



Item 4A
LMRWD 12-20-17

Minutes of Regular Meeting
Board of Managers
Wednesday October 25, 2017
County Board Room, Carver County Government Center, 7:00 p.m.
Approved December 20, 2017

1. CALL TO ORDER AND ROLL CALL

On Wednesday, October 25, 2017, at 7:00 PM in the Board Room of the Carver County Government Center, Chaska, Minnesota, President Shirk called to order the meeting of the Board of Managers of the Lower Minnesota River Watershed District (LMRWD) and asked for roll call to be taken. The following Managers were present: President Yvonne Shirk, and Managers Jesse Hartmann. In addition, the following were also present: Della Schall Young, Young Environmental Consulting Group, LLC, LMRWD Technical Advisor; John Kolb, Rinke Noonan, Legal Counsel and Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator. The following members of the public were also in attendance: The Honorable Gene Winstead, Mayor of the city of Bloomington; Glen Markegard, City of Bloomington; Bryan Gruidl, City of Bloomington; Steve Christopher, Board of Water & Soil Resources; Nora Beall; Kevin & Laura Bluml; Lindsey Albright, Dakota County SWCD; Todd Johnson, Liane Laurian; Gregg Porter; Ron Nelson; Tom & Vicki Roberts; Greg & Jan Jones; Duane Saunders; Janet & Larry Butler; Tim Marpe; Craig Diederichs; Micah Heckman, city of Shakopee; Mark Norton; Virginia Amiot; Bev & Jack Miles; Daniel Miller; Bob & Teresa VanCleave; Steve Dalsin; Bob Borgerding; Dave Modrow, city of Eden Prairie; Dave & Sharon Shervey; Stacy Harwell, WSB & Associates; Michael Brown; Brian Dueber; Ferin Davis; Marina Weddington; Al & Dawn Noard; Adam Buenz; Tom Moehn; Rod Rue, city of Eden Prairie; Curt Bardal; Chris Penwell, Siegel Brill; Christi Duffy; Douglas Bartyzal; Cheryl Norton; Mike Gilliland; Jennifer Bader

2. APPROVAL OF THE AGENDA

Administrator Loomis requested removal of Item 4. A. - Approval of September 20, 2017 Regular Meeting and the addition of New Business Item 6. A. - Receive and File Letter and Resolution from the city Eden Prairie.

Manager Hartmann made a motion to approve the agenda as amended. The motion was seconded by President Shirk. The motion carried unanimously.

3. CITIZEN FORUM

There were no citizens who wished to address the board.

4. CONSENT AGENDA

The Consent Agenda included the following items:

~~A. Approval of Minutes for September 20, 2017 Regular Meeting~~

- B. Approval of Financial Reports**
- C. Presentation of Invoices for payment**
 - i. **Culligan Bottled Water - July & August water for Chaska office**
 - ii. **Manager Hartmann - for 1st quarter 2017 per diem, mileage & expenses**
 - iii. **Rinke Noonan - for July & August 2017 legal services**
 - iv. **Waypoint Insurance Advisors - for Director's & Officer's Insurance**
 - v. **Burns & McDonnell - for July 2017 engineering services**
 - vi. **Steinkraus Development LLC - for October office rent**
 - vii. **US Bank Equipment Finance - October 2017 copier lease payment**
 - viii. **Western National Insurance - for general liability insurance**
 - ix. **Star Tribune - for legal notice of 2018 Budget Hearing**
 - x. **Time Saver Off Site Secretarial- for preparation of August 2017 meeting minutes**
 - xi. **Carver County- for 3rd quarter 2017 accounting & financial services**
 - xii. **Naiad Consulting - for June & July 2017 administrative services**
- D. MOA with Carver County WMO**
- E. Approval of Mendota Heights Surface Water Management Plan**
- F. Plan Amendment change order with Burns & MacDonnell**

President Shirk made a motion to approve the consent agenda as amended. The motion was seconded by Manager Hartmann. The motion carried unanimously.

5. PUBLIC HEARING

A. Public Hearing for Major Watershed Management Plan Amendment

President Shirk read a prepared statement regarding the order of proceedings for the public hearing.

Administrator Loomis provided background information on the establishment of the watershed district. Five counties petitioned the Minnesota Water Resources Board (now the Board of Water and Soil Resources) in order to provide a local sponsor for the US Army Corps of Engineers maintenance of the navigation channel in the Minnesota River. The District was established in 1960. She explained the purpose of the District.

Administrator Loomis explained the history and purpose of the Watershed Management Plan. She stated the 2011 plan was amended in 2014 and a clarification to the plan was issued in 2016. She explained the process used for preparing the Draft Plan Amendment, including meetings of the Technical Advisory Committee (TAC) and meetings with individual cities. The Board of Water and Soil Resources (BWSR) was petitioned regarding the Major Plan Amendment July 5, 2017. Municipalities, counties, the TAC and others were notified July 15, 2017. The deadline for the 60-day comment period was set as September 1, 2017. Because of the delay in notification, the comment period was extended to September 20th. The legal notice for the hearing this evening was published in the Star Tribune newspaper on Sunday, October 15 and 22 and posted on the LMRWD website.

Legal Counsel Kolb talked about the statutes for watershed districts. He said the legal authority for the Watershed Management Plan is found in MN Statutes Chapters 103b, particularly 231 & 235. A public hearing must be held on the draft plan and all the comments are forwarded to BWSR as part of the Plan approval process.

Ms. Young provided a summary of the plan amendment process. The process started in 2016 and went in to early this year. TAC meetings were held and there were individual meetings with a number of cities. She explained that during the Plan Clarification the LMRWD conducted in 2016, the TAC recommended the LMRWD consider updating its plan to align more closely with

the cities requirement to update their local water management plans. The Plan focuses on the mission of the LMRWD.

The first part of the Plan Amendment process was review of municipal and District standards. The district acknowledged there were some gaps in management of sensitive resources; resources that the plan refers to as high value resources and the bluff areas. To address the gaps the District proposed changes to the existing erosion control standard, the stormwater management standard, the water appropriation standard and the bluff standard. The erosion control, stormwater and water appropriation standards are directly related to the high value resources; fens and trout waters.

She showed four overlay districts that were created within the watershed district to protect the high value resources. Ms. Young said the first area is for Seminary fen and unnamed trout streams. The next area is adjacent to Savage fen, Eagle creek and some unnamed trout streams. The next area is Black Dog fen, Black Dog Lake, Nichols Fen and a series of unnamed trout streams. She noted there are multiple names for these resources. The last area is Gun Club Lake and Quarry Island fen. These are the four areas where it is proposed to put special standards in place. She then explained the proposed standards for the High Value Resource Areas and triggers for imposition of the proposed standards.

Ms. Young then proceeded to explain the proposed changes to the standards for bluff areas. The definition of bluff would be modified to include steep slopes that are prone to failure and erosion. Steep slopes would change from 30% to 18%; 30% is the existing definition. The new standard would not be tied to shoreland and the setback for structures will increase from 30 feet to 40 feet.

Ms. Young said then showed a series of maps showing current areas protected by the standards in the District's 2011 Plan and the differences with the proposed standards. The shapefiles for these maps will be made available to the municipalities and put on the LMRWD website along with the presentation. She pointed out the lighter areas are already under the district bluff standards. President Shirk asked if the maps being shown reflected the current standard. Ms. Young clarified that yes that is correct.

Ms. Young said based on these maps, the number of properties affected by the current standards, which was approved in 2011, 30% slope and 30-foot setback, would include: 511 homes in Bloomington, 226 in Burnsville, 121 in Carver, 54 in Chanhassen, 33 in Chaska, 141 in Eden Prairie, 37 in Eagan, 5 in Fort Snelling, 1 in Lilydale, 15 in Mendota, 16 in Mendota Heights, Metropolitan Airport Commission 1, 109 in Savage and 88 in Shakopee. The number of parcels was pulled from the county records for Hennepin Carver Dakota and Scot to determine the number of properties being impacted.

Ms. Young explained the 30% map was developed using information created by the DNR to map public waters for the state buffer requirements. Ms. Young showed maps showing the additional impact of 18% slopes as well as the 30% slope. Lastly, she showed maps with the 30% slopes, the 18% slopes and the 40 foot setback. The changes to the standards being proposed would impact the total number of properties as follows: in Bloomington, 676 total properties, for a net change of 164; in Burnsville, 363 properties for a net change of 77; in Carver, 159 for a net change of 38; in Chanhassen, 61 for a net change of 11; in Chaska, 84 for a net change of 51; in Eden Prairie, 229 for a net change of 84, in Eagan, 49 for a net change of 12; Fort Snelling, 5 for no change; in Lilydale 1 for no change; in Mendota, 16 for a net change of 1; in Mendota Heights, 16 for no change; Metropolitan Airport Commission 1 for no change; in Savage, 239 for a net change of 130 and in Shakopee 199 for a net change of 111.

Ms. Young said in August and September, before the close of the comment period, staff met with the cities of Eden Prairie and Bloomington. In October, draft comments were released. Staff met again with the city of Bloomington and with the Scott WMO and today we are holding the public hearing. In the future, between now and April 2018 staff will be working on finalizing the draft and preparing the Statement of Need and Reasonableness (SONAR) document. The SONAR is not something that is normally completed as part of the Plan amendment process, but is something the TAC and municipalities requested. The Plan on its own presents the issues and the remedies for the standards that are proposed.

During this time the Plan will be updated to address the comments and make the modifications that are approved. The Plan will be released in April for the 90-day draft final plan process.

President Shirk asked the Board if there were any questions. She then noted there are 7 individuals who have requested to speak. The Board took a 5-minute recess to allow for others to sign up to speak.

President Shirk opened the public hearing. She noted that officials from the cities of Bloomington and Eden Prairie wished to speak and since they might answer some questions others may have she planned to allow them to speak first.

[The actual comments from those giving testimony are contained in a separate document that will become part of the comments for the Plan Amendment and are attached to the minutes as Appendix A]

The following people addressed the Board:

- Mayor Gene Winstead, City of Bloomington
- Glen Markegard, Planning Manager, City of Bloomington
- Dave Modrow, Water Resource Engineer, City of Eden Prairie
- Nora Beall, 2915 Overlook Drive, Bloomington
- Todd Johnson, 10020 Dell Road, Eden Prairie
- Greg Porter, 11601 Palmer Road, Bloomington
- Ron Nelson, 163 Spring Valley Drive, Bloomington
- Tom Roberts, 11015 Bell Oaks Estate Road, Eden Prairie
- Duane Saunders, 9901 Riverview Road, Eden Prairie
- Micah Heckman, Graduate Engineer, City of Shakopee
- Daniel Miller, 1875 Meadow View Road, Bloomington
- David Shervy, 1901 Meadow View Road, Bloomington
- Adam Buenz, 10100 Eden Prairie Road, Eden Prairie
- Tom Moehn, 5025 Overlook Circle, Bloomington
- Chris Penwell, Siegel Brill, Suite 1300, 100 Washington Avenue South, Minneapolis
- Laura Bluml, 10540 West Riverview Drive, Eden Prairie
- Roger Peters, 3061 Overlook Drive, Bloomington
- Steve Peterson, 11036 Glen Wilding Way, Bloomington
- Doug Bartyzal, 11012 Glen Wilding Lane, Bloomington

President Shirk asked if anyone else wanted to speak. Seeing and hearing no one, President Shirk suspended the public hearing for the evening.

Manager Hartmann made a motion to recess the public hearing to a date, time and location to be determined and re-noticed pursuant to statute; that staff coordinate with local communities to provide additional informational meetings for residents at which district staff

can explain the proposed amendments and answer questions; also that staff at a minimum coordinate local informational meetings in the cities of Bloomington and Eden Prairie, and that staff work with the local communities to provide notice of the informational meetings by local publication, community bulletin board postings website postings and email if possible, in addition to that I would like that staff hold another meeting with the TAC (Technical Advisory Committee).

President Shirk assured the audience that the managers would carefully consider the testimony before the plan amendment is acted upon.

Administrator Loomis said staff will work with the cities to arrange for the informational meetings and put together a plan.

President Shirk asked about time constraints. Administrator Loomis said there are only three managers and the constraint is to get information pulled together in time for the January meeting, before Manager Raby leaves for the winter.

Attorney Kolb informed the Managers that LMRWD staff has met with the Board of Water & Soil Resources Board Conservationist and the Metro District Manager, who encouraged the District to take as much time as necessary to get the proper input and the proper information out into the public's hands before moving forward. So really, that constraint is only the District's: it is not imposed by on the District by rule, statute or otherwise.

The motion was seconded by President Shirk. The motion carried unanimously.

Manager Hartmann pointed out that there are two open positions on the board; one for Carver County and one for Hennepin County. He encouraged members of the audience to consider applying for one of the vacant positions. President Shirk said the audience could also consider applying to be on the Citizen Advisory Committee.

President Shirk called for a short recess before proceeding with the remainder of the meeting.

President Shirk proposed addressing only the action items on the agenda and tabling the other items to next month's meeting.

6. NEW BUSINESS/PRESENTATIONS

A. Receive and file Letter and Resolution from the city Eden Prairie

Administrator Loomis said the District received the letter and resolution. Staff is requesting that the Managers authorize staff to prepare a response and mail the response to the cities.

Manager Hartmann made a motion to receive, file and respond. The motion was seconded by President Shirk. The motion carried unanimously.

7. OLD BUSINESS

A. MAWD

Administrator Loomis explained that Manager Raby is registered for the MAWD Annual Conference and therefore it would not be out of order to designate him as the delegate for the LMRWD. The Board might also wish to give him the proxy of the second delegate.

President Shirk made a motion to appoint Manager Raby as delegate and give him the proxy of the second delegate. The motion was seconded by Manager Hartmann. The motion carried unanimously.

B. MN River Clean Up Event

No new information since last update

C. Dredge Management

i. Review Process for funding of maintenance of Navigation Channel

Administrator Loomis said there was no action. She asked when the board would like Clay Dodd to walk the board through the report. President Shirk said she would prefer to have Manager Raby present. So coordinate with Mr. Dodd to come to a meeting when all three Managers will be in attendance.

ii. Vernon Avenue Dredge Material Management site

Administrator Loomis informed the Managers that BWSR approved the work plan submitted by the LMRWD. She asked the Managers to authorize staff to begin work on the plan.

Manager Hartmann made a motion to have staff initiate the work plan. The motion was seconded by President Shirk. The motion carried unanimously.

iii. Private Dredge Material Placement

The meeting was adjourned at this point in the agenda and the remaining items were tabled until the November 2017 meeting.

D. 2018 Legislative Action

E. Website Redesign

No new information since last update

F. Education and Outreach Plan

i. Friends of the MN River Valley/LMRWD cooperative project

ii. Citizen Advisory Committee

G. LMRWD Projects

i. Riley Creek Cooperative Project/Hennepin County Flying Cloud Drive/CSAH 61 reconstruction project

ii. Lake Coring Project with Freshwater Society

iii. Seminary Fen ravine stabilization project

iv. Analysis of Dakota County Groundwater Project

v. East Chaska Creek/ CSAH 61 & TH 41 Transportation Improvement Project

vi. Savage Fen Ravine Project

H. Project Reviews

i. City of Burnsville - Hertz Corporation

ii. City of Burnsville - Caliber, Inc.

iii. **City of Burnsville, Dakota County - Quarry dewatering**

iv. **Xcel Energy Black Dog Plant**

I. **Dean Lake - no change since last update**

No new information since last update

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

No new information since last update

7. COMMUNICATIONS

A. **Administrator Report:** No report

B. **President:** No report

C. **Managers:** No report.

D. **Committees:** No report

E. **Legal Counsel:** No report

F. **Engineer:** No report

8. ADJOURN

The meeting was adjourned at 10:02 PM.

Dave Raby, Secretary

Attest:

Linda Loomis, Administrator

**EXHIBIT A
LOWER MINNESOTA RIVER WATERSHED DISTRICT
BOARD OF MANAGERS**

**Public Hearing Transcript
October 25, 2017**

Public Hearing for Major Watershed Management Plan Amendment

President Shirk: Okay folks, we have, ah, some people here from the City of Bloomington and the City of Eden Prairie. And because your comments may help answer some of your questions, I'm going to ask that they go first. We have the Honorable Gene Winstead here. Gene Winstead, welcome.

Gene Winstead: Well, thank you and thank you for the opportunity to address the Board. It's a good thing to have happen here, this hearing is. I know many people here are very interested in this. From the City of Bloomington's perspective, you need to know that we have always supported protection of the bluff and river resources. It's something that's been important to the City of Bloomington. I think we are a city, probably, with the longest stretch of the Minnesota River here. And, you know, it's been a big part of us. And, Bloomington has, for decades now, more than three decades, had very strong standards in place for bluff protection. And I know that because it was in the mid-80s that I served on our city's planning commission and we put in a lot of these regulations and ordinances within the City of Bloomington. A bluff deck and overlay zone, different bluff protection ordinances that the city has worked with and adhered to over the course of the last three decades. And, I know that from a fact of serving on the city council and then as mayor that we do see things come before us regarding development on the bluff. Different standards that are there and we are imposing them. And, I think we've done a great job in protecting the bluff.

Another statement I'd like to make too is one of the things and one of the biggest watchdogs for the bluff and the bluff protection are the residents, the homeowners who live on the bluff. They care about it, they really do want to see to it the bluff remains protected and we hear that all the time. If there's any issues, we hear from the residents on the bluff. So, I'm just happy to say that about the people who live on the bluff and the City of Bloomington.

The proposed rules, and that's what we're talking about here tonight, the proposed rules as they've been presented, do create some problems for the City of Bloomington. No doubt about it. The rules seem to be unreasonable and appear to be de facto taking of property, of property rights. And it, really, they're not reasonable or acceptable as drafted. So, I think we do need to do some work. The City of Bloomington has put forth many comments to those and, you know, they have been responded to. I don't think we need to get into all of those because you are very much aware of it and things that we can work through. And, our city staff is going to follow me and put up what they have seen, how the rules would impact our properties in the City of Bloomington. They've got some visuals and they'll be able to walk through that for you.

There does need to be more of a balance between the environmental protection and property rights on this with imposing these standards. I think those things can be met, to meet the goals of the district as well as, you know, those goals to preserve, protect, and restore. These things can all be met. And, really, it's, this is a big decision. These rules, if they're enacted, it is a big decision. And, unfortunately, you have been a board of only three members and it would be good to see your board filled out and

have the additional insight, input, from, you know, more board members who would, could give input, insight, into this.

So, you know, the City of Bloomington would ask that you do not adopt these proposed standards. The standards we've got in the City of Bloomington have been, really, existing standards have been sufficient and really done. And, there's examples of three decades worth of good stewardship on the bluff and, you know, we have worked to protect it. If the district does move forward, you have got to consider some exemptions for cities who have these robust standards, the standards that have been in place. The standards that have proven to be effective and can protect without having to disrupt so many, as many as 500 to 700 homes on the river bluff that could be affected by this proposed, ah, the proposed rules. And, here again, I indicate that I think it would be good to get the input of a full board, have all five members, to be there.

Um, I was glad to hear, in your statements and remarks that the Statement of Need and Reasonableness, the SONAR, is going to be produced and put forth. I think it's very important to, in this particular scenario of things going on, because it is the cities that do need to do the enforcement or the monitoring of anything, any of these rules, that would be put into place, the cities would need to do it. So, we do need to know up front before we could even consider, you know, agreeing to or thinking that these rules would enact and get the, get done what needs to get done on the protection of the bluff. So, the SONAR is very important and that is something that we're happy to see that it is going to be produced prior to adoption of any rules, so that we can look at that and see what the ramifications would be there. And, too, I'm glad to see that the maps now have really come forward on what is being considered as far as the river bluff because we've only been able to go by what we have as a standard. And so, we can see now how this can impact, ah, the numbers of homes that you have put up and from the City of Bloomington as well as there.

And, too, I can only say that I am speaking for the City of Bloomington and I know that there's other concerns from other cities that are here today. And, too, I think there needs to be some, ah, ah, very good definitions and some language improvement regarding these proposed changes in the rules. So, it's, it's one of those things that's there and as you can see up there, one of the things that you've indicated that you're going to be doing too. And I'm very happy to hear that you will be conducting some additional hearings throughout the watershed district that can be made more available to the people in the area, those who are affected by it. So, at this time, I would like to call up, I think, Mr. Glen Markegard from our city's planning department. He's got some things that he would like to share and we can just go forward. Thank you.

Glen Markegard: Good evening Madam Chair, and members of the board, staff members. Thank you for an opportunity to speak. What I would like to do is just talk about the impact. Specifically, on Bloomington.

Unidentified Speaker: Sorry, could you use the microphone?

Glen Markegard: Sure. Can you hear me better now?

Unidentified Speaker: Glen, maybe you can just sit at the table and you could pull the microphone right up and we could advance your slides for you.

Glen Markegard: Can you hear me now?

Unidentified Speaker: No. Closer Glen. Louder.

Glen Markegard: Can you hear me now?

Unidentified Speakers: No. If you want to sit, I can advance your slides. Let's see if that works though.

President Shirk: He needs to be right in front of the microphone.

Glen Markegard: All right. Can you hear me now?

Unidentified Speaker: Better.

Glen Markegard: So, this is a map of the impacts and the proposed **(57:15)** area in Bloomington. By our count, it covers 795 parcels in the city. It touches or totally encompasses 515 homes. I would note that this entire area, in Bloomington at least, is highly developed. We have only two large undeveloped residential parcels in this area. Go to the next slide please. I would also point out that it does not only impact the river bluff in these areas, it impacts significant areas away from the river bluff in Bloomington. You can see the yellow area on the screen where it is pointed out. If you go to the next slide, this is a highlight of one of those areas. This is about a mile and a half away from the river. The Valley West Shopping Center is just on the lower righthand side of that slide. So, this is along Kell Avenue. You can see several homes that are highly impacted by the standard. So, I wanted to, wanted to make the point that this goes well beyond just the river bluff. Next slide please.

As the mayor talked about, Bloomington has a long history of having very robust standards that protect the bluff. We think those are definitely sufficient. We think they better balance property rights and environmental protection. A couple of these I will call out. We do a bluff protection overlay zone currently today. We have, over the bluff, discharge limits in terms of if you do development, you cannot increase the amount of runoff that goes over the bluff. Then we have very detailed standards, such as if you were to build a building along the bluff, we regulate **(59:11)** slope, placement, a slope of your roof. So, we feel that these protections are very adequate today and that we do not need additional standards. Next slide please.

I want to highlight just one example in Bloomington of how this plays out. This is a typical Bloomington parcel. It's in western Bloomington, 11141 Xylon Avenue South. If you go to the next slide, we've mapped on this parcel where the current bluff zone restrictions are. These are the Bloomington bluff zones. We did some analysis before the meeting and could not believe that the current Lower Minnesota bluff standard apply to this parcel given that the slope is below 30 percent. We have not seen, until this evening, a map of that current standard. So, we'd be very interested in looking over that in more detail and see if that matches our analysis. Go to the next slide.

This is what we do know, that the proposed standard would increase the bluff zone on this parcel. So, the red area shows the proposed watershed district bluff zone plus the 40-foot buffer area in which no structures would be allowed. So, you can see if you owned this house and you wanted to add a deck or a shed or a fence even, or an addition to the house, would have a huge impact on what you could do. So, this is just one example. But, again, Bloomington alone, we have 515 homes that either are fully or partially within that new zone. This one is partially within the new zone. Next slide please.

So, we have had some discussions with the watershed district's staff. We greatly appreciate that and look forward to more discussions. What we've learned from that and from reviewing the responses to comments is that staff does plan to look at the definition of structure. We think that's very important. Right now, it's an extremely expansive definition and includes just about anything. The staff has also talked about trading, some sort of flexibility tool, which would address the red area on the last map and whether or not somebody could put in a deck, for example.

So, the way we understand this potential flexibility tool to work is let's say the homeowner would like to put in a deck. They would have to hire first a geotechnical engineer and then they would have to hire a surveyor to determine exactly where the bluff is relative to the proposed deck. They would prepare an application. They would have to submit that through the city, through the watershed district but it would be, that action would be deferred to the city. But, the city would not be allowed to make its own decision. It would have to look at the mandated findings that the watershed district would provide and determine whether or not it would meet those findings.

So, we think this tool definitely is cost prohibitive. This would be a \$5,000 to \$10,000 job if someone wanted to put on a deck or a fence or some other type of structure. I think that is cost prohibitive and a time-consuming process. We imagine our public hearings being overloaded by at least 500+ properties whenever they want a fence, a deck, etc. We think this sort of a flexibility process is unreasonable. It would put a big burden on cities and it would be better simply to modify the standards so that you don't need the flexibility process at all. If the line should be drawn lower, we think the standard should match that rather than forcing people through this sort of process. So, next slide.

So, the mayor covered these and I just want to reiterate our request is to not adopt the standards. Definitely to provide more information and to provide a lot more opportunity for input. I think a lot of the people who are here tonight are here just because Bloomington and Eden Prairie proactively notified residents. I think just about everybody would have missed that in the *Star Tribune*. So, we encourage you, as you move forward, to provide a lot of notice as it has a big impact on property owners and we think they deserve to know about it. So, thank you.

President Shirk: Thank you. And, was there someone else from Bloomington? Okay. From the City of Eden Prairie, Mr. Dave Modrow.

Dave Modrow: We'll see if this one works. Can people hear me? Okay. My name is Dave Modrow. I'm a water resource engineer with the City of Eden Prairie. I wasn't planning on speaking so I didn't have anything prepared but I just wanted to just put out a couple of clarifying comments and then before the public hearing continues.

I want to reiterate some things that Bloomington said that Eden Prairie does have ordinances in place already to protect bluffs, including the ordinance that matches the State standards with the current standard that the Lower Minnesota Watershed District has adopted. There are some intricacies that, that, that um, the current definition aren't as easy to decipher when you're first looking at a topographic map. It's not just a 30% bluff that you're looking at. It has to be managed from the total bluff so any point on the bluff it averages over 30%. So, the total bluff is actually defined as a 50-foot length (1:05) area that is 18% or greater. So, you have to take trendlines all along the bluff from the bottom of the point that has the 18% or greater to any point along the bluff. And, if that averages over 30%, then the bluff extended to the top of the bluff, which is another 50-foot section of 18%.

So, it's a really complicated bluff analysis. That's typically done on a development scale, or individual scale. So, it's, it's not easy to look at just a 30% piece of slope and say that's a bluff. You have to look at every trend line from the total bluff to any point on that bluff. So, it's not just an average of 25 feet or higher. So, there's a lot of different pieces to it. So, we haven't had an opportunity to look at the maps that were looked at tonight but I have a feeling that there's some discrepancies between what the city has currently called a bluff and what may be on these existing flood maps. So that's something I'm glad to see that's out and we have an opportunity to react to that.

I'm also glad to see that a SONAR is going to be provided. For the most part, we have heard about the Mississippi River Critical Corridor Area as the basis for the Lower Minnesota River Watershed District proposed standard. But, we've been asking for a, for a more detailed review of the Lower Minnesota River area in, in those standards and how they effect. So, I think that's a good step in the right direction to really analyze what those 18% slopes are throughout this corridor.

One thing to note is that in the SONAR for the Mississippi River Critical Corridor Area, the 18% slope was already defined in the original executive order that defined that Mississippi River Critical Corridor Area. So, if you read that SONAR, they didn't extend the 18% from the bluff standard from a previous percent. It was already in place from that original executive order.

Lastly, a couple things that I want to clarify is that although there may be some properties that are currently inhibited by that 30% bluff standard. Some of those 18% areas would inhibit it further as some of the **(1:08)** put together. So, while it might be 55 new properties in Eden Prairie, there may be other properties that are further restricted. And, all of them would be further restricted by a 30-foot setback moving to a 40-foot setback. So, the other big change would be that the current rule only applies to the top of bluff. So, the bluff impact zone is 20 feet and the bluff impact zone is no grading, no structures, no vegetation rule. That will stay at 20 feet but right now it only applies to the top of bluff, not the side or total bluffs and the current standard would apply to the side of the bluff, the bottom of the bluff, and the top of the bluff. And also, you get 40-foot setbacks. So, I'd like to, it's nice to be able to look at these maps to show the comparative relationship with the existing proposed maps. Then we'll have the opportunity to look in more detail at that parcel level on some of those impacts. So, I wanted to verify those few things and thank you for giving me the time.

President Shirk: Thank you. Next is Ms. Nora Beall.

Nora Beall: Madam Chair and board, my name is Nora Beall. I'm a property owner in Bloomington. I live in the City of Bloomington.

President Shirk: Ms. Beall, can you give us your address please?

Nora Beall: Sure, 2915 Overlook Drive, Bloomington. I got the letter from the City of Bloomington. I also got the post card from the district. And, I have over five acres. That address is over five acres. It's on the Minnesota River bluff and it goes down to the bottom of the bluff where Nine Mile Creek is. So, the Creek issue and the bluff issue affect that property. I wanted to explain a little bit about the fact that, um, I previously owned property in Scott County in Spring Lake Township on Sand Creek. And, I know about the wetland issues and the creek issues and how that dumped into the Minnesota River.

I am, um, like I said, I have a vision disability. I don't know if it's screens, I have to protect my eyes from screens and when I got the post card about the hearing, I contacted Linda and explained to her that I

needed to see documents on paper in order to be able to comment. And, she consulted with whoever and managed to get those thousand pages to the Bloomington library for me to look at. And, I sincerely thank whoever gave her the permission to do that because it was wonderful. She got her thousand pages back tonight. I'm able to comment with some, you know, significant information. One of the comments you're talking about was the bluff slope in the bluff impact zone. On page 6 of the draft standard, appendix K talked about 20 feet from the top of the slope and 20 feet from the toe of the bluff when calculating the slope. Is that 20 plus 20 equals 40? Or, is the 40 something different? I don't know. Somebody else can explain that. It doesn't have to be done tonight. But, they're also talking about where's the top of the bedrock or the solid rock as opposed to the dirt underneath the grass and soil and trees.

There was another issue. I said how are they going to calculate that? The, ah, when, on my five acres, I don't know how you would calculate the slope because part of my bluff edge is very gradual and some is very steep, then gradual and steep. It is very irregular and it would be difficult to calculate. Although this person proceeding me mentioned there was an average they were calculating. It would be very difficult to be calculating my property as to what is the slope for the entire property.

The other thing that I wanted to comment about is, um, these things are very complicated. I work for Minnesota Department of Health, State of Minnesota, for 29 years. Work with rules and regulations and, um, all the technicalities that go along with that as well as I've been, what, 16 years without a career because of my vision disability. So, and prior to working with the State of Minnesota, I worked at St. Francis Hospital at Shakopee and so I know some of the local issues there. Plus being a property owner in Scott County, previously a property owner.

I guess I basically want to say thank you for getting me that stuff on paper so I could study it, read it, and be educated about it and be able to ask intelligent questions. And, um, I, because of this meeting I know more people to call and ask for more explanation of questions. But, it really would impact my property and, um, I know that it's been a complicated process that you've been dealing with for years. And I just started to learn about it and have a ways to go. Thank you.

President Shirk: Linda, I know we're taking notes and recording all of this. Are we going to be adding questions and then responses to our comment document?

Administrator Loomis: Madam President and Manager Hartman, yes, all comments and questions will become part of the record and will be captured in the comment log. And, we will respond to folks.

President Shirk: Perfect, thank you. Okay, I believe it's Todd Johnson. Mr. Johnson.

Todd Johnson: Good evening staff, board. My name is Todd Johnson. I am a property owner in the City of Eden Prairie. My address is 10020 Dell Road. I just wanted to make a comment. I did submit a comment on line. But, in hearing the folks from the City of Bloomington, I wanted to thank them very much for their presentation. I think it echoes very much what I heard in planning at the City of Eden Prairie as well.

I bought my property 17 years ago, constructed a home on it 16 years ago. At the time I constructed my home, my home was conforming. One of the concerns was of preservation of the bluff. The city guided me through the process, where we could build, how we could build, very extensively. Riley Creek runs

behind that particular property so actually I have two bodies of water to be concerned with at the time that I built.

I was convinced that we were conforming and the city was. We got a permit and built the home. Been living there for 15 years. Suddenly, unilaterally, and really from what I've heard so far, and I know this is something you're going to work on, but from what I've heard so far, without substantiation for need, debt, or scientific evidence linkage, and without any valuation of the economic impact to private property owners, you've gone ahead and proposed a standard that's going to make my property suddenly nonconforming. And, I'm not a good public speaker so I'm a little shaken, but I'm very disturbed by this. It's the concept that you can walk in and do this that disturbs me more than anything. I'll let the other folks talk about the technical stuff but, frankly, I, I just, I find the action reprehensible. I just can't understand how you can do this. But, anyway, that's my comment for the record. And, I thank you very much for hearing me out. Thank you.

President Shirk: Thank you sir. Greg Porter.

Greg Porter: My name is Greg Porter. I live at 11601 Palmer Road in Bloomington. I have one of the properties that is, would be nonconforming to this standard. My house is **___ (1:18)** and I'm really concerned on how it's going to affect the value of my property and what I would be able to do, what improvements or alterations I would be able to make in the future. I also have some questions on, there's a proposal to pave a river trail, 14-foot wide Minnesota River trail by the DNR that's going to be pavement, how this would, these standards would affect that. And that would be allowed, or whether that would be allowed, but my little patio that I would like to build would not be allowed. That's about it for my comments.

President Shirk: Thank you. Ron Nelson.

Ron Nelson: Hello folks. Madam President. Thank you for this opportunity. My name is Ron Nelson. A Bloomington resident, 163 Spring Valley Drive. Again, I'm really happy that I found out that you guys are giving us this opportunity. I just learned about it in the last fortnight. I don't quite understand what it is that is the objective of this new standard and the new law. Or, law. Is that what it's called? Would that be a law Mr. Attorney?

Legal Counsel Kolb: It is not law, Mr. Nelson. It is a standard that is being proposed by the watershed district that if adopted in the plan amendment, would become the basis for official controls within the community. So, it would be like, end up being like, an ordinance that would have to be followed by developers.

Ron Nelson: Thank you. Okay, yeah, I'm not sure who actually wants this. Is there anybody here that, or have you talked to anybody who really wants this ordinance Madam President?

President Shirk: Staff? I defer to staff. The plan amendment has been based largely on **___ district (1:20)** technical advisory committee. And, Mr. Kolb if you can respond, you're welcome to it.

Legal Counsel Kolb: Yes Madam President. Mr. Nelson, I mean if you ask everybody in this room tonight if they want this, they'll probably say, 'no.' Right? So, that we can just accept that. But, there's a lot of things in life that people that don't want that may ultimately be necessary. And that's, I understand where we're, we're putting the me onto the statement of being reasonableness, which was

something requested by local communities, which we agree is important. But the standards, the standards come out of the district's analysis of resources. And, the district's, both the technical evidence either by research study or actual real-life events that have occurred regarding, in the case of the steep slopes, regarding the steep slopes. And so, the board is looking at, there's something in the current standard that is not fully addressing the resource concerns that were identified in the district's technical analysis. So that's the basis of the proposed standard. Again, as we have heard tonight, as we have already talked about a little bit tonight, some of that standard needs flexibility, and we agree with that. And, some of that standard needs to be better balanced, and we agree with that.

One of the challenges that an organization like this has is that they have to start somewhere. So usually, we start very restrictive and then through this process, which we're experiencing tonight, we look at, okay, what are the issues that arise out of the most strict standard. How do we balance that back to strike a better balance? Like the mayor suggested, between the property owner's interests, which are valid, and the resource concerns, which we believe are also valid. So that's where the standard comes from. It comes out of the district's analysis of resource concerns and its understanding based on that analysis that there's something in the current standard that is failing to address at least a portion of those concerns regarding the steep slopes.

Ron Nelson: Thank you. The property I live on is much like, I'm sure, the property that everybody who lives on the bluff share. It is steep. It is prone to erosion. It needs to be preserved and protected. In some cases, it needs to be restored. The question is, for me, is who should be responsible for that. Personally, I think I'm doing a darn good job. If I'm not, the watershed district, you know, I've got a beer. We can have a beer and we can talk about it. But, on a case-by-case basis, not a blanket, you know, you know, you know. So anyway, that is pretty much my concern, is that it just seems like it's, it's presumptive that I'm not a good steward of the river bluff. And, I've, I've lived there for 20 years. I think I'm a pretty good steward and I have, I see no evidence that my neighbors aren't as equally concerned about the character and preservation and protection and any restoration that might be needed.

Now if there's monies involved where you would like to distribute them to the neighbors so that we could build a conforming retaining wall, or, you know, a creek with a waterfall would be nice, then let's pursue this. I'm all for it. But at the moment, it just seems like a little bit of an overreach that I've got 200 feet of land from my back door to the end of my property line that abuts whatever it is out there that it abuts. And, um, if I wanted to put a fence around it to protect my family from coyotes, would that be a problem? I don't know but I suspect it would be a lot more problem if this passes. And, that's my concern.

I don't know what this is all about and the explanation I've gotten here tonight actually instead of relieving some of my concerns, it has actually exacerbated them. And I'm now even more concerned than I was when I walked in. So anyway, my bottom line is that, that as long as it doesn't impede the homeowners from doing what they want to do, like building an addition out towards the bluff, in that direction, or if the map is right, I can't even build forward to the street if what I'm hearing is really happening. So, anyway, I'm getting vague and I'm beginning to ramble and I thank you for your time. And, I'd like to go on record, as it stands now, even though I haven't read it, it sounds like I would have to vote against it if my voice had a vote. Thanks again.

President Shirk: Thank you. Tom Roberts.

Tom Roberts: I am Tom Roberts. I live at 11015 Bell Oaks Estate Road, Eden Prairie, Minnesota. Can you hear me? Okay, we have several homes on the bluff in our development. My concern is more of what the process is because everybody here took high school civics and we know we have the feds and we have the state and we have the city and we have the county and the city. Where do you fit? The mayor mentioned you were supposed to have five people and you only have two. Are you the only two making the decision?

President Shirk: No. We have a third manager right now. We've had a vacancy on our board from Hennepin County for a couple of years, more than a couple.

Administrator Loomis: One year. One left a year ago.

President Shirk: Oh, we had Dave before he? Okay. And, we have a vacancy from Carver.

Tom Roberts: So, right now you're not a full board and so you two people could make this decision. Is that correct? Am I correct? Or, not correct?

President Shirk: Theoretically. But, it won't happen.

Tom Roberts: But, no, so, so when, in our situation in Eden Prairie, in our area, I think the City of Eden Prairie has done a wonderful job. As our **priority law (1:28)**, we have a scenic easement agreement. And, ah, they've had, probably 200 foot of our bluff that is our property but is a scenic easement to the city and they control that. We can't do anything there. I mean, we're not even supposed to cut a tree. So, why do we feel that their city, including Bloomington or Eden Prairie, needs another layer of government on top of the, the Bloomington, and their mayor of Bloomington spoke earlier about how they have a lot of rules and regulations. Ah, the City of Eden Prairie has a watershed district person already.

What is the, what is your purpose as an entity that doesn't have enough people on your board, that people chose not to be on, that we think we need to make a big change. That's kind of my question. From a government standpoint, where do you fit. Do you have power over cities? Do you have power over the state? Or, does, is my state legislator, is he allowed to say, 'No, we want to slow it down.' I don't know the process.

President Shirk: Mr. Kolb, you're up.

Legal Counsel Kolb: I didn't realize I'd be getting so much play this evening. Mr. Roberts, that's an excellent question because a lot of people don't understand where watershed districts fit into the overall scheme of governmental entities within the state. So, the watershed district is a special purpose unit of government. The legislature authorized the creation of watershed districts decades ago. And as was in the introductory remarks from Ms. Loomis, this was one of the second watershed districts established in the state and it's been in place for almost 60 years. It's been in place for 56 years now. So, I think it's 57 years. Um, so there's, there's quite a history there.

So, the legislature, in terms of your legislator, your legislator cannot tell this watershed district what to do except by introducing legislation that would change its authorities, its purposes, and then the reason why it exists. An enabling legislation, as we reviewed at the beginning of, prior to the hearing and presentation, places certain obligations and requirements on the board. And, in this case, because of

an, whether it's a failure to appoint or a lack of interest in Hennepin and Carver Counties, this board is stuck with what it is stuck with, which is three members.

They have certain, certain responsibilities that are given to them by statute too, and also by the state government, the entity/agency of the state government, in this case the Board of Water and Soil Resources, which a.) executed their establishment order, in this case back in 1960 in the case of this district; and, b.) reviews and approves their watershed management plan. Once that happens, for a metropolitan watershed district, and I want to make that distinction because there's watershed districts all over the State of Minnesota.

But in the seven-county metro area, they have additional special legislation or enabling legislation under a whole separate part of the state statutes. And, under those, under that requirement of statute, once they have an approved plan, and their approved plan has to contain standards that address the resource concerns, which is what we are talking about tonight, then local government entities have to adopt their local water management plan and official controls that bring management within that municipality in conformance with the watershed management plan, the standards. Districts can go about that in a couple different ways. This district, looking at the plain language of the statute, says it would rather not have a separate layer of regulatory, so its own permitting program, but would rather have the cities do what they already do very well, which is manage land use and have restrictions and those sorts of things within their boundaries. And, so, this board has the opportunity to adopt standards based on criteria and statute and their analysis of the resource concerns. In turn, they fit then in between the state and the municipality. The municipality has an obligation under statute to amend its official controls to be in conformance with those standards.

For municipalities that don't do that, the district has a second option. And, the second option of the district would be to adopt rules, its own regulatory program, and its own stand alone permitting program, which, in my opinion and in the board's opinion, would be a second layer of government and would add redundancy and further expense and delay and uncertainty to land owners. So, they fit in between the State of Minnesota and your local municipality. The legislature gave them obligations to perform their function, that's laid out in statute. We reviewed those at the beginning of the presentation. And, the municipalities have certain obligations to ensure that their local water management and their official controls conform to the standards adopted in this organization's watershed management plan, which again is reviewed and approved by, or reviewed and modified by, or reviewed and rejected by the Board of Water and Soil Resources. So, the state has to put its approval on whatever the standard ends up being by the time we get done with this public hearing process.

Tom Roberts: So, the state will eventually have to approve this so if our mayors are concerned about it, they would go to that state agency to say we don't agree with this. If let's say they pass it and they don't agree, that would be the process?

Legal Counsel Kolb: There's another hearing that occurs at the state agency level, if requested. In most cases, it is requested. So that board, the Board of Water and Soil Resources, has a subcommittee that reviews these plans, holds the hearing, and then makes a recommendation to the full board.

Tom Roberts: So, you, typically the cities' input would be very important to your decision.

President Shirk: Certainly.

Tom Roberts: And a side note, I own some property and I laugh because I just had to sign a deal with Coon Creek Watershed District. And, the way the guy put it to me, there's no attorney in the United States that would allow me to sign that. But their thing is, well, it's just like doing your i-Phone, you just click 'yes.' So, they do get a little out of hand. I do know that for a fact on some stuff I have. But the whole thing is they don't have any enforcement. And, it appears to me that you're transferring all the enforcement to the cities. Is that correct? If the city wants it?

Legal Counsel Kolb: Again, we're not transferring it. The legislature has said that they must do that.

Tom Roberts: Okay, so whatever they adopt, the city is required to.

Legal Counsel Kolb: That's correct.

Tom Roberts: That's what I needed to know. Thank you.

President Shirk: Thank you sir. Duane Saunders.

Duane Saunders: Thank you for having me. I wrote my comments down so I can be brief here. We own four properties on the bluff. We own a 10-acre lot where our house is. We own a 6-acre lot where there's a small house for, where our caretaker lives. And then we own a 6-acre and a 12-acre lot that are undeveloped. As far as I can tell, from the somewhat limited specific information I have received, it appears that the two undeveloped lots will become worthless and there will be substantial limits of what can be done to the two lots with houses on them. Both houses are over 60-years-old. The one house, the small house, the lot is really worth quite a bit more than the house is. It would, from an economic standpoint, it would be good to tear that house down and build a \$2-\$3 million-dollar house. My guess is that this will have an overall reduction in value of the four properties by \$2-\$3 million or more.

President Shirk: Mr. Saunders?

Duane Saunders: Yes?

President Shirk: Could we get your address please?

Duane Saunders: Oh, 9901 Riverview Road, Eden Prairie.

President Shirk: Thank you.

Duane Saunders: Yeah, sorry. Also in the 19 years we've lived there, we have paid around \$140,000 in property tax on the two undeveloped, potentially worthless, lots. And, we have probably paid higher taxes on what, than we should have, on the other two properties if their value falls. This is actually worse than eminent domain where at least you have some payment if they take your property. And, basically, you're taking my property without eminent domain and paying me anything. There is also some mention in the, in an article in the *Eden Prairie News* that one of the reasons they wanted to make these changes is to better control erosion on the bluffs. I would counter the landowner with valuable property would take better care of that property than worthless property. When we moved here, there were two, that's 19 years ago, there were two substantial washouts on the bluff. I have repaired those and planted grass and now the bluff is in excellent condition. I think this, especially, involves the

undeveloped properties that you're making worthless. And, the older properties, which in time would be replaced by newer, more expensive properties. But don't get me wrong, it also affects the existing newer properties also. Thanks.

President Shirk: Thanks. Mr. Michael Heckman.

Michael Heckman: Michael Heckman, City of Shakopee. We sent out a letter earlier today to Linda. I assume you guys got it and have reviewed it. But if not, I'll just do a quick summary of it. Our purpose of being here tonight is to ask for a continuance of the public hearing. What we've seen is we got this 59-page document a little over a week ago that takes a significant amount of time to review and staff has not had adequate time to review that, look at those comments and work with staff to work through those comments and respond to comments. In addition, we've seen a fair amount of comments that are response to comments that are open ended and vague enough that they don't really address the original comment. So, what we are proposing, we'd like to see, is a continuance of this public hearing so that staff, city staff, could have more time to interact with district staff to work through some of these open ended vague responses and make sure they are addressed properly. I think that's it for now for a continuance.

President Shirk: Thanks you and I'm sorry we didn't see you were here for the city earlier. And, we did receive your letter. Daniel Miller.

Daniel Miller: Thank you Madam Chairman and other members of the commission as well as consultants. My name is Daniel Miller. I am a Bloomington resident. I live at 1875 Meadow View Road in Bloomington. And, I, I want to first of all say that the mayor of Bloomington spoke very well about many of the concerns I've had and most of the other people that have commented tonight have addressed many of the problems.

One of the main issues that concern me greatly is the significant negative impact that this could have on my property and, obviously, property of probably most of the people who are here. That had it not been for the City of Bloomington providing us some notice, I likely would have never even of known about this. And, I have a property that is about almost four acres. The vast majority of my property is down the bluff and in the river valley. And, I understand I would never do anything to it. I bought the property about nine years ago.

My worry is that if these proposed amendment changes, especially to the definition of the bluff impact zone and setback area, are adopted my entire back yard and portions of my house will be either in the bluff impact zone or in the, what should be the setback area. And, therefore I have legally nonconforming property. And, I can't even begin to predict what's going to happen if and when I decide to sell that property and I have to disclose on a listing agreement that this is legally nonconforming. And no one in this room and no one anywhere can say how many people won't even bother to look. And, the negative financial impact that will have just from that point of view is completely unpredictable. In addition, if my wife and I were talking about putting a three-season porch on the back of our house, that's why we bought the house, because it butts up against the river valley. If these changes go through, that's not going to happen. And so, virtually 90% of my lot is, I can't do anything with it. And I, I am adamantly opposed to any change that, quite frankly, I don't understand what the purpose of it is.

Why does it have to be changed because many of the other property owners have testified tonight, we all love the back yard, love the bluff we are on, and want to protect it. And, we're going to do

everything we can to maintain its integrity. But these kinds of changes, especially the map that the City of Bloomington presented of property on Xylon, that entire home is now frozen. Nobody can do anything.

Or, as I've read through some of the comments, there is a possibility you could get a variance but as I understand the proposed standard for granting a variance, its undue hardship and that is, I'm an attorney, I don't practice in this area of law but I know that proving undue hardship is almost impossible. I can't prove it's an undue hardship if I wouldn't be allowed to build a deck on the back of my property. So, the real affect of this is that the vast majority of these people there may be a way that we could get through it but nobody in their right mind is going to spend \$5,000 to \$10,000 to just be given the 'green light' to put a \$3,000 deck on the back of their home. Or, I've seen some comments that changing the landscaping in the back yard would potentially now have to be permitted. And, I, I just don't see the benefit and I think that there is a significant negative financial impact that for all practical purposes, would constitute a taking of my property. And, I don't understand what the benefit would be and I quite frankly don't understand how anybody can tell me what the value is because it may not happen until 20 years into the future. And, how are we going to provide for that so that everybody has an opportunity to enjoy their land and, hopefully, make something out of the investment?

I think for the vast majority of these people, property that they own is the biggest single asset that we all have. And, I think we are all seeing the very real possibility that that single biggest asset is going to be a heck of a lot less than it was before. That's the end of my comments. Thank you.

President Shirk: Thank you sir. Mr. Dave Shervey.

David Shervey: Greetings to everyone. Thank you for having me. I wanted to say I was very appreciative of all the city officials that made comments and brought some important points into view on the issues we are facing with these proposals. I'm within Bloomington. I'm 1901 Meadow View Road in East Bloomington and I've been there 18 years. When I purchased my home, originally my lot was twice the size, ah, twice the size when I got it and the original owners had told me that half of their property was taken away to establish the Minnesota Valley National Wildlife Refuge. And they told me that that was done to protect the wildlife down there and there wouldn't be anything done with the property down there and it would just be a wildlife refuge. Since that time has passed, they have built a park down below my house and I don't understand how that ever happened when it's a National Wildlife Refuge, how they built a park down there.

Um, but, um, my, ah, other concerns is my lot has a 90-foot drop and I have one-and-three-quarters acres and it used to be a three-and-a-half-acre lot. And, I, it still upsets me that, ah, they were told there wouldn't be anything done with the property down there after that had been taken away and now you're looking to take more property away as far as I'm concerned. I, ah, just see no proven track record with your stewardship of property or resources and it's just like you've formed a committee with no experience or background in it. As far as the scientific data, um, there's satellite tracking that can monitor ground movement along the bluffs and I don't see any scientific data showing everything is sliding down the bluff right now.

I know a lot of us that do have property, like many have said, enjoy the bluff and provide good stewardship of the wildlife and the resources. And, I don't see that there's any need for change of what the city has established as standards and the counties have done. So, I don't see that there's any need for new, ah, laws and limitations on things.

The other things I've noticed in Bloomington is there's a lot of commercial properties along the river bluffs and some of those, such as the Minnesota Valley National Wildlife Refuge, the visitor park there, if you walk outside and go to look at the birds, you're hanging right off a concrete, looking down a 60-foot drop so I think that building would be in the outlawed area too. And there's also the Health Partner's building on the river bluffs, and Ceridian. And, I think all of those are built right on the edge of the bluff so I haven't got to see the maps or anything and see how those are impacted but I don't understand why my house would be.

It's very troubling to me about my property as far as taking away my privileges and uses of my land that would be impacted by that. Also, I have houses below my, my property on the bluffs, such as Bloomington Nursery, that's a business down below. And so, I don't understand why mine can be impacted but something already is way farther down the bluff, 100 feet more down into the river bottoms. There's houses down there also. It's just very troubling to me how this could ever come about.

President Shirk: Thank you. Adam, is it Beamans, or?

Adam Buenz: Yeah, it's a hard one. My name is Adam. I'm at 10100 Eden Prairie Road. I was curious for homes that are monofunctional, we have a tree farm that we're economically dependent on that would be part of the bluff zone. And, as part of the tree farm, we obviously take vegetation, whatever the language was in there. I was wondering how does that work? Do we just not, do we just shut down the farm? Or?

President Shirk: My understanding is you're already...

Adam Buenz: There's no structures in place so we plant trees. We back a spade truck up and we take trees out and move them to other areas throughout the state.

President Shirk: Mr. Kolb, this isn't ___ (1:52) causing any existing farming in operations, is it?

Legal Counsel Kolb: Madam President, I am not aware how we have dealt with existing agricultural operations. However, we are working through the process of identifying a process for continuing pre-existing nonconforming uses if the use is made nonconforming by the standard. And so, I would not perceive, in the final, final recommendation that the tree farming operation would be required to cease in any way. If anything, it may require some kind of storm water erosion control plan but they probably already implement those activities. Again, it should, in the final recommendation, should have no, ah no impact on that type of use.

President Shirk: Thank you.

Adam Buenz: Thank you.

President Shirk: Mr. Tom Moehn.

Tom Moehn: Close. Good evening Madam Chairman and Chair partner and other members. My name is Tom Moen. I'm a Bloomington resident. I live at 5025 Overlook Circle. I moved in there approximately three years ago, in 2014. And I'm so happy to be here because we've had a lot of wind

over the past couple of days and the light pole by our house, in that circle, is sort of cock-eyed and it shines on my house. Now I know who to go to because it's in your district.

I've got a couple of questions about who is the governing agency. I know that you're over at MPCA, you have an office over there. Are you a guidance agency? The national, ah, not national, but the DNR? Is it MPCA? Is it Revenue? Who oversees you as far as a state agency.

President Shirk: The Board of Soil and Water Resources.

Tom Moehn: So, they are a state agency?

President Shirk: Yes.

Tom Moehn: All right. Are you familiar with the, ah, edict from Governor Dayton has now a state law about plain language? Are you familiar with this document? All state agencies need to follow plain language rules. This document here does not follow those plain language rules. And, I'll leave this with the board so they can understand what all that means.

The second thing is, I understand that you had a working session the other day but there was no notification of that. Is that true?

President Shirk: Ms. Loomis?

Administrator Loomis: It was notified like we were required to notify it.

Tom Moehn: To who?

Administrator Loomis: To the public.

Tom Moehn: Because I did not get information on that.

Administrator Loomis: It was on our website and it also was...

Tom Moehn: I didn't know about your website and it impacted me. I don't get the *Star Tribune*.

Administrator Loomis: Well, work sessions are not noticed in the *Star Tribune*.

Tom Moehn: The open meeting law, again, the State of Minnesota, the public body must either e-mail notice of people who have requested e-mails or they must, um, give notice. Because everybody needs to find notice about this particular meeting and what's happening in our, in our area. So, that needs to be addressed in the future, that all people concerned, if I request to be notified by mail, you need to notify me by mail according to the State of Minnesota open meeting rule.

Let's go on to other things. Ah, I'm really excited, 56 years and you come up with a draft to impact a lot of people. I'm not sure if Linda or Della had made a comment about stakeholders and rattling off government agency people as stakeholders and not once talking about the citizens of the impacted area, as far as getting their information until this process has occurred over the past weeks is atrocious.

You've had years working on this and the people behind me just found out a few weeks ago. I found out a few weeks ago by circumstance.

My distance from my house to the river is half a mile, which is 5,200 feet. That's a big distance. Earlier we talked about a shopping center that was impacted that was several miles away. How far is too far? The, my bluff area, I'm 840 feet above the river. The river's at 717 feet elevation, that's 123 feet difference. And that is a gradual decline over the half mile I mentioned to you before. The, I've got these bookmarked here. I'd like to talk a little bit about them.

The next one is terminology and the policy states that there's words like 'protect, maintain, sustain, preserve, minimize, manage, promote, encourage, retain, improve, support, and evaluate.' But, here's an interesting word, 'require.' And 'require' is only mentioned once in the policy statement. And it says, 'required property owners controlled at rate and volume of storm water runoff or irrigation.' Why are we a requirement? Why are we not 'protect' or 'encourage?' No, we're required. You're beating us up a little bit on that. In your document you have conflicting information. On one page, on 4.1a, in the standard, general bluff standard, it says, 'all grading, clear cutting, removal of vegetation, and/or land distribution activities are prohibited on the bluff and/or the Bluff Impact Zone. Where later, it says exemptions, 'minor land disturbing activities such as home gardens contained within a residential lot, landscaping, repairs, and maintenance work, are not,' it's an exception. So, you've got conflicting requirements within your own document that I can see for myself.

When I moved into Bloomington three years ago, we had a, we live on a little over half-an-acre and the previous owners liked the forested area on the northeast side of the house. The forested area was riddled with thousands of buckthorn plants. According to this, I can't get rid of it. And, the state, not the state, but Bloomington was kind enough to let me borrow their tree stump puller. Now is Bloomington going to say, 'you can use this but if you're on the bluff and you're taking away the evasive species buckthorn, you can't do that.' It doesn't really mention that in here.

You were kind enough to tell us about all the impact homes that are on this area, thousands of homes in the affected area. That's information's probably on an Excel file someplace or some data base. I think it becomes public information and if we would request it, we may want to do a mass mailing to these people to make sure that they're aware of what's going on if they have not been informed by the *Star Tribune*, their city, or a friend that just happens to know about what's happening in this landscape area.

Other people have already talked about the property decreasing. I came from Minneapolis, and, North Minneapolis, and I lived on a small little lot there and with this proposal, I see my lot being smaller than the lot I had in Minneapolis. A postage stamp. I do occasionally work out of the house. I might want to paint the outside of the house. If I'm in the bluff area, do I need to get permission to paint the house? If it cuts through half my house, do I have to get permission to remodel the interior of my house because this is in the bluff area? Or, my roof? Your requirements in this document do not address so many things and you've had so much time to look at it. I don't know how to react to it sometimes. I know that a lot of people may react by invoking Dan's law. Are you familiar with Dan's law at all? Dan's law states that you can do whatever you damn well want to until you get caught. And, I think that's what will be happening.

The document also has this, it does not defined of a 100-year flood. I seen that, I saw that many times in this document and it's an ambiguous figure of 100-years that somebody has come up with at some time. I think you should go up to 500 years or 1,000 because there's been a lot of floods all over the place.

But if you go with the 500 or 1,000-year flood mark, then you really start to impact a lot of, lot of people, which maybe you should use and get down to 100, so we get only homeowners upset.

I want to thank you again for your kindness and understanding that what you are doing here over the next several months is going to have a detrimental affect over a lot of thousands of people in the area and whatever you do, ah, you may want to consider that you are a board that is publicly funded and I'm sure that if the legislature, especially the dominated-Republican legislature, finds out about this and invoke an emin...can't get that word...the domain thing, that they might take offence to that and possibly defund. So, be aware that there's a lot of impacts that will affect a lot of people up and down the line. Thank you.

President Shirk: Thank you. Chris Penwell.

Chris Penwell: Good evening Madam President, Manager Hartman. I'm Chris Penwell. I'm an attorney with Siegel Brill. The address is Suite 1300, 100 Washington Avenue South, Minneapolis, Minnesota. I represent a number of owners of parcels who are impacted by the bluff standards. Mayor Winstead made reference to the bluff standards affecting a de facto taking. In fact, at least for some property owners, the bluff standard will affect an actual taking, what is called a regulatory taking.

Just a little bit of my background. I am a land use attorney. I was the lead attorney in the case Wensmann Homes versus City of Eagan, which is the seminal regulatory taking case decided by the Minnesota Supreme Court. Just in a nutshell, that case says that if there's a piece of property that can be developed and then there's a regulation that takes away that right to develop, that is what is called a regulatory taking. It's compensable under the Minnesota and federal taking clauses of those constitutions and compensation has to be paid to the land owner. It, in these bluff standards, at least as to owners of vacant parcels that can now be developed, if the bluff standards, and the bluff standards will remove the right to develop for some of those property owners, that is a regulatory taking.

Mr. Saunders is a perfect example. He has two vacant parcels that he can currently develop. He talked about how the bluff standards will take away the right to develop those parcels, that is a regulatory taking. And, he talked about millions of dollars in loss of value to those parcels if the bluff standards are enacted. As to parcels that already have some development on them, whether they have a regulatory taking claim or not is more complicated and has to be decided on a case-by-case basis but it could very well be that some of the property with development already on it may have regulatory taking claims as well.

One thing I want to make clear is that a regulatory taking claim doesn't have anything to do with whether the district has the authority to enact the bluff standards, whether the district properly followed the, the right procedure in enacting the bluff standards, or whether the Statement of Need and Reasonableness completely supports the enactment of the bluff standards. The only test is whether the property, you know, I'll just say it, at least as to vacant parcels that can be developed, if the bluff standards take away the ability to develop those properties, and it will for some properties, in my view that is a, just a lay down as far as a regulatory taking claim. And there are enough vacant parcels that fit that description and that will have a regulatory taking of their property that's going to result in millions of dollars of compensation under the takings clause.

Mr. Saunders also referenced eminent domain. That's where the condemning authority initiates the condemnation. If in regulatory taking cases, most of the time, there's what's called inverse

condemnation where the property owner brings the claim against the condemning authority asking that first of all, the regulatory taking be established. Then it goes to a condemnation board for determination of how much compensation has to be paid. And that's what would happen in these cases if the district decides not to compensate those owners who lose development rights or in some cases have a substantial diminution in the value of their property as a result of the bluff standards. And that's what you're going to see. I'm not, you know, it's not a threat. It's just a fact that those claims are going to come. And, as I say, Mr. Kolb, who has been good enough to, um, have a couple conversations with me and we've exchanged some correspondence. I think Mr. Kolb may disagree with me on the strength of these claims but those claims will come. I believe they will be successful and they should be taken into account when deciding whether to pass these bluff standards or not. Because if you are, I would suggest that you budget for these claims.

The final point I want to make is that it has been suggested that there will be a delay in the amount of time it takes to enact the bluff standards, maybe 18 months to 2 years. And, in that period of time, property owners that want to develop their property eventually should go ahead and get their city approvals and then they'll be grandfathered in. That also has nothing to do, that is not a defense to a regulatory taking claim. There is no requirement that a property owner, between now and the time those bluff standards would be enacted, go to their city and get approvals or start developing or anything like that. They are not required to do that and if they choose not to, again the only test is whether they can develop now and whether they're prevented from developing after the bluff standards are enacted. Thank you, that concludes my comments.

President Shirk: Thank you. Mr. Penwell was the last person who has signed in saying he wanted to speak. However, I...

Laura Bluml: I was on the first page. I don't know what happened. You maybe thought I was representing an entire city.

President Shirk: I'm sorry, are you Ms. Bluml? Please come up.

Laura Bluml: I came in early at 7. I was here so I know I was the first person. My name is Laura Bluml.

Unidentified Speaker: Microphone?

Laura Bluml: I can just read. Okay, is that going?

President Shirk: Yeah. You can pull it down maybe.

Laura Bluml: Okay, my name is Laura Bluml. My husband Kevin and I live at 10540 West Riverview Drive in Eden Prairie. We purchased our property there in 1986 and built in 1993 so we've lived there for 24 years. I appreciate having a public hearing but what I think would be helpful is to actually have more of an open house where we would have the exhibits. We would have the maps. I looked at the maps on line, what you showed here. They are so tight to an area, I can't even find my property on them. I'm squinting at my computer trying to, is that my property? Is that my property? You can't tell where the 18% line is, where the 30% line is. So, I come here tonight with no information and I'm afraid I'm leaving with no information because I don't have a map that I can determine my property. And, I think everyone would like to know on their property lines where these 18% and 30% marks would be. So, I think an open house, they can be combined with a public hearing. Have an open house first, have staff

who can answer questions, show exhibits, show maps, that sort of thing would be more helpful. I'm picking up bits and pieces from your presentation and from members of the audience.

One of the things is, I'm oblivious to what the current rules are. Our property is approximately two and a half acres. First 150 feet or so back from the street is flat. Behind our house a little bit down and then it goes down fairly steeply. I don't know what zone it is in right now. If it would be classified as 18%, 30%, I don't know. I don't know what I currently can do. I don't know what I can't do let alone what the new rules would say. Um, a few people have mentioned why the need for, for this new set of rules. I'd like to know what issues have happened that we can examine, say, 'Oh yeah, I'm glad somebody's on the ball and looking at this or this.' This is what we're trying to address and in doing so, I'd like to find out what types of properties have been involved in those sorts of issues. Are they industrial? Residential? Is it the pipeline that runs through Eden Prairie? Um, government?

I don't know how many of you recall the July 23, 1987, 100-year rain storm. We owned our property at the time but had not built our house. The only erosion that occurred was because of the Metropolitan Waste Control Commission. Some people remember that. They have their sanitary sewer plant on the south side of the river. They had a head house a few blocks down from ours. That head house blew up the night of the storm because they had one if not two, there's controversy, the engineers couldn't remember. They had one if not two of the three outgoing pipes shut that night. That tore out the bluff. I think government is the cause there. They took over my property in order to divert that sanitary sewer. That's what caused the delay in our being able to build our dream home there.

Agriculture, I, I looked at some of the information on line last night at about 2:30 in the morning. It looks like, and somebody had mentioned this, agriculture is exempted. I think we all just became farmers now. I'll grow something. What can I grow that would exempt me? I'll be the next tree farmer, I think.

You talked about nonconforming, properties that become nonconforming through these rules would be grandfathered in. That's great. What about the properties who owners would like to do the same thing as their neighbor but now they're prohibited? I read some of the public comments that were posted and the answers seem to be when someone said, 'What will this do to the value of my property?' The answer seemed to be, 'We're protecting the bluff so everything is good. It's going to be a good thing for you.' Well, what you're not taking into consideration is that you're creating disparities between properties within the district, within cities, within neighborhood, and to adjacent neighbors. We don't have a pool. I don't know how to swim. We will never have a pool. If a neighbor had a pool and it was within the no-go zone, he's grandfathered in. Somebody else wants to put in a pool, identical house next to it, you'll say, 'No, you can't.' You are creating disparities between properties and there would be a loss of what I call loss of property value for potential. You now don't have the potential to do this or that. Like some people mentioned, they want to put on a three-season porch or patio. You're taking away that potential for the land owner and for future sale of the property.

Two of our neighbors, neighbors on either side of us and our property, we've had developers approach us wanting to buy the three properties and redevelop them for probably greater density and it would all be on the flat area because I have a pretty far setback from the road. What would that do? Who's going to buy property for redevelopment? I don't know. It's a big unknown.

Also, you say that the cities can, um, exempt areas and provide, some people are calling it variances, but an exemption. But, the emphasis has to be placed on, and it's been alluded to a little bit tonight, that

the city doesn't have the final decision. If I'm reading it correctly, and please correct me if I'm wrong, but the way I read it, is the city can make, well, in fact it was recorded in the Eden Prairie paper, the city can make a case with the watershed district. Which means the city doesn't have the final say. They're going to come to you and ask permission. This whole process, I don't know what that's going to involve. I still don't know what I can do on my property. We have about two-and-a-half acres, like I said.

This summer we spent quite a bit of money having our back regraded. Not the slope part but the rest so we could keep runoff going where it should, um, and not damage the bluff. I've also spent months pulling invasive vines and bushes and things that should not be there. And, I know there's an exemption for that. We want to reestablish more natural, um, vegetation there. But now I'm worried. I almost clear cut some parts of our property, not huge, they work for me, to pull all of that. Even bought a wood chipper to mulch it up. I don't know what somebody would allow. Can I put, move vegetation there? Can I take more out? A lot of those things have been addressed or talked about but the final rules would, you know, predict what can happen.

Home, I think a homeowner just does not know what is permitted and what is not. What process we would have to go through. Um, in the paper one of, Linda Loomis is quoted as saying that, um, a 40-foot setback is meant to target new development. Does it say that in the proposal? That this is for new development? This isn't, this is for current home owners? This is for current homeowners? This is for current properties that are owned by, by residents versus industrial? I don't think there's anything specific enough that, that tells us. If you're saying that these new rules are for new development, then I can help you write that into the proposal. New rules for new development only.

Our property, um, the bottom of it, ends at the flood plain. There is a good full block or two of distance between us and the river. Someone else had talked about that. That they're quite a ways back from the river. Our, what would, about on our property? Is that going to impact that I could do something that somebody else couldn't do because I'm farther from the river? It seems like a lot of this proposal is focused on bluff. One of my concerns is the flatter areas. What are the rules proposed for them? Do they, will they have controls as to what they can do on their property? Can they put on a pool on their property? Well, we know the water that's, that was, say they could put up a huge shed. We know the water that, that comes off of that roof is going to go into the flood plain and affect the river just as much as if something rolled down that hill, as water tends to do.

Some of the things that we've been concerned about, um, wondering, we thought about putting some steps on our property. These are just ideas that don't know if we'd ever, ever would do them but now we're wondering. Would that be allowed? As we get older, well, my husband's getting old, um, I won't admit to it, um, we want to have steps to, to access part of our property. There is a big gully that would be nice to get over that. And, maybe we want to fill in some of that. That would be good not to have a gully. We don't know. We just don't know what's allowed.

We've thought about putting solar panels up. We don't want them on our house because of the elevation where we are the wind comes straight up the bluff, right into our roof. I don't want any potential water damage getting under there. In an area where you don't have upwind like that, you can do that. We've talked about, about potentially putting solar panels on the ground. Is that allowed? I don't know. It doesn't tell me. Can I put a bench in? Can I put a fence on our property? Our property in Eden Prairie is zoned so that we could have horses. Well, right now I have 435 horses but they are all under hood. So, we don't have a horse right now. But if I could put in, have horses there, can I put in a shed for them? Can I put in a fence to contain them? Those sorts of things. I would certainly want

them to have the run of the full length of the property, which is going to be down the slope. That's it, thank you.

President Shirk: Thank you. Is there anyone else here who would like to speak? Sir?

Roger Peters: My name is Roger Peters, 3601 Overlook Drive, Bloomington. I thought at the beginning I heard you say that you initially proposed very restrictive new restrictions and then you back off from those. Did I catch that right? Is that?

President Shirk: I think Mr. Kolb can respond to that.

Legal Counsel Kolb: Madam President, that was my comment and it really spoke more toward where was our starting point with this after working with the Technical, or TAC, Technical Advisory, ah, Committee. Thank you. And so, we understood when we put the proposal in place that there would likely be issues that get raised. Just like here. So, there is some discussion already that we've had among staff and the managers about moving away from the standard as strict as it is related to the bluff standard and to create that level of flexibility and try to strike that better balance that's been discussed here tonight. So, it's not uncommon to start from a more restrictive point and to move from there. You have to start somewhere and, again, that's kind of what has happened here. Not necessarily intentional but it, it doesn't, it happens.

Roger Peters: It seems sort of like a negotiation. You low ball, you start high, you start low. I would propose that the, that as our Mayor Gene Winstead proposed, not only do we not implement these but we look at them and un-restrict some of the stuff that we're restricted from. Um, because what, what potentially could happen is you guys are probably not left with, you know, we can't build a deck. We can't, there are all these restrictions that we can't do. Well, the, you lean up on it a little bit and then, oh, we all feel we're good. Great. You know? Look at it, we won. Well, it seems like we should be looking at it and going the other way. Um, you know, when was the last time a major erosion happened in Bloomington or in Eden Prairie? I heard there's a, there's a pool that's falling down into the bluff but what, where, what's the reason for all of this? I don't, I don't understand.

So, but, anyway, you know you guys seem very, I talked to Linda on the phone, she's very helpful. You seem very attentive, like you're, you're, um, you're very aware of our needs and you're listening. But you're still, you're, you're coming onto our, you know I have this saying that I say, it's 'Let's put the private back into property.'

You know, you're coming into my back yard. I've got buckthorn 20 feet away from my house and I can't take it out. And, I don't know if you guys are familiar with the movie Braveheart, but there's a practice. The powers that be, they have what we'll call an ordinance. It's called Ius Primaе Noctis. Somebody's familiar with what that is. So, this is a crude example but it's, what happens is on the wedding night of a bride, the powers that be can come in and they get first right to the bride. And as I'm standing on my back yard, then I think this is how some of us feel. I'm looking at, you know this buckthorn and I can't take it out because I'm restricted. I mean, the bluff is a half a mile from my house and I, there's, it's just, you know, granted there's some slope there but, you know, and it's to have, you know, you guys tell me that I can't do it just feels wrong. And, I think that's the sentiment, like John mentioned earlier, we all agree to that fact. Nobody here wants this to happen.

But I would propose that, you know, and thank you for the great presentation from Gene and Glen, but maybe we go the other way. You know, it sounds like you've got some, some attorneys involved here but would you guys be open to that? Like maybe reducing it to 15% and maybe 780 feet? I mean, just because, unless, unless there's problems with it, why, why would we add more restrictions? You know, let's put the 'private back into property.' We own this. This is property we paid for and hope to someday sell for a profit or to get our money back. We want to build stuff in our back yard. We want to create a view. So, anyway, that's it. Um, again, I thank you. From Bloomington, I read the letter. Um, it was fabulous. I mean, I think as, as **LP (2:28)** said to me a couple weeks ago, this is the first time that the bluff owners in the City of Bloomington have been on the same side. So, thanks for listening.

President Shirk: Thank you.

Steve Peterson: My name is Steve Peterson and I live at 11036 Glen Wilding Way in Bloomington and I came with a printed presentation but the folks in the audience have pretty much touched on the points I was going to make. But, you know, the sense that I got as I stand in the back and listen to other people talk is, is that for the watershed district this was an incredible missed opportunity. Um, if you look at the, one of the chief goals of the watershed district is around educating people.

And, if you look at who lives in the watershed district, who cares more about the watershed district than anyone else, it's the folks in this room who live on the bluff. You know, they don't think of the watershed district as a storm drain at the end of the street where water goes in. They truly are connected to it. And, this process was a great opportunity for, ah, the watershed district to have a conversation with people on the bluff. People who are connected. People who have resources that could make things happen to help with the mission of the watershed district. And instead, the approach the board took was an approach where you decided to take such a strict approach on the initial ordinance that you made a whole bunch of people super angry and are questioning the very relevancy of what you are doing.

And not only that but in this room, there's a lot of people who are really well connected and can impact the ability of watershed districts all over the state to kind of, kind of fulfil their mission. And because of the incredible excessive nature of what you proposed, that effectively takes away people's ability to do anything with the parcels that they own. Um, in terms of getting people in the district connected to what you're doing, you set it back by years and years because of the actions that you've taken. And that really is a disappointing thing. Um, that me personally, somebody who believes that, you know, that we want to have people involved, we want to have people understand what the issues are, and so I just, just wanted to express that great disappointment I have in you personally with the actions you've taken around this ordinance and hope that you step back and think about what the next proposal is that you have. And, it's something that really listens to what people have, have to say here and it, um, and it really is something that perhaps sets things back on the direction of having some sort of trust and cooperation between the people in the district who really have a stake in what you are doing and the district itself. Thank you for your time.

President Shirk: Thank you.

Doug Bartyzall: I'm Doug Bartyzall. Ah, also on Glen Wilding Lane, 11012 Glen Wilding Lane. And, I'd just like to share a story about how it's supposed to work. Um, a couple years ago I pulled a permit with the City of Bloomington to put a, just a small 12 by 14 addition on the back of my house. If you want to know where the 30% line is, pull a permit on the bluff and you'll find out in a hurry that the current law's

already very restrictive. Um, all I was doing was putting two footings in because the addition that I built on my house is on the second level and it's just two big 12 by 12 posts for the addition. And another, um, my house was built in 1956. I'm the second owner. I feel privileged to live on the bluff and, ah, if I, if those footings had been another ten feet back, I would not have been allowed to build that. So, it's already restrictive. I'm talking about my house is on the front third of the actual, my piece of property is about two acres.

For people that don't know it, you can, ah, in Bloomington anyway, you can type in your address and see how your property would be affected by the 18% rule and I wouldn't have been able to put that footing by my mailbox. Um, my, 100% of my property would be affected by this. I don't know, ah, you know, without a survey. We talked about buckthorn problem. It's an invasive species so as it grows in on my property, the 'sacred plant,' I'm supposed to have my tarred driveway and nothing but buckthorn forest.

President Shirk: Mr. Kolb, please clear up the buckthorn issue.

Legal Counsel Kolb: Yeah, that's, that's actually misinformation. The current standard actually contains an exemption for removal of invasive species. It's always been there. It's not a change. It's nothing new. Um, people have glommed onto that and have made several comments about it tonight and it's inaccurate as to the current standard.

President Shirk: Thank you.

Doug Bartyzall: It should be a lot clearer what the standards are. I mean, I was actually, found out from my neighbor, um, and then I dug through the mail to find the little post card from the watershed district that was in amongst the Value Pack coupons and the Dish Network thing, and, you know, all the rag tag junk e-mail that you get. And it's like something that affects my property this greatly, I would expect that something in non-legal speak to come to my home and say, 'Okay, 100% of your property, Doug, is going to be affected. No fire pits, no tents.' Whatever, whatever, whatever happened the regulations happen to be, that's information that we need long before we get to this point in the process so we can. And, a lot of my neighbors are not even aware. I mean, you talk amongst the neighborhood and they don't even know about this.

So, it seems like the information isn't getting out there the way it should be getting out there. And I think that's your responsibility to make sure that everybody that's affected by this, before any of the decisions are made, has a chance to have a voice like this. You know, we're spreading the word as we can but, I mean, the thousands of homes that are affected by this? I guarantee you 50% of these people don't even know about this. And, and the value of their property? You know, we need information like I still don't know. Maybe I'm the only one in the room. You know, you talk about grandfathering something in? Okay, 100% of my property is affected by this. If my home has a total loss due to fire, what's the process to rebuilding that piece of property? How is that affecting the value of my property. These are just some of the things that, that we're concerned about. You know? I mean, does anybody on the watershed district own a bluff lot?

President Shirk: I can tell you that my property is fully engulfed by the proposed changes. So, I'm in the same position as many of the people in this room.

Doug Bartyzall: Well then, I don't get your logic. Trust me.

President Shirk: I can tell you we're looking at this very carefully.

Doug Bartyzall: Yeah, all right, well I appreciate being able to speak my peace. I didn't come here to, expecting to say anything but I didn't want to leave without saying anything.

President Shirk: Thank you. Anyone else? Then with that we'll suspend the public hearing for this evening.