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2 FINAL Minutes of the workshop and regular meeting of the Brown's Creek Watershed District
3 Board of Managers, Wednesday May 10, 2023
4

5 ROLL CALL

Managers Present:	Others Present:
Klay Eckles, President	Karen Kill, BCWD administrator
Celia Wirth, Vice President	Camilla Correll, EOR, BCWD engineer
Charles LeRoux, Secretary	Michael Welch, Smith Partners, BCWD counsel
Gerald Johnson, Treasurer	Cameron Blake, BCWD staff
	Mike Majeski, EOR, BCWD engineer
	John Sarafolean, EOR, BCWD engineer
	Derek Lash, EOR, BCWD engineer
	Ryan Fleming, EOR, BCWD engineer
	Paul Nation, EOR, BCWD engineer
	Aaron DeRusha, Washington Conservation District
	Joel Chirhart, Minnesota Pollution Control Agency
	Jason Palmby, Magellan Land Development
	Scott Dahlke, Civil Engineering Site Design
	Lisa Tilman, Stantec

- 6
7 **1) Call regular meeting to order**
8 President Klay Eckles called the regular meeting to order at 6:30 p.m.
9
10 **2) Approve Regular Meeting Agenda and Discussion Agenda**
11 **Manager Johnson moved, seconded by Manager Wirth, to approve the agenda as**
12 **presented. Motion carried, vote 4/0.**
13
14 **3) Public Comments**
15 There were no public comments.
16
17 **4) Consent Agenda**
18 **Manager Wirth moved, seconded by Manager Johnson, to approve the consent**
19 **agenda as presented:**
20 **a) Approve Board Meeting Minutes of the April 12, 2023 Regular Meeting.**
21 **b) Accept Permit Fee Statement.**

c) Approve flood risk assessment and community meetings scope for Benz, North School Section, South School Section, and Goggins Lakes not to exceed \$10,684 from account 923-0002 Flood Risk Assessment and \$6,890 from account 950-0001 South School Section.

d) Approve scope to develop Applewood Hills reuse project operations and maintenance plan not to exceed \$16,300.50 from account 929-0010.

e) Approve registration and expenses for staff, as well as per diems for managers for Minnesota Watersheds summer tour June 20-21 in Albert Lea.

f) Approve registration and expenses for staff as well as per diems for managers for the St. Croix River workshops on the water.

Motion carried 4/0.

5) Treasurer’s Report

a) Review Authorized Funds Spreadsheet

Manager Johnson moved, seconded by Manager Wirth, to accept the authorized funds spreadsheet as presented. Motion carried, vote 4/0.

b) Current Items Payable

Manager Johnson moved, seconded by Manager Wirth, to approve the payment of bills as presented in the amount of \$105,362.88

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<u>Manager Eckles</u>	X			
<u>Manager Johnson</u>	X			
<u>Manager LeRoux</u>	X			
<u>Manager Wirth</u>	X			

Motion carried 4/0.

6) Permitting

a) BCWD Permit 23-03 Boutwell Farms/GreenHalo Builds LLC – Violation Hearing

President Klayton Eckles called the violation hearing to order. Michael Welch noted that John Sharkey and Paul Przybylowski, representatives of the property owner, GreenHalo Builders, were timely notified of the hearing and advised of that they could attend and be represented by counsel. But they appear to have decided not to attend.

Paul Nation provided the factual basis supporting the enforcement hearing. He explained that the permit approval for the Boutwell Farms subdivision, of which the property at 2545 Boutwell is a part, required the applicant to record on the title for the property a declaration requiring maintenance of the infiltration basin located, in part, on the property at 2545 Boutwell Farm Road. The BCWD inspector found in April 2023 that excavated soil had been stockpiled in the basin. The stockpile will impede infiltration, increasing risk that stormwater would overflow from the basin and cross other property and enter a tributary to Brown’s Creek and an adjacent wetland. The district issued a notice of probable violation (NOPV) to Mr. Sharkey and Mr. Przybylowski that direct the removal of the stockpile and restoration of the infiltration capacity of the basin. GreenHalo had the stockpile removed April 25, 2023, but no steps have been taken to restore the basin.

1 On May 2 the district issued an updated NOPV, providing notice of the hearing tonight.
2 GreenHalo Builds confirmed receipt of this notice. On May 2, GreenHalo submitted
3 updated erosion and sediment control plans to satisfy the one remaining condition on
4 issuance of permit 23-03 for the construction of the home at 2545 Boutwell, and the
5 district administrator issued the permit on May 3, 2023.

6 Mr. Nation explained that steps still needed include seeding the basin, testing the
7 infiltration rate to ensure it meets requirements, and maintaining the basin until
8 vegetation has established. Mr. Nation displayed photos of the completed basin in 2020,
9 the basin with the stockpiled material in April 2023, and photos from the May 2, 2023,
10 inspection showing the stockpile removed.

11 Mr. Welch noted the permit was issued without receiving the permit fee and Ms.
12 Kill explained this was due to an internal clerical error. The permit fee is still outstanding
13 so the applicant will be required to submit the original permit fee and reimburse BCWD
14 for its costs of seeking compliance.

15 The managers clarified with the administrator that permit 23-03 was issued after
16 the work had begun. The managers confirmed also that Mr. Sharkey has commenced
17 work on projects without a permit in the past. Staff prepared the materials on the matter
18 for hearing by the board because the degradation of the infiltration basin represents a
19 threat to water resources and potentially to adjoining properties.

20 Mr. Welch recommended the board consider issuing an order with a clear timeline
21 for actions needed to restore the function of the basin. Staff prepared a draft order for
22 board consideration.

23
24 **Manager Wirth moved, seconded by Manager Johnson, to order GreenHalo Builds**
25 **to:**

26 **1. Provide a plan to establish and maintain vegetation within the infiltration**
27 **basin for review and approval by BCWD by May 17, 2023.**

28 **2. Provide monthly updates to BCWD on the status of basin vegetation,**
29 **beginning June 1, 2023.**

30 **3. Submit to BCWD necessary documentation of completion of the necessary**
31 **grading and earthwork by close of business June 7, 2023, including double-**
32 **ring infiltrometer results by a qualified contractor (to document capacity)**
33 **and an as-built grading survey.**

34 **4. Advise BCWD of successful reestablishment of vegetation in the**
35 **infiltration basin by October 1, 2023, for confirmation by inspection by**
36 **BCWD.**

37 **5. Replenish the BCWD fee deposit for permit 23-03 to \$5,000 by May 24,**
38 **2023.**

39 **Motion carried 4/0.**

40
41 **7) Projects**

42 **a) Water Quality Monitoring Summary – 2022 data and long-term trends**

43 Aaron DeRusha from Washington Conservation District explained there were
44 some improving trends in water quality and lake grades across the watershed, which
45 reflect the efforts being made to protect and restore resources in the watershed. Long
46 Lake was listed as impaired for chloride pollution this year and chloride mostly observed

1 in lake-bottom conditions. Chloride is present and increasing in Brown's Creek, but not
2 yet at an impairment threshold. Chlorides are considered a permanent pollutant and best
3 addressed by prevention techniques. Mr. DeRusha noted the overall high water-quality
4 conditions across the watershed resources despite recent drought conditions.
5

6 **b) Biological Stream Monitoring**

7 **(1) Presentation 2022 data and long term trends**

8 Mike Majeski of EOR introduced Joel Chirhart from the Minnesota Pollution
9 Control Agency. Mr. Chirhart explained that the Index of Biological Integrity (IBI) score
10 of a water resource uses the presence of tolerant or intolerant aquatic animal species as an
11 indicator of the suitability of the resource to support aquatic life. There is an overall
12 improving trend in the IBI scores of Brown's Creek. Mr. Chirhart explained the
13 Minnesota Pollution Control Agency (MPCA) does not regularly collect IBI data in the
14 spring; spring data cannot be used for delisting impaired resources. The methods and
15 analysis are based on macroinvertebrate communities in fall conditions. He said annual
16 measurements are not required for long-term trend analysis, but acknowledged that
17 sampling regimes are based on the goals of the district. The MPCA also requires
18 professionals collecting the data to follow agency protocols for the data to be used in
19 assessing the listing or delisting of a resource as impaired. He noted that Mr. Majeski
20 follows MPCA protocols.
21

22 **(2) 2023 Scope**

23 The board discussed potential value in continuing to collect IBI data in the spring
24 as this is when the effects of chloride pollution might be observed over time. Mr. Chirhart
25 said chloride pollution may still have a measurable impact in the fall depending on the
26 nature of the loading. The board also discussed the option of decreasing the sampling
27 frequency from annual to biennial. The managers saw value in continuing annual
28 sampling to more accurately gauge the impact of district projects. Manager Eckles stated
29 he did not see the value of spring sampling as the chloride levels in the creek do not seem
30 to be an issue yet. Ms. Kill noted the sampling has already occurred this spring and
31 further discussion can occur on future sampling regimes. She explained the Minnesota
32 Department of Transportation has switched its winter road-maintenance practices to using
33 all chloride products and this impact may become apparent in the chloride monitoring the
34 district has begun this year.
35

36 **Manager Wirth moved, seconded by Manager LeRoux to approve not to exceed**
37 **\$3,797 from account number 947-0018 to conduct fall 2023 macroinvertebrate**
38 **assessment. Motion carried 4/0.**
39

40 **c) Brown's Creek Stream Assessment: Headwaters to Manning Avenue**

41 Mr. Majeski presented the drone and field assessment of Brown's Creek and its
42 tributaries. These included observed channel conditions, beaver dams and fallen trees,
43 and a new bridge and trail crossing over one of the tributaries.
44

45 **d) Trout Habitat Protection Project (THPP) infiltration trench inspection**
46 **results and next steps**

1 Derek Lash explained the multistep assessment of the THPP infiltration trench,
2 which showed the practice was still performing well even though it was constructed
3 almost 20 years ago. The observed decreased infiltration at the facility may be due to
4 groundwater interaction, especially considering the historic high rainfall in years leading
5 up to 2020. The board can consider different options of evaluating the basin as a whole
6 including evaluating whether portions have become sealed with sedimentation,
7 preventing infiltration. Due to drought conditions the last two years the water levels have
8 fallen below the outlet so there is no immediate need to take action this year. Another
9 option the board can consider is piezometer monitoring of the practice, which would
10 provide a clearer picture of groundwater interactions occurring in the practice. The board
11 agreed to wait on any further action.
12

13 **8) Discussion Agenda**

14 **a) Updates**

15 **(1) Administrator**

16 **a. Board/CAC Tour August 30th at 5:30-8pm**

17 Ms. Kill confirmed the joint district board and Citizen Advisory
18 Committee watershed tour date and noted the CAC would be providing
19 further input at its June 12, 2023, meeting regarding tour locations.
20

21 **(2) Legal**

22 No update.
23

24 **(3) Engineer**

25 **(a) BCWD Permit 23- Stillwater Oaks – initial proposed project**

26 Camilla Correll overviewed the general site plan for the
27 redevelopment of the former Stillwater Oaks golf course into a 15-lot
28 residential development. The applicant is proposing to manage stormwater
29 via a combination of ponds, reuse and recorded conservation areas
30 providing evapotranspiration.

31 The applicant, Jason Palmby, clarified which areas were intended
32 to be restored with native vegetation and which areas are existing
33 woodland that they are planning to preserve.

34 Scott Dahlke, the civil engineer for the project, stated that their
35 goal is to seek permit approval and begin work this fall. Mr. Dahlke said
36 their goal is to preserve as much habitat and woodland area as possible. He
37 expects homeowners to also retain as much woodland and natural areas as
38 they can. The applicant is seeking flexibility as the lots are going to be
39 custom designed by the buyer. There are topographic restrictions in how
40 lots are going to be able to be laid out.

41 The applicant is considering a request for a variance from the
42 district rate-control requirement for some individual catchments where
43 there is no proposed disturbance and existing rates would be reduced, but
44 not to presettlement levels.

45 The managers asked to hear more about the proposed reuse system.
46 Ms. Correll explained the plan to use two reuse ponds and a system that

1 homeowners will connect to as the site develops. Mr. Palmby stated the
2 exact layout of the system will not be known until individual builders have
3 designed each lot. Not all 15 lots will be close enough to the reuse ponds
4 to be able to connect to the system, but the volume required to be used will
5 be communicated to each builder.

6 The managers discussed how the developer will stipulate that the
7 reuse water must be used. Mr. Palmby said this will be documented in the
8 homeowners' association documents. Mr. Welch explained the district will
9 not be involved in the HOA documents so the reuse system will need to be
10 outlined and recorded in the stormwater management declaration required
11 by the permit so the district can ensure the stormwater requirements are
12 being met.

13 The managers suggested there may be additional opportunities to
14 preserve more woodland space. They would like to see these additional
15 efforts made when the applicant officially submits their permit for board
16 approval.

17
18 (b) Permit Inspection Update

19 A notice of probable violation was issued for BCWD Permit 22-11 due to
20 lack of adequate erosion and sediment control. In response, the permittee
21 timely stabilized the site and came into compliance.
22

23 (4) Managers

24 Manager Eckles shared his observations from his wildlife cameras in his
25 backyard of wildlife activity in the Brown's Creek tributary area. Manager Wirth
26 recommended sharing those videos on the district's website or social media.
27

28 **9) Adjournment**

29 **Manager Wirth moved, seconded by Manager Johnson, to adjourn the regular meeting at**
30 **9:10 p.m. Motion carried 4/0.**

31
32 Respectfully submitted by

33 Cameron Blake, BCWD staff and Charles LeRoux, Secretary