Regular Meeting of the RCWD Board of Managers

Wednesday, May 10, 2023

**Shoreview City Hall Council Chambers
4600 North Victoria Street, Shoreview, Minnesota
and
Meeting also conducted by alternative means
(teleconference or video-teleconference) from remote locations**

**Minutes**

**CALL TO ORDER**

President Michael Bradley called the meeting to order, a quorum being present, at 9:00 a.m.

**ROLL CALL**

Present: President Michael Bradley, 1st Vice-Pres. John Waller, 2nd Vice-Pres. Steve Wagamon, Treasurer Marcie Weinandt, Secretary Jess Robertson

Absent: None

Staff Present: District Administrator Nick Tomczik, Permit Coordinator/Wetland Specialist Patrick Hughes, Technician/Water Resource Specialist Molly Nelson, Water Monitoring Technician Catherine Nester (video-conference), Public Drainage Inspectors Ashlee Ricci and Tom Schmidt, and Office Manager Theresa Stasica

Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); District Attorney Louis Smith from Smith Partners; Drainage Attorney John Kolb (video-conference) from Rinke Noonan

Visitors via video-conference: Elissa Thompson, Jason Sonnek, Brian Olsen

**SETTING OF THE AGENDA**

***Motion by Manager Robertson, seconded by Manager Wagamon, to approve the agenda as presented.***

***Motion carried 5-0.***

**READING OF THE MINUTES AND THEIR APPROVAL**

**Minutes of the April 26, 2023 Board of Managers Regular Meeting. Motion by *Manager Robertson, seconded by Manager Weinandt, to approve the minutes as presented.* *Motion carried 5-0.***

**Consent Agenda**

**Water Quality Grant Program Cost Share Application**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Applicant** | **Location** | **Project Type** | **Eligible Cost** | **Pollutant** **Reductions** | **Funding Recommendation** |
| R23-03 | Beth LaBreche | White Bear Lake | Shoreline Stabilization & Restoration  | $20,599.00 | Volume: 22%TSS: 91%TP: 58% | Not to exceed 50%; up to $7,500.00 |
| R23-04 | Ryan Lake | White Bear Township | Shoreline Stabilization & Restoration | $13,062.00 | Volume: 66%TSS: 98%TP: 87% | Not to exceed 50%; up to $6,531.00 |
| W23-01 | Lauren & Don Forner | Hugo | Wetland Restoration | $10,090.00 | SW Runoff: 85%%TSS: 79%TP: 79% | Not to exceed 75%; up to $7,500.00 |

Manager Waller noted that he did not object to any of these grants, but would like to pull W23-01 pulled for additional discussion.

***It was moved by Manager Wagamon and seconded by Manager Weinandt, to approve the Water Quality Grants R23-03 and R23-04 from the consent agenda as outlined in the above table, in accordance with RCWD Staff’s Recommendation based on established program guidelines, dated May 4, 2023. Motion carried 5-0.***

Manager Waller stated that he would like to have a discussion about process and explained that he was in favor of this grant, however the City of Hugo happens to be the local government unit for the Wetland Conservation Act so he felt there should be some type of notice given to them for this wetland restoration to ensure that they are involved in the process. He reiterated that he has no problem with this grant but felt that the City of Hugo needed to be involved in the process and asked that the District “CAPROC” this and give it conditional approval until staff checks with Hugo to ensure they approve.

Technician/Water Resource Specialist Nelson stated that the general protocol with every application that they receive is to involve the cities in order to let them know that a project is taking place. She stated that she would be happy to have a discussion with the City of Hugo to ensure there are not additional things needed for this project.

Manager Waller stated that he had checked with them this morning before the meeting and this project was news to them.

District Administrator Tomczik stated that staff can certainly talk to the City of Hugo yet noted that he doubted the activity would trigger WCA regulation.

Manager Waller explained that his underlying point what that he wanted District staff to establish the protocol of communicating these types of requests and projects to the appropriate cities.

***It was moved by Manager Waller, and seconded by Manager Bradley, to approve the Water Quality Grant W23-01 from consent agenda as outlined in the above table, in accordance with RCWD Staff’s Recommendation based on established program guidelines, dated May 4, 2023, with the condition that staff checks with the City of Hugo. Motion carried 5-0***

**Public Hearing: Blaine 2022, LLC Petition to Outlet Additional Acres to Anoka County Ditch (ACD) 10-22-32**

President Bradley opened the public hearing on the petition of Blaine 2022, LLC, to utilize Branch 3 of ACD 10-22-32 as a drainage outlet to property not previously within the ACD 10-22-32 drainage area. He stated the purpose of this hearing is to receive comments from the public on the petition in order to inform the Board of the public’s concerns. The petition requests outlet to Branch 3 of ACD 10-22-32 for approximately 4.43 acres of land not currently within the ACD 10-22-32 sub watershed drainage area. The petition is subject to statutes section 103E.401.

District Engineer Otterness gave a presentation regarding the petition to outlet additional acres to ACD 10-22-32, Branch 3 and reviewed items for the Board consideration. He reviewed the proposed site location, the proposed change in the drainage area, capacity of the system and analysis, mitigating site run-off, and necessary permitting. He explained that the conclusion, based on the proposed site features including infiltration basins, is that the outlet will not impair the utility of Branch 3. He stated that they are recommending that the Board adopt findings and order authorizing outlet of additional lands to ACD 10-22-32 Branch 3. He noted that they are recommending an outlet fee of $375.28 and also an additional fee for related costs by the District for administration of the petition. He noted that the petitioner has already submitted a $5,000 bond in order to begin this process.

President Bradley asked if the Board had any questions for the staff or consultants.

Manager Robertson stated that when this project was proposed to the City she knows they had to go through a thorough environmental process and asked if this would have any impact on that.

District Engineer Otterness stated that this would not impact anything related to the EAW or outcomes from the EAW.

Drainage Attorney Kolb noted that he had included something in the order he submitted that now that he has heard the report from District Engineer Otterness may not be applicable. He stated that he had initially thought that it would be beneficial for the petitioners to provide an easement to the District for any portions of the ACD 10-22-32 on their development property and not just the 4 acres proposed to be drained. He asked if he had misread that or if it was still a recommendation from the District Engineer.

District Engineer Otterness stated that he thinks it would be appropriate to still include that language in the order though believes it was already considered in the permit.

Manager Weinandt stated that her understanding of this is that the District is taking action to allow a small amount of acres into the drainage area of the ditch, but there is also a permit for this project. She asked if there was some maintenance language that should be included as it relates to the infiltration basin.

Permit Coordinator/Wetland Specialist Hughes stated that the proposed stormwater BMPs for the project would be covered by a maintenance obligation and noted that the ‘gold standard’ would be for that to be recorded on the property title which he believes was done. He stated that would mean the maintenance obligation would run in perpetuity.

No additional questions were received. There were no written comments received to be read into the record. President Bradley invited those on the video-teleconference who wished to speak to unmute and state their name and address. No one from the zoom video-conference had comments. There were no public comments.

Being there no further testimony from the public, President Bradley closed the public hearing and continued the regular meeting.

**Open Mic/Public Comment**

None.

**ITEMS REQUIRING BOARD ACTION**

1. **Consider Findings and Order To Outlet Additional Acres to Anoka County Ditch 10-22-32 by Petition of Blaine 2022, LLC**

District Administrator Tomczik noted that this item is related to the public hearing that the Board just held.

***Motion by Manager Waller, seconded by Manager Wagamon, to adopt Resolution 2023-07* Findings and Order Authorizing Outlet of Additional Lands to Drainage System and Setting Outlet Charge*.***

Therefore, the RCWD Board of Managers makes the following:

**ORDER**

1. The Board of Managers authorizes an outlet to Branch 3 of ACD 10-22-32 for approximately 4.43 acres of land not currently within the ACD 10-22-32 sub watershed drainage area as petitioned and outlined in the engineer’s report and associated development permit applications/approvals.
2. The authorization granted herein is subject to the following conditions:
	1. Payment of an outlet fee of $375.28.
	2. Payment of all costs associated with the proceedings.
	3. Execution of an easement, in a form acceptable to the drainage authority, documenting the existing alignment of ACD 10-22-32 on the Petitioner’s property and including a width as is reasonably necessary for future maintenance of the drainage system.

***ROLL CALL:***

***Manager Bradley – Aye***

***Manager Robertson – Aye***

***Manager Waller – Aye***

***Manager Weinandt – Aye***

***Manager Wagamon – Aye***

 ***Motion carried 5-0.***

1. **Houston Engineering, Inc. Task Order Boundary Project**

Water Monitoring Specialist Nester explained that the District was prepared to take the next step in reviewing their political boundary. She noted that they were currently working along the southwest portion of the District and noted that Houston Engineering was recommending modifications of the boundary with the Mississippi WMO, Vadnais Lakes Area WMO, Capitol Region Watershed District, and Ramsey Washington Metro Watershed District. She stated that the next step is to consider the comments and develop the petition to BWSR to modify the boundary which will require technical work from Houston.

***Motion by President Weinandt, seconded by Manager Bradley, to approve*** ***Houston Engineering Inc. Task Order 2023-007 Rice Creek Watershed District Boundary Petition Assistance. Motion carried 5-0.***

1. **Manager Bylaws Adjustment**

District Administrator Tomczik stated the Bylaws state their review every five years. He noted that at the Board’s April 10, 2023 workshop meeting there were some suggested changes to the Bylaws outlined in the staff memo; notice for the changes being given at previous workshop.

President Bradley noted that these proposed changes are non-substantive.

***Motion by Manager Bradley, seconded by Manager Weinandt, to acknowledge that proper notice has been given for the consideration by the managers of a proposed bylaw change and move to amend Article VII, Section 8 and Article VIII, Section 1 of the Bylaws of the Rice Creek Watershed District.***

Manager Waller explained that he would be voting against this action because he feels there are contents within the entire Bylaw that he feels are unnecessary and will cause nothing more than political headaches.

***Motion carried 4-1 (Manager Waller opposed).***

1. **US Sitework, Inc. Partial Pay Request #5 Anoka County Ditch 53-62 Main Trunk Repair Project**

Public Drainage Inspector Ricci gave an overview of partial pay request #5 and explained that all the work had been certified by the District Engineer and staff concurred with the findings.

***Motion by Manager Wagamon, seconded by Manager Weinandt, to approve US Sitework, Inc.’s pay request #5 as submitted and certified by the District Engineer and directed staff to issue a payment in the amount of $63,210.62. Motion carried 5-0.***

Public Drainage Inspector Ricci explained that the contractor had an incident on site. She explained that the excavator was working within the channel and the bottom of the ditch gave out underneath one track which caused the excavator to tip. She stated that the operator was able to safely exit and get the equipment out, however there was a spill of engine oil that was contained as quickly as possible. She stated that District staff notified the duty officer and the city and explained that she and Abel Green went to the site in order to field public input and questions because it happened near a local city park. She stated that an update on the project and incident was also posted on their Facebook page and the District would also send out updates via e-mail.

Manager Robertson stated that she saw the post on Facebook and her immediate next step was to check her e-mail thinking that the Board would have been advised before a post was put out on social media. She stated that she would like to know things as soon as possible, before the general public, as the Board has a responsibility in these cases. She stated that in the future she would ask that the Board receive a heads up before something like this is released on social media.

Public Drainage Inspector Ricci noted that following this incident they have begun working with the contractor on alternative methods to complete the work.

Manager Weinandt asked about the conclusion that the ditch bottom had collapsed.

Public Drainage Inspector Ricci explained that in the area that the contractor was in, it is suspected that there was a hard layer of sand, but underneath it was soft, mucky peat with no firm bottom. She explained that they ended up being 7 feet down and did not touch a bottom. She stated that it is very fortunate that nobody was injured and that the machine was able to be recovered safely. She explained that they suspect that the vibrations from the machine loosened the sand and created ‘quicksand’ which caused the bottom to give out.

President Bradley asked how they were able to get the equipment out.

Public Drainage Inspector Ricci stated that the contractor brought in a 75-ton rotating wrecker and noted that because of the ground conditions, a portion of it also sunk about 4 feet into the ground before it was able to pull out the equipment. She stated that it was fortunate that she was familiar with many of the landowners in the area and was able to explain a bit about what was termed their ‘evening entertainment’.

1. **Check Register Dated** **May 10, 2023, in the Amount of $80,712.56** **Prepared by Redpath and Company**

***Motion by Manager Weinandt, seconded by Manager Bradley, to approve check register dated May 10, 2023, in the Amount of $80,712.56 as prepared by Redpath and Company. Motion carried 5-0.***

**ITEMS FOR DISCUSSION AND INFORMATION**

1. **District Engineer Update and Timeline**
2. **Administrator Updates**

District Administrator Tomczik stated that he understands that the City of Forest Lake has an interim moratorium on the establishment of wetland banks within its jurisdiction. He stated that staff heard someone was intending to develop 240 acres as a wetland bank which the City found concerning. He stated that he has participated in a few meetings with the city regarding a potential ordinance. The city is looking at ordinance language which would have some restrictions limiting wetland banks to conservation areas of the city’s zoning map and potentially would also require a conditional use permit.

1. **Managers Update**

Manager Waller attended the Washington County Consortium meeting and gave a brief overview of the topics of discussion. He noted that he had also attended the Forest Lake City Council meeting.

Manager Weinandt gave an overview of the conference committee report for the Legacy Finance Bill and explained that it has passed the House and will be moving on to the Senate this week. She also informed the Board of an upcoming Clean Water Council meeting on their Forever Green projects.

President Bradley noted that he had attended the CAC meeting.

**ADJOURNMENT**

***Motion by Manager Wagamon, seconded by Manager Robertson, to adjourn the meeting at 9:54 a.m. Motion carried 5-0.***