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**REGULAR MEETING OF THE RCWD BOARD OF MANAGERS**

Wednesday, July 12, 2017

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

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**Approved Minutes**

**CALL TO ORDER**

1<sup>st</sup> Vice-President Barbara Haake called the meeting to order, a quorum being present, at 9:00 a.m.

7

**ROLL CALL**

Present: 1<sup>st</sup> Vice-Pres. Barbara Haake, 2<sup>nd</sup> Vice-Pres. John Waller, Treasurer Steven Wagamon, and Secretary Michael Bradley.

11

Absent: President Patricia Preiner (with prior notice).

13

Staff Present: Administrator Phil Belfiori, Permit Coordinator/Wetland Specialist Nick Tomczik, Technician Samantha Berger, Office Manager Theresa Stasica.

16

Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); and, District Attorney Chuck Holtman from Smith Partners.

19

Visitors: None.

21

**SETTING OF THE AGENDA**

*Motion by Manager Wagamon, seconded by Manager Bradley, to adopt the agenda as presented. Motion carried 4-0.*

25

**READING OF THE MINUTES AND THEIR APPROVAL**

Minutes of the June 28, 2017 Board of Managers Meeting. *Motion by Manager Wagamon, seconded by Manager Bradley to approve the minutes as presented. Motion carried 4-0.*

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30

31 **CONSENT AGENDA**

32 The following items will be acted upon without discussion in accordance with the staff  
33 recommendation and associated documentation unless a Manager or another interested  
34 person requests opportunity for discussion:

35 **Table of Contents**

36 **Permit Applications Requiring Board Action**

37 17-037 I-35's Business Park, LLC Columbus Final Site Drainage CAPROC 12 items

38 *CAPROC= Conditional Approval Pending Receipt of Changes*

39  
40 Permit Coordinator/Wetland Specialist Tomczik stated there was a correction to the Engineer's  
41 Report Findings item #6, strike out the last sentence "An acceptable drainage easement was  
42 previously recorded on the property."

43  
44 ***Motion by Manager Wagamon, seconded by Manager Bradley, to approve the consent***  
45 ***agenda as outlined above for permit 17-037 in the above Table of Contents with staff***  
46 ***recommended change in accordance with RCWD District Engineer's Findings and***  
47 ***Recommendations, dated July 5, 2017. Motion carried 4-0.***

48  
49 **OPEN MIKE – LIMIT 12 MINUTES.** *Any RCWD resident may address the Board in his or her*  
50 *individual capacity, for up to three minutes, on any matter not on the agenda. Speakers are*  
51 *requested to come to the podium, state their name and address for the record. Additional*  
52 *comments may be solicited and accepted in writing. Generally, the Board of Managers will not*  
53 *take official action on items discussed at this time, but may refer the matter to staff for a future*  
54 *report or direct that the matter be scheduled on an upcoming agenda.*

55 No comments.

56  
57 Administrator Belfiori requested delay of item #1 until District Technician Berger arrived. The  
58 Board agreed.

59

60 **ADDITIONAL ITEMS REQUIRING BOARD ACTION**

61 **2. Consider Permit Delegation to District Administrator.**

62 Permit Coordinator/Wetland Specialist Tomczik stated this item is in relation to Rule G,  
63 specific to dealing with drainage and to address some of the urgency they see from  
64 applicants regarding culvert replacement.

65  
66 ***Motion by Manager Bradley, seconded by Manager Wagamon, to approve Resolution***  
67 ***2017-17: Delegating Permitting Authority For Culvert Replacement.***

68

69

70 **THEREFORE BE IT RESOLVED** that the Board of Managers hereby delegates to the  
71 Administrator, with the advice of the District engineer, the authority to make permit  
72 decisions on applications under District Rules G and I to replace a culvert or similar  
73 structure within a surface water conveyance system, in accordance with the following  
74 terms:

- 75 • Culvert inlet and outlet elevations, and hydraulic capacity, must be equal or  
76 materially equivalent to those of the structure being replaced;
- 77 • For replacements within a public drainage system, if an existing elevation differs  
78 from an as-constructed-and-subsequently-improved-condition (ACSIC) as adopted  
79 by the Board, the culvert or similar structure must be replaced to conform to the  
80 ACSIC.
- 81 • If the structure to be replaced is of an obsolete dimension, the next-largest hydraulic  
82 equivalent is to be used.

83  
84 **BE IT FURTHER RESOLVED** that the delegation does not apply if a variance is required,  
85 and that the Administrator may decide that the application should be brought before  
86 the Board if it raises a technical, policy or legal question that the Board should consider.

87  
88 Permit Coordinator/Wetland Specialist Tomczik stated this delegation does not provide  
89 for 48-hour prior notice to the Board as does the existing, more general delegation of  
90 permitting authority to the Administrator. The rationale for that is the urgency with  
91 which some of these activities have to take place so the language is not present in the  
92 motion.

93  
94 **ROLL CALL:**

95 ***Manager Waller – Aye***

96 ***Manager Haake – Aye***

97 ***Manager Bradley – Aye***

98 ***Manager Wagamon – Aye***

99 ***President Preiner – Absent***

100  
101 ***Motion carried 4-0.***

- 102  
103 **1. Consider RCWD Water Quality Grant Application R17-05 Cindy Petrie, Raingarden.**  
104 District Technician Berger stated the proposed raingarden is located on the north side of  
105 a residential property in Roseville. Current conditions are a mowed turf grass lawn and  
106 swale along the property line that terminates at a catch basin leading directly into the  
107 storm sewer system. The catch basin serves to gather water from a watershed  
108 consisting of 8 total homes, creating a situation where a lot of stormwater runoff from  
109 the surrounding residential properties is entering the storm sewer system untreated.

110  
111 District Technician Berger stated the proposed project is to remove the existing turf  
112 grass and install a raingarden and native planted swale. The raingarden and swale will

113 serve to create a natural pollinator habitat through the use of native flowing plants  
114 along with the ability to capture and infiltrate the water that currently flows directing  
115 into the storm sewer. This will help to remove pollutants and filter sediment. In  
116 addition, the project is located in a known volume constrained area, thus holding water  
117 on the landscape is always desirable.

118  
119 District Technician Berger reviewed the proposed project with the Board.

120  
121 District Technician Berger stated it is recommended that this project be awarded cost  
122 share in the amount of \$5,290.11 or 50% of the eligible project costs, whichever is less.

123  
124 Manager Haake asked if there is already a depression where rain is running to. District  
125 Technician Berger stated there is an existing swale. She showed on the map where the  
126 swale is located. She stated what the District will be doing is adding a little more pond  
127 capacity so it is not running straight through into the catch basin, and there will be more  
128 time for the water to settle.

129  
130 Manager Haake asked if there is anything written in regard to the approval of the  
131 residents. She understands they approved this verbally. District Technician Berger  
132 noted this will be located on one individual landowner's property so staff will be  
133 working with that landowner on this project.

134  
135 ***Motion by Manager Bradley, seconded by Manager Waller, to approve RCWD Water***  
136 ***Quality Grant Program Contract R17-05 for the Petrie's rain garden project, up to***  
137 ***\$5,290.11 and not to exceed 50% of eligible project expenses, in accordance with***  
138 ***established program guidelines. Motion carried 4-0***

139  
140 **3. Consider Motion Related to Use of Volume Bank Credits.**

141 Permit Coordinator/Wetland Specialist Tomczik stated at the July 10<sup>th</sup> Board workshop,  
142 there was discussion on road authorities' use of prior-banked volume control credits for  
143 non-linear projects and addressing volume control debits under Rule C.6(g).

144  
145 Permit Coordinator/Wetland Specialist Tomczik stated that Rule C.6(g) requires  
146 interpretation, and staff recommends the Board approve allowing volume bank credits  
147 to be utilized for non-public linear projects.

148  
149 Permit Coordinator/Wetland Specialist Tomczik reviewed the recommendation with the  
150 Board. He also noted there was a letter from Roseville initiating the issue and within the  
151 letter it had a comment about the District Attorney's position on the issue which was  
152 not quite right and he asked District Attorney Holtman to comment on what Smith  
153 Partners' position is on it.

154

155 District Attorney Holtman stated the letter indicated that counsel determined that the  
156 District should apply Rule C.6(g) to allow existing credits to be used for non-linear  
157 projects. He thought it would be useful for the record to be clear how staff's  
158 recommendation was derived and it was not derived from his giving a directive as to the  
159 interpretation.

160  
161 District Attorney Holtman stated there is a standard way that they approach these types  
162 of interpretive questions that come up when staff is applying the rules. The first step is,  
163 do the rules clearly address the question explicitly and if they do then there is no  
164 interpretation of the rules, they are just applied. If that is not the case and there is  
165 some ambiguity then the next step is, does the District have an established practice of  
166 how the rule is applied and if so, then it continues to follow that practice unless there is  
167 a good reason to change it, and that reason can be articulated. If there is no such  
168 established practice, then they get to the realm where it is a matter for interpretation  
169 by the District and that is where they came to for this particular question. In this  
170 situation, it is not the attorney's role to tell staff or the Board what the interpretation  
171 should be; it becomes a policy question to look at their rule and the purposes of their  
172 rule and broader purposes, to give a reasonable reading to the rule in question, and  
173 then to apply it consistently after that.

174  
175 District Attorney Holtman stated there was discussion at a staff level of the pros and  
176 cons and brought before the Board as recommended position and was discussed at the  
177 Board Workshop.

178  
179 District Attorney Holtman added that there is a fair amount of this type of interpretive  
180 activity that staff undertakes in the day to day course of applying the rules, so there is a  
181 second element, which is what is the relationship between staff and the Board as  
182 regards establishing interpretations of rule provisions. With some frequency, staff  
183 establishes interpretations as to matters that either are technical or do not have great  
184 policy consequences, and typically the Board does not hear about these. Other  
185 interpretations will be brought to the Board for concurrence. Finally, some  
186 interpretations are significant enough that they are brought to the Board in the form of  
187 a Resolution for approval.

188  
189 Manager Haake asked if a variance is similar to this. District Attorney Holtman stated it  
190 is different than a variance because a variance is a case where the rule clearly states the  
191 applicant has to do item A and the applicant indicates it can't do A and would like to do  
192 B. With a variance, the Board is looking at it on a case by case basis and there are  
193 unique circumstances justifying departing from the rules. This is different because they  
194 are not departing from the rule, they are saying the rule has some gaps and they are  
195 taking the opportunity to fill them in. When the next project comes that is in a similar  
196 situation they would have the same treatment as with this one.

197

198 ***Motion by Manager Waller, seconded by Manager Bradley, to approve administration***  
199 ***of volume banked credits and debits through the use of non-public linear projects.***

200  
201 Manager Waller stated this is a reaction to the cities requesting this and it looks like  
202 something has come about to change the rules and they have many cities in appearance  
203 and interest in this so they are reacting and making this adjustment for the benefit of  
204 those that have debits and credits. He noted the cities have asked for the rule changes  
205 also. He thought the District was being proactive.

206  
207 ***Motion carried 4-0.***

208  
209 **4. Consider Letters of Appreciation to Legislators.**

210 District Administrator Belfiori presented draft handwritten letters to the legislators who  
211 sponsored the legislation to correct watershed-based wetland conservation act  
212 implementation and also to Les Lemm at BWSR who assisted in moving the legislation.

213  
214 District Administrator Belfiori stated that now that the legislation has passed, it is  
215 appropriate to send a formal thank you letter. He noted a thank you letter was also  
216 prepared for the sponsors of the CLFLWD/RCWD special legislation transferring the  
217 drainage authority for Washington Judicial Ditch 6.

218  
219 ***Motion by Manager Waller, seconded by Manager Wagamon, to approve the thank***  
220 ***you letters for the legislation to correct watershed-based wetland conservation act***  
221 ***implementation and the thank you letters for the CLFLWD/ RCWD special legislation***  
222 ***and to authorize President Preiner to sign those thank you letters.***

223  
224 Manager Bradley requested a correction to the WCA letter, 2<sup>nd</sup> paragraph, “taxpayers”  
225 is one word.

226  
227 ***Manager Waller and Wagamon accepted the friendly amendment.***

228  
229 ***Motion carried 4-0.***

230  
231 **5. Consider Check Register dated July 12, 2017, in the amount of \$220,781.27, prepared**  
232 **by Redpath and Company.**

233 ***Motion by Manager Wagamon, seconded by Manager Waller, to approve check***  
234 ***register dated July 12, 2017, in the amount of \$220,781.27, prepared by Redpath and***  
235 ***Company. Motion carried 4-0.***

236  
237 **ITEMS FOR DISCUSSION AND INFORMATION**

238 **1. District Engineer’s Report and Timeline.**

239 District Engineer Otterness reviewed the table with the Board and answered questions  
240 regarding remaining budgets that are at a deficit.

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**2. Managers Update.**

Manager Waller stated he attended the Halls Marsh landowner information meeting in Mahtomedi and it was well attended. Manager Waller stated there were questions about any kind of District grant money available to re-establish the shore land. He stated there were also questions about cleaning the sediment out of the pond and he was invited to a future citizens’ meeting about this. He thought most of the questions were answered and he invited all of them to participate in helping to write the District’s ten-year Watershed Management Plan. He thought it was important for people to realize that government is a mechanism to file their complaints and that is what makes a democracy work.

Manager Haake stated she had a discussion regarding purchasing equipment to clean out ditches and in the process of doing so she thought they would have a tour to see how the machine operates. Manager Waller thought what is more important to be done prior to any purchase of machines or decisions is that the operating manual needs to be written for how to proceed in the maintenance of these areas. Manager Bradley stated he agreed that they need to have an understanding of how to keep their ditches clean.

Manager Bradley stated he received a voicemail and email from Merrill Busch on behalf of Minnesota Commercial Railway and requested clarification.

District Administrator Belfiori stated in regard to the Ditch Maintenance program, the District has a robust ditch maintenance program and received a BWSR grant a few years ago to create a public drainage maintenance database. The District also has created a digital GIS system that allows anyone in the world to access with a click of the button and get history, locations, and elevations.

District Administrator Belfiori stated staff did talk to Mr. Busch, representative for the Minnesota Commercial Railway, about its bridge over Rice Creek that requires structural repair or replacement. Mr. Busch first asked about any potential RCWD partnership. Staff explained that the RCWD does have a competitive urban storm water cost share program and shared the website link with Mr. Busch to learn more about the program guidelines, potential eligibility, and financial caps. Mr. Busch then asked about the RCWD permitting program. Staff suggested, given the timing concerns voiced by Mr. Busch, that he schedule a “permitting preapplication meeting” with regulatory staff to learn more about the District’s permitting requirements and to become more aware of District technical assistance that may be available.

Manager Waller asked for more information regarding Mr. Busch and the railroad company because he was not sure what was being discussed. Manager Bradley stated he received a voicemail from Merrill Busch from Busch and Associates and he represents

284 Minnesota Commercial Railway. District Attorney Holtman stated Minnesota  
285 Commercial Railway sued the District in 2003/2004 claiming the increase in  
286 development upstream and the District's upstream sediment basin together caused  
287 scouring around their railroad bridge over Rice Creek. The case was litigated and the  
288 District Court dismissed the railroad's claim. The railroad appealed to the State Court of  
289 Appeals which affirmed the District Court decision. The District prevailed in that lawsuit  
290 and to his knowledge that was the last they heard from the railroad as to the bridge. He  
291 added that the litigation produced a history showing structural maintenance on the  
292 bridge going back many decades before the development and the District's basin  
293 installation.

294  
295 District Administrator Belfiori stated staff is scheduling a pre-application meeting with  
296 Mr. Busch in the next week or two and will update the Board.

297  
298 District Engineer Otterness informed the Board the bridge they are talking about is just  
299 upstream of Long Lake in New Brighton.

300

301

302 **ADJOURNMENT**

303 ***Motion by Manager Waller, seconded by Manager Wagamon, to adjourn the meeting at 9:48***

304 ***a.m. Motion carried 4-0.***

305