

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

February 7, 2024, RPBCWD Board of Managers Regular Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer
 Tom Duevel, Secretary
 Larry Koch*
 Dorothy Pedersen, President
 David Ziegler, Vice President

Staff: Amy Bakkum, Office Administrator
 Zach Dickhausen*, Natural Resources Coordinator
 Liz Forbes*, Communications Manager
 Andrew Hartmann*, Water Resources Technician
 Terry Jeffery, District Administrator
 Eleanor Mahon,* Community Engagement Coordinator
 Josh Maxwell*, Water Resources & Fisheries Manager
 Dylan Monahan, Administrative Assistant
 Mat Nicklay*, Natural Resources Technician
 Alaina Portoghese*, Communications Specialist
 Louis Smith, Attorney, Smith Partners
 Scott Sobiech, Barr Engineering Company

Other Attendees: Andrew Aller* Shaun Redford*
 Laura Biermann* Steven Sabraski*
 Chris Call* Maya Santamaria
 Rod Fisher*, EP Duck Lake Assoc Sharleen Spear*
 Dave Hawkins* Carol Standal*
 Brace Helgeson* User875291
 Jennifer Koehler, Barr

**Attended the meeting virtually.*

1. Call to Order of Board of Managers Regular Monthly Meeting

- 1** President Dorothy Pedersen called to order the Wednesday, February 7, 2024, Board of Managers
- 2** Regular Meeting at 7:00 p.m. at the District Office, 18681 Lake Drive East, Chanhassen,
- 3** Hennepin County, Minnesota.

4 Louis Smith called attendance for the Board of Managers as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Present |
| Duevel | Present |
| Koch | Present |
| Pedersen | Present |
| Ziegler | Present |

6

2. Approval of Agenda

7 Manager David Ziegler moved to accept the agenda as written. Manager Tom Duevel seconded
8 the motion.

9 Manager Larry Koch requested removing Consent Agenda items 7b, 7d, 7f, and 7g.

10 Louis Smith acknowledged the Board is meeting in a hybrid format due to an abundance of
11 caution about Covid 19 and recognizing this meeting is being held in person but also, for a
12 manager that may, based on advice from a healthcare professional, have a legitimate reason for
13 not attending a meeting in a public place in person, such as Covid-19 exposure infection, and in
14 such circumstances may participate in the meeting remotely, and members of the public may
15 participate in person or may participate virtually by accessing the meeting link

16 Upon a roll call vote, the motion as amended carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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3. Matters of General Public Interest

19 President Pedersen explained the procedures for raising matters of public interest.

20 Tom Lindquist of 16750 Baywood Terrace, Eden Prairie commented he and his neighbors
21 and other board members of the Eden Prairie Duck Lake Association have been following
22 with great interest the discussions regarding water level. He said looking back at data,
23 including a graph shown extremely nicely in a report from Barr Engineering tells the story
24 that the lake has really changed its personality since the outlet was changed in 2014. Mr.
25 Lindquist said the outlet change effectively clamped the water level to a level about a foot
26 lower than it had been in the past, about four years prior to the outlet change. He
27 commented he and his neighbors and other board members of the Duck Lake Association
28 are very interested in Resolution 24-017 that is in front of the Board. Mr. Lindquist said the
29 resolution holds out the chance of mimicking the behavior of the lake in prior years. Mr.
30 Lindquist asked if the verb “mimic” means something in addition to just getting the average
31 water level back to where it used to be or if there is more to it than that. He said he and the
32 other people he previously mentioned are interested in seeing the water level return to prior
33 values. Mr. Lindquist said the implementation schedule looks like this task order would be
34 completed in July of this year. He said he is concerned about the ticking clock. He said he
35 and others have been waiting for a couple of years for improvement. Mr. Lindquist said he
36 hopes it is not only possible to define the approach but also to also make a modification to
37 the outlet by the end of this summer. He said if that is possible, he thinks it would behoove
38 the District or the Duck Lake Association to speak to the Minnesota Department of Natural
39 Resources (MNDNR) fisheries staff to see if they buy in to this and would be willing to, as
40 soon as this spring, restock the lake as they used to do with the DNR’s prior fisheries
41 management plan for the lake. Mr. Lindquist said he appreciates the District’s efforts and he
42 hopes this work moves ahead and gets the lake back to where it used to be.

43 Maya Santamaria, previous president of the Eden Prairie Duck Lake Association and current
44 board member, commented the Duck Lake Association was founded in September 2022 as
45 residents felt it was needed because issues with Duck Lake seem to be compounding rather
46 than improving. She said the Association’s mission is to work together with stakeholders
47 such as the Riley Purgatory Bluff Creek Watershed District (RPBCWD) to protect and
48 enhance the water quality of the lake water, the aquatic environment, and the fish and
49 wildlife habitat of Duck Lake and its surrounding watershed. Ms. Santamaria said at the
50 Association’s full membership meetings in February and June 2023 residents asked the
51 Association board to do something to address the low water level of the lake. She
52 commented that those residents who have lived here for years know the level has been
53 lowered, which is not conducive to the Association’s mission of protecting and enhancing
54 the aquatic environment or the ecosystem that depends on it. Ms. Santamaria said the
55 Association feels the DNR and City have done the residents wrong by illegally putting the
56 culvert in at a lower level than it should have been and then by denying the actual real
57 historical levels of the water the Association knows the lake should be at and are being
58 artificially manipulated in a way that has been a detriment to fish and wildlife and interferes
59 with the natural order. Ms. Santamaria said the Association is really grateful to the Board
60 tonight for listening to us, our lake residents and lake association, and working with us. She
61 said we are grateful that the tasks 1-5 from Task Order 46 by Barr Engineering to evaluate
62 the outlet configurations will to be voted on by the District Board, and we feel heard and
63 like true stakeholders in this along with the District. Ms. Santamaria said the Association is
64 feeling that help is within reach regarding the task of being responsible stewards of the lake.

65 She said with the support of this Board, hopefully that task can be started as a resolution to
 66 this issue that is so important to the residents. Ms. Santamaria said on behalf of the entire
 67 membership of the Eden Prairie Duck Lake Association and over 40 households and
 68 families who live around the lake who are members of the Association, we urge the Board
 69 to vote in favor of Resolution 24-017, which is up for a vote at tonight’s meeting. She said
 70 the Association appreciates the District’s support and promises to be good partners in this
 71 and put some skin in the game along with the District in this process and to collaborate
 72 where appropriate.

73

4. Presentation on Lotus Lake Water Quality Improvement Project

74 Administrator Jeffery said Jen Koehler of Barr Engineering will present a summary of the
 75 Lotus Lake Water Quality Improvement Project Feasibility Study as an information-only
 76 item. He said staff will come to the Board at a future meeting for a public hearing and a
 77 request to order the project.

78 Ms. Koehler of Barr Engineering shared the PowerPoint presentation “Lotus Lake Water
 79 Quality Improvement Project – Feasibility Study.” She explained the study took into
 80 account the water monitoring data, data from site visits, and other watershed information
 81 and used the District’s hydrologic and hydraulic model to understand the existing conditions
 82 at the proposed project locations. Ms. Koehler said Barr evaluated the effectiveness of water
 83 quality Best Management Practices (BMPs) in the potential project areas in terms of the
 84 BMPs related to their cost per pound of pollutant removed. She said Barr recommends the
 85 following projects:

- 86 • North Lotus Lake Stormwater Park (LL_1a/b) Infiltration System
- 87 • Channel Stabilization Downstream of Meadow Green Park Pond (LL_3b)
- 88 • Enhanced Filtration at Lower Wetlands in Meadow Green Park (LL_7e)
- 89 • Infiltration Basin on Frontier Trail Association Outlet (LL_8d)
- 90 • Kerber Pond Ravine Restoration (Concept 1)

91

92 Ms. Koehler said the combined total estimated phosphorus removed per year is 58 to 60
 93 pounds per year. She stated the targeted load reduction, between the watershed load
 94 reductions and the erosion sources, is approximately 56 pounds per year. Ms. Koehler said
 95 theoretically with the implementation of the recommended projects, the District could
 96 achieve the load reduction required by the Lotus Lake TMDL (Total Maximum Daily
 97 Load).

98 Ms. Koehler said the report includes a proposed work plan, which includes tasks like
 99 engineering, design, permitting, agreements, easements, bidding and award,
 100 implementation/construction, monitoring, long-term inspections and maintenance. She said
 101 regarding the schedule, it is being driven by trying to coordinate with the City of

102 Chanhassen in line with its street reconstruction schedule and with the goal of beginning
103 project construction in late 2025 into 2026.

104 Manager Ziegler said these projects sound great, but the District's alum treatment was not as
105 effective as anticipated. He said one of the theories as to why it was less effective is wake
106 boats' impacts on the shoreline and churning up bottom sediments. He asked if anything can
107 be done to reduce the resuspension of phosphorous caused by wake boats.

108 Administrator Jeffery said that while the Lotus Lake alum treatment was less effective than
109 the Lake Riley treatment, it was successful and achieved a 40-to-60 percent reduction in
110 total phosphorous in Lotus Lake. He said staff is seeing high release rates in the shallow
111 areas of that lake from the soil substrates. Administrator Jeffery said Joe Bischoff of Barr
112 will come to an upcoming meeting to talk about the second alum treatment on Lotus Lake
113 and staff and Barr are looking at things that could make the alum treatment more effective.

114 Manager Crafton said one thing to address before doing the next alum treatment is to stop
115 the external loading to the lake. Administrator Jeffery said the District's Use Attainability
116 Analysis and the TMDL study both said the load reduction goals cannot be met by only
117 addressing either external or internal loading. He said the District has started the internal
118 load reduction and needs to address the external loading. Administrator Jeffery said the
119 proposed projects will get the District really close to where it wants to be in terms of load
120 reduction for Lotus Lake.

121 Manager Koch said he has lived on Lotus Lake for 34 years, and in his view this has been
122 too long in coming. He asked if this project would deal with the entire length of the stream
123 because he thinks it all needs work, from the outlet of the pond all the way to where it runs
124 into the lake. Administrator Jeffery said this project will look at the entire corridor. Manager
125 Koch asked if the ponds on the east side of the lake are included in this project. He said for
126 example taking a look to see if the ponds need to be cleaned out. Manager Koch said the
127 phosphorous levels in the shallow areas of Lotus Lake are showing wake boats are having
128 an adverse effect on water quality.

129 Manager Koch said he believes the District has the ability to regulate water activities,
130 especially when the activities have an adverse impact on lake bottoms and lake shores. He
131 said we have the legal authority to address it, especially on a lake like Lotus Lake. He asked
132 if there could be a Board workshop to go into each of the BMPs proposed for this project in
133 more detail.

134 Manager Duevel asked how dependent the District is on the City of Chanhassen regarding
135 getting these projects done. Administrator Jeffery responded the District is very dependent
136 on the City of Chanhassen for the North Lotus Lake Park project. He said that project will
137 not happen without partnership with the City of Chanhassen. Administrator Jeffery said the
138 District could do some of the other projects with minor assistance from the City of
139 Chanhassen.

140 Manager Pedersen said she is happy to see that the District is working with one of its cities
141 to accomplish more and this makes her optimistic that the District's money will be put to
142 greater effect by working in partnership.

143 Manager Koch asked staff to look into whether there are ponds on the east side of Lotus
 144 Lake and whether they should be evaluated. Administrator Jeffery said he will look into it
 145 and get information about it to Manager Koch.

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5. Reading and Approval of Meeting Minutes

147 **a. Approve Minutes of the December 6, 2023, Special Meeting of the RPBCWD**
 148 **Board of Managers**

149 Manager Ziegler moved to approve the minutes of the December 6, 2023, Special Meeting
 150 of the RPBCWD Board of Managers. Manager Crafton seconded the motion. Manager
 151 Crafton noted an edit on line 50 to delete the word “the” in front of “bond.”

152 Upon a roll call vote, the motion carried 4-1 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | No |
| Pedersen | Yes |
| Ziegler | Yes |

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155 **b. Approve Minutes of the January 10, 2024, Regular Meeting of the Board of**
 156 **Managers**

157 Manager Ziegler moved to accept the minutes of the January 10, 2024, Regular Meeting
 158 of the Board of Managers. Manager Crafton seconded the motion.

159 Upon a roll call vote, the motion carried 4-1 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | No |
| Pedersen | Yes |
| Ziegler | Yes |

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c. Approve Minutes of the January 25, 2024, Board of Managers Workshop

Manager Duevel moved to accept the minutes of the January 25, 2024, Board of Managers Workshop. Manager Ziegler seconded the motion.

Manager Ziegler noted an edit to line 138 to include his comment, "...including the BMP and alum treatments in the timeline would help show the cause and effect of the BMPs and alum treatments on the water quality."

Manager Crafton noted an edit on line 202 replace "it" with "if."

Upon a roll call vote, the motion to approve the amended minutes carried 5-0 as follows:

| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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6. Committee and Member Reports

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a. Adopt Resolution 2024-012 Receiving Committee Reports.

i. Receive Citizens Advisory (CAC) Minutes and Report

Jeff Weiss reported the CAC met on January 22nd and the CAC meeting minutes are in the Board's meeting packet. He noted there were a few recent resignations of CAC members. Mr. Weiss said staff member Mat Nicklay gave a great presentation about the regulatory program and the CAC had a good discussion about it. He said the CAC did not make any motions. Mr. Weiss said CAC member Sharon McCotter shared with the Committee the update from the Board's January meeting that Riley Lake and Rice Marsh Lake are near to being delisted. He said the Committee elected officers, and Andrew Aller remains CAC Chair, Bonnie Nelson is the new Vice Chair, and Andrew Peterson is the recorder. Mr. Weiss said the next CAC meeting is on February 26.

Manager Duevel commented it will be important when the lakes are delisted that the District makes it known that the District was part of the major effort in the work to achieve the delisting.

187 Manager Duevel said Mat Nicklay’s presentation to the CAC was very
188 informative and it would be nice to have such presentations to the Board from
189 time to time.

190 Manager Koch asked if the CAC is planning to track its requests to the Board and
191 to follow up with the Board on those items. He recommended the CAC does so.
192 Manager Koch said there has been some discussion about recording the
193 presentations made to the CAC so people could view them. Manager Crafton
194 asked if Mr. Nicklay’s presentation was recorded. Administrator Jeffrey said it
195 was not.

196

197 **ii. Receive Personnel Committee Report**

198 President Pedersen said the Committee made a couple of minor changes to the
199 Employee Handbook. She noted details about the District Administrator review
200 process. President Pedersen said the Committee talked about having a salary and
201 benefits survey conducted in conjunction with other water management
202 organizations. She said she is expecting a proposal from Gallagher and will bring
203 this back to the Board.

204 Manager Koch commented he assumes President Pedersen will go back to Metro
205 Watersheds to see if it wants to participate before the District undertakes the
206 survey alone. President Pedersen said yes.

207 Manager Koch stated it has been known for a long time the Sick and Safe Leave
208 statute was going into effect in January. He said perhaps the District’s policy is
209 compliant, but he wants to see something from appropriate employment law
210 because he wants to know if the District is complying with the law. He said we
211 should not be here in February discussing it. Manager Koch said regarding the
212 Employee Handbook he does not see that anybody on staff or the Personnel
213 Committee is authorized to make any changes to the Handbook or the District’s
214 policies. He said they should be brought to the Board for the Board’s action.

215 Manager Koch asked about a reference by Administrator Jeffery in the Committee
216 minutes regarding the Administrator review and that each manager should be kept
217 separate due to the current lawsuit. He said he is not aware of any reason why
218 these should be kept separate, especially under Minnesota government Data
219 Practices Act and he is not aware of any exception. Manager Koch said if there is
220 an exception he should expect to see basis for that exception in writing from legal
221 counsel.

222 Manager Koch said he would like to know if the Committee will meet quarterly
223 and if the Personnel Committee meetings will be recorded.

224 Mr. Smith said Legal Counsel’s recommendation is the Board go through the
225 Administrator Review process it has always gone through. Manager Pedersen said
226 that it how we are proceeding.

227 Mr. Smith said Smith Partners has been involved in reviewing handbooks in
 228 relation to Earned Sick and Safe Leave and Legal Counsel can double check to
 229 make sure all is in order.

230 Administrator Jeffery said the document he presented to the Personnel Committee
 231 came from Smith Partners. Manager Koch said he expects to get something in
 232 writing from legal counsel documenting we are in compliance.

233 Manager Ziegler moved to accept the Committee Reports. Manager Duevel
 234 seconded the motion. President Pedersen said the action is to adopt Resolution 24-
 235 012 to Receive Committee Reports.

236 Upon a roll call vote, the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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239 **b. Confirm Board Representation for February 26, 2024, CAC Meeting**

240 Manager Ziegler volunteered to be the Board representative at the February 26th CAC
 241 meeting.

242

7. Consent Agenda

243 **a. Adopt Resolution 24-013 to Approve Consent Agenda**

244 President Pedersen listed the items remaining on the Consent Agenda: 7a – Adopt
 245 Resolution 24-013 to Approve Consent Agenda, 7c – Receive January Engineer’s Report,
 246 and 7e – Approve Permit 2023-079 Grace Church Playground as Presented in the
 247 Proposed Board Action Section of the Permit Review Report

248 Manager Ziegler moved to adopt Resolution 24-013 to Approve Consent Agenda.
 249 Manager Duevel seconded the motion.

250 Upon a roll call vote, the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
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| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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8. New Business

253

a. Items Removed from Consent Agenda

254

i. Receive January Staff Report

255

Manager Koch asked if Administrator Jeffery is proposing changes to the budget regarding the audit and budget function. Administrator Jeffery said no, he is proposing looking at the Treasurer’s Report format for clarification about committed funds.

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Manager Koch commented regarding Local Surface Water Management Plans (LSWMP) he thinks the District has a strong argument that it has jurisdiction over activities on the water to the extent they affect the bottom of the lake and water quality. He said he thinks the Board should have legal counsel look into this because he thinks it behooves us to try to do something to stop this artificial but severe erosion caused by wake boats.

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Manager Koch remarked he thinks the District’s website needs a lot of work.

266

Manager Koch moved to receive the January staff report. Manager Ziegler seconded the motion.

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Upon a roll call vote, the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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271

ii. Receive January Regulatory Report

272 Manager Koch asked for the report to at least include the number of permits
 273 closed out each cycle and for staff to include in the report quarterly a summary
 274 of what types of permits are being applied for. He asked for the permit
 275 violations report to also include a description of next steps.

276 Manager Duevel asked if the District has no regulatory enforcement authority.
 277 Mr. Smith said he vigorously disagrees that it has no regulatory enforcement
 278 authority. He said watershed districts do not have the authority to issue fines
 279 and do not have peace officers at disposal to enforce the District’s rules. He said
 280 the District does not have a DNR conservation officer at disposal to enforce the
 281 District’s rules, except there may be times in which the DNR has a joint
 282 interest. Mr. Smith said the District has authority to seek enforcement of its
 283 rules through a variety of means. He said Legal Counsel recommends typically
 284 an administrative process so there is plenty of opportunity for the alleged
 285 violators to be heard and present their side of the story. Mr. Smith said that
 286 could be with staff and if that is not effective, then typically Legal Counsel
 287 recommends elevating it to inviting the violators to speak at a Board meeting.
 288 He said if that direction from the Board is not adequate, the District has made a
 289 record of its efforts and a record of what the violations are and concerns about
 290 the impacts to water resources. Mr. Smith said then the District is in a very
 291 good position to go to court. He said taking occasional enforcement action in
 292 cases in which the District’s rules have not been complied with and good-faith
 293 efforts to seek compliance have not been productive will lead to people
 294 learning, and word getting around, that rules are enforced. Mr. Smith said that
 295 ultimately the District has full statutory authority to go to court and have the
 296 project brought into compliance and have the District’s fees and costs
 297 recovered.

298 Manager Pedersen asked the Administrator and Mr. Nicklay to come up with
 299 something that gets sent to Mr. Smith and then brought to the Board that will
 300 give the Board and staff some direction about what to do regarding rules
 301 violations. Manager Koch said he agrees the District should have a process
 302 documented so it can be applied in each and every case. He said he thinks it is
 303 appropriate to have staff to come up with something in collaboration with Mr.
 304 Smith and staff and present it to the Board for consideration and adoption as
 305 part of the District’s rules.

306 Manager Koch moved to accept the January Regulatory Report. Manager
 307 Ziegler seconded the motion.

308 Upon a roll call vote, the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |

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| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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iii. Adopt Resolution 24-014 to Enter into a Cost Share Agreement with Autumn Ridge Association for \$19,475.24 for a Habitat Restoration and \$4,875 for Professional Maintenance

315

Manager Koch listed his recommended edits to the resolution.

316

Sharleen Spear commented she is representing the Autumn Ridge Association and she confirmed the legal name is the Autumn Ridge Association.

317

318

Manager Duevel moved to adopt Resolution approve Permit 24-014 to Enter into Cost Share Agreement with Autumn Ridge Association for \$19,475.24 for a Habitat Restoration and \$4,875 for Professional Maintenance. Manager Crafton seconded the motion.

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Manager Koch moved to amend the motion to incorporate the changes he listed to the agreement as approved by and discussed by the Administrator and legal counsel. Manager Duevel and Manager Crafton consented to Manager Koch’s amendment to the motion.

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Upon a roll call vote, the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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iv. Adopt Resolution 24-018 to Authorize Administrator to Enter Agreement with Carver County Soil and Water Conservation District for Technical Services

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Manager Koch commented the agreement appeared to be very open ended as to exactly what services Carver County Soil and Water Conservation District (CCSWCD) will be performing. He said he would like the agreement narrowed

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334

335 as to the areas of work the CCSWCD will be doing for the District as opposed
 336 to an open ended agreement.

337 Manager Crafton said the flexibility is important. Administrator Jeffery said the
 338 District has had a contract with the Carver County Soil and Water Conservation
 339 District for ten years. Manager Koch said the number of years the agreement
 340 has been in place does not determine if the language is good or bad.

341 Manager Ziegler suggested adding the language “staff-requested services.”

342 Manager Ziegler moved to adopt Resolution 24-018 to Authorize Administrator
 343 to Enter Agreement as written with Carver County Soil and Water Conservation
 344 District for Technical Services. Manager Crafton seconded the motion.

345 Upon a roll call vote, the motion carried 4-1 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | No |
| Pedersen | Yes |
| Ziegler | Yes |

347

b. Accept January Treasurer’s Report

349 Manager Crafton said the January Treasurer’s Report has been reviewed in compliance
 350 with our internal controls and procedures. She moved to accept the January Treasurer’s
 351 Report. Manager Duevel seconded the motion.

352 Manger Koch asked if the 4M Fund listed includes the U.S. Bank accounts.
 353 Administrator Jeffery said yes.

354 Upon a roll call vote, the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |

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| Ziegler | Yes |
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Manager Ziegler moved to accept the September 2023 Treasurer’s report as presented and tabled at the October 2023 meeting. Manager Duevel seconded the motion.

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Manager Koch moved to table the report to the Board’s next meeting so he can review the report. Manager Koch’s motion died due to lack of a second.

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Upon a roll call vote, the motion carried 4-1 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | No |
| Pedersen | Yes |
| Ziegler | Yes |

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c. Adopt Resolution 24-015 Approving Payment of the Bills

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Manager Crafton moved to adopt Resolution 24-015 Approving Payment of the Bills.

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Manager Duevel seconded the motion.

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Upon a roll call vote, the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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d. Approve After-the-Fact Permit 2023-053 Helgeson Lot Improvements as Presented in the Proposed Board Action Segment of the Permit Review Report

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373 Administrator Jeffery said Brace Helgeson and his legal counsel Shaun Redford are
374 attending the meeting to provide comments. Administrator Jeffery said the City of
375 Chanhassen contacted the District regarding work being done on Mr. Helgeson's
376 property. Mr. Jeffery said upon investigation, it appeared a previous addition was made
377 to the property and in total the modifications exceed the threshold for requiring a permit
378 from the District. He said staff prepared a report and the report and plans as shown will
379 be compliant with the District's rules. Administrator Jeffery said Mr. Helgeson's
380 neighbor submitted documents regarding his concern over some cross access rights and
381 easement rights. Administrator Jeffery said those concerns are outside the District's
382 purview of review and staff knows the underlying property is owned by Mr. Helgeson
383 and the staff is moving forward on that basis.

384 Mr. Helgeson stated when he submitted for this addition with Lecy Construction in
385 2015, there was never anything mentioned by the City that this project needed to go to
386 the watershed district. He said Lecy Construction was unaware and he was unaware of
387 the District's at-that-time new regulations. Mr. Helgeson said when it was discovered
388 the project had exceed regulations, he complied and seeded the area around his pond
389 with native grasses. Mr. Helgeson noted he was unaware he would be required to sign a
390 maintenance declaration to be attached to the title. He said he is unclear about what and
391 how much maintenance he can do. Mr. Helgeson said he has had the native grasses
392 planted professionally and he would like to manicure it. He explained his property sits
393 at an elevation 60 feet below Pleasantview Road. He said a ton of water comes down
394 the hill and his shared driveway and runs into the lake without any sedimentation filter.
395 He said he has offered to the City of Chanhassen and the District to allow them to do a
396 submersible drainage system with filters to manage runoff, which would be far superior
397 to the native grasses, and there has been no follow through. He said the City and the
398 District realize there is this problem with the water barreling down through the culvert
399 on the other side of Pleasantview Road and it washed out everything when there is a big
400 rain. Mr. Helgeson said the native grasses will not do any good compared to the
401 treatment that could be provided by the system he has suggested to the City and the
402 District. He said he wants everyone to understand he is a very compliant resident and he
403 was unaware of the District's rules as was Lecy.

404 Shaun Redford said he represents the Helgesons. He highlighted that the most recent
405 project completed this last year falls well-under the 5,000 square-foot disturbed area
406 threshold that triggers the District's rules. Mr. Redford said the 2015 project was bigger
407 and his client was relying on professionals to advise him. Mr. Redford said his client is
408 now trying to fix this and reported Mat Nicklay has said his impression is the
409 Helgeson's have been trying to comply and have been cooperative. Mr. Redford said
410 one of his client's main concerns with the maintenance declaration is its ambiguity of
411 what he is able to do and not do in maintaining the native grasses. Mr. Redford said his
412 client has safety concerns regarding the height of the grasses along the pond. Mr.
413 Redford said his client would like to have the ability to do occasional cutting and
414 trimming of the native grasses. Mr. Redford said there is ambiguity about what level of
415 trimming and cutting Mr. Helgeson can do that will still allow the grasses to perform
416 their filtering function while balancing out the other factors Mr. Redford laid out for the
417 Board.

418 Mr. Redford asked for clarity about the District's condition that the site plan needs to be
419 updated and exactly what the District is asking the site plan to show. He asked for
420 clarity on the District's request for an additional permit fee deposit.

421 Administrator Jeffery responded the District's rules say the buffers must be maintained
422 as native vegetation needs that provides the ecological and habitat functions.

423 Administrator Jeffery said that would not preclude biannual cutting to foster
424 regeneration but would preclude mowing it and maintaining it as a lawn. He explained
425 regarding the length of the buffer, it must extend from property line to property line, so
426 it must encompass the wetland area that was excavated in the DNR public water.

427 Administrator Jeffery said regarding the additional fees, they are to recoup the
428 additional time and expenses of the District and the \$200 deposit is to pay for any
429 inspections that may need to occur. He said the deposit may be refunded if there is any
430 balance remaining.

431 Administrator Jeffery said he recommends this after-the-fact permit be approved with
432 the conditions as presented in the staff report in the Board packet.

433 Manager Koch said he has concerns if there is a lack of understanding by the permit
434 applicant about the requirements. He said the questions should be submitted to staff in
435 writing. He said we should not be issuing permit if there are these outstanding issues.
436 Manager Koch said there seems to be an issue raised by the neighbor as to whether
437 granting this permit would end up complying with item number 3 under Applicable
438 General Requirements. Manager Koch said he thinks the District's legal counsel should
439 review this issue and staff should be working with Mr. Helgeson and his attorney to
440 clarify the maintenance requirements.

441 Manager Koch moved to either table this after the fact permit or reject it. Manager
442 Duevel seconded the motion.

443 Mr. Redford said he is not clear what the objection is by the neighbor and asked if the
444 neighbor is present to make his objection. President Pedersen said it does not seem he
445 is. Administrator Jeffery said the objection is in the form of a memorandum, which is
446 attached to the materials for this agenda item posted on the District website.

447 Mr. Smith said the relevant issue in front of the Board is the activity on the Helgeson
448 property and bringing it compliant with the District's rules. He said the activity we are
449 describing all takes place on the Helgeson property. Mr. Smith said there apparently is
450 an issue with a neighboring property owner and it is not within the District's jurisdiction
451 to adjudicate it. Mr. Smith said whatever dispute they have, they can pursue it between
452 them.

453 Manager Koch asked why the District has paragraph 3 in the Applicable General
454 Requirements. He said he does not see how the Board can go forward on this permit.
455 Manager Koch said obviously there are still questions out there and they need to be
456 addressed. Mr. Helgeson said he does not have questions outstanding.

457 Upon a roll call vote, the motion failed 1-4 as follows:

458

| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | No |
| Duevel | No |
| Koch | Yes |
| Pedersen | No |
| Ziegler | No |

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Manager Ziegler moved to approve 2023-053 subject to the conditions and stipulations set forth in the recommendations section of the attached report. Manager Duevel seconded the motion.

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Manager Koch said he does not see how we can vote to approve this when the evidence testimony statements before us show there is a dispute as to whether item number 3 is being complied with. He said he does not think we should approve this application, certainly not until all the “i”s have been dotted and “t”s crossed.

467

Upon a roll call vote, the motion carries 4-1 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | No |
| Pedersen | Yes |
| Ziegler | Yes |

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e. Consider Permit 2023-045 Avienda Rowhomes Variance Request from Rule B

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Scott Sobiech displayed a PowerPoint presentation “2023-045 Avienda Rowhomes.” He described the proposed project to construct 53 row homes with associated streets and utilities.

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Mr. Sobiech said the proposed project disturbs two waterbodies and one is compliant. He reported the applicant is requesting a variance from the District’s Rule B, Floodplain Management and Drainage Alterations providing compensatory storage within the same waterbody floodplain the project disturbs.

480 Mr. Sobiech said the project proposes to completely fill a stormwater filtration basin
481 completed with the first permit and replace it with an underground storm water chamber
482 system. He said the volume being provided would not be in the same floodplain. Mr.
483 Sobiech said the applicant proposes to change some of the drainage patterns to further
484 provide protection and mitigate the impacts of the variance request.

485 Mr. Sobiech presented the District Engineer's review of the variance request per the
486 District's Rule K criteria. He said the proposed design results in a 62% shortfall from
487 the requirement, so to offset that the applicant proposes to construct the biofiltration
488 basin with significantly more volume, so the net increase in storage provides more flood
489 storage than what is there today. Mr. Sobiech stated the proposed project is not likely to
490 cause offsite adverse impacts or adversely affect offsite governmental services, water
491 resources, flood levels, or neighboring properties. Mr. Sobiech said the proposed
492 variance only impacts the applicant's property. He summarized the applicant
493 incorporated into the project plan technical measures to alleviate the practical difficulty.
494 He said the measures include creating additional flood storage in the biofiltration basin
495 so there is a net increase in flood storage on the site and the applicant is planning to
496 redirect a portion of the watershed. Mr. Sobiech said the practical difficulty occurred
497 because the applicant wants to replace the existing surface BMP with an underground
498 BMP.

499 Mr. Sobiech summarized the District Engineer's review shows there is adequate
500 technical basis for the managers to rely on to grant the requested variance.

501 Manager Koch asked if pre-excavation there were wetlands on this property. Engineer
502 Sobiech said yes, there were extensive wetlands on the property prior to the project
503 going in. Manager Koch if it is accurate to say approving this would allow the applicant
504 to eliminate part of a wetland, as in part of the retention pond, and replace it with a tank.
505 Administrator Jeffery said a detention pond does have some wetland characteristics, so
506 some terrestrial benefits of that feature will be lost by putting in the stormwater chamber
507 underground. Manager Koch said it seems to him the City would have to be involved in
508 approving that and also it seems to him that would require compensatory wetland
509 somewhere. Administrator Jeffery said the pond is not jurisdictional so the Board would
510 only consider the ecological benefit of the stormwater pond. Engineer Sobiech clarified
511 the applicant is replacing an existing filtration basin with an underground chamber. He
512 said the plan proposes to construct a large biofiltration basin on the eastern portion of
513 the project site as well as two areas with tree trenches, so the applicant is adding a lot of
514 trees as well.

515 Steven Sabraski, the applicant's consultant, said the basin being converted to an
516 underground basin is a stormwater management facility and is not a wetland nor a wet
517 pond but a dry filtration basin. He said the purpose of it is to solve for the constructed
518 stormwater needs of the project site.

519 Manager Ziegler moved to adopt the variance for Permit 2023-045, resolved that the
520 variance request for Permit 2023-045 from compliance with Rule B, subsection 3.2b is
521 approved, based on the facts and analysis provided by the RPBCWD engineer and
522 placed in the record at the February 7, 2024, meeting of the managers, and the

523 managers’ findings in the record of the February 7 meeting. Manager Crafton seconded
 524 the motion.

525 Manager Koch said the Board is granting a variance based on the proposed
 526 reconfiguration that was submitted. He said he is concerned the District does not have
 527 the typical conditions and standard language in place. Mr. Sobiech said the conditions
 528 are part of the permit, which is the next item on the agenda.

529 Upon a roll call vote the motion carried 5-0 as follows:

530

| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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532 **f. Approve Permit 2023-045 Avienda Rowhomes as Presented in the Proposed**
 533 **Board Action Segment of the Permit Review Report**

534 Manager Duevel moved to approve Permit 2023-045 Avienda Rowhomes as presented
 535 at the February 7, 2024, meeting of the Board of Managers, subject to the conditions
 536 and stipulations listed by the engineer and set forth in the Proposed Recommendations
 537 section of the Permit Review Report and resolved that on determination by the
 538 RPBCWD administrator that the conditions of approval of the permit have been
 539 affirmatively resolved, the RPBCWD president or administrator is authorized and
 540 directed to sign and deliver Permit 2023-045 to the applicant, on behalf of the
 541 RPBCWD. Manager Crafton seconded the motion.

542 Upon a roll call vote the motion carried 5-0 as follows:

543

| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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Administrator Jeffery said the remaining agenda items can wait until the Board’s March meeting.

Manager Koch moved that the remaining agenda items be put on the Board’s March regular meeting. Manager Ziegler seconded the motion.

Upon a roll call vote the motion carried 5-0 as follows:

| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |
| Pedersen | Yes |
| Ziegler | Yes |

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g. Adopt Resolution 24-016 Authorizing Barr Task Order #45 to Develop a District-wide Groundwater Monitoring Network

[Item moved to the March 2024 Regular Meeting of the Board of Managers.]

h. Adopt Resolution 24-017 Authorizing Barr Task Order #46 to Analyze Potential Duck Lake Outlet Modification

[Item moved to the March 2024 Regular Meeting of the Board of Managers.]

9. Discussion Items

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a. Hybrid Meeting Configuration - Larry Koch Critique

[Item moved to the March 2024 Regular Meeting of the Board of Managers.]

b. Update on Lawsuit Larry Koch v. RPBCWD and Terry Jeffery (the Board may go into closed session)

[Item moved to the March 2024 Regular Meeting of the Board of Managers.]

10. Member Reports

- 567 • **Manager Reports**
568 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

- 569
- 570 • **Administrator Report**
571 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

- 572
- 573 • **Legal Counsel Report**
574 [Item moved to the March 2024 Regular Meeting of the Board of Managers.]

575

11. Upcoming Board Topics

- 576 • EHAP Workshop, March 11, 2024

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12. Upcoming Events

- 578 • February 10, 2024 – Minnetonka Farmers Market
- 579 • February 22, 2024 – Volunteer Appreciation
- 580 • February 26, 2024 – STEM on TAP
- 581 • March 2-3, 2024 – MNWA Legislative Days
- 582 • March 9, 2024 – Eden Prairie Home, Landscape, and Garden Expo
- 583 • March 14, 2024 – Cedar Ridge Science Night

584

13. Adjournment

585 Manager Koch moved to adjourn the meeting. Manager Ziegler seconded the motion.

586 Upon a roll call vote the motion carried 5-0 as follows:

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| <i>Manager</i> | <i>Action</i> |
|----------------|---------------|
| Crafton | Yes |
| Duevel | Yes |
| Koch | Yes |

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| Pedersen | Yes |
| Ziegler | Yes |

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The meeting adjourned at 10:06 p.m.

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Respectfully submitted,

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Tom Duevel, Secretary