



1
2 Minutes of the Regular Meeting of the Brown's Creek Watershed District Board of Managers,
3 Wednesday, December 13, 2017 at 6:30 PM

4
5 Family Means, 1875 Northwestern Avenue South, Stillwater, MN 55082

6
7 **ROLL CALL**

| Managers Present: | Others Present: |
|---------------------------------|---|
| Craig Leiser, President | Karen Kill, Administrator |
| Sharon Schwarze, Vice President | Carmen Simonet, Recorder |
| Gerald Johnson, Treasurer | Michael Welch, Smith Partners, BCWD counsel |
| Anne Maule Miller, Secretary | Camilla Correll, EOR, BCWD engineer |
| | Jared Fabian, EOR, BCWD engineer |
| Managers Absent: | Ryan Fleming, EOR, BCWD engineer |
| Connie Taillon | Don Wright, Stillwater resident |
| | Mark Lambert, Stillwater resident |
| | Deb Keech, Stillwater Resident |
| | Sandy Giesen, Stillwater Resident |

- 8
9 **1) Call Regular Meeting to Order**
10 President Leiser called the Regular Meeting to order at 6:31PM.
- 11
12 **2) Approve Regular Meeting Agenda and Discussion Agenda**
13 Items 8b) and 8c) under new business were removed from the agenda.
14 **Manager Maule Miller moved, seconded by Manager Schwarze, to approve the**
15 **Regular Meeting agenda and discussion agenda as amended. Motion carried, vote**
16 **4/0.**
- 17
18 **3) Public Comments**
19 Mark Lambert commented that he owns a commercial property on Croixwood Boulevard
20 and has recently purchased a property for commercial use in the southeast corner of
21 Highway 36 and Manning. He stated that he attended the meeting because he wants to
22 build a good working relationship with BCWD. He will begin timber harvesting this
23 winter and submit a mass grading plan soon to BCWD.

24
25
26
27

1 4) **Treasurer’s Report**

2 a) **Long Lake Raingardens – final payment – Board Action**

3 Manager Johnson moved, seconded by Manager Schwarze, to approve the final
4 payment to All Weather Services in the amount of \$4,153.10 from account 929-
5 0000 (Long Lake Plan Implementation) for the Long Lake raingardens retrofit
6 project. Motion carried, vote 4/0.

7
8 b) **Review Authorized Funds Spreadsheet**

9 Administrator Kill presented the authorized funds spreadsheet.

10 Manager Johnson moved, seconded by Manager Schwarze, to approve the
11 authorized funds spreadsheet as presented. Motion carried, vote 4/0.

12
13 c) **Current Items Payable – Board Action**

14 Manager Johnson moved, seconded by Manager Maule Miller, to approve
15 payment of bills as presented in the amount of \$66,093.33.

| | <u>Yea</u> | <u>Nay</u> | <u>Abstain</u> | <u>Absent</u> |
|-----------------------------|------------|------------|----------------|---------------|
| <u>Manager Johnson</u> | <u>x</u> | | | |
| <u>Manager Leiser</u> | <u>x</u> | | | |
| <u>Manager Maule Miller</u> | <u>x</u> | | | |
| <u>Manager Schwarze</u> | <u>x</u> | | | |
| <u>Manager Taillon</u> | | | | <u>x</u> |

22 Motion carried 4/0.

23
24
25 5) **Consent Agenda**

26 Manager Schwarze moved, seconded by Manager Johnson, to approve the
27 consent agenda:

- 28 • Approve minutes from November 8, 2017 Regular Meeting as presented.
- 29 • Accept the permit fee statement as presented.
- 30 • Decline to waive monetary tort liability limits in Minnesota Statutes
31 section 466.04 for purposes of League of Minnesota Cities Insurance
32 Trust coverage.

33 Motion carried, vote 4/0.

34
35 6) **Permits**

36 a) **BCWD Permit 17-14 Parkwood Townhomes – Board Action**

37 Jared Fabian, EOR reported on a permit application submitted by Ancho Bay Pro,
38 Inc. for Parkwood Townhomes, a 1.59-acre townhome-development project. The
39 site is approximately 0.35 miles north of Highway 36 on the northwest side of
40 Stillwater Blvd between Parkwood Lane cul-de-sac and Saddle Court in the City
41 of Stillwater. The project proposes 43.5% impervious surface. The majority of
42 the site drains to the south; 710 square feet of proposed pervious area drains to the
43 west. Mr. Fabian reviewed the analysis of the project’s compliance with the
44 BCWD rules and recommends approval with conditions and stipulations. Noting
45 that the applicant was not present to answer questions, President Leiser asked for
46 public comments.

1 Deb Keech lives near the proposed development and said the neighbor who lives
2 adjacent to the site has numerous concerns, but could not be here this evening.
3 She wanted to make sure BCWD had received his letter that was sent late today.
4 Administrator Kill said she did receive it and following the public comments she
5 will report on the letter to the managers.
6

7 Sandy Giesen lives on Parkwood Lane and said she just received the notice from
8 BCWD regarding the permit review and was surprised at the short notice of
9 consideration of the permit at the meeting. She asked if this permit was all that the
10 developer needs to proceed. President Leiser responded the developer will also
11 need a permit from the City of Stillwater. Administrator Kill acknowledged the
12 short timeline and explained the BCWD review process.
13

14 Administrator Kill reported on written comments received from Michael Hughes,
15 who lives at 1172 Parkwood Lane just west of the site. Mr. Hughes states
16 concerns about the loss of the existing wildlife habitat and natural vegetative
17 cover. His comments noted there are underground seeps in this area of Stillwater
18 and his concern about the potential migration of groundwater from infiltration
19 practices associated with the development and impacts to his basement. It was
20 noted that the elevation of his basement is not known.
21

22 In response to his comments, the administrator asked the district engineer to
23 verify the drainage under proposed conditions. Mr. Fabian stated the majority of
24 stormwater runoff will be at the southeast corner, away from the Hughes property
25 and that there will be less runoff to the west than there is under existing
26 conditions. Addressing the concerns regarding adding to groundwater seeps, Mr.
27 Fabian stated that soils throughout the site are classified as a “D,” which is a tight
28 soil with a low infiltration rate.
29

30 **Manager Maule Miller moved, seconded by Manager Johnson, to approve**
31 **permit application 17-14 Parkwood Townhomes with conditions and**
32 **stipulations outlined in the engineer’s report dated December 8, 2017, and on**
33 **submission of proof of preliminary plat approval from the City of Stillwater.**
34 **Motion carried, vote 4/0.**
35

36 **b) BCWD Permit 2017- 23 Keller subdivision – BCWD Agreeing to Exercise of**
37 **Permitting Authority by CMSCWD – Board Action**

38 Camilla Correll, EOR reported the project is a 5-lot single-family residential
39 development in May Township on the south side of Lynch Lake. It is in both
40 BCWD and Carnelian-Marine-St. Croix Watershed District (CMSCWD). While
41 the majority of the site is in BCWD, much of this area is proposed to remain open
42 space. Most of the development activity is proposed within CMSCWD, and all of
43 the drainage will be directed towards CMSCWD.
44

45 The driveway accessing Lot 5 will cross a wetland that drains towards the
46 headwaters of Brown’s Creek, leading the engineer to recommend that the Board

1 require the following condition: 1:1 mitigation for flood storage in the same
2 subwatershed (and not elsewhere in CMSCWD nor by payment to the CMSCWD
3 Wetland Restoration Fund).

4 **Manager Johnson moved, seconded by Manager Schwarze, to authorize the**
5 **administrator to work with counsel to develop a joint powers agreement with**
6 **CMSCWD to allow CMSCWD to exercise authority on BCWD's behalf to**
7 **permit the project and authorize the president to sign the agreement, with**
8 **the condition noted above. Motion carried, vote 4/0.**
9

10 7) **Projects**

11 a) **Public Hearing – BCWD 2017-2026 Watershed Management Plan**
12 **Amendment**

13 Administrator Kill summarized the proposed BCWD management plan
14 amendment. President Leiser called for a recess of the regular meeting and
15 opened a public hearing for the BCWD 2017-2026 Watershed Management Plan
16 amendment at 7:26 pm.

17
18 There were no public comments.

19
20 Michael Welch, Smith Partners said that at the January meeting staff will bring
21 back to the managers any substantive comments received, draft responses, and a
22 draft resolution adopting the amendment to the plan.

23
24 President Leiser closed the public hearing and called the regular meeting back to
25 order at 7:30pm.

26
27 b) **Rule Revisions**

28 (a) **Public Hearing**

29 President Leiser noted that BCWD is required by state law to adopt rules to
30 accomplish the purposes of the Watershed Act. President Leiser called for a
31 recess of the regular meeting and opened a public hearing for the BCWD rule
32 revisions at 7:32pm.

33
34 (b) **Summary of Substantive Written Comments and Request for Board**
35 **Direction**

36 Administrator Kill reported the 45-day statutory comment period ended on
37 December 4th. Comments were received from the City of Oak Park Heights,
38 Mark Lambert, and the Minnesota Department of Transportation.

39
40 President Leiser asked for comments from the public. Mr. Lambert, who owns
41 commercial property in the watershed, said he submitted a letter to BCWD
42 about his concerns over the burden the new rules will have on small property
43 owners who want to redevelop their sites. In his case, he said, if he redevelops
44 his commercial property on Croixwood Boulevard, 22% of the site will have
45 to be dedicated to a pond or he will need to add expensive underground tanks

1 to manage stormwater runoff under the proposed rules. He asked that the
2 managers exercise flexibility when addressing small businesses.

3
4 Ms. Correll gave an introduction on: the policies supported by BCWD rules,
5 the aquatic impairments of concern as identified by the Minnesota Pollution
6 Control Agency, strategies for addressing impairments, and Governor
7 Dayton's water quality improvement goal.
8

9 Ms. Correll led a discussion with the Board addressing the substantive points
10 raised in the written comments:

- 11
12 ■ Mr. Welch clarified a point regarding the statement of need and
13 reasonableness (SONAR). While state agencies are required to prepare a
14 SONAR as part of rulemaking, watershed districts do not have this
15 requirement. BCWD's SONAR is meant to support the rules by explaining
16 the resource protections to be served by the rules, and helping people
17 understand and interpret them. The document could be given a different
18 name, such as "Memo Supporting the Rules" to avoid confusion with the
19 requirements set forth in the Administrative Procedure Act. The managers
20 noted that the document is beneficial and supported the idea of renaming it
21 to prevent confusion.
22
- 23 ■ The proposed 10,000 square feet of impervious area as a trigger for
24 stormwater-management requirements on redevelopment projects was
25 discussed. Both, the engineer and administrator noted a trend toward more
26 infill and redevelopment projects, as well as road redevelopment and trail
27 projects in BCWD. Ms. Correll presented a chart comparing the amount of
28 impervious area triggering stormwater rules among various watershed
29 organizations; the proposed revision to the BCWD rules is consistent with
30 other watershed districts and watershed management organizations in the
31 area. The managers agreed to leave the proposed redevelopment trigger at
32 10,000 square feet.
33
- 34 ■ The use of pre-settlement conditions as the baseline for setting
35 stormwater-management requirements was discussed and the managers
36 determined that BCWD is in line or possibly not as stringent as other
37 watershed districts and were in agreement to not change the reference.
38
- 39 ■ The definition of "reconstruction" was revised to remove unnecessary
40 reference to cost-percentage changes to buildings, leaving the fully
41 effective language BCWD had proposed in October regarding changes to
42 impervious surface area. The managers supported this change.
43

44 Recess 8:30pm-8:34pm
45

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

- The existing regulatory agreements among cities and BCWD are not affected by the rule revisions. The managers agreed BCWD should have a meeting with Oak Park Heights and Stillwater to discuss the rule revisions and continued utility of the Trout Stream Mitigation Project agreement.
- Mr. Welch discussed moving references to state best-management practices design and construction guidance from among the standards in subsection 2.4 of the Stormwater Management Rule to the required exhibits subsection. The move underscores that when submitted to support a permit application, designs and plans must be consistent with the best practices provided in the referenced state-of-the-art practices and techniques documents. The managers agree with moving the design standards to the required exhibits section.
- A practical difficulty versus undue hardship variance standard was discussed. Mr. Welch noted a watershed variance standard is not directed by state law. The managers considered adopting the "practical difficulties" standard that now applies to city and county area variances, but with advice of counsel considered the statutory variance factors under each test and found that the undue-burden variance factors better guide watershed-rule variance decisions than the factors in statute for practical-difficulties decisions.

Mr. Welch noted staff will follow-up at the January meeting with a draft of responses to all the comments received, in keeping with direction from the managers tonight.

President Leiser closed the public hearing and called the regular meeting back to order at 9:20pm.

8) New Business

a) Hugo Water Resource Management Plan – Board Action

Manager Leiser moved, seconded by Manager Johnson, to approve Resolution 17-05 to approve the City of Hugo Water Resources Management Plan on the condition that Hugo revise its plan to address comments in the memo prepared by the BCWD administrator.

| | Yea | Nay | Abstain | Absent |
|------------------------------------|-----------------|-----|---------|-----------------|
| <u>Manager Johnson</u> | <u>x</u> | | | |
| <u>Manager Leiser</u> | <u>x</u> | | | |
| <u>Manager Maule Miller</u> | <u>x</u> | | | |
| <u>Manager Schwarze</u> | <u>x</u> | | | |
| <u>Manager Taillon</u> | | | | <u>x</u> |

Motion carried 4/0.

1 d) **Auditor Engagement Letter – Board Action**
 2 **Manager Leiser moved, seconded by Manager Schwarze, to authorize the**
 3 **administrator to execute a contract on advice of counsel with Abdo Eick &**
 4 **Meyers as District auditor to conduct the audit for fiscal year 2017 in the**
 5 **amount not to exceed \$7,950 from account 200-4331 (Audit). Motion carried,**
 6 **vote 4/0.**

7
 8 e) **Family Means Meeting Space – Board Action**
 9 Mr. Welch noted he does not recommend executing the waiver presented by
 10 Family Means because it waives even Family Means’ gross misconduct and
 11 intentional negligence. The managers discussed and agreed that the risk was low
 12 enough that execution of the waiver is acceptable. **Manager Leiser moved,**
 13 **seconded by Manager Maule Miller, to authorize the administrator to sign**
 14 **the waiver for Family Means. Motion carried, vote 4/0.**

15
 16 9) **2018 Budget**

17 a) **Public Meeting regarding 2018 Budget and Levy**
 18 There were no public comments received on the proposed 2018 budget and levy.
 19

20 b) **Resolution 17-06 Final 2018 Budget – Board Action**
 21 **Manager Maule Miller moved, seconded by Manager Johnson, to adopt**
 22 **resolution 17-06 Brown’s Creek Watershed District Board of Managers**
 23 **Certified 2018 Final Budget Resolution with an Operating and Capital**
 24 **Budget totaling \$1,121,790 including \$960,790 for Management Plan**
 25 **Implementation and \$161,000 for Operations.**

| | Yea | Nay | Abstain | Absent |
|------------------------------------|-----|-----|---------|--------|
| <u>Manager Johnson</u> | x | | | |
| <u>Manager Leiser</u> | x | | | |
| <u>Manager Maule Miller</u> | x | | | |
| <u>Manager Schwarze</u> | x | | | |
| <u>Manager Taillon</u> | | | | x |

30
 31 **Motion carried 4/0.**

32
 33
 34 c) **Resolution 17-07 Final Levy – Board Action**
 35 **Manager Schwarze moved, seconded by Manager Maule Miller, to adopt**
 36 **resolution 17-07 Brown’s Creek Watershed District Board of Managers**
 37 **Certified 2018 Final Tax Levy Resolution: to levy a total of \$1,007,490,**
 38 **including \$156,000 for the General Fund as provided by MN Statute**
 39 **103D.905 and \$851,490 for the Management Planning Fund as provided by**
 40 **the MN Statute 103B.241.**

| | Yea | Nay | Abstain | Absent |
|------------------------------------|-----|-----|---------|--------|
| <u>Manager Johnson</u> | x | | | |
| <u>Manager Leiser</u> | x | | | |
| <u>Manager Maule Miller</u> | x | | | |
| <u>Manager Schwarze</u> | x | | | |
| <u>Manager Taillon</u> | | | | x |

46
 47 **Motion carried 4/0.**

- 1 **10) Discussion Agenda – No Action Required.**
2 **a) Administrator Updates**
3 Administrator Kill reported on current BCWD activities.
4
5 **b) Communications & Manager Reports**
6 President Leiser reported on his activities with Minnesota Association of Watershed
7 Districts.
8
9 Administrator Kill noted the BCWD office will be closed December 25, 26, and
10 January 1st.
11
12 **c) January 2018 BCWD Board Agenda**
13 No items were suggested.

- 14
15 **11) Adjournment**
16 **Manager Johnson moved, seconded by Manager Maule Miller, to adjourn the**
17 **Regular Meeting at 9:45PM. Motion carried, vote 4/0.**

18
19 Respectfully Submitted by
20 Carmen Simonet, Recorder and Anne Maule Miller, Secretary
21