager Waller noted this permit fit  
142 under the current rules and were being adhered to, so he did not believe there was any reason to question this as it met all  
143 of the standards and rules in effect today and they were not going on any past-expired permits.

144  
145

145 Permit Coordinator/Wetland Specialist Tomczik stated that was correct. He acknowledged this was confusing so  
146 whenever the District staff brought forward a permit for approval there were probably going to be historic permits.

147  
148

148 ***Motion by Manager Waller, seconded by Manager Ogata, to approve CAPROC Permit 13-038. Motion***  
149 ***carried 4-0.***

150  
151

151 Acting President Haake handed the meeting over to President Preiner.

152  
153

153 **OPEN MIKE – LIMIT 12 MINUTES.** *Any RCWD resident may address the Board in his or her individual capacity, for up to*  
154 *three minutes, on any matter not on the agenda. Speakers are requested to come to the podium, state their name and address for the*  
155 *record. Additional comments may be solicited and accepted in writing. Generally, the Board of Managers will not take official action on*  
156 *items discussed at this time, but may refer the matter to staff for a future report or direct that the matter be scheduled on an upcoming*  
157 *agenda.*

158  
159

158 There were no comments made at Open Mike.

160  
161

160 **ITEMS REQUIRING BOARD ACTION**

161  
162

161 **1. Consider the City of Spring Lake Park’s Local Stormwater Management Plan (Kyle Axtell)**  
162 Water Resource Specialist Axtell explained in May 2009, the RCWD adopted Resolution 2009-20, approving the  
163 City’s Local Surface Water Management Plan. With the adoption of the District’s Third Generation Water  
164 Management Plan in June 2010, and the expansion of the Coon Creek Watershed District to cover portions of the  
165 former Six Cities WMO within the City more recently, the City was required to complete an additional update to  
166 its Plan to ensure compliance with the new Watershed Plans. He indicated the City submitted an updated Plan in  
167 April, 2013 for review. The Plan was largely similar to the 2009 plan and staff found the Plan was consistent with  
168 the District’s Watershed Management Plan and provided an exceptional description of the surface water  
169 regulatory framework within the City, including its relationship with the RCWD. He recommended the Board  
170 approve the Plan.

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Manager Haake expressed concern that they had not received the Met Council's comments. She asked what they were doing with the stormwater. She noted the water in Spring Lake had gone down after a development had gone in. Water Resource Specialist Axtell responded he did not have information on the particular site Manager Haake was referring to and could not make comment on that today. He noted this was not a document that would define or dictate specific practices on a private property, so he did not know if that would be a relevant issue on this particular plan.

Manager Haake stated the stormwater went somewhere and she wanted to know if it went into the lake and if it went in untreated. She asked if the District should be concerned about stormwater going into the lakes.

District Engineer Deutschman stated the Rice Creek updated its Water Management Plan, it was necessary for the Cities to also update their plans to be consistent with the plan and that is what this was. He stated the City was making their plan consistent with the RCWD plan and that was what Water Resource Specialist Axtell's review was.

Manager Haake stated they were not aware of what was going on in Spring Lake Park. Water Resource Specialist Axtell responded he did not review the specifics of a particular property.

Manager Ogata stated what was in front of them today was approval of the plan and he believed they should look at this as two different issues.

Manager Waller stated the RCWD plan was in 2010 and this was 2013 so if passed today saying it was consistent, it would be helpful. He believed as Manager Ogata said, how it affected a certain lake was a separate issue. He stated since 2010 the Board had discussed the issues of water going into lakes and they were moving in a direction to be more protective of the stormwater that ran into the lakes and the process of cleaning it. He believed new regulations, rules and procedures would be adopted when the next plan was brought forth and maybe Water Resource Specialist Axtell should bring back the Spring Lake Park plan to see if it really worked in Spring Lake Park to see what adjustments needed to be made.

Manager Haake stated people were concerned about their lakes and Spring Lake was constantly being neglected and she thought if they were approving this there would be answers to this question. She stated she would vote no because she did not know what was going on and she did not want her neighbors to think she was in favor of something that would be destroying her lake.

***Motion by Manager Ogata, seconded by Manager Waller, to approve Resolution 2013-13, Resolution to Approve Spring Lake Park Local Surface Water Management Plan.***

- ROLL CALL:**  
***Manager Waller – Aye***  
***Manager Haake – Nay***  
***Manager Ogata – Aye***  
***Manager Wagamon – Aye***  
***President Preiner – Aye***

***Motion carried 4-1, Manager Haake opposed.***

218 Manager Waller requested staff look at Spring Lake Park's Water Management Plan and also the RCWD Plan to  
219 see what changes were necessary or suggestions that would apply to start a discussion. Water Resource Specialist  
220 Axtell noted the review he did was almost precisely that type of a review.  
221

222 Manager Waller stated he was sure staff's review was thorough, but he wanted to make sure the RCWD's policies  
223 and Plan to see if the RCWD's policies were providing the protection Manager Haake was worried about, not just  
224 for Spring Lake Park, but for all of the lakes in the District.  
225

226 Manager Ogata stated Water Resource Specialist Axtell might not be the correct person for this type of review,  
227 but he would leave it up to District Administrator Belfiori.  
228

229 District Administrator Belfiori stated there were three lakes that he knew of that had similar issues and it was his  
230 understanding that the Board would begin a process of discovery through presentations and partnerships to start  
231 looking at things that would be done as a whole. If the Board wanted to have a more active role, the RCWD could  
232 revise the plan at that time. He stated these issues were more universal than what this Board wanted to do.  
233

234 Manager Haake stated the only issue was that it was retroactive.  
235

236 District Engineer Deutschman stated it appeared the issue was what the District was doing to manage its lake  
237 resources. He noted all lakes were categorized into four tiers, including the water quality. He stated in addition to  
238 classifying the lake, there were other things they did to address water quality including plans, goals, and objectives.  
239 He reminded the Board that they did have several programs focused on water quality. He stated there were also  
240 individual BMP cost share projects the District partners with to improve water quality. He stated there was a  
241 structure in the plan for all of the lakes to maintain or improve the quality of the lakes.  
242

243 **2. Consider Authorizing Public Notice for a Landowner Information Meeting and Public Hearing for**  
244 **ACD15/Anoka-Washington Judicial Ditch 4 Watershed Management District for maintenance (Phil Belfiori)**  
245 District Belfiori explained at the May 8 Board meeting, the District adopted a Resolution ordering implementation  
246 of water management district (WMD) charges for ongoing maintenance of Anoka County Ditch 15/Anoka  
247 Washington JD4 (ACD 15/JD4). Pursuant to this resolution and in an effort to expedite this process, staff was  
248 requesting the Board consider setting a date and giving notice for both the landowner information meeting and  
249 the public hearing related to the WMD preliminary charge analysis for ongoing maintenance of ACD 15/JD4.  
250

251 ***Motion by Manager Waller, seconded by Manager Haake, to have staff schedule the landowner information***  
252 ***meeting for the WMD preliminary Charge Analysis for ongoing maintenance of ACD 15/JD4 on June 12, 2013***  
253 ***at the RCWD Regular Board meeting. Furthermore, Manager Waller moves that staff schedule the public***  
254 ***hearing on the WMD preliminary Charge Analysis for ongoing maintenance of ACD 15/JD4 on June 26, 2013***  
255 ***at the RCWD regular Board meeting and give notice by publication and to all residents in the drainage***  
256 ***systems in accordance with the District's noticing requirements for District projects and the process described***  
257 ***above.***  
258

259 Manager Ogata inquired as to what type of notice would be given. District Administrator Belfiori responded a  
260 postcard mailing to individual landowners would be going out as well as publication in the District's official legal  
261 newspaper and Pioneer Press, local newspapers, cities/counties and road authorities within the drainage system.  
262

263 ***Motion carried 5-0.***  
264

265 3. Consider Check Register dated 5/22/2013, in the amount of \$274,464.96, prepared by HLB Tautges  
266 Redpath.

267  
268 *Motion by Manager Wagamon, seconded by Manager Ogata, to approve check register dated May 22, 2013, in*  
269 *the amount of \$274,464.96, prepared by HLB Tautges Redpath. Motion carried 5-0.*  
270

271 **ITEMS FOR DISCUSSION AND INFORMATION**

272 1. **Presentation – Lake Study in the Northeast Quadrant of the Twin Cities Area (Jake Duppong)**

273 Mr. Duppong gave a presentation on the Lake Study in the Northeast quadrant of the Twin Cities Area.

274  
275 The Board of Managers asked Mr. Duppong questions regarding his presentation and the Board and Manager  
276 Waller thanked him and Professor Barnes for the information.

277  
278 2. **Discussion on proposed variance fee, permit fee revisions and rule guidance**

279 Permit Coordinator/Wetland Specialist Tomczik presented the proposed fee schedules. He asked the Board if they  
280 wanted to leave the fee as it was or if they wanted to adjust it for inflation.

281  
282 It was the Board’s consensus to proceed forward with the proposed fee schedule in column 1 with an additional  
283 ten to twenty percent inflation and pull out the variance fee.

284  
285 With respect to the surety requirements it was the Board’s consensus to have staff do additional research and  
286 bring this back to the workshop.

287  
288 3. **Follow-up discussion on Rule Revision related to protecting phased development from rule changes**

289 District Administrator Belfiori referenced a memorandum distributed by the District attorney and thanked the  
290 District attorney for his work and willingness to jump on this quickly in putting some things together. He stated  
291 this was a follow-up from the May 6 workshop discussion. He asked if the Managers wanted a chance to read  
292 through the memo.

293  
294 Manager Waller asked what did staff want done.

295  
296 Permit Coordinator/Wetland Specialist Tomczik stated they were seeking some general direction on which way  
297 the Board wanted staff to address in the proposed rule with the idea of “grandparenting” development on parcels  
298 where an area development plan already had been permitted, or phased development on one parcel. He noted  
299 the Managers did have quite a bit of discussion at the Board workshop. He stated one item that came up was  
300 how often this occurred. He stated for 2012 and 2013 the permits that came before the Board, it was  
301 approximately 12 times this came up as well as 2 that came on the agenda today that dealt with this type of issue.  
302 One of which was the Kwik Trip application as well as Freeway Mini storage application. He noted both of these  
303 had previous permits with the District where some BMP was put in place to address the project and to move  
304 forward. He stated it was not cut and dried because there were a variety of issues happening between the new  
305 rule and old rule. He indicated one of the ways this comes up is in sequencing. He noted the current rule requires  
306 infiltration and if the prior rule did not use infiltration, staff had the obligation to ask applicant to put that into  
307 place where it was possible. He stated this was important because of the volume constrained system and the  
308 District trying to reduce the volumes and reduce or assist in alleviating problems. The other issue in the rule was  
309 to look for maintenance of the facility. He indicated historically, there did not have to be a maintenance  
310 obligation that was recorded on the property, but in the current rules that was now an obligation. He stated one  
311 of the ways they have seen this was when they had a couple of occurrences where applicants have built BMP’s for

312 intended future projects. One was Valentine Park where the City needed to put in the playground and were  
313 ready to put in their park, but the City knew they had future road construction that drained to this area, but were  
314 not ready to do the road work yet. He stated in this case, the District allowed for the BMP to be built and it has  
315 volume or treatment above or beyond what was necessary to be done for the park, so there was an agreement  
316 with the District that at a future date the City could use that. The distinguishing point was that they recognized  
317 the BMP and the volume or treatment that it had, but if the standard changes before the road work is done, the  
318 road work can use the capacity but will need to meet the new standard. Another example was the Centerville  
319 downtown redevelopment for the use of LaMotte Pond. He stated both agreements recognized the BMP's for use  
320 in response for the regulation that existed for some specific date. He stated it did not say what that future  
321 regulation might be, but it allowed the Board to change things. Part of the question was how important was it to  
322 use infiltration as part of the regulation. Currently, both rules say infiltrate if you can. He stated the District  
323 Attorney came up with some language which covered that.

324  
325 District Attorney Holtman stated the memorandum did not go out until last evening, so some of the Managers  
326 might not have gotten it until this morning. He asked if the Board wanted to have him go through the points of  
327 his memorandum.

328  
329 Permit Coordinator/Wetland Specialist Tomczik stated he believed it was important to bring this back to the June  
330 workshop for further discussion, but when the Board adopts the final rule remains open.

331  
332 President Preiner recommended taking each item point by point and coming up with a consensus today.

333  
334 Manager Wagamon stated he wanted to read the memorandum in depth so he was not prepared to come up  
335 with a consensus at this time. Manager Haake agreed.

336  
337 District Attorney Holtman stated he had not used the term "grandparenting," but he tried to be specific about  
338 what the language would accomplish. He stated what staff took out of the workshop discussion was that the  
339 Managers wanted to address the situation where there has been an area development permit where the District  
340 had issued a permit that involved regional stormwater infrastructure that had been put into place in anticipation  
341 of individual parcels of that defined area later developing and using those facilities for their stormwater needs. He  
342 stated two things that would not be covered by the policy. The first is residential developments. The reason was  
343 because there was already language in the rule that accommodated residential developments. He stated the  
344 residential piece worked well and they assumed the Board did not want to change it. The other one was that it  
345 would not apply to phased development on a single parcel. He noted that was a more simple issue and controlled  
346 by the landowner. Under the present rule, when a landowner proposes a phased development, the landowner  
347 can ask for an extended permit term or the landowner could seek renewals of the permit. In addition, what the  
348 District did informally was that if that infrastructure was in place on the property, it was not banked formally, but  
349 if the landowner came back and said this was built 8 years ago and there was still capacity that the landowner  
350 could use that capacity to meet the present requirements, then the District would accept it.

351  
352 President Preiner stated this was exactly what her point was. She indicated a development that was preplanned  
353 in phases and it was the exact footprint that was what she was alluding to was that the landowner should have  
354 the right to use the permit.

355  
356 Manager Ogata asked if President Preiner was including only permit holders who had active permits. President  
357 Preiner responded if the landowner completed the stormwater management infrastructure, but not the buildings,  
358 why should the stormwater facilities not be able to be used.

359

360 Manager Ogata asked even if the permit expired and the landowner came in for a new permit should that apply  
361 for the new permit. President Preiner responded yes, that was what she wanted because the landowner already  
362 did all of the work and the landowner could only do a project to a certain point.  
363

364 Manager Ogata stated it was his understanding this was for people who had an active permit and were extending  
365 the permit out.  
366

367 District Engineer Deutschman stated in practice they did it now provided the BMP's were properly sized to the  
368 standard at the time and the current standard. What was different here was if you used an example of rate  
369 control if they come in later and could demonstrate the facility is properly sized and meets the current standard  
370 for rate control, they could use that.  
371

372 President Preiner asked what if the standards were changed. District Engineer Deutschman responded what was  
373 different here was that they had multiple standards and the one that changed the most was the volume control.  
374

375 Manager Waller stated he sympathized with what President Preiner said. He stated, however, that the drainage  
376 system was built to provide a certain drainage capacity but landowners subsequently are deprived of the full use  
377 of that capacity. He noted that new laws came along and they were imposed on the drainage infrastructure.  
378 Theoretically, the drainage volume and efficiency was protected under state law as a property right, but wetland  
379 rules came in and they changed it. Then rules for wildlife protection came in and they changed it. This had an  
380 impact on everyone. His latest impact personally was a loss of a yearling heifer last weekend due to the loss of the  
381 stormwater infrastructure volume that was theoretically there, but it was not there because the rules had  
382 changed in the RCWD. RCWD even changed it to the point that they do it by private contract and not rule  
383 change, such as in JD2. He stated even the Corps gave him approval, so the question here was do these new rules  
384 supersede existing prior investment and stormwater management infrastructure that was intended to support  
385 development of existing parcels.  
386

387 President Preiner stated if they just looked at this everything was built by standard.  
388

389 Manager Waller stated it was the same thing with the ag business and if they were going to allow them to use JD2  
390 to the full capacity as it was supposed to be, he agreed with it, but that didn't happen. On JD2 he had acreage  
391 now underwater because he did not have the capacity of that infrastructure that was intended to support the  
392 development of a specific parcel and he paid a specific tax for it. He stated he didn't like it, but apparently it was  
393 not illegal.  
394

395 Manager Wagamon stated that was why he wanted to look through this before they got started as they will be  
396 here until midnight reviewing it.  
397

398 President Preiner believed the Managers understood what she was trying to say and they needed to provide for  
399 people who had followed the rules.  
400

401 Permit Coordinator/Wetland Specialist Tomczik stated in President Preiner's situation he recognized she built a  
402 BMP and it was intended to serve the entire site under the rule at that time. He stated they were obligated to  
403 apply the current rule and require the infiltration feature. In President Preiner's situation the soil conditions did  
404 not allow her to infiltrate and so she immediately moved through the sequencing requirement. He recognized  
405 the project was put through a process that he was understanding her to say should not have occurred. What he  
406 was hearing was that there was a process in place to extend a permit but that the District may or may not have  
407 provided notice of permit expiration.

408  
409 President Preiner stated she did not believe she had received notice as she would have responded immediately.  
410  
411 Permit Coordinator/Wetland Specialist Tomczik stated currently with the advances with Houston Engineering  
412 and their systems, they had a database that told them when things would expire and notices were sent out, so  
413 going forward the second bullet would serve them well.  
414  
415 President Preiner stated she was speaking about people who had sat still for 8-10 years.  
416  
417 District Attorney Holtman stated he believed the rationale that was being offered may apply equally to the  
418 situation she was talking about in a single parcel and he believed the difference was that their general sense was  
419 the different mechanisms already exist with a single parcel to get to a level of protection that she was referring to.  
420 If the board wants these mechanisms to be stronger or differently stated, it can make that practical judgment. He  
421 stated he might have created confusion by focusing on that exclusion first. He suggested that he describe the  
422 overall proposed language and then once the Board concurred in or refined the language, there would just be the  
423 additional question as to whether this should apply to both multiple parcel developments, as well as single parcel  
424 developments. He stated there was one distinction that he wanted to make clear was that basically what the  
425 Board is discussing is a situation where if stormwater infrastructure has been put in place in the past and then  
426 new development is proposed that was slated to use that infrastructure, the new development does not need to  
427 comply with the rules in effect. That is different from what is proposed in the drafted memorandum language.  
428 In the drafted language, the new development is subject to the rules in effect at the time that it's approved, but to  
429 the extent that there are regional facilities that allocated capacity for that new development, that capacity would  
430 be allowed to be used first. So, if a new development occurred in a time when the rules require abstraction or  
431 infiltration on site, but there was a regional facility that was planned for it, there would be an exception to the on-  
432 site requirement and make sure they use the regional facilities first. The investment on the regional facilities was  
433 not frustrated, but if the rule has since changed so there was something more needed the landowner would go  
434 beyond that and address what remained in the rule.  
435  
436 President Preiner stated once the facility was done and completed, there was nowhere else to go, and if they were  
437 using the same footprint and were not changing anything, then there should be no hold up at all as far as  
438 completing the project. She stated regional facilities were things of the future and not now.  
439  
440 District Attorney Holtman stated that as regards Memory Care, it was their understanding that Memory Care's  
441 engineer came forward and represented that they could do some onsite infiltration consistent with the footprint  
442 they planned to develop, and if that should not be the case, it then would be a usual variance situation.  
443  
444 Manager Waller stated he did not see where this was not a change and he did not know if it was necessary as this  
445 allowed for the opportunity for more staff and consultant time to be burned up and he believed this was an  
446 unnecessary regulation unless they were going to start to provide capacity for the ditches.  
447  
448 Manager Haake stated with existing capacity as the land developed they might have to increase that capacity, but  
449 in particular cases they still had variances. She said that when the District issues new rules, that is because the  
450 Board has decided that there has been a change in what is needed at this time. She stated the MS4's would say  
451 the water had to stay on the land where it fell and so it had to stay within the developed land.  
452  
453 Manager Ogata asked if this language addresses President Preiner's concern and whether it would cover the  
454 situation with her business. President Preiner responded that was correct, but emphasized that her permit

455 amendment already has been processed under the existing rules. She is just raising the issue based on her own  
456 observations resulting in part from her experience.

457  
458 Manager Ogata stated the language would limit the consideration given to a ten year period. President Preiner  
459 stated ten years was a reasonable time period.

460  
461 Manager Ogata stated he was concerned this was too broad. He stated that someone with an expired permit  
462 who comes for another permit should be treated the same as someone coming in for a new permit.

463  
464 President Preiner stated she did not have a problem with this if it was a new project, but if a landowner was just  
465 completing a project already permitted, that to her was the difference.

466  
467 Manager Ogata stated it seemed to him that if there was no active permit and you have someone come in, the  
468 only difference was that somebody had done something in advance of requesting the permit.

469  
470 Manager Haake pointed out with cities if you had it a permit to build a garage and you got a permit and because  
471 of some circumstances the garage was not built, but you came back five years later and said that you want it, but  
472 now there was a new rule, then the landowner had to comply with the new rules. She concurred that someone  
473 cannot be grandfathered in on a permit that was expired and the applicant needed to apply for a variance.

474  
475 President Preiner stated in her situation, the site was done and there were vehicles on the building pad instead of  
476 a building.

477  
478 Manager Waller stated that once a permit is done, it is done.

479  
480 Manager Haake stated she understood what President Preiner was saying. She acknowledges President Preiner  
481 had the parcel, she had the pads that were laid out, and at the time when she did it, this was all of the impervious  
482 surfaces. Now where President Preiner wanted to put buildings, she had the pads, so it was the very same  
483 impervious surface and drainage that she had, but now there were new rules in effect.

484  
485 President Preiner stated she knew there were other people out there that had the same issue and with the  
486 economy and in all fairness, she believed the District needed to address this.

487  
488 District Attorney Holtman stated when an applicant has come in under a single permit and engaged in the land  
489 disturbance that triggers the district's permit and stormwater management requirements, and has completed all  
490 of that work, then there is a basis to not have the further activity, later, trigger new rule requirements. He stated  
491 that if the activity triggering the District's permitting requirements reaches into this phase, then that might be  
492 the problem. The other end of the spectrum that raises a concern is where a city built a pond in the late 1970's  
493 and now there are projects coming forward wanting to make use of the pond. The District doesn't want a policy  
494 that says the new development now gets evaluated under the rules that were in place when the pond was built.  
495 The proposed text says that they can use the pond, but they still need to meet the present rules, which means  
496 they may need to do more.

497  
498 Manager Waller stated this really concerns redevelopment.

499  
500 President Preiner stated she did not see this as addressed solely to redevelopment, but rather a continuation of a  
501 plan previously proposed and permitted.

502

503 Manager Ogata stated that a time limitation such as the 10-year limitation in the proposed text would address  
504 Attorney Holtman's concern. Attorney Holtman concurred.  
505

506 District Engineer Deutschman stated when he looked at what the District was doing standards are changed over  
507 time and they were proposing a new standard. He stated the standards were changed for a reason and therefore  
508 when the District changes its rules, it has an interest in the new rules being applied. He said the Managers needed  
509 to think about what was a reasonable amount of time where the old standards did not apply and in this case it  
510 was being recommended to be ten years.  
511

512 Manager Ogata stated the way he read this was that on area development permits, assuming those were included,  
513 and multiple/single parcel or phased development – on area development permits they had a specific rule that  
514 states that the old rules would apply regardless of what would happen for ten years. Unless there was something  
515 in the permit specifically providing otherwise.  
516

517 District Attorney Holtman stated that under the proposed text, what the area development permit would have  
518 to say is here is the area of development encompassed within the permit, here is the capacity of the facilities, here  
519 are the development assumptions for the parcels that form the basis on how the stormwater facilities were  
520 designed, so that there is something in the record documenting this parcel would get this much capacity. He said  
521 that this could be applied to phased development on a single parcel as well. He emphasized that the present text  
522 does not provide that the future development will be protected against intervening rule changes, but only that  
523 any rule changes will not deprive the development of its ability to use the capacity allocated to it in the previously  
524 built infrastructure.  
525

526 Manager Ogata stated he believed this level of documentation in the permit is less likely on a single parcel.  
527

528 District Attorney Holtman stated he presumes the intent of the policy is to cover a situation where an owner has  
529 a specific intent for phased development at the start.  
530

531 Manager Ogata stated one of the original reasons for bringing this up was factors outside of the control of the  
532 person and for economic reasons, the whole project could not be developed and wanted to come back to it and  
533 find that they had different rules. He stated that the new intent might not match the original plans.  
534

535 Manager Ogata stated if they assumed they did enact this change in the rule and they included phased  
536 developments on a single parcel, would that require another rulemaking notice and comment period. District  
537 Attorney Holtman replied he would be comfortable doing it in the current rulemaking as he believes it is an  
538 administrative aspect concerning how the District defines and administers the permit term. He noted Manager  
539 Waller referred to subsection b. He noted subsection a stated the general concept and refined it with exceptions.  
540 He stated subsection b is one of those exceptions. He stated the intent of subsection bis to retain the District's  
541 authority in the event new information is discovered that would make it problematic to have the facilities used  
542 for a future development, such as the discovery of contamination in the vicinity of an infiltration basin. He stated  
543 Manager Waller is correct that as soon as an exemption is created, it creates the risk of the exception swallowing  
544 the rule and also undermines the level of expectations that a property owner gets from the policy. He pointed to  
545 the language proposed to mitigate this, requiring that the information be newly discovered, that the concern be  
546 material and that the District have to make specific findings. He stated if they did not have this and if there was a  
547 situation where the District had a liability risk, it would have to deviate from the rule and take the consequences.  
548

549 Manager Ogata stated he was sympathetic to the problem and the fairness issue and in reading over the rule as  
550 drafted, he believed it limited the applicability to at least an amount he could live with. It provided an opt-out

551 and it was limited to a ten year period. He stated the way he would agree to this was as long as there is language  
552 in subdivision c requiring an explicit statement in the permit that the carry-forward will apply, that there would  
553 be no language on single parcels, but single parcels would be added to subdivision a. He stated it also is important  
554 that the owner of the property would have the burden of showing that his situation qualifies for the rule  
555 exception.

556  
557 Manager Haake stated the ten years would be the time that a person could still go under the rules that had been  
558 put in ten years ago.

559  
560 Manager Ogata stated he understood this would apply to permits that were issued within the ten year previous  
561 period for only these particular circumstances.

562  
563 Manager Haake stated sometimes a single parcel could be 20 acres. Manager Ogata stated a single parcel could  
564 also be 100 acres, but this was dealing with a limited circumstance of already constructed infrastructure on a  
565 project which they met the rules at that time and now 9.9 years later they want to continue with the project as  
566 long as they met the criteria under the old rules were met and under this limited circumstance he was willing to  
567 agree.

568  
569 Manager Haake stated that with cities, if anything changed with the particular footprint and it isn't exactly like  
570 the previous permit, then the applicant would not be allowed to proceed under those old rules, they would have  
571 to go with the new rules.

572 Manager Ogata responded an applicant had to actually have constructed the facilities in accordance with the  
573 permit issued at the time, and if there was a change, then this would not apply.

574  
575 Manager Haake stated they were also adding subdivision c, so in this case this would not apply to a situation such  
576 as President Preiner's, because she did not do a regional facility.

577  
578 Manager Ogata stated he was adding language to paragraph a(i). which would read this: the District has issued a  
579 permit to construct stormwater management facilities to serve identified multiple parcels within an area  
580 development "or a phased development on a single parcel". He stated subdivision c would only apply to a permit  
581 issued to an area development and not to a single parcel.

582  
583 District Engineer Deutschman stated from a staff level he asked the Managers to think about in doing this staff  
584 would be carrying multiple rules forward in making judgments. The other thing was the District could end up in a  
585 situation where in applying its rules it would affect other rules in place at the time such as the Wetland  
586 Conservation Act. In that case, the District would defer to the existing state rule in place at the time. He stated  
587 there might be a situation where they were applying a rule retroactively that had changed over time with some  
588 state rule. Under that circumstance, they would need to point out to the applicant that while they met the  
589 District's rules, there were state rules they had to comply with also.

590  
591 Manager Haake stated there are new rules coming out that are beyond the District rules.

592  
593 President Preiner stated the applicant would have to do this anyway.

594  
595 Manager Waller stated he would not support the rule change because he did not think it was equitable to  
596 everyone. He felt it was not equitable because there was much expense that had been put into the drainage  
597 infrastructure and the drainage systems had been limited in their capacity and that was going to continue and if  
598 one community has to abide by new rules, resulting in greater water retention on their properties, then this

599 needed to be applied equitably across the board to everyone. He stated he did not like it and he empathized with  
600 the situation, but this was true with what happened in the ag communities and he did not think making  
601 exceptions would be equitable. Manager Haake agreed with Manager Waller.  
602

603 Manager Ogata stated he believed staff had an idea about the majority of the Board members.  
604

605 District Attorney Holtman stated he was hearing that they should continue to refine this based on the discussion,  
606 but at this point there might be some Board members who do not want to adopt the language. With respect to  
607 single parcels and phased development, he believes the best way to structure the majority intention is through an  
608 extended permit period.  
609

610 Manager Waller stated the other issue that came up was that ownership changed hands and some of the  
611 properties might have been owned by the bank so the notice had to be sent to the bank and then the bank will  
612 write back and say they would like to proceed and need to renew the permit. He stated right now they had 18  
613 month notices twice and now they needed to say maybe this was 18 months three or four times, or maybe the 18  
614 month permit needed to be extended.  
615

616 Manager Ogata asked if extending the 18 month permit term would address the issue. District Attorney Holtman  
617 responded if work was approved under a permit and the permit is in effect or has been extended, then the work  
618 could be completed under the terms of that permit and would not be affected by rule changes.  
619

620 Manager Waller stated the problem was when the permit expired and it did not exist any more and then this was  
621 a new deal on the table. Manager Haake agreed. She stated with number 2 maybe they could allow the permit to  
622 be renewed a certain number of times, but if there was a new change or rules, then they had to meet the rules.  
623

624 Manager Waller stated if the permit expires then they have to meet the new rules as this is a new permit.  
625

626 Manager Haake stated if they allowed the renewal, but if they had a change in rules, the applicant needed to be  
627 informed ahead of time of the proposed rule change and if they did not complete their existing permit, then the  
628 applicant had to get a new permit to meet the new rules.  
629

630 Manager Waller stated if the permit was extended it was the same permit and it did not expire and the same rules  
631 were in effect. The problem was if the permit expired and new rules came into effect. He stated this was the issue  
632 with the ag community and the ditch cleaning.  
633

634 District Attorney Holtman stated the intent of saying the permit would expire in "X" years is to avoid the  
635 administrative issues that staff experiences presently with renewals. He noted that staff does provide notice of  
636 pending permit expiration. However, that is not a legal duty of the District but rather a convenience for the  
637 benefit of the permittee, and if notice did not get to the permittee that did not keep the permit from expiring  
638 according to its terms. As an administrative manner, they could do more with noticing, but he did not want this  
639 to be a legal requirement.  
640

641 Manager Ogata stated in extending the length of a permit, that meant that they had to extend the length of all  
642 permits and he was not sure he was in favor of extending all permits. He stated they could use this only on  
643 phased or area developments.  
644

645 Manager Waller stated he wanted this to be left alone. Manager Haake agreed.  
646

647 Manager Ogata stated he was trying to limit the scope of this to very limited circumstances.

648  
649 Manager Waller stated this was called a variance. Manager Haake agreed.

650  
651 District Administrator Belfiori stated he would put this discussion back on the June 10 workshop for further  
652 discussion.

653  
654 **4. Staff Reports**

655 There were no comments.

656  
657 **5. June Calendar**

658 There were no comments.

659  
660 **6. Manager's Update**

661 President Preiner stated Anoka County Commissioner Rhonda Sivarajah attended the City of Lino Lakes Council  
662 meeting where the District was asking for concurrence for ACD 53-62 WMD and she was very impressed with the  
663 District and its work.

664  
665 **ADJOURNMENT**

666 *Motion by Manager Haake, seconded by Manager Wagamon, to adjourn the meeting at 11:53 a.m. Motion carried 5-*  
667 *0.*

668