



Minutes of Regular Meeting  
Board of Managers  
Wednesday December 20, 2017  
County Board Room, Carver County Government Center, 7:00 p.m.  
Approved January 8, 2018, 2018

**1. CALL TO ORDER AND ROLL CALL**

On Wednesday, December 20, 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 Manager David Raby. In addition, the following were also present: Della Schall Young, Young Environmental Consulting Group, LLC, LMRWD Technical Advisor; Maury Noonan, Rinke Noonan, Legal Counsel and Linda Loomis, Naiad Consulting, LLC, LMRWD Administrator; Clay Dodd, Patchin Messner Dodd & Brumm; Ed Rudberg, CD3; Lindsey Albright; Dakota County SWCD; Jake Hamlin, CHS; Members of the public: Marina Weddington, Tom Moehn, Todd and Linda Johnson, Tom Roberts.

**2. APPROVAL OF THE AGENDA**

President Shirk requested the removal of the October 25, 2017 meeting minutes from the Consent Agenda. She added it to the agenda as New Business Item 5. D. - Approval of October 25, 2017 Regular Meeting.

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

**3. CITIZEN FORUM**

Tom Moehn, 5025 Overlook Circle, Bloomington, thanked Administrator Loomis for getting him information on the residents impacted by the proposed changes to the standards in the draft Watershed Management Plan Amendment. He said he had a few questions. The first one is there are some nice colored maps of the 18% and 30%, and how he can get better maps other than in pdf format. Ms. Young asked Mr. Moehn what he is looking for from the District. She asked if he wanted the shp files so that he could make his own maps or what it is that he wants. Mr. Moehn responded that there are maps that show areas within the Watershed District, nice colored maps. He has some maps that he created on his own that are a certain size, but he would like to get all of them or a documentation file that the District has that shows the exact 18 and the exact 30%. If these maps are on the website; he couldn't find it and asked if it is there. Ms. Young was not sure if the maps are on the website and staff could double check and get back to him. Ms. Young said the District has the 18%, the 30% and a combination of the 18 and the 30%, but those are all pdf format. She asked if there was a specific size he was looking for, the District can print it to that size and get it

to him. She explained that it would be a pdf file that would be printed. She said if he would like to talk more about it with her, she could then determine how to get him what he wanted.

Mr. Moehn said he asked a question of the board at the end of the last meeting, which he wanted to clarify. He said that when the final plan goes forward for approval. He believes he was told that the vote to go forward needs to be unanimous. He asked for clarification. President Shirk referred the question to Legal Counsel Noonan. Attorney Noonan said the voting requirements are contained in statute and voting requirements will be online. Mr. Moehn asked what statute. Attorney Noonan said he did not know off the top of his head. He said he will look in to it. Mr. Moehn asked if the requirement is that the vote is unanimous, can the requirement be changed so that it is not unanimous? He questioned how the requirement for unanimous approval would be changed and who would change it. He asked if only two people would be able to make the ultimate decision to approve the plan. Basically, he is looking for how many people does it take to make this decision, does it have to be unanimous or just a majority of affirmative votes. President Shirk said she believes all those questions are answered in statute and answers will be provided.

Mr. Moehn thanked the Board for the opportunity to speak.

#### **4. CONSENT AGENDA**

The Consent Agenda included the following items:

- A. Approval of Minutes for ~~October 25, 2017~~ and November 15, 2017 Regular Meeting**
- B. Approval of Financial Reports**
- C. Presentation of Invoices for payment**
  - i. Chimney Pines Homeowners Association - for 2017 cost share
  - ii. Una Forde & Theodore Rick - for 2017 cost share project
  - iii. Frank Janezich - for 2017 cost share project
  - iv. Scott County SWCD - for 3rd quarter monitoring services
  - v. Barr Engineering - engineering service associated with Riley Creek project
  - vi. Burns & McDonnell - for September 2017 engineering services
  - vii. Rinke Noonan - for October 2017 legal services
  - viii. Star Tribune - for publication of notice of public hearing
  - ix. Steinkraus Development LLC - for December office rent
  - x. Time Saver Off Site Secretarial- for preparation of October 2017 meeting minutes
  - xi. Dakota County SWCD - for 3rd quarter monitoring services
  - xii. Naiad Consulting - for September 2017 administrative services & expenses
- D. Time Save Off Site Secretarial agreement addendum**
- E. Receive and file 2017 Cost Share report for Carver County Government Center Project**
- F. Certify 2018 Tax Levy**

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

#### **5. NEW BUSINESS/PRESENTATIONS**

##### **A. Presentation from Clay Dodd**

Mr. Clay Dodd of Patchin Messner Dodd & Brumm said the report on the Special Benefit to Properties was included in the packet. He explained that he inventoried who owns what. On the north side of the channel it is mostly publically owned. It is either owned by the City of Bloomington, the State of Minnesota, US Fish & Wildlife Service or the Metropolitan Airport Commission. On the south side of the river particularly in Scott County and into Burnsville (Dakota County), there are a number of major industrial barge users. There are 7 properties that have active barge docks.

Mr. Dodd said he looked into the volumes of cargo on the river which has been on a declining trend, but recently there has been resurgence in the volumes. He said that terminals were built there because of the river, so the value is tied to the channel. He spoke about the activities at some of the active docks and the relationship of the activities to the river. He stated that in his analysis conservatively about 40% of the value of those properties is attributable to the river. He noted the properties were not individually appraised. He used the assessed value as a proxy. He said assessed values are supposed to reflect the market value.

In addition, Mr. Dodd said he looked at the properties that have industrial operations but don't have an active barge operation right now to look at the affect the channel has on the value of those properties. He discussed Xcel Energy's Black Dog Plant and whether there is an opportunity to use the river. He spoke about the Burnsville Sanitary Landfill, Kraemer and amphi-theater (the McGowan property). He said he spoke with Burnsville's planning office about future plans for properties adjacent to the river. The Burnsville Comprehensive plan guides the future use of those properties as primarily recreational. His conclusion with those properties was that to assign any value to them for any potential industrial barging operation would be speculative. There may be value for commercial recreational uses, but there would be difficulties that would make assigning value for that use speculative too.

He spoke about properties that enjoy fleeting rights and the value of that. He then asked if the Manager had any questions.

President Shirk asked if the 40% of value is looking at land value or improved value. Mr. Dodd said both. His calculations are based on the total assessed value.

Manager Raby commented on the overall gist of the study, that while there are certain individual properties that receive primary benefit from the channel, there is benefit to the entire district and state. He further noted that those properties that officially receive benefit, they are effectively paying for it in their share of the ad valorem taxes. Maybe not precisely, but in general, if we change what we are doing now, it is not going to make much of a difference relative to who pays what. They receive a big value but they pay higher taxes because they have a big tax base; part of which is based on being able to use the channel. Manager Raby asked if he was off base in this assumption. Mr. Dodd said he agrees there is a big general benefit to the state. He has no doubt that the terminals' ability to have an alternate export route result in increased prices all the way to the farm. These particular properties are worth a lot more because of the river.

Administrator Loomis said the Board needs to receive and file the report and that Attorney Kolb's memo outlined the next steps to verify the process.

**President Shirk made a motion to receive and file the report and to have staff address what should be done in response to the report by the February meeting. The motion was seconded by Manager Raby. The motion carried unanimously.**

**B. Presentation from Ed Rudberg**

Mr. Rudberg, CEO of CD3, said Manager Hartmann asked him to reach out to the Board after zebra mussels were found in the Minnesota River within the District. He said his presentation mostly shows a pilot project his company was involved in to get boaters to change their behavior to help stop the spread of AIS. AIS cost the government and the economy over \$146 million per year. There are about 36,000 boat launches throughout the U.S. Mr. Rudberg said boaters need tools, outreach and education.

Mr. Rudberg said his proposed solution was to be a welcome mat. The pilot project was public nonprofit private partnership with the DNR and many other partners. He explained the Clean, Drain Dry initiative. He said that the project designed a station to be placed at boat launches so boaters could clean boats after being removed from AIS waters. The station he showed has tethered tools that include a vacuum, brush and blower that would do some final drying. He showed the station at the Three Rivers Park at Bryant Lake. He said the station is connected to the Internet of Things so that they can get feedback about usage and when tools may need replacing.

Mr. Rudberg showed pictures and identified projects from the different lakes around the state. He said the cost to operate a station is about \$250 a season, including septic suck out of vacuums.

Mr. Rudberg said they are going to continue to do research on the efficacy of the stations. The pilot projects showed that people will use the tools if they are available. He noted that vandalism has not been a problem.

President Shirk asked what the cost is. Mr. Rudberg said it is \$19,500 per unit plus a concrete pad and 30-amp electrical service. Administrator Loomis asked about the cost of the solar installation. Mr. Rudberg said the cost for the 5 panel solar shown in his presentation was \$20,000 and that it was a more expensive installation than they needed. He said they didn't know how much power they would need to power the station, so it was over-engineered. He would recommend 1 panel for future solar installations, which would cost around \$5,000.

Manager Raby asked how many boat launches are within the district. Administrator Loomis said there is one in Carver, Chaska, Cedar Avenue in Dakota County and Bloomington at Lyndale Avenue. She said that the boat launches are all in pretty remote locations and that was why she asked about the solar.

President Shirk thanked Mr. Rudberg for the presentation.

**C. Dakota County Monitoring Agreement**

Administrator Loomis said this agreement is similar to the previous agreement with Dakota SWCD. She noted there is a small increase in the hourly cost this year; however, there has not been an increase in several years.

President Shirk asked if monitoring at Black Dog fen has been given up. Administrator Loomis said they are waiting for the assessments from the DNR before any decision is made on monitoring there. She noted this had been discussed with Dakota SWCD in the past and the agreement can be amended if it is determined that monitoring is needed in Black Dog fen.

**President Shirk made a motion to approve the agreement. Manager Raby seconded the motion. The motion carried unanimously.**

**D. October 25, 2017 Board of Managers meeting minutes**

Manager Raby said the meeting minutes seemed fairly clear; however he said the attachment for the testimony at the public hearing should be looked at again. He understands when people are speaking at they often speak with incomplete sentences. He said he would like to see someone go back through the tapes to verify what was documented is what was said. Manager Raby said the comment log and responses should also be documented to make sure all the comments were picked up.

President Shirk asked if Time Savers would be able to complete a transcription. Administrator Loomis said quite a bit of time was spent already and it was very difficult to prepare the testimony without interpreting what people were saying.

Manager Raby noted that he was not at the meeting and he said if the tapes were listened to and the information is accurately presented then he is okay with the minutes. Administrator Loomis said in the future if there is a public hearing she would recommend that the District have someone present to transcribe the meeting.

Ms. Young said she was instructed by legal counsel to just provide an overview and not capture every comment that was made. The exact comments would be captured with the transcription attached to the minutes.

President Shirk suggested reviewing the tape one more time and tabling the approval until January. She noted that a lot of people took time to show up and she felt it was important to get it right.

## 6. OLD BUSINESS

### A. 2018 Cost Share Program

Administrator Loomis said edits and changes were provided by Manager Raby. The cost share program will be posted on the website when approved and distributed to the cities

Manager Raby said he did go through it and edits were made and he does not have any concerns with the program.

**President Shirk made a motion to approve the 2018 Cost Share Program. The motion was seconded by Manager Raby. The motion carried unanimously.**

### B. Dredge Management

#### i. Review Process for funding of maintenance of Navigation Channel

Administrator Loomis talked about the shipment of cryo-tanks by Chart Industries in New Prague from the CHS terminal and showed some pictures provided by Greg Oberle of CHS. Manager Raby said this speaks to the value to the entire state of the channel.

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

Administrator Loomis said the contract with Rachel Contracting expires at the end of this year. She said that staff could prepare a request for proposal for the Managers to review for the sale of dredge material for reuse and the contract with Rachel. President Shirk said she feels the Board should do that.

President Shirk asked if the city of Savage is plowing Vernon Avenue. Administrator Loomis said she did not know the answer to that question. She did say that Rachel may be plowing, since they were still moving material off the site. President Shirk said that if plowing is necessary it should be made clear in any future contract.

Manager Raby said requirements, such as maintenance of Vernon Avenue, for successful bidding should be made clear in the RFP.

**Manager Raby made a motion to direct staff to prepare a RFP for sale of dredge material. The motion was seconded by President Shirk. The motion carried unanimously.**

#### iii. Private Dredge Material Placement

No new information since last report

**C. Watershed Management Plan**

Ms. Young said there have been countless comments since the release of the draft Watershed Management Plan Amendment. Over the last month staff has been reviewing the comments received and working with the DNR regarding the floodplain questions we have gotten. Staff is working with the city of Savage as they are the only city that will be significantly impacted by the high value resources area around the fens and we have been looking at regional treatment solutions. She said staff took a renewed look at the bluff standard as this was the subject of most of the comments received at the public hearing. The original presentation of the standard was prohibitive, which is how most watershed legislation and standards have progressed over time. The prohibitive nature of the bluff standard was a continuation of that standard from the last plan. District staff looked at how the standard could be more permissive and still maintain the requirement for protection the District is interested in; making sure the slopes stay in place and that stormwater is managed away from the top of the bluff.

Ms. Young then presented the changes staff is recommending. The title will be changed from draft "Bluff Standard" to draft "Bluff and Steep Slope Standard". She said this change would fit better with the cities' current regulations. Staff is also recommending a change to the definition of steep slope in the plan. Manager Raby said when he read the testimony from the public hearing there was a lot of confusion. He suggested better defining these terms and maybe use examples in graphic form. Ms. Young said graphics will be used to identify the toe and top of bluffs and slopes and the total bluff impact zone. There had been requests for identifying the setback requirements, but those are no longer part of what staff is recommending.

Ms. Young said the policy statement presents why this is being proposed; protection of water quality, maintaining the stability of the bluff, sustaining and enhancing the biological and ecological diversity of these areas, minimizing impacts to and preserving the natural character of the slopes, protecting properties and water bodies and lastly promoting public safety by requiring certification for qualified individuals to do an assessment of activities happening in this space so that we're not seeing catastrophic issues as we have seen in the past.

As for regulated activities, Ms. Young said the original language regulated any land disturbing activity within the bluff overlay district. What is now being proposed is two things: 1) if an activity within the bluff and steep slope overlay district involves excavation of 50 cubic yards or more, or alteration or removal of 5,000 square feet you would have to go through this analysis and you would be regulated; 2) activities that would require a municipal permit for buildings, grading, parking, foundations and things of that nature. This is included because there may be activities that fall below the established thresholds (excavation of 50 cubic yards or alteration of 5,000 square feet) that could have structural implications. The District wanted to make sure that these activities are taken into consideration and this is in line with permitting the city is already doing.

Ms. Young talked about the exceptions and said this is important because of the confusion many people had who spoke at the public hearing. She said staff wanted to make clear that maintenance repairs or replacements of existing structures such as public roads, utilities and drainage systems would be an exception. If an area was being disturbed that was called out in the city's local water plan for repairing a slope that would be exempt. There were many comments about removing invasive species and native plantings. These activities would be exempted. Ms. Young added the recommendation that residents look for locally recognized methods for removing noxious, exotic, or invasive vegetation to protect the slope and prevent the spread of the noxious, exotic or invasive vegetation. Ms. Young said staff recommends providing the public access to information about vegetation management both by a brochure

and on the website. Tree removal to reduce public hazards and pruning is an exception (which was in the previous version of the draft). Maintenance of existing lawn and gardens are also now included as exceptions.

Ms. Young said what the standard will now say is "land disturbing activities as regulated in this section may occur within the bluff and steep slope overlay district provided a geotechnical engineer certifies the suitability of the area for the proposed activity, structure, or use resulting from the activity". The standards will also ask for, at a minimum, an erosion and sediment control best management plan, to make sure the slope is adequately stabilized to reduce potential adverse impacts to down-slope properties. The District wants to be able to preserve the existing hydrology and drainage patterns. One of the biggest concerns the District has is with additional water going over the slope. The District is concerned what effect this may have on erosion of the slope. She said staff heard from some city staff that they are concerned with increased water going to the municipal storm water system, so there will need to be discussion with the cities regarding how to address run-off that may be generated by an activity.

Ms. Young said finally, the District is concerned with soil saturating devices within the bluff impact zone. Any infiltration of water must be directed away from the slope. She stated they don't want any storm water ponds, infiltration basins, things of that nature within the bluff impact zone.

She said that this change takes away some of previously proposed requirements, such having to be called out in a local plan or if it was a public project; it is more permissive. It is now making sure that projects are being looked at and certified in a manner that shows slope structure and protection is being taken into account.

President Shirk asked how staff is envisioning the public meetings. Ms. Young said the changes to the standard tried to take into account the spirit and intent of the Board's original direction, which was slope protection and taking care of safety. This is the foundation of the watershed plan as well as the foundation of the SONAR (Statement of Need and Reasonableness). She said if this is okay with the Board, staff would like to take the changes to the TAC (Technical Advisory Committee) to get additional comments and concerns that staff can bring back to the Board to work through before it goes back to the public. The public information meetings will be in February.

President Shirk asked if the TAC meeting has been scheduled. Ms. Young said that no, staff wanted to make sure the Board was okay with the more permissive standard before making the revisions public.

President Shirk asked where staff is at with the SONAR. Ms. Young said staff is planning to have the SONAR available in January.

Manager Raby asked whether or not it was correct that this revision doesn't really change much but it is more of a clarification. Ms. Young said they looked at the language and tried to make it less prohibitive while still keeping in mind the goals. She said that the revised language may present in a different way. Manager Raby asked if the revision was in keeping with the intent of the original proposed language. Ms. Young said yes this was the spirit and intent of the original direction from the Board.

Manager Raby asked about a technical engineer being required and asked if that requirement is addressed in the plan. He said that needs to be specific. Ms. Young said it will be and she had been thinking about this requirement. She said rather than specify a geo-technical engineer; it

will likely say that it must be a registered professional engineer in the state of Minnesota. Manager Raby agreed with this approach.

**President Shirk made a motion to direct staff to convene the TAC to review the watershed management plan changes. The motion was seconded by Manager Raby. The motion carried unanimously.**

**D. 2018 Legislative Action**

Administrator Loomis said she has spoken with Lisa Frenette of Frenette Legislative Advisors about retaining her services. She said hopefully an agreement will be ready by the next meeting to retain lobbying services for the 2018 legislative session.

**E. Website Redesign**

Administrator Loomis said she doesn't have anything to report.

**F. Education and Outreach Plan**

**i. Education and Outreach Coordinator**

Administrator Loomis said she put together an RFP for an education and outreach coordinator. This item was presented to the Board at the November meeting. She said if the Managers are okay with the RFP, they can approve it and order distribution.

Manager Raby suggested saying we invite applications from individuals and firms.

Ms. Young said we may also want to include insurance requirements, it should be made clear that this is not a position, but is a consultant that is being looked for.

**Manager Raby made a motion to direct staff to issue the RFP for a contracted Education and Outreach Coordinator. The motion was seconded by President Shirk. The motion carried unanimously.**

**ii. Friends of the MN River Valley/LMRWD cooperative project**

Administrator Loomis said she will get a report. She told the Managers that no money will be provided for the project until a report has been received.

**iii. Citizen Advisory Committee**

There is no new information since last report.

**G. LMRWD Projects**

Administrator Loomis said she has no reports on the projects other than what was in the executive summary.

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

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

She is waiting to hear from Jeff Weiss of Barr Engineering where this project is at.

**iii. Floodplain Lake Coring Project with Freshwater Society**

**iv. Seminary Fen ravine stabilization project**

She has received a list of information BWSR still needs in order to close out this grant.

**v. Analysis of Dakota County Groundwater Project**

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



**vii. Savage Fen Ravine Project**

**H. Project Reviews**

Administrator Loomis said she has no reports on the projects other than what was in the executive summary. She reported that the District received notice of three new projects on Monday that staff will be tracking.

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

**ii. Hennepin County Rail Authority - Bluff Creek culvert repair**

**iii. City of Bloomington - 2435 Old Shakopee Road**

**iv. City of Burnsville - Kraemer Quarry dewatering**

**v. City of Burnsville - Xcel Energy Black Dog Plant**

Administrator Loomis said there was notification about the seeps, which she had provided to the Board. There are still ongoing issues and Xcel is working with the DNR. President Shirk asked if they have received final approval. Administrator Loomis said they have not.

**vi. City of Chanhassen - Comprehensive Plan review**

**vii. City of Shakopee - Veterans Memorial Park**

**viii. MNDOT - I35W Bridge replacement**

Administrator Loomis said they have received documents from MNDOT. She noted there would be a presentation at a future meeting of the Board. She reported that she had received notice from the city of Burnsville that this project will need a Conditional Use Permit.

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

**J. Confirm date of January 2018 Board meeting**

President Shirk confirmed January 8<sup>th</sup> will be the next meeting. Administrator Loomis said she will check with Manager Hartman.

**7. COMMUNICATIONS**

**A. Administrator Report:** She reported that she had received a request from an educational program that the Managers may be interested in that she will send to them by email.

**B. President:** No report

**C. Managers:** Manager Raby commented on the MAWD conference and he was disappointed in the conference overall. He said it seems to be run by a group of people that have run it for a long time and they don't want to listen to anybody else's opinions. He said he was disappointed with the presentations. He said he spoke with other delegates that were concerned with the increase in the level of dues. They don't feel the dues are reflective the value (lack of value) they receive in services from the organization.

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

- D. Committees:** No report
- E. Legal Counsel:** No report
- F. Engineer:** No report

**8. ADJOURN**

**The meeting was adjourned at 8:40 PM.**

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Dave Raby, Secretary

Attest:

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Linda Loomis, Administrator