



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## Minutes of Regular Meeting

### Board of Managers

Wednesday, November 18, 2020

Carver County Government Center, 602 East 4th Street, Chaska, MN 7:00 p.m.

Approved December 16, 2020

#### 1. CALL TO ORDER AND ROLL CALL

On Wednesday, November 18, 2020, at 7:00 PM, President Hartmann called to order the meeting of the Board of Managers of the Lower Minnesota River Watershed District (LMRWD). The meeting was convened on-line due to the health emergency created by the COVID-19 pandemic.

President Hartmann asked for roll call to be taken. The following Managers were present: Manager Adam Frey, President Jesse Hartmann, Manager Dave Raby, and Manager Lauren Salvato. In addition, the following joined the meeting: Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; Della Schall Young, and Katy Thompson, Young Environmental Consulting Group, LLC (YECG), Technical Consultant; John Kolb, Rinke Noonan, Attorneys at Law, Legal Counsel; Lindsey Albright, Dakota County Soil & Water Conservation District; Steve Pany, Manager, Prior Lake Spring Lake Watershed District; Earth Evans and Nic Hentges, WSB; Kristin Asher, Public Works Director, City of Richfield; Brandon Goldberg, GreenbergFarrow; and Steven Soltau, Southbridge Crossings.

#### 2. APPROVAL OF THE AGENDA

Administrator Loomis said she had no additions or changes to the agenda. She recommended that Item 6. I. be moved forward on the agenda, before New Business as several people have joined the meeting specifically for those Items.

**Manager Raby made a motion to approve the Agenda with the corrections he noted. The motion was seconded by President Hartmann. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

#### 3. CITIZEN FORUM

Administrator Loomis said that she did not receive communication from anyone who wished to address the Board.

#### 4. CONSENT AGENDA

President Hartmann introduced the item.

##### A. Approve Minutes October 21, 2020 Regular Meeting

##### B. Receive and file October 2020 Financial reports

##### C. Approval of Invoices for payment

- i. Daniel Hron - September & October 2020 office rent
- ii. Rinke Noonan, Attorneys at Law - August 2020 legal services

- iii. **Star Tribune - Publication public hearing notice for levy certification**
- iv. **US Bank Equipment Finance - October 2020 payment on copier lease**
- v. **Friends of the MN River Valley - Support of River Watch program**
- vi. **Western National Insurance Company - Annual casualty insurance premium**
- vii. **HDR Engineering, Inc. - website maintenance**
- viii. **TimeSaver Off Site Secretarial - Preparation of August 2020 meeting minutes**
- ix. **Young Environmental Consulting Group - For August 2020 technical services**

**D. Receive and File letter from Friends of the Minnesota Valley**

**President Hartmann made a motion to approve the Consent Agenda noting that the motion is approving the September meeting minutes and financial reports. The motion was seconded by Manager Frey. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

**5. NEW BUSINESS**

**A. MAWD Annual Conference**

Administrator Loomis said this conference will be virtual this year. She said the business meeting is scheduled for Friday morning. She asked that the Board designate delegates to the Conference. President Hartmann clarified that the delegates need to be on the Board. Manager Salvato asked about the time commitment since it occurs during the work day. Administrator Loomis answered that the business meeting is Friday morning and is scheduled to be done at noon. She clarified that delegates need to register for the Conference in order to attend the business meeting. She noted that all sessions will be archived for those registered to view afterwards.

Administrator Loomis reported on the resolution the LMRWD had submitted. She noted that she had heard from Lisa Frenette that some MAWD Board members support the LMRWD. She noted that the LMRWD should have someone attend the meeting to support the resolution.

The board said they will check their schedules. Manager Salvato said she could possibly attend the meeting. Manager Raby said he could attend if Manager Salvato were unable to attend.

**President Hartmann made a motion to have Manager Salvato represent both delegate votes and/or Manager Raby represent both delegate votes to the MAWD Annual Conference. If they both attend, they each have one of the delegate votes and will only pay for one.**

Attorney Kolb suggested that the Board appoint delegates and that they give each the proxy of the other, in case only one delegate can attend. That way the District would have its authorized number of votes.

**The motion was so amended. The amended motion was seconded by Manager Salvato. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

**Manager Raby made a motion to support the resolutions consistent with the recommendations of the MAWD Resolutions Committee. The motion was seconded by Manager Salvato. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

**B. City of Burnsville - Trail Improvement Project**

Administrator Loomis said a message was sent to cities on the south side of the MN River asking them to provide recommendations of projects that might qualify for Watershed Based funding. She said she received a response from the City of Burnsville which identified a project to raise a

section of trail that connects to the river crossing at I35E, out of the floodplain. She noted the city indicated they will receive federal funds for the project.

President Hartmann asked about the timing of the project. Administrator Loomis said the feasibility study has been completed. The construction is planned for 2024 but could be moved forward if funding becomes available.

Manager Salvato asked if this project could be used a good outreach opportunity. She thought this would be a good project for education and awareness. Administrator Loomis said they could put up signage. If they partner on this project they could look for other ways to bring attention to the District.

Manager Raby asked about the funding. Administrator Loomis said she Had not discussed that with the city.

The board agreed they are interested in the project and would like to see the costs and directed staff to start discussing.

The board took a short recess.

## 6. OLD BUSINESS

### A. Cost Share Application - S. Mueller, 10745 Lyndale Bluffs Trail

No new information to report since last update.

### B. City of Carver Levee

No new information to report since last update.

### C. Remote meeting participation

No new information to report since last update.

### D. Dredge Management

#### i. Vernon Avenue Dredge Material Management site

Administrator Loomis said she has a slideshow of the improvements to the dredge site and showed the pictures. She explained that they have not received an invoice from the contractor and would like the Board to authorize payment subject to review of the invoice by staff.

**Manager Raby made a motion to approve the dredge site subject to staff review of the invoice. The motion was seconded by President Hartmann. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

#### ii. Private Dredge Material Placement

No new information to report since last update.

### E. Watershed Management Plan

Administrator Loomis said they are working with the cities to get Municipal permits approved.

### F. 2020 Legislative Action

Administrator Loomis said there is no action. She noted that she had been contacted by the lobbyist for Scott County, Claire Robling, about looking at how to keep a full board. Managers Raby asked if the Board should bring a petition. Administrator Loomis said it is her understanding that petitions are generated by the Counties. She reminded the Board that she had reached out to Scott County Commissioner Michael Beard about convening a meeting of County Commissioners to look at how to keep a full complement of Managers on the Board. The board talked about how to keep the board full and discussed Dakota County specifically.

Manager Raby asked about sending a mailing to Dakota County residents. Administrator Loomis said a mailing had been prepared and addresses had been obtained. Manager Raby said the mailing should be sent. Other Managers agreed.

**G. Education and Outreach Plan**

Administrator Loomis said the video looks good and will be premiered at the MAWD Conference. The District will send out a press release right after the video premieres.

**H. LMRWD Projects**

***(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)***

**i. Eden Prairie Study Area #3**

Administrator Loomis said an RFP is being worked on. Della Young, technical consultant for the District, asked for clarification on a couple items. Ms. Thompson provided an overview of what has been done so far. She noted it has been a long time since the original studies were done and the initial recommendations are 10 years old and new data and technologies are available. She noted the goal is to have the draft complete so the Board can consider approval at the December Board meeting. She asked, what is the intent of the RFQ? IS the Board looking to obtain the best design at the lowest cost or do they want to have the proposed alternatives evaluated? How involved does the Board want to be?

The proposal is laid out in phases, so there is opportunity for the Board to participate in several ways. Board members can be involved if they choose on a selection panel and meetings. She opened for discussion.

Manager Raby said he is less concerned with the design approach; he is more concerned with the cost and capabilities. Will this be a two step process with an RFQ (Request for Qualifications) and an RFP (Request for Proposals). Ms. Thompson noted that depends on the feedback from the board. She envisions technical proposals will come in where the teams technical qualifications are presented with a cost proposal in a separate document for the costs. Manager Raby affirmed that it is really a one step process request for proposals where the qualifications are within the proposal.

Manager Salvato asked Ms. Thompson thoughts about the design; are the technologies that much better that a new design would save the District money on the actual construction? Ms. Thompson said that was a question she had for the Board about their goals for the RFP. As an engineer, taking someone else's design there is always a level of review that you want to do, to make sure that it's valid and that you are comfortable signing and stamping those plans. So she would recommend that they at least review the conceptual design. But there may be other options that a fresh set of eyes may consider. She doesn't think that there needs to be a full blown analysis. Manager Raby said they have studied this a lot don't need to go down that road of alternatives analysis.

Ms. Young said she believes they have the information they were looking for. In December the Board will get a schedule and can decide how much they want to be involved.

**I. Project/Plan Reviews**

***(only projects that require Board action will appear on the agenda. Informational updates will appear on the Administrator Report)***

**i. 77th Street Underpass**

Katy Thompson, Young Environmental Consulting Group presented this project to the Board. She noted the project has received funding and is moving to construction. The design of the project has changed since the LMRWD approved the project in 2018. The main changes to the design were the removal of two storage ponds. The ponds were removed due to increased right-of-way costs. The project, as currently designed, does not meet LMRWD standards for rule D. She recommended that the Board consult legal counsel regarding the options for Board action.

President Hartmann asked what a storage vault is. Ms. Thompson explained a storage vault would hold water during a rain event, but it does not treat the stormwater.

Manager Salvato asked about the difference in the design between the original design and the current design. Ms. Thompson explained the original design include dry ponds that would receive stormwater for treatment before being released to the storm sewer system. Those ponds have been removed from the current design.

Manager Raby asked why staff is asking to seek legal counsel instead of denying the permit if it is different from what was proposed and doesn't meet the District's requirements. Ms. Thompson said the applicant is requesting a variance from the LMRWD standards.

Earth Evans, WSB, a consultant for the project explained that the ponds in the original design did not provide treatment they were only in the design for storage. The original design did not provide treatment either. Ms. Evans noted there are nine (9) bridges in the project area and limited right-of-way which limit the area to place treatment. She said ground water proximity to the surface makes additional limitations for treatment options. So a number of constraints exist which is the reason for the variance request. Manager Raby asked if cost was a constraint. Ms. Evans said that cost is a constraint and that it is a major factor.

Kristin Asher, Public Works Director, City of Richfield, said they have been working on this project together since the 1990's. She said this is the final project in a string of projects along I-494. She said that they was an informal agreement with the Metropolitan Airport Commission (MAC) to acquire that land for the ponds. She said that the land can no longer be acquired at a cost that makes sense for the project. She noted that this project is a MNDOT project and is part of the larger I-494 project and that storm water treatment/management will be taken into consideration under that project.

Manager Raby asked if he is right to understand that MNDOT will treat this water? He asked if the District has been able to review whatever studies/plans MNDOT has that would confirm this.

Ms. Young said it is important to note that when the LMRWD originally learned of this project, the District was told it was in a Drinking Water Sensitivity Management Area (DWSMA). She noted the District allows different requirements in DWSMAs and that was why the original design was approved. No evidence was provided confirming the project was in the DWSMA and the LMRWD subsequently discovered the project area is no in a DWSMA.

Ms. Young said MNDOT has not given the LMRWD any indication that treatment of stormwater from this project would be incorporated into the I-494 Corridor of Commerce project. She stated the LMRWD needs MNDOT to provide something in writing saying they will incorporate this into its project. Manager Salvato asked if MNDOT did include treatment of stormwater from this project into the Corridor of Commerce project would it still need a variance?

Attorney Kolb responded. He first asked questions of the applicant. Was the MAC property in question acquired with federal funds? If so that would make it federally obligated property. This would determine the cost of acquisition of the property where the ponds would be sited. If not, the FAA would not have any jurisdiction over the sale of the property.

He asked Ms. Thompson if the LMRWD Rule D has a water quality standard; yes. Does Rule D have a rate and volume standard; yes. Does the project meet the rate requirement and not the volume requirement; correct. He asked the applicant if there is nothing they can do to meet the water quality and volume requirement. Ms. Asher said that they are treating water but not in the LMRWD portion of the District. Ms. Evans said that is accurate, there is nothing of substance they can do. Attorney Kolb asked if there are opportunities outside the boundaries of this project but elsewhere in the LMRWD watershed to provide treatment. Ms. Evans said they did not look outside the project area.

Attorney Kolb stated that because the applicant cannot meet the rules the District would need to grant a variance to permit the project. He walked the Board through variance standards of rule A. He is happy to coach the Board through the variance process and support whatever decision the Board wants to make, but he feels there are some critical items of information the Board should know before making a decision.

President Hartmann asked about the question about federally purchased land. Attorney Kolb explained.

Ms. Evans asked if a variance would still be required if MNDOT were to provide documentation that stormwater from this project area would be addressed with its project.

Attorney Kolb said it would depend on what the commitment was, how binding it was and the timing within which it would occur. It might be that the timing to meet the requirement of the rule would be out of sequence and the LMRWD could make that a condition of the permit. Manager Raby asked if that meant there would be no need for a variance. Attorney Kolb said that is correct, it would be a permit condition. He followed up that the documentation would need to be clear agreement and commitment by MNDOT.

Attorney Kolb asked about the timeline. Ms. Asher said they intend to advertise the project in February or March.

Manager Raby said he doesn't know how they can move forward without getting the information from MNDOT. The Board agreed.

The board asked what action should to be taken. Attorney Kolb suggested the item be tabled until the information provided. The applicant asked for clarification about what MNDOT would need to commit to. There was discussion on the volume and the

infiltration. Ms. Thompson said she has the standards that need to be met and can provide that information to the applicant. She also reminded the applicant that the standard required to be met with the original design assumed the project was located in a DWSMA and the standards now acknowledge that the project is not within a DWSMA.

There was some discussion about the value of the MAC property.

Everyone clarified their understanding of what to do next.

**Manager Raby made a motion to table the discussion on further information is received from the permittee. The motion was seconded by Manager Salvato. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

Attorney Kolb noted that the Board is required to take action within 60 days of the receipt of a complete permit. The completed application was received on October 21st. Attorney Kolb suggested sending a letter to the applicant extending the District's period to 120 days.

Manager Salvato asked about previous variances. Attorney Kolb explained that the LMRWD has never gone through a permitting process until the adoption of its most recent plan. When the LMRWD adopted rules, it was hoped that the municipalities would adopt official controls consistent the LMRWD's performance standards and would manage the variance process. That has not happened as quickly as the District had hoped, so there is no precedent or example of how a variance has been done before, which is one of the reasons your engineering consultants suggested that your legal counsel be on hand to talk to the Board about it.

President Hartmann thanked Earth and Kristin for their time.

**ii. Amend LMRWD Permit 2020-123**

Administrator Loomis explained that this project came before the Board in September for a permit to demolish structures on the site. The applicant is now looking to prepare the site and begin construction of the footings and foundation. Staff determined it is appropriate to amend the existing permit. Ms. Thompson said they have reviewed the project and are recommending approval. She noted that this project is in the City of Shakopee and the City has plans for a stormwater treatment project that will benefit this property. The City's project is slightly behind the private development. The applicant should continue to work with the City on the regional stormwater treatment. They need to have a permit from the District before the City will allow work to begin.

**Manager Raby made a motion to amend the permit subject to stormwater BMPs meeting the LMRWD requirements. The motion was seconded by President Hartmann. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

**iii. Texas Roadhouse**

Administrator Loomis said this request is for a sit-down restaurant in the City of Shakopee. She noted staff has reviewed the project and is recommending approval. Ms. Thompson walked the Board through the project.

**Manager Raby made a motion to approve a permit for the Texas Roadhouse. The motion was seconded by Manager Salvato. Upon a vote being taken the following voted**

**in favor of the motion: Frey, Hartmann, Raby and Salvato; the following voted against: None.**

**J. MPCA Soil Reference Values - no change since last update**

**7. COMMUNICATIONS**

**A. Administrator Report:** Administrator Loomis asked the Board about their intent to participate with the One Watershed One Plan for planning area 56. Holly Kalbus who is heading up that initiative asked if the LMRWD wanted to be involved on the policy committee if the Planning area does not include any of the LMRWD. She informed Ms. Kalbus that she believed the Board wanted to be included regardless of the final determination of the boundaries of the planning area. The Board said that is correct.

She had nothing additional to report other than what was contained in the report posted on line.

**B. Managers:** No Report

**C. Committees:** No report

**D. Legal Counsel:** No report

**E. Engineer:** No report

**8. ADJOURN**

**At 8:52pm, President Hartmann made a motion to adjourn the meeting. Manager Raby seconded the motion. Upon a vote being taken the following voted in favor of the motion: Frey, Hartmann and Raby the following voted against: None.**

**The next meeting of the LMRWD Board of Managers will be 7:00, Wednesday, December 16, 2020 and will be held at the Carver County Government Center, 602 East 4th Street, Chaska, MN. Electronic access will also be available.**

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Lauren Salvato, Secretary

Attest:

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Linda Loomis, Administrator