Regular Meeting of the RCWD Board of Managers

Wednesday, May 24, 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/Inspector Terrence Chastan-Davis, Public Drainage Inspector Tom Schmidt, Program Support Technician Abby Tekiela, and Office Manager Theresa Stasica

Consultants: District Engineer Chris Otterness from Houston Engineering, Inc. (HEI); District Attorney Louis Smith from Smith Partners

Visitors: None

**SETTING OF THE AGENDA**

***Motion by Manager Waller, seconded by Manager Weinandt, to approve the agenda as presented.***

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

**READING OF THE MINUTES AND THEIR APPROVAL**

**Minutes of the May 8, 2023 Workshop and May 10, 2023 Board of Managers Regular Meeting.**

**Motion by *Manager Robertson, seconded by Manager Wagamon, to approve the minutes, as presented.* *Motion carried 5-0.***

**Consent Agenda**

The following items will be acted upon without discussion in accordance with the staff recommendation and associated documentation unless a Manager or another interested person requests opportunity for discussion:

**Table of Contents-Permit Applications Requiring Board Action**

**No. Applicant Location Plan Type Recommendation**

23-003 3 Beacon Columbus Final Site Drainage Plan CAPROC 10 items
 Holdings, LLC Wetland Alteration
 Floodplain Alteration

23-024 Shoreview Ridge Shoreview Final Site Drainage Plan CAPROC 4 items
 MF, LLC

23-027 City of Fridley Fridley Final Site Drainage Plan CAPROC 6 items
 Floodplain Alteration

Permit Coordinator/Wetland Specialist Hughes stated that he had a minor change for Permit No. 23-027. He referenced page 29, and explained that the date was wrong in the description, and should be changed to October 26, 2022.

***It was moved by Manager Wagamon and seconded by Manager Bradley, to approve the consent agenda as outlined in the above Table of Contents in accordance with RCWD District Engineer’s Findings and Recommendations, dated May 16, 2023, with the date revision for Permit No. 23-027 as discussed. Motion carried 5-0.***

**Open Mic/Public Comment**

None.

**ITEMS REQUIRING BOARD ACTION**

1. **RCWD 2023 Board of Managers Calendar Adjustment**

District Administrator Tomczik stated that the Board had adopted its 2023 calendar in December 2022. He noted that recently the Board had discussed changing the calendar in order to avoid a periodic workshop conflict and there was consensus to move the workshop start time to 9:00 a.m. the same Monday before the second Wednesday of the month board meeting.

***Motion by Manager Waller, seconded by Manager Weinandt, to adopt the revised 2023 Board of Managers Calendar, as presented. Motion carried 5-0.***

1. **Check Register Dated** **May 24, 2023, in the Amount of $353,508.29** **Prepared by Redpath and Company**

***Motion by Manager Weinandt, seconded by Manager Wagamon, to approve check register dated May 24, 2023, in the Amount of $353,508.29 as prepared by Redpath and Company. Motion carried 5-0.***

Manager Weinandt explained that she wanted to let the Board know that yesterday they held the quarterly Treasurer’s meeting where they reviewed the budget and current expenditures. She stated that they also visited with Corey Boyer with PMA regarding the Districts 4M funds and explained that they will continue to look at options for investing. She noted the intent for the Board to discuss this information at their June 12, 2023 workshop meeting.

**ITEMS FOR DISCUSSION AND INFORMATION**

1. **Lennar Corporation - ACD 55 Order & Permit 18-046 Update (Terrence Chastan-Davis, Tom Schmidt)**

Technician/Inspector Chastan-Davis gave a brief update on the rerouting of ACD 55 and noted that the development is ongoing. He explained that staff wanted to discuss Resolution #2017-28 Order which was for a petition to reroute a portion of ACD 55 so that a development could progress. He stated that part of the petition was making sure that they constructed the reroute in accordance with how the petition was approved. He stated that on September 15, 2022 they provided an as-built survey to the District of the reroute and some deficiencies and concerns were found.

Public Drainage Inspector Schmidt explained that the goal was to get the party who asked for the change in the drainage system to demonstrate that they built it in the way they said they would. He stated that the District Engineer had recommended Board approval based on the plans that were submitted and noted that, to date, the petitioner has not demonstrated that the ACD 55 realignment has been built according to the plans. He stated that the District has asked the petitioner to either repair it or demonstrate that it does not have deficiencies, and they have done neither. He stated that they received an e-mail late yesterday afternoon from the developer. Staff emailed the developer previously that this item was on the agenda. the developer communicated that they were committed to getting the District this information.

Manager Wagamon asked what staff was concerned about in this situation.

Public Drainage Inspector Schmidt explained that there are areas of the ditch that have drain tile that is negative grade or flat. He stated that the main concern is that it will cause an impact upstream and gave an overview of the area of concern.

President Bradley stated that this was approved 6 years ago and asked if these were the same people that are currently trying to work on further expansion of this project. He explained that he was trying to figure out what kind of ‘leverage’ the District may have.

Technician/Inspector Chastan-Davis explained that the District had issued Permit No. 18-046 in 2018, so it is still a relatively recent permit. He stated that ‘leverage-wise’ the permit is still open and still has some outstanding permitee obligations.

President Bradley reiterated that he wanted to know if the people the District dealt with in 2018 when the permit was issued are the same people who recently asked the District to expand and move other parts of this ditch.

Technician/Inspector Chastan-Davis confirmed that it was the same people.

Manager Waller thanked staff for bringing this issue before the Board. He stated that this is a long term development an believes the city should be contacted as well to see what their plans are. He stated that he believes this being on the agenda today will get the process started for the city to work with the developer.

Manager Weinandt asked if she was correct that when the staff report was put together they had not received any information from the petitioner, but as of yesterday, they did receive more information.

Technician/Inspector Chastan-Davis stated that the District had been communicating with the petitioner/permitee, but quite a bit of time had passed since the District had received a response from them. He stated that when he communicated with them that they planned to discuss this situation with the Board today, that prompted a response from them that was received yesterday. He stated that their response was brief and basically said that they wanted to try to demonstrate that the capacity and function of the system still exceeds what existed previously. He explained that staff just wants to make sure that a resolution continues to be sought.

District Administrator Tomczik stated that there has been an e-mail exchange between the petitioner/permittee with the District’s engineer. This is important to coordinate on what would be acceptable to the District in order to demonstrate the drain tile function. He noted that the District team brought forth the concern early on after the as-built information was submitted in September of 2022. He stated that this conversation has been going on quite a long time with, in his opinion, limited developer response or motivation to address it. He stated that the District does not want this situation to fester or be forgotten. He stated that the District wants the parties to honor the order and permit that was issued by the Board. He stated that as alluded to by Manager Waller, he does believe the city has plans at this time to further and continue with what has been dubbed the ‘super ditch’, but rather in the future.

President Bradley asked if the District still had the bond or surety that had been provided.

District Administrator Tomczik stated that the District does still have the bond.

Manager Waller noted that the staff has properly suggested a deadline for the response from the developer by June 30, 2023. He stated that he believes the stormwater plan from Lino Lakes includes this ‘super ditch’ and reminded the Board that in the past, some cities, including Roseville and Forest Lake, have taken over a portion of ditches. He expressed his appreciation to staff to bringing this situation to the Board’s attention.

President Bradley agreed and noted that he cannot think of anything more important to the District than enforcing their own permitting that was intended to provide protection for people upstream. He stated that he would agree with the mindset that the Board needs to bring all their forces to bear, as may be necessary.

District Attorney Smith stated that prior to doing something like ‘go to the courthouse’, the Board has the authority to convene an enforcement proceeding that conveys a level of formality and gives the opportunity for the petitioner to appear before the Board and make commitments. He explained that all of the costs that are incurred by the District in that proceeding and further enforcement are recoverable under the Watershed Act, so there is a way to get their attention by marking that proceeding which does not involve going to court.

Manager Waller stated that he has a great deal of faith in the staff of the cities and the District to be able to work together to provide a long-term solution for this situation.

Manager Weinandt stated that the District knows that the development is going to continue to grow and asked when an enforcement proceeding would occur in this kind of situation. She stated that this is the first time since she has been on the Board where she has heard about an issue like this. She noted that she feels the Board really needs to decide how they will ‘stick their stake in the ground’ because there is so much development happening, she felt it was possible that this situation may be replicated with other projects.

Manager Waller stated that the past practice in Forest Lake was to let the city take over the ditch. He stated that he did not think there had been enough information gathered at this point to jump ahead.

Manager Wagamon noted that there have been enforcement issues in the past with other projects.

District Administrator Tomczik stated that he recognizes the that the District has worked with its municipalities at times when it may have been fruitful for them to take over the public drainage system, but noted that, at this point, that is not in play and the current situation is really about the interim condition of the drain tile. He gave the example of the recent Roseville work that was a well-coordinated effort where the function of the system remained intact while the City work was being completed. He suggested that the Board may come to a consensus position to reinforce the June 30, 2023 date that the responsible parties provide definitive clarity on the existing condition. He reminded the Board that the ‘as built’ information was provided to the District on September 22, 2022 and stated that subsequent work the developer and its contractors undertake on site is a hardship in their ability to correct ACD 55 system. He stated that their construction management should not undermine the District’s obligation to ensure a functioning system.

Manager Waller reiterated that he feels that the District need to see what information comes about by the June 30, 2023 date and then from that point can continue the discussion.

President Bradley suggested that there be communication from the District that expresses the concern of the Board and its insistence on addressing those concerns.

Manager Waller asked that District staff also copy the city and keep them informed about what is happening because their partnership is important.

1. **Staff Reports**

District Administrator Tomczik introduced Program Support Technician Abby Tekiela and reviewed some of her job duties, including historic permits.

Manager Waller stated that the District has worked hard for a long time to make the permitting program work smoothly despite the fluctuations in the economy. He commended District Administrator Tomczik for his work in his former role as Permit Coordinator and current Wetland Specialist/Permit Coordinator Hughes for their work to whittle away at these permits.

District Administrator Tomczik stated that doing the work to whittle away at these permits should be attributed to all of the staff members.

Manager Weinandt asked for an update on ditch where the excavator fell in.

District Administrator Tomczik stated that happened at ACD 53-62 during the cleaning of the main trunk.

District Engineer Otterness explained that the contractor has not done much out on site because they are still waiting for the tree contractor to get the machine fixed. He noted that they have been able to do some minor activities like cleaning up some of the areas where they still had access. He stated that the contractor has supplied an updated plan of attack for getting this done and the District has been happy with the responsiveness they have provided in this situation and reiterated that they were just waiting for the equipment to be available for them to execute the plan.

District Administrator Tomczik stated that it is important to note that there is no change in the substantial completion date and the contract had not requested an extension.

District Engineer Otterness agreed that they had not asked for an extension yet and explained that the ball would be in their court to either meet the substantial completion date or determine that meeting that deadline would be problematic and apply for an extension.

Manager Weinandt asked if staff expected this kind of incident to happen elsewhere in the District.

District Engineer Otterness stated that those exact conditions were not necessarily common, but noted that there are unstable soils along nearly every ditch system.

District Administrator Tomczik stated that the pool of contractors that have an interest in doing this type of work is a unique group and the District appreciates their endurance and tolerance for the conditions on this type of site. He stated that it is definitely challenging work and commended the contractors for doing the best possible job they can.

1. **June Calendar**

District Administrator Tomczik noted that there is a June 5, 2023 Special Workshop meeting at 9:00 a.m. and the workshop meeting is on June 12, 2023 at 9 a.m.

Manager Weinandt noted that she would not be in attendance for the June 28, 2023 meeting.

1. **Administrator Updates**

District Administrator Tomczik noted that the AWJD3 phase 2 project on Branch 1, 2, and 4 is moving forward. He noted that he had signed the construction agreement and issued the notice to proceed. He reviewed and signed a minor change order related to some erroneous language in the contract. He stated that the District has been receiving inquiries from residents to complete work outside of the District’s goals, like remove abandoned debris out of the creek, like old canoes. He stated that they have also been asked to dredge several areas for navigation, and noted that staff are not promoting any excavation by the District for those activities.

Manager Waller asked if staff was working with various community parks and recreation organizations for removal of things like the old canoe.

District Administrator Tomczik noted that this particular comment actually came from one of the communities hoping that the District would address the issue because they noticed the longevity of its presence.

1. **Managers Update**

Manager Waller noted that he plans to attend the Agricultural Drainage Futures meeting tomorrow and had also recently attended a Forest Lake City Council meeting. He explained that he had attended some meetings with city staff at Hugo and shared some of the concerns and feedback that they gave him. He expressed his appreciation to Senator Housley for the budget bill that earmarked $5 million in stormwater money for Forest Lake. He stated that he felt it was important for cities to have some long-term certainty of the funding for these projects.

**ADJOURNMENT**

***Motion by Manager Waller, seconded by Manager Wagamon, to adjourn the meeting at 9:52 a.m. Motion carried 5-0.***