



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

Minutes of Regular Meeting

Board of Managers

Wednesday, June 20, 2024

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

Approved \_\_\_\_\_, 2024

## 1. CALL TO ORDER

### A. ROLL CALL

On Thursday, June 20, 2024, at 7:00 PM CST, in the Board Room of the Carver County Government Center, 602 East 4th Street, Chaska, Minnesota, President Barisonzi called to order the meeting of the Board of Managers of the Lower Minnesota River Watershed District (LMRWD).

President Barisonzi asked for the roll call to be taken. The following Managers were present: President Joseph Barisonzi, Manager Theresa Kuplic, and Manager Apollo Lammers. Manager Lauren Salvato was absent.

In addition, the following attended the meeting in-person: Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; Steve Albrecht, Shakopee Mdewakanton Sioux Community, Tribal Operations Administrator; Lani Leichty, Water Resource Engineer, Bolton & Menk; Casey Black, Senior Project Manager, and Sam Westlund, Water Resources Project Manager, SRF; and Craig Jenson, Transportation Planning Manager, Megan Tasca, Water Resources Engineer, and Kyle Sammons, Project Manager, Scott County;

Della Schall Young, Young Environmental Consulting Group, LLC, LMRWD Technical Consultant; Hannah LeClaire, Water Resource Engineer and Jess Norby, Senior Water Resources Scientist, both from Young Environmental Consulting Group, LLC; John Kolb, Rinke Noonan Attorneys at Law, LMRWD Legal Counsel; Scott County Commissioner Jody Brennan; and Manager Ben Burnett, Prior Lake Spring Lake Watershed District attended the meeting virtually. Lisa Frenette, Frenette Legislative Advisors, legislative liaison for the LMRWD joined the meeting at 8:00 pm.

## 2. CITIZEN FORUM

No one was present to address the Board of Managers.

## 3. APPROVAL OF THE AGENDA

### A. Additions, Corrections and Deletions to the Agenda

President Barisonzi introduced this item.

**Manager Kuplic made a motion to approve the agenda with changes. Manager Lammers seconded the motion. Upon a vote being taken the motion was carried unanimously.**

## 4. PUBLIC HEARINGS & PRESENTATION

### A. There were no public hearings or presentations

## 5. CONSENT AGENDA

President Barisonzi introduced the item.

Administrator Loomis asked that the May 2024 invoice from Rinke Noonan for general legal services be removed.

### A. Approve Minutes May 15, 2024, Regular Meeting

### B. Receive and file May 2024 Financial Report

### C. Approval of Invoices for payment

- i. Clifton Larson Allen (CLA) - Financial services through April 2024
- ii. TimeSavers Off Site Secretarial – Preparation of March 26, 2024, personnel committee meeting minutes and April 17, 2024, meeting minutes
- iii. Rinke Noonan, Attorneys at Law – April 2024 Legal Services related to Area #3
- ~~iv. Rinke Noonan, Attorneys at Law – May 2024 legal services~~
- v. Daniel Hron - May 2024 office rent
- vi. US Bank Equipment Finance – May 2024 copier lease payment
- vii. Young Environmental Consulting Group, LLC – April 2024 technical, and Education and Outreach services
- viii. Naiad Consulting, LLC – April 2024 administrative services, mileage, and expenses
- ix. 106 Group - Area #3 – May 2024 services related to Area #3
- x. Barr Engineering - April 2024 Geotechnical services related to Area #3
- xi. Barr Engineering – May 2024 Geotechnical Services related to Area #3
- xii. WSB – Area #3 land acquisition services
- xiii. Frenette Legislative Services – May-June 2024 legislative liaison services
- xiv. HDR – Website services from 10-1-2023 to 6-1-2024
- xv. Great American Insurance Company – 8/1/24 to 8/1/25 Director & Officer Insurance
- xvi. MN DNR Ecological and Water Resources – application fee for work in public waters permit
- xvii. 4M Fund - April 2024 fund service charges
- xviii. Daniel Hron - June 2024 office rent

### D. Report from the Citizen Advisory Committee

### E. Authorize reimbursement for Cost Share Grant for 1880 Christy Drive, Carver

### F. Authorize reimbursement for Educator Mini-grant for Redtail Ridge Elementary School

Manager Lammers made a motion to approve the Consent Agenda. Manager Kuplic seconded the motion. Upon a vote being taken the motion was carried unanimously.

## 6. PERMITS

### A. LMRWD Permit Renewals

President Barisonzi introduced this item.

Manager Lammers made a motion to renew permits as recommended in Table 1 of Technical Memorandum – June 2024 Permit Renewal Requests dated June 12, 2024. Manager Kuplic seconded the motion. Upon a vote being taken the motion carried unanimously.

### B. TH 41 ORF (Organic Recycling Facility) Relocation (LMRWD No. 2023-027)

President Barisonzi introduced this item.

Steve Albrecht, from the Shakopee Mdewakanton Sioux Community, came forward and shared that the facility is under construction, and they are hopeful to be able to start taking food waste in September. He noted that the project will likely not be fully complete until June of 2025. He added that they are also going to be adding a new crossing signal at the railroad tracks, as well as right and left turn lines in this area on Highway 41 to help with traffic flow. He shared that MnDOT will also be making improvements to the railroad tracks as a part of this project.

President Barisonzi asked how close they are to the water level. Mr. Albrecht said they are not close to it as this project will be well above it.

**Manager made a motion conditionally approve a permit for TH 41 Organic Recycling Facility (ORF) Intersection Reconstruction (LMRWD No. 2023-027) contingent upon receipt of the following: the name and contact information of the individual(s) liable to the LMRWD for performance under the LMRWD rules from the time permitted activities commence until the LMRWD has certified satisfaction with erosion and sediment control requirements, contact information for the contractor(s), and contact information for the person(s) responsible for inspection and maintenance of erosion and sediment control. Manager seconded the motion. Upon a vote being taken the motion was carried unanimously.**

**C. Merriam Junction Trail (LMRWD No. 2023-013)**

President Barisonzi introduced this item.

Craig Jenson, Scott County Transportation Planning Manager, came forward and shared that this trail is a 2.2-mile trail that goes from Scott County to Carver County. He noted this project has been in the works since the trail was abandoned in the late 2000s. He shared that this is Scott County's highest priority project.

President Barisonzi asked what the primary challenges were with this project. Mr. Jenson said that finding funding for the project was one of their original challenges. He added that they also had issues with archaeology and ensuring that they are not affecting any endangered species with this project. He shared that a lot of investigation has gone into the design process.

President Barisonzi noted that there are a lot of contingencies. He asked why approval from the Board is important for the project at its current stage. Mr. Jenson explained that they are looking to have this project out for bid at the beginning of July and would aim to start construction in September.

President Barisonzi asked where they are with the Wetland Conservation Act approval. Mr. Jenson said this is in progress. He noted that they believe they have contingent approval coming for this. He added that they have had conversations with the LGUs and most of them have been interested in what is proposed.

President Barisonzi asked where they are with the Army Corp. of Engineers. Mr. Jenson shared that this is also in review, and they hope to have the permit in place, with conditions after MPCA approval. He noted the MPCA review is in progress currently.

Mr. Jenson shared that the start of construction date for some aspects of this project is quickly approaching as some of the work can only be done in the winter months. He said if they missed construction this winter, it would push the timeline for construction back an entire year.

President Barisonzi asked where they are with the DNR. Mr. Jenson shared that they are also in progress with the DNR.

Manager Lammers asked how the City of Carver feels about this project. Mr. Jenson explained that they have been having monthly meetings with Carver to coordinate their levee project along with this project. He said they have been a part of this project for the last year and a half. He shared that they are creating a flood response plan with the City of Carver. He noted that Carver is in support of this project, and they have a joint powers agreement for this.

President Barisonzi shared that he is very excited about this trail. He said he has a vision of recreational access along the Minnesota River. He said he does not have many concerns with this; however, he is concerned with the long-term impacts on fragile wildlife areas and use of trails that are not receiving ongoing management.

President Barisonzi asked how they are acknowledging long term impacts to wildlife. Mr. Jenson shared that the first step of this was doing an investigation to make sure that they knew all of what was present. He added that they are continuing to work with different agencies, including the DNR to make sure that they have a buffer from any wildlife that that may be in the area. He shared that there are some mitigation measures that are being recommended along with some of their permits. He noted that they are also looking at doing some restoration work within the waterways after they remove the temporary structures for the project. He said there may be more long-term goals that they have in partnership with the DNR. He explained that they do not see it as a challenge to maintain the use of the trail long term.

President Barisonzi asked who would be responsible for the ongoing maintenance of the trail. Mr. Jenson said it would be Scott County and Three Rivers Park District.

Manager Kuplic asked if they will have signage on the trail that identifies different kinds of wildlife. Mr. Jenson said yes.

President Barisonzi noted that he does not believe it is within the Board's permitting authority to request ongoing mitigation strategies; however, he hopes that Mr. Jenson will take back the Board's concerns with ongoing impacts that this project may have. He added that Three Rivers has experience in managing the human side of maintaining sustainability in trails. He noted that they may be able to utilize community partnerships for signage.

**Manager Kuplic made a motion to conditionally approve a permit for the Merriam Junction Trail project for temporary and permanent impacts contingent upon the receipt of the following:**

- **A Copy of the NPDES construction stormwater permit**
- **Contact information for contractor(s) undertaking any land disturbing activities**
- **Contact information for the person(s) responsible for inspection and maintenance of erosion and sediment control**
- **Documentation of approval under the Wetland Conservation Act (WCA)**
- **Documentation of approval from the US Army Corps of Engineers (USACE)**
- **Documentation of approval from the Minnesota Pollution Control Agency (MPCA), including Section 401 Individual Water Quality Certification**
- **Documentation of approval from Minnesota Department of Natural Resources (MN DNR) including final signed cooperative agreement**

- **Documentation of approval from Scott County Water Management Organization (Scott WMO)**
- **Documentation of approval from the City of Carver**
- **Final plans signed by a profession engineer**
- **Documentation that properties impacted by temporary increases greater than 0.1 foot to the 100-year floodplain have been notified**

**The final approved project permit will have the following stipulation:**

- **The project engineer will review the contractor's hydraulic models and provide a memorandum of findings demonstrating that construction impacts are within the proposed 0.22-foot temporary stage increase of the Minnesota River 100-year floodplain. The memorandum must be received before temporary impacts are constructed to avoid a lapse in permit coverage. 2024 T2 North Expansion (LMRWD No. 2024-006)**

**Manager Lammers seconded the motion. Upon a vote being taken the motion was carried unanimously.**

**D. 2024 T2 North Expansion (LMRWD No. 2024-006)**

President Barisonzi introduced this item.

**Manager Lammers made a motion to conditionally approve a LMRWD Rule B permit for 2024 T2 North Expansion (LMRWD No. 2024-006) contingent upon the receipt of the following: final construction plans signed by a professional engineer and an executed maintenance agreement. Manager Kuplic seconded the motion. Upon a vote being taken the motion was carried unanimously**

**E. Lower Lyndale Avenue Road Project (LMRWD No. 2024-010)**

President Barisonzi introduced this item.

**Manager Kuplic made a motion to conditionally approve a LMRWD Rule C for the Lower Lyndale Avenue Road Project contingent upon receipt of a copy of the NPDES construction stormwater permit, contact information for the contractor(s) and contact information for the person(s) responsible for the inspection and maintenance of erosion and sediment control with the stipulation that work may not begin within the USFWS parking lot until the final construction plans and final MOU have been submitted and the LMRWD has determined that are in accordance with the proposed cut and fill exhibits in the permit application. Manager Lammers seconded the motion. Upon a vote being taken the motion was carried unanimously.**

**F. 535 Lakota Lane after-the-fact Project Review (LMRWD No. 2023-001)**

President Barisonzi introduced this item.

Attorney Kolb shared that they are not requiring the removal of the retaining wall, nor are they requiring any further investigation on it as it would be riskier to remove the retaining wall than it would be to leave it in place. He explained that if the permit fees are collected then they can discharge the enforcement action in the district court as the violation would be cleared up with the issuance of the permit.

Ms. LeClaire reviewed how they came to the permit amount of \$4,875 owed by the applicant.

President Barisonzi asked if this amount was derived by calculating the hourly cost to the LMRWD and for Young Environmental's staff time. Ms. LeClaire said yes.

President Barisonzi asked if this included Attorney Kolb's time. Attorney Kolb said no. President Barisonzi asked why his time was not included. Attorney Kolb explained that they do not have a basis for this in Watershed Law and there is no provision that would allow them to collect any legal fees.

President Barisonzi asked why it is in the Board's interest to settle with this non-compliant person outside of court. Attorney Kolb explained that they were following the direction of the Board at the time to try to resolve this matter. He added that they started the enforcement act as additional pressure on the applicant. He noted that this only resolves the applicant's issue with the LMRWD and the applicant still lacks a certificate of occupancy with the City and has to come into compliance with those zoning ordinances.

President Barisonzi asked what kind of precedent this will set with other contractors who do not apply for permits before starting their work.

Manager Kuplic asked what they will be able to do in the future if an after-the-fact permit like this comes forward in the future. Attorney Kolb shared that they could adopt a different process for after-the-fact permitting that would be more punitive in regard to the fees.

Manager Lammers asked how much in legal fees were spent on this matter. Attorney Kolb said he does not have the exact numbers; however, he does not think the costs were tremendous.

President Barisonzi asked how many after-the-fact permits they have done. Attorney Kolb said this is the only one.

President Barisonzi asked if other WMOs have different policies for dealing with after-the-fact permits. Attorney Kolb explained that every organization that he works with has rules or provisions related to after-the-fact permitting. He shared that the City of Chanhassen is still enforcing their own zoning ordinances on this matter. He recommended adopting a fee schedule for after-the-fact permits; however, it is not a common occurrence.

President Barisonzi asked if this is a consequence of allowing the City of Chanhassen to be the front line for this project. Attorney Kolb said he is not sure if that is exactly how it works. He shared that these kinds of situations slip through the cracks more often than they realize. He noted that the matter in which Chanhassen caught this non-compliance is because the property was listed for sale and an inspection was triggered

**Manager Lammers made a motion to conditionally to approve an after-the-fact permit for the following property improvements at 535 Lakota Lane:**

- **Reestablishment of permanent vegetation on the bluff**
- **Drain tile installation with energy dissipation, and**

- **Installation of riprap of fill the gaps in the existing riprap located on the bluff side of the retaining wall**

**Contingent upon receipt of \$4,875 for the investigation and inspection of the unauthorized work, and the notation that the retaining wall on the property was not constructed with a permit from the LMRWD and is not certified by a professional engineer. Though constructed in a manner not in compliance with LMRWD Rules, the LMRWD deems removal of the existing retaining wall to be of equal risk to the integrity of the adjoining slope as allowing it to remain. The LMRWD assumes no responsibility for the wall's structural integrity or future performance. The current homeowner/permittee is advised to notify any future purchaser of the property of the compliance status of the retaining wall. Manager Kuplic seconded the motion. Upon a vote being taken the motion was carried. President Barisonzi abstained.**

## **7. ACTIONS ITEMS**

### **~~A. Administrative Services Agreement Amendment #4~~**

This item was removed from the agenda as it was addressed at the May 2024 meeting.

### **B. Cost Share Application from Cambridge Condominium**

President Barisonzi introduced this item.

Manager Kuplic said they do not have enough documentation to make an informed decision on this. She added that the plan that was provided to the Board is not complete.

Manager Barisonzi said he does not support this cost share project. He directed Staff to let the applicant know that the Board had mixed feelings on whether or not they would like to see this again.

### **C. Study Area #3**

Administrator Loomis introduced and gave a brief background of this item.

Attorney Kolb shared that the applications are in review and are waiting on Staff recommendations to move forward.

President Barisonzi asked when they were expecting a finance proposal. Administrator Loomis shared that they will be bringing a letter forward to the July meeting from Shannon Sweeney from David Drown. She noted that because they have not completed the audits they may end up with a higher interest rate. She added that they should expect to spend the same on bonds that they put in this year.

## **8. BOARD DISCUSSION ITEMS**

### **A. Minnesota River Boat Tour**

President Barisonzi introduced this item.

Administrator Loomis shared that they are still working on revising the invite list.

President Barisonzi asked who a good partner for this would be. Administrator Loomis noted that there are a number of groups that would make good partners, including the Chambers of Commerce, the MPCA, the 169 Coalition, the Sensible Land Use Coalition, and others.

President Barisonzi shared that he knows of a number of organizations that he would be interested in partnering with for this boat tour. He said there is a Young Professional Engineers Association or young engineers just starting their careers. He noted he would love to get these

people involved. He asked if there is a way that they can leverage their contracts with vendors and have them showcase at this event. Administrator Loomis said they can run this by the vendors and see if they are interested.

President Barisonzi asked if there are any projects being done in this area that the Board is not involved in that they could give awards to so they can encourage groups to come and receive recognition from the Board.

Manager Kuplic asked what this event will look like. Administrator Loomis said it can be whatever the Board wants it to be. She noted that in the past she has just arranged speakers to come forward and address the attendants.

President Barisonzi added that it would be nice to highlight the projects that they are doing

Manager Kuplic suggested having different groups set up tables with information at this event.

The Board suggested having light snacks and music at this event.

The Board discussed dates for the river boat tour, expressing interest in September 3 or 5.

## **9. FOR INFORMATION ONLY**

### **A. BWSR Notice of LMRWD Petition for Boundary Change**

President Barisonzi introduced this item.

This item was for information only.

### **B. Lower MN River East One Watershed One Plan**

President Barisonzi introduced this item.

Administrator Loomis shared that there was a Policy Committee meeting this afternoon and they approved sending the plan to the State agencies for the 90 day review. She added that BWSR's Central Region Committee is having a meeting on August 1 where they are planning to do a presentation in front of this committee on the plan and expect to get approval from BWSR at their August 29 Board Meeting.

President Barisonzi asked how long Administrator Loomis expects to be involved at the current level she is involved. He asked if there is an appropriate scale back plan since they do not plan on joining this JPA. Administrator Loomis noted that once that plan is approved and the Board adopts it, she will no longer need to be involved.

Attorney Kolb explained that they will be adopting this plan to the extent that it is supportive of the LMRWD's existing goals and objectives in their watershed management plan.

President Barisonzi asked about the consequences of them not adopting this plan. Attorney Kolb said they would not be able to utilize any form of financial assistance from this collaborative.

This item was for information only.

### **C. 2024 Legislative Activities**

President Barisonzi introduced this item.

This item was for information only.

### **D. LMRWD Permit Program Summary**

President Barisonzi introduced this item.

This item was for information only.



**10. COMMUNICATIONS**

- A. **Administrator Report:** Administrator Loomis shared that they will be reviewing the education when more of the Board is present. She noted that they will be sending out postcards to areas that have been under-represented on the CAC inviting people to join the CAC.
- B. **President:** President Barisonzi asked that they schedule a new manager training for all the Board members once Manager Salvato returns and the new manager is appointed. He shared that when they approved the Minnesota Congress contract, part of the communication was the need for KPIs associated with this agreement and he requested to view this contract to give feedback on it prior to its execution.
- C. **Managers:** No report
- D. **Committees:** No report
- E. **Legal Counsel:** Attorney Kolb shared that he found the numbers associated with his work on the 535 Lakota Lane after-the-fact permit and it totals \$6,928 since May of 2022.
- F. **Engineer:** No report.

**11. ADJOURN**

**Hearing no further business, President Barisonzi adjourned the meeting at 8:25pm.**

**The next meeting of the LMRWD Board of Managers meeting will be 7:00, Wednesday, July 17, 2024, and will be held at the Carver County Government Center, 602 East 4th Street, Chaska, MN. Electronic access will also be available.**

Attest:

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Lauren Salvato, Secretary

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Linda Loomis, Administrator