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2
3 **MINUTES OF THE REGULAR MEETING OF**
4 **THE MINNEHAHA CREEK WATERSHED DISTRICT**
5 **BOARD OF MANAGERS**

6 **August 28, 2014**

7
8 **CALL TO ORDER**
9

10 The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called
11 to order by President Sherry White at 6:45 p.m. at the District offices, 15320 Minnetonka
12 Boulevard, Minnetonka, Minnesota 55345.

13
14 **MANAGERS PRESENT**
15

16 Sherry Davis White, James Calkins, Richard Miller, Jeffrey Casale, William Olson, and Brian
17 Shekleton.

18
19 **MANAGERS ABSENT**
20

21 Pam Blixt.

22
23 **OTHERS PRESENT**
24

25 Jeff Spartz, Interim District Administrator; James Wisker, District Director of Planning, Project
26 and Land Conservation Programs; Brandon Wisner, District Technician/Compliance Officer;
27 David Mandt, District Operations Manager; Courtney Hall, District Technician/Wetland
28 Specialist; Tiffany Schaufler, District Natural Resource Technician; Chris Meehan, District
29 Consulting Engineer and Louis Smith, District Counsel.

30
31 **MATTERS FROM THE FLOOR**
32

33 Mr. Tom Geng appeared before the Board of Managers and read a letter of apology for his
34 behavior at the previous evening's Citizen's Advisory Committee.

35
36 **APPROVAL OF AGENDA**
37

38 *It was moved by Manager Miller, seconded by Manager Shekleton, to approve the agenda as*
39 *distributed. Upon vote, the motion carried, 6-0.*
40

41 **CONSENT AGENDA**
42

43 Manager Calkins requested that item 6.3, 325 Blake Road checking account, be pulled from the
44 consent agenda. *It was moved by Manager Shekleton, seconded by Manager Calkins to*
45 *approve the remaining items on the consent agenda, as follows:*
46 **Minutes of August 14, 2014; General Checking account register; Surety Account register;**

47 **Resolution, 14-064, Approval of 2014 Watershed Heroes Award Recipients**

48

49 **NOW, THEREFORE, BE IT RESOLVED** that the Minnehaha Creek
50 **Watershed District Board of Managers** hereby recognize the following
51 **individuals and groups** for their outstanding contributions to watershed
52 **management:**

53

54 **Excellence in Development Award**
55 **Tiny Diner**

56

57 **Innovation in Government Award**
58 **Hennepin County**

59

60 **Outstanding Partner Award**
61 **Three Rivers Park District**

62

63 **Youth Naturalist Award**
64 **Boy Scouts of America**

65

66 **Citizen Engagement Award**
67 **Peter Rechelbacher**

68

69 **Outstanding Contribution Award**
70 **Rotary Club of Minnetonka and Rotary Club of St. Louis Park Sunrise**

71

72 **Lifetime Stewardship Award**
73 **Eugene Hickok and Mike Panzer**

74

75 **BE IT FUTHER RESOLVED** that the District Administrator is authorized
76 **to purchase appropriate awards** to be given to the award recipients at a
77 **ceremony on October 16, 2014.**

78

79 **Resolution 14-065, Approval of Revised Capital Improvement Program (CIP)**

80

81 **NOW, THEREFORE, BE IT RESOLVED** that the Minnehaha Creek
82 **Watershed District Board of Managers** approve the revised CIP.

83

84 **Resolution 14-066, Authorization of Cost Share Funding – 2014 Homeowner BMP**
85 **Cost Share Projects**

86

87 **NOW, THEREFORE, BE IT RESOLVED,** that the MCWD Board of
88 **Managers** authorizes funding of 50 percent of the documented costs for
89 **construction of stormwater BMP's** listed in the attached document, not to
90 **exceed \$5,000** for each project, out of the Cost Share fund, contingent on a
91 **signed grant and maintenance agreement** that includes a final landscape

92 **design plan that is approved for Cost Share purposes by the Cost Share**
93 **recipients and District staff and provides for appropriate signage; and**
94

95 **BE IT FINALLY RESOLVED, that the MCWD Board of Managers**
96 **authorizes the Administrator, on advice of counsel, to sign a Cost Share**
97 **funding and maintenance agreement with each individual property owner.**
98

99 **Upon Vote, the motion carried, 6-0.**

100
101 **BOARD, COMMITTEE, AND TASK FORCE REPORTS**
102

103 President's Report: President White noted the schedule of events, and also noted that a statement
104 had been published in the Sun-Sailor in response to a recent article about the District. She noted
105 a question from Manager Calkins about the authority of the president to issue such statements
106 and referred to the governance policies which provide that the president of the board is the
107 District's spokesperson to the news media. Manager Calkins stated that he believed that the
108 views expressed in this statement need discussion by the whole board, and that the President is
109 supposed to represent the views of the whole board. President White noted in her two years of
110 service on the Board of Managers she had seen similar statements issued without board review.
111

112 Citizen's Advisory Committee Report: Manager Shekleton reported on the meeting of the
113 Citizen's Advisory Committee on August 27:
114

115 1) Tom Casey moved to amended the agenda to discuss new items and old items. CAC
116 Chair Bill Bushnell suggested that all non-water quality related discussions be added to the end
117 of the agenda. Mr. Casey's new item was a resolution about procedures and scope related to Eric
118 Evenson-Marden's Data Practices request. This was added to the agenda and he then moved to
119 revisit six items passed at the July CAC agenda. Those six items were also added to the agenda.
120

121 2) As a response to a memo drafted by MCWD District Counsel, Michael Osterholm
122 made a motion to add an item to the agenda to re-vote on the "confidence" motion from
123 July. That vote was declared to have passed on a divided vote of: 6 Yes, 3 No, 3
124 Abstained, 1 Recusal. In a memo distributed by MCWD District Counsel it was pointed
125 out that Robert's Rules of Order differ from the CAC bylaws on the requirements for a
126 motion to prevail. As the memo indicated:
127

128 "All issues to be voted on shall be decided by a simple majority of those
129 members and members pro tempore present at the meeting in which the vote takes
130 place.' CAC Bylaws, Article III, Section 7. Accordingly, on a motion before the
131 CAC, abstentions count as 'NO' votes. The CAC may wish to review its actions
132 at the July meeting accordingly."

133 After acknowledging that last month's motion, irrespective of how the vote could be interpreted,
134 resulted in a response from the MCWD Board, the Chair of the Hennepin County Board, and

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135 press coverage in the Sun-Sailor, Dr. Osterholm proceeded to request CAC action. The motion
136 to amend the agenda failed and July's "confidence" vote was not revisited.

137

138 3) Staff provided an update about what actions had been taken in response to the discovery
139 of zebra mussels in Christmas Lake. A motion was passed to support the AIS actions taken by
140 MCWD staff. This vote passed unanimously.

141

142 4) Peggy Knapp from the Freshwater Society gave a presentation about the Master Water
143 Stewards project and her efforts to expand beyond the MCWD. Members were very supportive
144 of both the joint MCWD/Freshwater Society program and the work to expand the program
145 beyond the MCWD borders.

146

147 5) MCWD Education and Communication staff gave an overview of their work and how it
148 supports the mission of the organization. This was the third month that staff attended a CAC
149 meeting ready to present.

150

151 6) The CAC and the Cost Share program have developed a new procedure to process the
152 applications for funding. A subcommittee of the CAC reviewed new applications and provided
153 their recommendations to the CAC.

154

155 7) **Tom Casey's New Motion: BE IT RESOLVED** that the Citizens Advisory Committee
156 of the Minnehaha Creek Watershed District respectfully requests that:

157

1. All government data practices requests, sent to the CAC, be accompanied by the actual
158 document requesting the data, unless the document is legally deemed "private";

159

2. The MCWD use due diligence to confirm the scope of a government data practices act
160 request; and

161

3. The MCWD carefully explain its role in providing legal assistance to the CAC to ensure
162 compliance with any data request.

163

164

165 Passed unanimously

166

167 8) **Tom Casey's Old Motion:** The CAC finds that Jeff Casale's July 31, 2014 apology letter
168 failed the criteria stated in the CAC's July 22, 2014 motion and is otherwise defective in the
169 following (8) ways.

170

171

172 Passed with 2 opposed

173

174 9) The CAC finds that Hennepin County Commissioner Opat's letter dated August 22, 2014
175 was inadequate because he failed to consider whether or not Mr. Casale violated the MCWD's
176 "code of ethics" as stated in Minnesota Rule 8410.0400:

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177 Commissioner Opat did not consider whether or not Mr. Casale violated the Hennepin County
178 Volunteer Manual (as mentioned in in the CAC's July 22, 2014 motion), a "code of ethics" as
179 described in Minn. Rule 8410.0400.

180
181 Therefore, the CAC restates its request that Mr. Casale's behavior be reported to Hennepin
182 County for consideration as to whether or not he should be dismissed from the board of
183 managers for violation of the "code of ethics" of the Minnehaha Creek Watershed District or
184 Hennepin County.

185
186 Passed with 3 opposed

187
188 10) CAC reaffirms its request that any CAC member be allowed to speak at any open Board of
189 Managers meeting.

190
191 Passed unanimously

192
193 11) The CAC reaffirms Motion #4 of its July 22, 2014 meeting and requests that the MCWD
194 provide a timeline for compliance.

195
196 Motion #4 from July 22:

197
198 Motion: The CAC requests that the MCWD render an itemized accounting of costs related
199 (directly or indirectly) to the dismissal of Eric Evenson- Marden, including but not limited to
200 out-of-pocket costs and staff time.

201
202 In the event that staff finds that it does not have the authority to render said accounting, then this
203 motion shall be considered a formal request pursuant to the Minnesota Government Data
204 Practices Act for documents sufficient to indicate the above-stated costs.

205
206 Passed unanimously

207
208 12) The CAC reaffirms its request that the MCWD and Eric Evenson-Marden work together
209 to release all documents relied upon by the Board of Managers to fire Eric Evenson-Marden and
210 requests that each party provide a progress report at their earliest convenience.

211
212 Passed unanimously

213
214 13) The CAC reaffirms that the release of said documents shall not be conditioned upon Eric
215 Evenson-Mardens' release of the MCWD from all liability.

216
217 Passed unanimously

218

219 14) A request was made by Tom Geng, a Shorewood resident, to address the CAC. Upon a
220 divided vote, he was allowed to address the Committee.
221 Mr. Geng then proceeded to demand that the CAC pass a resolution requesting the MCWD
222 meetings be televised. Mr. Geng described how former Senator Gen Olson contacted the Lake
223 Minnetonka Cable Commission. Senator Olson, who was at the CAC meeting, then described
224 how LMCC staff told her they would be able to broadcast our meetings. Mr. Geng specified that
225 the LMCC could make any video available to Media Com and that our meetings would be
226 distributed across the Watershed District.

227
228 When told that MCWD staff had recently met with their IT support to scope out technical
229 options, potential costs, and processes, Mr. Geng then demanded that Telly Mamayek, the
230 MCWD Communications Director, come before the CAC to explain what is happening.

231
232 At 10:15 PM the meeting adjourned.

233
234 Manager Shekleton noted that it was a challenging meeting, that was not the kind of meeting that
235 most people would enjoy attending. He felt it was going to be important for the Citizen's
236 Advisory Committee and the Board to find a way to move forward, as Hennepin County
237 Commissioners Opat and Callison were urging. Manager Olson noted that one of Mr. Geng's
238 concerns including meeting minutes that were missing from the District website. Manager
239 Shekleton said he concurred in this concern.

240
241 **PERMITS REQUIRING A VARIANCE OR DISCUSSION**

242
243 **Permit 14-196: City of Edina, Pamela Park Improvements**

244
245 Mr. Brandon Wisner appeared before the Board of Managers and reviewed the permit
246 application. He noted the presence also of Ms. Anne Kattrey, Director of Parks for the City of
247 Edina, and Mr. Jay Pomeroy, consultant. Mr. Wisner noted that notices for the permit application
248 had been mailed to 500 parcels, and one property owner requested a hearing. The staff organized
249 a meeting with City representatives to meet with residents and review questions relating to both
250 the Watershed and city jurisdiction. The residents attending the meeting said that they felt that
251 their concerns had been effectively addressed in this discussion and appreciated the opportunity
252 to address them at a single forum. Manager Casale asked for further clarification about the
253 parking lot expansion, the placement of the pond, and confirmation that no trees are taken as a
254 result of the project. Manager Miller noted that he was familiar with the park and that he felt
255 these were good improvements. The managers thanked Mr. Wisner for the work with the City
256 staff and community residents. *Following discussion, it was moved by Manager Miller,*
257 *seconded by Manager Casale, to approve the permit application with the conditions*
258 *recommended by staff. Upon vote, the motion carried, 6-0.*

259

260 **ACTION ITEMS**

261
262 **Resolution 14-067, Acceptance of Utility Occupancy Licenses from Soo Line Rail Road for**
263 **Powell Road Stormwater Diversion Project**

264
265 Mr. James Wisker appeared before the Board of Managers and reviewed the request for board
266 action. He noted that this was part of the requirement of the agreement with Mr. Uggorets and
267 the related easement for the stormwater improvement. He noted that legal counsel had identified
268 several terms which should be clarified if possible with the railroad license. Manager Casale
269 noted a reference in the staff memo to eminent domain and asked whether the District could in
270 fact exercise eminent domain on railroad right-of-way. Mr. Smith explained that typically this
271 situation would be reviewed with a functional analysis and fit of the respective public purposes
272 for the watershed district and the railroad. Manager Olson asked about the typical attention of the
273 railroad to track licenses such as these that are granted. Manager Casale asked about the width of
274 the railroad right-of-way in this area and Mr. Wisker reported he would check this. ***Following***
275 ***discussion, it was moved by Manager Miller, seconded by Manager Casale to adopt Resolution***
276 ***14-067 as recommended by staff. Upon vote, the motion carried, 6-0.***

277
278 **Resolution 14-068, Authorization to Enter Into Memorandum of Understanding with the Mader**
279 **Family Trust in City of Minnetrista**

280
281 Ms. Courtney Hall appeared before the Board of Managers and reviewed the request for board
282 action. She noted that members of the Mader family were also present, and that a letter from the
283 City of Minnetrista was in the meeting packet.

284
285 Ms. Hall noted that there are currently no wetland banks within the Minnehaha Creek watershed,
286 and as a result wetland banking must occur outside of the watershed. At the request of the
287 managers, Ms. Hall explained the wetland banking process. Mr. Wisker noted that the purpose of
288 the memorandum of understanding is to express the parties interest in pursuing the feasibility of this project, aligning land use planning and wetland
289 conservation in coordination for the owners with the participation of the District and the City.
290 Manager Miller complimented Ms. Hall on her presentation and asked about the estimated cost
291 of the wetland restoration at this site. Ms. Hall estimated the cost to be in the neighborhood of
292 \$250,000 to break the drainage tiles, restore hydrology, and seed and replant the wetland.
293 Manager Calkins noted that this was a wonderful and necessary project, and he thanked the
294 Mader family for their interest. He asked whether it would be possible to enlarge the project to
295 address the extent of the wetland on other neighboring parcels. Ms. Hall noted that there would
296 be discussions pursued with the neighboring property owners as well. Manager Calkins asked
297 about the ditch within the wetland at this site and the implications for the restoration project. Ms.
298 Hall noted that the feasibility analysis would require that there be no effect on offsite hydrology
299 as a result of the project.

300
301
302 ***Following discussion, it was moved by Manager Calkins, seconded by Manager Miller, to***
303 ***approve Resolution 14-068 as recommended by staff.*** Ms. Mary Jo Frank appeared before the

304 Board of Managers and said that the family was pleased with this opportunity to honor their
305 parents and that she hoped that this project could work out as envisioned. Mr. Patrick Mader
306 appeared before the Board of Managers and thanked Ms. Hall and Mr. Wisker for their
307 professionalism in helping to advise them on this opportunity. *Upon vote, the motion to adopt*
308 *the resolution carried, 6-0.*

309
310 325 Blake Road Checking Register

311
312 Manager Calkins stated that he had requested this item be pulled from the consent agenda
313 because he noted that revenue from the Cold Storage facility appears to be behind projections for
314 the year, and he asked for a status report from the staff. Mr. David Mandt appeared before the
315 Board of Managers and noted that he could prepare a more detailed report with the assistance of
316 the Cold Storage facility manager, but generally the revenue from the Cold Storage facility is
317 seasonal and will fluctuate from time to time. Manager Calkins stated that such an update would
318 be helpful as well as a general overview of the land conservation program. Manager Miller stated
319 that he would agree with this suggestion, and that it is important to review the Cold Storage
320 operations periodically. *Following discussion, it was moved by Manager Calkins, seconded by*
321 *Manager Miller, to approve the check register for 325 Blake Road. Upon vote, the motion*
322 *carried, 6-0.*

323
324 Mr. Mandt stated that the budget forecast is based on assumptions of seasonal cash flow for the
325 Cold Storage facility. Mr. Wisker added that it would be useful to provide an overview for 325
326 Blake Road planning, including debt service, revenue projections, and planning for
327 redevelopment of the site. Mr. Wisker stated that he would work with Mr. Mandt to prepare an
328 overall presentation at an upcoming meeting.

329
330 **BOARD DISCUSSION ITEMS**

331
332 Letter from Hennepin County Board of Commissioner, Mike Opat, Chair

333
334 President White referred to a letter received from both Commissioner Mike Opat and
335 Commissioner Jan Callison. She noted that these letters expressed respect for the Board of
336 Managers employment decisions, support for Manager Casale's service on the Board and an
337 interest in the Board proceeding with mediation to address its conflicts.

338
339 Mediator Selection Process

340
341 Manager Shekleton referred to the memorandum prepared by Mr. Spartz outlining a process to
342 select a mediator, and stated that he felt the process generally seemed reasonable, but thought it
343 would be good for the Board to discuss how best to judge a mediator in order to foster dialogue
344 and respect. Mr. Spartz noted that generally measures of merit for mediators include their
345 education, experience, experience with governmental organizations and track record of success
346 with mediations. In response to a question from Manager Miller, Mr. Spartz outlined a
347 recommended process to develop a list of potential mediators in which Board members would

348 take turns striking persons from the list. He noted also a suggestion that the Bureau of Mediation
349 Services from the State of Minnesota has an Office of Collaboration which may also be a
350 resource. President White noted the importance of establishing a timeline in order for the process
351 to commence. Manager Casale suggested that there are various sources for lists of qualified
352 mediators and that it would be useful to have a general list of names that had been screened
353 through some kind of request for qualifications process. He stated that the approach of striking
354 names seem to be negative in tone.

355

356 *Following discussion, it was moved by Manager Shekleton, seconded by Manager Casale, to*
357 *direct the President in consultation with the Administrator and counsel to develop a list of*
358 *qualified mediators for the Board's consideration on or before September 18. Mr. Spartz*
359 *recommended that either Manager Olson or Manager Calkins be included in this process with*
360 *President White. Managers Shekleton and Casale accepted this suggestion as a friendly*
361 *amendment to their motion. Upon vote, the motion carried by a vote of 4 (White, Shekleton,*
362 *Miller and Casale) – 2 (Calkins, Olson).*

363

364 President White noted that Managers Olson and Calkins had voted against the motion and asked
365 if they would be willing to state their objections to the motion. Manager Olson stated that he
366 would not like to express his objection at this time, and Manager Calkins stated that he had stated
367 his objections to the mediation in the past and did not wish to repeat it now. President White
368 asked Managers Calkins and Olson if they would assist in the process of developing a list of
369 potential mediators. Managers Calkins and Olson stated that they would decline to participate.

370

371 Manager Miller asked if Managers Olson and Calkins were willing to participate in the
372 mediation itself. Manager Calkins stated that he had no reason not to, and Manager Olson
373 nodded affirmatively.

374

375 **STAFF UPDATES**

376

377 Administrator's Report: Mr. Spartz distributed a memo prepared by sixteen staff members on
378 program staff collaboration and attaching a document, *Organizational Culture: A Foundation of*
379 *Core Values*. He noted that many of the staff are 'millennials' who greatly favor collaboration
380 over hierarchy. He also noted that the memo formally requested that in the best interest of the
381 organization, the search for the new administrator should be advanced.

382

383 Manager Shekleton stated that this was an impressive document, and that he hoped the search
384 process could move forward. Manager Miller suggested that this memo and the attached
385 document be provided to David Unmacht, the consultant managing the search process. Mr.
386 Spartz noted this would be done, and that Mr. Unmacht would be meeting with the staff in this
387 process. Manager Casale asked that the memo and attached document be inserted as Item 13.1 in
388 the meeting packet.

389

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390 **ADJOURNMENT**

391

392 There being no further business, the regular meeting of the Board of Managers was adjourned at
393 8:20 p.m.

394

395 Respectfully submitted,

396

397

398

399 Jeffery Casale

400 Secretary

DRAFT