



Minutes of Regular Meeting
Board of Managers
Wednesday September 20, 2017
Council Chambers, Chaska City Hall, 7:00 p.m.
Approved November 15, 2017

1. CALL TO ORDER AND ROLL CALL

On Wednesday, September 20, 2017, at 7:00 PM in the Council Chambers of the Chaska City Hall, 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: Manager Jesse Hartmann, President Shirk and Manager David Raby. In addition, the following were also present: Della Schall Young, Young Environmental Consulting Group, LLC, LMRWD Technical Advisor; John Kolb, Rinke Noonan, LMRWD Legal Counsel and Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator, Marianne Breitbach, Prior Lake/Spring Lake Watershed District, Steve Peterson, Simon Barrow, and Adam Frey Bloomington residents.

2. APPROVAL OF THE AGENDA

Administrator Loomis requested an addition under Old Business; Item 6. I. xii. - 2435 Old Shakopee Road.

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

3. CITIZEN FORUM

The following were present to address the Board:

President announced that there are openings on the Board of Managers.

Adam Frey, 5621 Autoclub Road, Bloomington. Mr. Frey asked if he could address the Draft Watershed Management Plan this evening. President Shirk informed Mr. Frey that the Managers would accept comments. Mr. Frey questioned why the Plan Amendment was changed the way it was. President Shirk responded that the District has been made aware that erosion of the bluffs and has been asked to help remediate the erosion. The District is concerned with the amount of erosion it has been asked to help manage. Mr. Frey stated that while he believes it is a good idea to address erosion, the proposed changes in the plan are in conflict with the principals he learned through the Master Water Steward Program. Mr. Frey informed the Managers of a map he had seen that caused him concern, because some properties are completely affected by the proposed standards. Attorney Kolb explained to the Managers that the map Mr. Frey is referring to was generated by the city of Bloomington and the District cannot comment on it, because we do not know which map Mr. Frey is referring to. Attorney Kolb further explained that the map shows only the changes and does

not address that many of these properties are already impacted by current standards. He said the LMRWD has not yet released maps showing the impact on properties of the current District standards. President Shirk recommended that concerns be submitted in writing to the LMRWD. Attorney Kolb hat even though the 60-day-comment period will expire today, September 20, 2017, the LMRWD will continue to accept and respond to comments until the close of the required public hearing.

Simon Barrow, 9731 16th Avenue South, Bloomington. Mr. Barrow questioned the impact of the proposed standards on pre-existing structures. Attorney Kolb explained the existing structures are not impacted by proposed standards unless changes to the structure are considered. Mr. Barrow stated that the restrictions seemed excessive regarding the removal of vegetation and he would not like to have to speak with the city every time he wants to remove invasive species from his yard. Ms. Della Young clarified the District's expectations regarding vegetation removal. Mr. Barrow thinks bluff management would be better managed on an individual property basis.

Steve Peterson, 11036 Glen Wilding, Bloomington. Mr. Peterson explained he will be impacted by the proposed standard. He requested the Managers consider holding an additional hearing in the city of Bloomington, so that more people impacted by the proposed change can give input. President Shirk responded that it will be considered.

President Shirk closed the citizen forum portion of the meeting and moved on to the Consent Agenda.

4. CONSENT AGENDA

The Consent Agenda included the following items:

- A. Approval of Minutes for August 16, 2017 Regular Meeting**
- B. Approval of Financial Reports**
- C. Presentation of Invoices for payment**
 - i. Metro Sales - for service agreement for copier**
 - ii. David Raby - payment for 1st half 2017 per diem, mileage & expenses**
 - iii. Rinke Noonan - for June legal service**
 - iv. HDR Engineering - installment payment for website redesign**
 - v. Scott County SWCD - for 2nd quarter 2017 monitoring services**
 - vi. Steinkraus Development LLC - for September 2017 office rent**
 - vii. Time Saver Off Site Secretarial- for preparation of July 2017 meeting minutes**
 - viii. US Bank Equipment Finance - September 2017 copier lease payment**
 - ix. Greg Zeck - for June & July 2017 webmaster services**
 - x. Redpath & Company - payment for 2016 financial audit**
 - xi. Naiad Consulting - for May 2017 Administrative services**
 - xii. Dakota County SWCD - for 2nd quarter 2017 monitoring services**
 - xiii. USGS - for 2017 sediment monitoring**
- D. Authorize execution of Cost Share Agreement & payment for 10217 Tenth Avenue Circle, Bloomington - Frank Janezich**

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

5. NEW BUSINESS

A. Election of LMRWD Officers

Attorney Kolb explained the process for electing officers. He explained the first office to be considered should be the office President. If someone other than the current President is elected the new President would preside over the election of Secretary, Treasurer and Vice

President and the rest of the meeting. Attorney Kolb said that since there are not enough Managers to fill all the positions of the Board, it would be appropriate to have one Manager hold more than one office. President Shirk opened the nominations for the position of President.

Manager Hartmann nominated President Shirk and Manager Raby seconded the nomination.

Manager Raby moved to closed the nominations and cast a unanimous ballot for Manager Shirk for President. Manager Hartmann seconded the motion. The motion carried. President Shirk abstained from the vote.

The next position to be filled was the position of Vice President.

President Shirk nominated Manager Hartmann Vice President. Manager Raby seconded the nomination.

Manager Raby moved to close the nominations and unanimously elect Manager Hartmann Vice President. President Shirk seconded the motion. The motion carried. Manager Hartmann abstained.

The next position to be filled was the position of Secretary. Attorney Kolb explained this position could be held by either Manager Raby or Manager Hartmann, since one of them will have to hold two offices, if all offices are to be filled. President Shirk asked about what would happen should another Manager be appointed. Attorney Kolb said the bylaws offer a provision for succession and the Managers could decide to appoint an acting Secretary for a month or two. Attorney Kolb explained one of the duties of Secretary is to sign on behalf of the Board to authenticate Documents.

President Shirk nominated Manager Raby for the position of Secretary. Manager Hartmann seconded the nomination.

President Shirk moved to close the nominations and unanimously elect Manager Raby Secretary. Manager Hartmann seconded and the motion carried. Manager Raby abstained.

President Shirk nominated Manager Raby for the position of Treasurer. Manager Hartmann seconded the nomination.

President Shirk made a motion to close the nominations and unanimously elect Manager Raby Treasurer. Manager Hartmann seconded the motion. The motion carried. Manager Raby abstained.

B. LMRWD bylaws

Administrator Loomis said the bylaws were sent to the Managers for them to review. The bylaws require revision every 5 years and the bylaws were reviewed and revised when Attorney Kolb began as legal counsel for the District. Manager Raby had a question about Section III Section 2 of the bylaws, which states the "LMRWD covers an area of 64 square miles". He questioned whether or not that Section should be changed due to the approval of boundary changes made recently.

Administrator Loomis said BWSR has not yet been petitioned or approved the boundary change yet, so any revision to the bylaws is premature. President Shirk asked Ms. Della Young if there was a simple way to calculate the square mileage of the District. She said it could be done, but it not necessarily simple. Administrator Loomis noted that in some places it says the LMRWD is 80 square miles and others places it says 63 square miles. She said this question is one that the

District plans to look at this question as one of the projects identified in the Watershed Plan Amendment.

Manager Raby then questioned, since there is currently no Secretary, who has been signing the minutes of the meeting, since the bylaws state that all meeting minutes, "...shall be signed by the Secretary...". Administrator Loomis said Manager Kremer was the Secretary and signed the minutes. When he resigned his position, Administrator Loomis has had the minutes signed by the Vice President, Manager Hartmann. Now that there is a Secretary, Manager Raby will be asked to sign the minutes. Manager Raby stated his concern that the bylaws say one thing and the District has been doing another.

President Shirk said that the bylaws could be revised once the boundary changes are complete and perhaps at that time the question of who should sign the minutes in the absence of a Secretary could be addressed too.

C. Cost Share Application - 9912 2nd Avenue South, Bloomington, Una Forde & Theodore Rick

Administrator Loomis said she recently received this application. The homeowners are working with Metro Blooms to design and construct several rain gardens in their yard. She reported that the homeowners are planning to do all the work themselves and that she has discussed with the homeowners that their labor would be counted as part of the match, but they would not be reimbursed for it. She said the estimate of the cost of the project was calculated using a cost per square footage ratio from Metro Blooms. She has discussed with the homeowner that they would only be reimbursed for the actual cost of the project and that the homeowner will need to provide receipts documenting the actual costs. She reported the homeowners were amenable to that.

Managers asked how reimbursement would be managed. Administrator Loomis reported that if Managers approve the grant, reimbursement is not made until the project is complete and documentation of all the costs is provided to the District. Typically, Managers approve a grant and then a cost share agreement is drafted, the homeowner is notified of the approval of the grant. Homeowners can begin work on the project once they receive approval and then reimbursement is requested once the project is complete.

President Shirk made a motion to approve the application for an amount not to exceed \$2,500 as verified by receipts and authorize the Cost Share Grant Agreement. Manager Hartmann seconded the motion. The motion carried unanimously.

6. OLD BUSINESS

A. MAWD

Administrator Loomis reminded the Managers that this item was on the August agenda and Managers tabled it. The item was to approve resolutions to MAWD that were suggested by the Prior Lake/Spring Lake Watershed District (PLSLWD). However, we did not have the actual resolutions. Resolutions adopted by the PLSLWD were included in the packet for the September meeting and similar resolutions have been drafted for the LMRWD.

Marianne Breitbach, a Manager of the PLSLWD, was at the meeting. President Shirk asked Ms. Breitbach to step forward and welcomed her to provide any information she could to the Managers. Ms. Breitbach explained that the PLSLWD wanted to send a message to MAWD more than anything that there are other ways to conduct its business. She said the PLSLWD is looking for support from other Watershed Districts and then let's see what the general membership says and the annual conference.

Managers discussed the resolutions. They expressed support for all the resolutions except resolution 17-06 that spoke to proportional representation on the MAWD Board of Directors.

President Shirk moved to adopt Resolutions 10-07, 17-08 and 17-09. Managers Raby seconded the motion. Manager Hartmann said he is not opposed to 17-06 and after some discussion made a motion to amend President Shirk's motion by including resolution 17-06. Manager Raby seconded the motion to amend the original motion. The motion to amend the motion carried unanimously.

There was additional discussion with Ms. Breitbach. She explained it is the intent of the PLSLWD to submit the resolutions to MAWD for consideration at the Annual Meeting. She said they have taken this approach, because there is not really an opportunity at the Annual Meeting to bring items like this forth for discussion.

She provided more information about the process and rationale MAWD used to come up with its new dues structure. She said that as far as the Board of Managers of the PLSLWD is concerned annual payment of dues to MAWD will not be a foregone conclusion. She said they intend to evaluate the value MAWD gives to the PLSLWD every year and if the dues are worth it to the District. More than anything they want get the conversation started.

Managers then voted on the amended motion, which carried unanimously.

B. MN River Clean Up Event

Administrator Loomis explained that she had nothing new to add to this item. Manager Raby questioned what kind of event staff looking to do. Administrator Loomis said the Managers had asked staff to develop an event that would bring more visibility to the District and that is what she will be looking to do, some kind of event to have volunteers to come and clean up a natural area, or remove invasive species.

President Shirk asked if the city of Burnsville was contacted. Administrator Loomis said the city has been contacted, but their response was not enthusiastic. The city has events that they manage. Since the District contacted them about this, they have notified the District of the city's events, but they haven't reached out to the LMRWD to partner.

C. Dredge Management

i. Review Process for funding of maintenance of Navigation Channel

Administrator Loomis said there is nothing additional to report beyond what was in the Executive Summary.

Attorney Kolb said the report from Clay Dodd will be complete shortly and that Managers should consider scheduling a hearing. He said that some of the property owners were not as cooperative as they could have been and said that by scheduling public hearing, that would get them to the table to talk. He suggested that the Managers consider scheduling such a hearing after some of the Manager absences subside.

President Shirk asked if Mr. Dodd would need to be at the hearing. Attorney Kolb said that yes, Mr. Dodd would need to be at the hearing.

ii. Vernon Avenue Dredge Material Management site

Administrator Loomis reported that Rachel Contracting has been removing material. New material was scheduled to be coming in to the site, but water levels in the river delayed dredging in the channel.

She reported that the agreement with Rachel is coming to an end and that Taylor Luke, LS Marine, said the Managers should to begin to think about what to do with material after

the agreement with Rachel ends. Mr. Luke believes the District doesn't need to have an agreement for the sale of material, but could manage the sale on an as you go basis.

She said, if the Managers would like, she will invite Mr. Luke to a future meeting of the Board.

Attorney Kolb said an alternative to consider would be to prepare a request for proposals (RFPs) and advertise the material for sale. This would allow outfits like Rachel or Rachel that would come back to the District and say they are interested. That way the District could have a list of parties interested in the material and balance allocation of material amongst them. He recommended that the Managers get a plan from the site Managers as to how they would manage the sale of the material and if the Managers don't get a good feel from the current site manager as to how they would manage the material the District could approach Rachel, and without creating a monopoly for them, open up the process.

He said another issue is with the access road. If the LMRWD has a contract with someone for the sale of material, the District can hold them to certain standards for maintenance of Vernon Avenue. Without an agreement, the District's doesn't have the same level of control.

President Shirk asked if the sale of material is left in the hands of the site manager, they would be in control of who buys material. Administrator Loomis said the site manager would handle that and that the agreement with the current site manager, LS Marine would have to be amended.

President Shirk asked if it made sense to go out for bids for the material. Administrator Loomis said that it might, because she has been reading in the news lately that there is currently a sand shortage. It might be interesting to see what value channel sand has in the marketplace. Manager Hartmann asked what the sand is being used for. Administrator Loomis said sand for construction.

Managers Raby said dredge sand is probably not what is being looked for. He asked if anyone has expressed interest in the sand. Administrator Loomis said Rachel has indicated they are still interested and had at one time asked about becoming the site manager. At the time they had expressed interest in becoming site manager, they had asked about the possibility of bringing in additional material to mix with the sand. Attorney Kolb advised against that, as it could put some strain on the Conditional Use Permit (CUP) with the city and that kind of activity could possibly trigger the need for the District to get an MPCA permit.

iii. Private Dredge Material Placement

Administrator Loomis reported that the LMRWD has received payment from CHS and Riverland Ag for the placement of private dredge material. She reported that Attorney Kolb has amended the License agreement and it is currently under review by the other parties to the agreement. Attorney Kolb reported that the other parties have some questions which he will respond to; the good news is the other parties are all abiding by the terms of the license agreement.

D. Watershed Management Plan

i. Plan update/Major Plan Amendment

Administrator Loomis reported that staff is meeting with the cities and is scheduled to meet with the city of Bloomington again. She said that this evening the Managers should

determine the date of the public hearing, because that will set the time table for some of the other actions that need to happen.

She said that it appears the regular meeting night of October 18th will not work for the public hearing, since there will not be enough Managers at the meeting for a quorum. She also noted that if the date is changed to the following week they will need to consider another location for the hearing, as the Chaska council chambers is typically not available on the fourth Wednesday of the month.

President Shirk asked if they should consider moving the meeting to a different day of the week. Administrator Loomis said she does not know the availability for the Council Chambers and said it may be best to check with Carver County, to see if the County Board Room is available. Managers agreed to schedule the hearing for October 25th.

Staff has been logging comments and preparing responses that will be sent to those commenting and posted to the website. Staff is also working on a Statement of Need and Reasonableness report (SONAR)

President Shirk asked what date staff will be meeting with the city of Bloomington. Administrator Loomis said it hasn't been set yet, because she needs to check with others for their availability.

President Shirk asked about scheduling additional meetings for cities. Administrator Loomis pointed out that there are other cities in the District. President Shirk said that Bloomington is the only city with residents that have stepped forward to request a meeting. Staff explained to the Managers that Bloomington, Eden Prairie and Chanhassen took it upon themselves to notify resident of the LMRWD within each of those cities about the changes in the Draft Plan Amendment.

Staff explained the process for responding to comments and how the comments received during the 60-day comment period will be managed. Each comment received during the comment period will be responded to and a response will be sent to the person commenting and posted to the LMRWD website. The LMRWD is required to respond no later than 10 days before the public hearing. Comments received after the 60-day comment period deadline will be responded to also, but do not need to be responded to in the same timeframe as those received during the comment period.

Ms. Della Young explained to the Managers the notification process the LMRWD followed. She further explained that the cities of Bloomington, Eden Prairie and Chanhassen requested the LMRWD consider mailing additional notices. LMRWD staff told them we would take their request back to the Managers; however the cities took the initiative to mail the notice themselves.

Managers asked why the cities mailed the notices. Attorney Kolb explained that the cities of Bloomington, Eden Prairie and Chanhassen felt enough of their residents were impacted in a substantial way that they didn't feel a generic notice was sufficient.

Holding an informational meeting would provide an opportunity to clear up misinformation that is circulating. Ms. Young suggested that perhaps the LMRWD could request being placed on the agenda for a city's planning commission. Attorney Kolb agreed that would be a good idea and noted there are a number of options for communicating more widely.

Manager Raby said that, as was pointed out earlier, there are more cities in the District than Bloomington, Eden Prairie and Chanhassen and if the District is planning to reach out to Bloomington, they should reach out to all the cities. Manager Hartmann asked about the letters that were sent. Administrator Loomis said the letters that were sent out by Bloomington and Eden Prairie were very closely worded. She has not seen the letter Chanhassen sent, but has been told it is similar. She reported that the city of Bloomington informed the District of their intent to send a letter and provided a draft to the District for input before sending it.

Administrator Loomis explained that because of the amount of public interest in the Plan Amendment and the amount of public communication, the cost anticipated for the Plan Amendment will need additional authorization. Managers asked what the cost is and Administrator Loomis explained that it is staff time.

Manager Raby made a motion to direct staff to estimate the additional cost for the Plan Amendment as best as they can and bring an estimate back to the Board for approval. Manager Hartmann seconded the motion

Ms. Young asked about a workshop with the Managers to go over the response to comments. President Shirk asked if it should be before or after the public hearing. Ms. Young said she thought it would be better to have a workshop before the public hearing and before the responses are made public. Managers agreed to hold a workshop on October 12 at 6:00pm.

President Shirk called the question and the motion carried unanimously.

President Shirk allowed Steve Peterson to address the Managers again. He thanked the Managers for considering a meeting in Bloomington and he wanted to clarify that his request was for a public hearing to be held in Bloomington.

E. Legislative Action

i. 2018 Legislative Session

Administrator Loomis reported that she is waiting for a response from Ron Harnack.

F. Website Redesign

Administrator Loomis reported that staff is working on content for the website. The website has not been a priority, as staff has been working on the Plan amendment, managing comments and meeting with the cities.

G. Education and Outreach Plan

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

Administrator Loomis reported that she is planning to have Karl Schmidtke to come to a future meeting of the Board to report on his experiences this summer at the County Fairs

ii. Citizen Advisory Committee

No change since last update.

H. LMRWD Projects

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

Administrator Loomis reported that Barr Engineering has worked out the design details for this project and the next step is to get the county to agree and include it in their plans. She reported that she is meeting on site this Friday with Jeff Weiss to approve the project submission to the city,

ii. Freshwater Society Lake Coring Project

Administrator Loomis said she has nothing additional to report on this project or any of the others projects, than what was in the Executive Summary.

iii. Seminary Fen ravine stabilization project

See 6.H. ii.

iv. Analysis of Dakota County Groundwater Project

See 6.H. ii.

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

See 6.H. ii.

vi. Savage Fen Ravine Project

See 6.H. ii.

vii. Bluff Erosion 0 8150 132nd St. West, Savage

See 6.H. ii.

I. Project Reviews

Administrator Loomis said she has nothing additional to report on this project or any of the others projects, than what was in the Executive Summary. Except for 6.I.xii.- 2435 Old Shakopee Road.

i. City of Carver Comprehensive Plan Amendment - Trinity Development

No change since last update.

ii. 12300 Riverview Road, Eden Prairie - Hueler Subdivision

No change since last update.

iii. City of Chaska - MPPA (Minnesota Municipal Power Agency) Electric Generation Plant

No change since last update.

iv. Hennepin County - Upper Post Fort Snelling/Bloomington Road Project

No change since last update.

v. Xcel Energy Black Dog Plant

No change since last update.

vi. City of Shakopee - Eagle Creek Ridge

No change since last update.

vii. City of Burnsville Cargill/Mosaic levy project

No change since last update.

viii. Boy Scouts of America (BSA) - Fort Snelling Upper Post

No change since last update.

ix. City of Burnsville - US Salt

No change since last update.

x. Burnsville Water Management Plan

Manager Raby reminded the Board that action was needed on this item. Administrator Loomis said there is a resolution in the meeting packet to approve the plan. She asked Della Young to review Burnsville's plan. Ms. Young had some concerns about how the LMRWD standards will be implemented by the city; it is not identified in the plan. Staff would recommend the Board conditionally approve the Burnsville Local Water Management Plan.

Manager Raby pointed out there was an error in the resolution before them; condition #2 and #4. It seemed a word or was missing. Attorney Kolb noted that the city of Carver is mentioned and it should probably be the city of Burnsville.

Manager Shirk made a motion to approve the Local Water Management Plan for the city of Burnsville and adopt resolution 17-10 subject to the staff correcting the resolution and adding any conditions that staff deems necessary. Manager Hartmann seconded the motion. The motion carried unanimously.

xi. City of Savage - Formanek Property

No change since last update.

xii. City of Bloomington - 2435 Old Shakopee Road

Administrator Loomis explained that this project is located in the watershed of Ike's Creek. The US Fish & Wildlife Service (USFWS) has expressed concern that this project may increase chloride concentrations in the creek. Vicki Sherry has been in touch with the LMRWD about monitoring Ike's Creek for chloride. Administrator Loomis has committed to paying for the sampling of Ike's Creek for chloride. USFWS monitors the number of fish in the creek every year and this year has the largest population of trout in the creek that they have ever seen. The Creek has not been stocked since 2007, so the population of trout in the creek is naturally reproducing.

Ms. Sherry said USFWS is also concerned with the construction and Administrator Loomis said she thinks the District should inspect the property for compliance. The project is for a hotel and an entertainment facility for Whirly Ball. She has contacted the city about how they intend to monitor salt usage once the development is in use. The city said they don't have any control over that, once the construction is complete.

J. Calendar planning for Board meetings

Managers discussed dates for meetings for the rest of the year. Manager Raby stated that he would he plans to leave town January 9th, but the remaining 2017 dates looks good for him. He could meet on January 8th. He said he would then be gone for the February and March meetings. Administrator Loomis said the February and March meetings would be on the 21st of each of those months and the April meeting is on the 18th. Manager Raby asked about the ability to participate in meetings remotely. Attorney Kolb explained the rules to allow remote participation. It was decided that it is impractical to do arrange for remote participation and remain in compliance with the state laws governing open meetings.

K. Dean Lake - no change since last update

L. MPCA Soil Reference Values - no change 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

Manager Raby moved to adjourn the meeting. Manager Hartmann seconded the motion. President Shirk adjourned the meeting at 8:45pm.

LOWER MINNESOTA RIVER WATERSHED DISTRICT
BOARD OF MANAGERS
Wednesday September 20, 2017
MEETING MINUTES

Dave Raby, Secretary

Attest:

Linda Loomis, Administrator