

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

November 7, 2018, Board of Managers Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch

Dorothy Pedersen, Vice President

Dick Ward, President

David Ziegler, Secretary

Staff: Zach Dickhausen, Water Resources Technician

Terry Jeffery, Project and Permit Manager

Michelle Jordan, Community Outreach Coordinator

Joshua Maxwell, Water Resources Coordinator

Scott Sobiech, Engineer (Barr Engineering Company)

Maya Swope, RPBCWD Staff

Michael Welch, Attorney (Smith Partners)

Other attendees: Paul Bulger, CAC

Ryan Majkrzak, Lake Riley Improvement Assoc.

Cole Harrison, Homestead Partners

Bryan Maloney, LRIA

Greg Hawks, Chanhassen Env.

Laurie Susla, LLCA

Commission

1. Call to Order

1 Manager Ward called to order the Wednesday, November 7, 2018, Board of Managers Monthly Meeting at 7:01
2 p.m. at the District Office, 18681 Lake Drive East, Chanhassen, MN 55317.

2. Approval of the Agenda

3 President Ward noted that the Board had previously cancelled the Board Workshop on the Permitting Program
4 that had originally been scheduled for 5:30 p.m. tonight. He said it will be rescheduled, and he added it as agenda
5 item 9d – Reschedule Permitting Workshop. President Ward removed from the agenda item 8j – Personnel
6 Committee: Salary Adjustments, which will be on the December agenda. He added item 9e – Watershed
7 Development Workshop. Manager Crafton requested adding a discussion item about tracking ecological services
8 that are lost. President Ward added it as agenda item 9f.

9 Manager Koch requested removing 6a – Accept October Staff Report, 6b – Accept October Engineer’s Report
10 with Attached Inspection Report, and 6c – Pay App #2 Lake Susan Park Pond – from the Consent Agenda.

11 Manager Koch requested an update on the Peterson contracts and being brought up to date on the Chanhassen
12 High School and Lake Susan Park Pond projects during the discussion of the Engineer’s Report. President Ward
13 added these items as 9g, 9h, and 9i respectively. Manager Koch requested that a discussion about the annual audit

14 and the auditor be added to the agenda for this month or the December agenda. The Board agreed to add it to the
15 December agenda.

16 Mr. Jeffery reported that the City of Eden Prairie requested the Board remove agenda item 8g – Approve
17 Cooperative Agreement with the City of Eden Prairie for Lower Riley Creek.

18 Attorney Welch pointed out that the Board may want to hear the project status update before acting on the Pay
19 App #2.

20 Manager Pedersen moved to approve the agenda as amended. Manager Crafton seconded the motion. Upon a
21 vote, the motion carried 5-0.

3. Matters of General Public Interest

22 President Ward explained the procedure for raising matters of general public interest and opened the floor.

23 Mr. Paul Bulger of 15807 Southlawn Road, Eden Prairie and president of the CAC asked the Board to please use
24 the microphones during the meeting. He commented he found the meeting minutes from the TAC extremely
25 helpful and encouraged the Board to adopt said practices moving forward.

26 Mr. Ryan Majkrzak of 9001 Lake Riley Boulevard and president of the Lake Riley Improvement Association
27 commented about the discovery of zebra mussels in Lake Riley. He extended his appreciation for the watershed’s
28 spirit of collaboration about the zebra mussel discovery and communication about next steps. Mr. Majkrzak
29 remarked that this could be used as an opportunity to learn and improve for the future. He said one area to focus
30 on is inspections, and he talked about how Lake Riley had a part-time inspection schedule. Mr. Majkrzak
31 commented that other lakes in the watershed are at a great risk of zebra mussel infestation now due to the risk of
32 zebra mussels being carried from Lake Riley to other lakes. He went into different ideas of a more robust
33 inspection program. He commented that education is another area for focus. There was a brief discussion of what
34 could have been done more effectively to engage the lakeshore homeowners regarding prevention and monitoring.

35 Ms. Laurie Susla of 7008 Dakota Avenue, Chanhassen, commented that she does not understand any scenario in
36 which part-time inspections are worthwhile. She said her plea is that the watershed steps up its involvement
37 because prevention is the only way. She encouraged the watershed to work with the cities and county to
38 encourage them to step up their involvement. Manager Koch noted that residents of Lotus Lake contribute their
39 own funds to pay for additional inspection time. Ms. Susla said that since 2012, residents around Lotus Lake have
40 been paying for additional inspection time. She said that Christmas Lake residents privately fund inspections to
41 the tune of \$40,000 per year.

4. Reading and Approval of Minutes

a. October 3, 2018, RPBCWD Board of Managers Monthly Meeting

42 Manager Ziegler asked for a correction on page 10, line 354 so the sentence reads, “...submissions and...”
43

44 Manager Crafton requested that on page 2, line 19 the word “was” be inserted so the sentence reads “the
45 vote was taken.” She also asked that on page 5, line 135, the minutes be edited to correctly identify the
46 Technical Advisory Committee. Manager Crafton noted a correction on page 3, line 59 to change the word
47 “explaining” to “explain.”
48

49 Manager Pederson noted that on page 4, line 122, the word “approved” should be corrected to “approve.”
50 She also requested that on page 5, line 160 the words “give that” be replaced with “because,” and on page
51 8, line 267 insert the word “was” so that the sentence reads, “...that was the intention.”

52 Manager Koch requested a change on page 7, line 215 to change “retains” to “will retain.” He also noted a
53 change to be made on page 8, line 292 to replace the word “satisfactory” with “substantial.”

54 Manager Crafton moved to accept the minutes as amended. Manager Pedersen seconded the motion. Upon
55 a vote, the motion carried 5-0.

5. Consent Agenda

56 President Ward read aloud the Consent Agenda item: 6a – Approve Permit 2017-047 Fawn Hill Modification with
57 Staff Recommendations [previously item 6d].

58 Manager Ziegler moved to approve the Consent Agenda. Manager Koch seconded the motion. Upon a vote, the
59 motion carried 5-0.

6. Citizen Advisory Committee (CAC)

60 Mr. Paul Bulger, CAC President, reported that the CAC had a meeting in October and an item of note was the
61 discussion of the Cost-Share Program. He noted that Ms. Jordan led the discussion. Mr. Bulger said that the
62 details are in the CAC’s meeting minutes.

63 Ms. Jordan summarized what will be discussed at the CAC’s November 19th meeting.

64 Manager Koch requested the Board hold a workshop on the Cost-Share Program and policy. There was
65 discussion about the idea of a workshop and the timeline for the updates to the Cost-Share Program. Ms. Jordan
66 noted that the plan is to bring a first draft to the Board at its January meeting. President Ward directed staff to
67 schedule a workshop for the same evening as the Board’s January monthly meeting. Ms. Jordan noted that the
68 District typically holds workshops at 5:30 p.m.

69 Manager Pedersen asked Mr. Bulger if the CAC discussed the number of members it would like to have on the
70 CAC in 2019. He said no. Manager Pedersen asked his opinion on the best number of CAC members for a
71 functioning committee. Mr. Bulger responded that there are 12 appointed CAC members now and the committee
72 struggles to get 8 members to show up. He said that he doesn’t see a need to restrict the committee to 12
73 members.

7. Action Items

a. Accept September Treasurer’s Report

74 Treasurer Crafton communicated that the report has been reviewed in accordance with the District’s
75 internal controls and procedures. Manager Ziegler moved to approve the Treasurer’s Report. Manager
76 Pedersen seconded the motion. Manager Koch had a question about the Landbridge item. Mr. Jeffery
77 respond that the Landbridge check represents two previous checks that were never received by the
78 company, so the District voided them and is reissuing payment in one check. Manager Koch went through
79 his additional questions about the Treasurer’s Report. Attorney Welch pointed out the motion should be
80 to accept the Treasurer’s Report instead of approve it. Managers Ziegler and Crafton accepted that
81 friendly amendment to the motion. Upon a vote, the motion carried 5-0.
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84 **b. Approve Paying of Bills**

85 Manager Crafton moved to pay the bills. Manager Koch asked Engineer Sobiech for details about Pay
86 App#2, the adjustment, and how the total payment amount of \$104,250 was configured. Engineer Sobiech
87 responded with details about how the Pay App #2 was adjusted. Manger Ziegler seconded the motion.
88 Attorney Welch noted that the Board is considering Pay App #2 before Paying the Bills. Manager Ziegler
89 withdrew his second. Manager Crafton withdrew her motion to pay the bills.

90 Manager Crafton moved to approve Pay App #2 Lake Susan Park Pond Watershed Treatment and
91 Stormwater Reuse Project. Manager Ziegler seconded the motion. Attorney Welch asked the managers if
92 they were all comfortable with the nature of the revision of this motion. The managers responded yes.
93 Upon a vote, the motion carried 5-0.

94 Manager Crafton moved to pay the bills. Manager Ziegler seconded the motion. Upon a vote, the motion
95 carried 5-0.

96 **c. Release Call for Application to 2019 Citizen Advisory Committee**

97 Ms. Jordan noted that the meeting packet included the application materials the District used last year,
98 and the recommendations made last year by the subcommittee established to look at the CAC
99 appointment process. The managers discussed their opinions about the language in the notice for
100 applications and the number of CAC members to appoint.

101 Attorney Welch clarified that the purview of the CAC is defined by the CAC, and the CAC can take up
102 any watershed issues it wants. He added that he doesn't see any legal issues with the Board expressing in
103 its notice what might be interests that the CAC will consider. Attorney Welch stated that statute requires
104 the membership to include at least five members. He commented that he doesn't see a legal concern with
105 the notice language as it is written. He explained that overall the language as written strikes him as
106 descriptive and inviting, not limiting.

107 Mr. Bulger recommended the Board reconsider the need for a CAC quorum. Attorney Welch remarked
108 the need for a CAC quorum was established by the CAC in its Bylaws, so if the CAC wants to modify
109 that item, it needs to revisit its Bylaws.

110 There was further discussion.

111 Manager Ziegler moved to grant staff flexibility with the language in the notice for CAC applications and
112 provide staff flexibility to make such minor edits as needed including about the length of time to keep the
113 application process open. Manager Crafton seconded the motion. Manager Koch moved to amend the
114 motion to limit the number of CAC members to 12. Manager Pedersen seconded the motion to amend.
115 Upon a vote, the motion to amend carried 5-0.

116 Upon a vote, the motion made by Manager Ziegler, seconded by Manager Crafton, carried 5-0. Ms.
117 Jordan asked if the Board is also directing staff to issue the notice. The Board indicated yes.

118
119 **d. Approve 2018 Annual Communication**

120 Ms. Jordan mentioned that staff plan to print some copies of the communication in-house to bring to
121 MAWD in December, and then the piece will be updated with final numbers at the end of the year. She
122 asked the Board for feedback on the 2018 Annual Communication. Managers provided their comments

123 about the piece. Manager Pedersen recommended including information about the recent discovery of
124 zebra mussels in Lake Riley.

125 Manager Koch moved to approve the 2018 Annual Communication and direct staff to distribute it.
126 Manager Pedersen seconded the motion. Upon a vote, the motion carried 5-0.

127 **e. Approve Permit 2018-056 Bluff Creek SW Tributary Restoration with Exception and Staff**
128 **Recommendation**

129 Mr. Jeffery explained that this permit application is from the watershed district to improve a channel
130 tributary to Bluff Creek. He described the channel and noted the District's CRAS identified this reach as a
131 high priority. Using PowerPoint slides he pointed out aspects of the site. Mr. Jeffery said that the District
132 has secured an easement with the City of Chanhassen but has not yet secured one with the Bluff Creek
133 Senior Housing. He pointed out on a map the area that does not yet have the secured easement.

134 He went through the review as related to rules B, C, D, F, and G. He talked about the project goals,
135 including reduction of shear stress and reduction of scour.

136 Mr. Jeffery stated that staff recommended approval of the exception to Rule B and approval of the permit
137 based on staff recommendations. Manager Ziegler asked if the easement isn't granted will the project be
138 at risk. Mr. Jeffery responded no. Engineer Sobiech noted that the easement aspect will not impact the rest
139 of the project. Staff answered further questions asked by the managers. Manager Pedersen noted that the
140 included plant list comprises plants that deer love to eat, which could be an issue, and there are better
141 plant options. She said she will be happy to send a list of more appropriate plants to Mr. Jeffery.

142 Attorney Welch provided comments including that the recommendation on the permit includes, as it is
143 stated in Mr. Jeffery's report, that staff finds that there is adequate technical basis for the exception.
144 Attorney Welch explained that this means all of the data supplied and all of the findings are significant in
145 that there is a lot of technical data supporting the exception request.

146 Manager Ziegler moved to approve the exception request for permit application 2018-056 based on
147 recommendations and review of the project by staff and based on based on the information provided
148 indicating that strict compliance with the rule would lead to results worse than if the exception was
149 granted. Manager Crafton seconded the motion. Attorney Welch asked if the Board wanted to handle both
150 the exception and permit in the same motion. The Board indicated yes. Manager Zeigler made the friendly
151 amendment to his motion to include approving Permit 2018-056 based on staff recommendations.

152 Upon a vote, the motion carried 5-0.

153 Attorney Welch stated that this is structured unusually because it is one of the requirements for complete
154 application to have the ownership necessary. He said that given that and given the timing the applicant is
155 looking at, the second condition listed in the information in the Board packet means if the easement is
156 given at the time that the project needs to move forward, then this permit approves it; if the easement isn't
157 granted, then this permit doesn't approve it but does carry on with the approval for all the rest of the
158 project.

159 **f. Local Surface Water Management Plan (LSWMP) – City of Minnetonka**

160 Mr. Jeffery noted that the City of Minnetonka provided its LSWMP to the District, and the District
161 requested a review extension from the City. He stated that the City approved, in writing, the extension.
162 Mr. Jeffery said staff will bring this item back to the Board at a future meeting.

163 **g. Award Bid for Bluff Creek Tributary Project**

164 Engineer Sobiech reported that on October 26, the District Engineer held the bid opening for the Bluff
165 Creek Tributary Project. He reported on the received bids. Engineer Sobiech explained that Sunram
166 Construction submitted the lowest bid at \$213,599, and the contractor supplied all of the required
167 documents except for the sworn statement. He noted that the contractor did supply to Barr Engineering an
168 electronic copy of the sworn statement by 1:30 p.m. and supplied a wet copy to the District later.
169 Engineer Sobiech said staff recommends the Board awards the bid to Sunram Construction as the
170 apparent low bidder and authorizes the Administrator to sign the notice of award, agreement, notice to
171 proceed at the appropriate times, and to execute change orders not to exceed 10% cumulatively, and, if
172 need be, execute a change order to change the project to remove from the project the watershed on the
173 Senior Housing property if that easement is not attained.

174 Attorney Welch said that in this circumstance, the apparent lowest bidder and the second-lowest bidder
175 neglected to include the sworn statement of responsible bidder. He said that the lowest bidder provided
176 the sworn statement later via email and subsequently via hard copy. Attorney Welch reported that the
177 District's Legal Counsel's analysis finds that this situation does not create a competitive advantage for
178 Sunram and it is within the scope of irregularities that the owner, the Watershed District, reserves for
179 itself the right to waive. He said the spirit of the oversight was corrected within hours and the letter of the
180 oversight was corrected within days. Attorney Welch reiterated that Legal Counsel's view is that this
181 situation in which the sworn statement was not with the bid at the time of the opening and the oversight
182 was corrected such that the sworn statement was provided to the District is within the realm of the
183 Board's right to waive. Additionally, Attorney Welch noted that under the contract documents, the Board
184 can reject all bids and decline to award a contract. He reiterated that the Board is not required to award a
185 bid.

186 Manager Koch moved to send out notice of bid award and that the District confirms its findings that the
187 bid was submitted with the required statutory notice, the sworn statement was submitted within hours of
188 bid opening, the Board finds the fact that the sworn statement not being included at bid opening does not
189 give advantage to the lowest bidder in comparison to the other bidders, and the Board authorizes the
190 Administrator to send out the notice of award and execute change orders as described and recommended
191 by staff. Manager Ziegler seconded the motion. Upon a vote, the motion carried 5-0.

192 **h. MAWD Annual Meeting**

193 President Ward said that the Board needs to appoint two representatives and one alternate to represent the
194 District was the Annual MAWD meeting being held November 29-December 1. He summarized topics
195 that will be addressed at MAWD. Mr. Jeffery noted the managers who are not delegates should make
196 their position on the items known so the delegates can consider all information in deciding how to vote.

197 Manager Pedersen nominated Manager Crafton as a MAWD delegate. Manager Ziegler seconded the
198 motion. Manager Koch nominated President Ward as a delegate. Manager Pedersen seconded the motion.
199 Manager Pedersen nominated Manager Ziegler as the alternate delegate. Manager Koch moved to
200 consolidate the motions into one motion and to approve the motion to appoint Manager Crafton and
201 President Ward as delegates and Manager Ziegler as alternate. Manager Ziegler seconded the motion.
202 Upon a vote, the motion carried 5-0.

203 Attorney Welch noted the Board meeting packet contains the information about the MAWD resolutions
204 being considered at the annual meeting. He highlighted Resolution #4 that would require watershed
205 district permits for the Department of Natural Resources. Attorney Welch described the resolution and its
206 implications for the District. The Board briefly discussed this item. The managers agreed to send

207 comments about the resolutions directly to Administrator Bleser.
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8. Discussion Items

209 a. Upcoming Meetings

210 President Ward noted the list of upcoming meetings and events as listed on the meeting agenda.

211 b. Upcoming 2019 Board of Managers Regular Meeting Schedule

212 President Ward noted that the 2019 meeting schedule is included with the meeting materials in the Board
213 packet.

214 c. Rescheduling Permitting Program Workshop

215 The Board agreed to hold the permitting workshop on November 14 from 5:30 p.m. to 7:00 p.m. Mr.
216 Jeffery mentioned the City of Eden Prairie would like to hold a meeting with the Board to discuss the
217 Duck Lake Project. The Board directed Mr. Jeffery to coordinate a meeting with the City of Eden Prairie
218 and to set it for a time immediately prior to the Board's December regular monthly meeting if possible.

219 d. Watershed Development Workshop

220 Manager Pedersen said she thinks this watershed has made huge gains, is organized, has a great 10-year
221 plan, has great staffing, and has been recognized for its accomplishments. She said she thinks this
222 watershed has been working toward becoming a leader for watersheds in the state. Ms. Pedersen
223 commented she thinks this watershed should explore what it could do to forge a path of cooperation to
224 better use limited dollars that are available in order to start looking a little bigger, even beyond the 10-
225 year plan. She proposed the District set up a brainstorming session with the managers, staff, the public,
226 and other key people to discuss how to come up with projects that could involve many groups, including
227 agencies, cities, non-profits, lake and homeowner associations, and so on. Manager Pedersen said that one
228 example is the irrigation controllers that have been discussed at recent meetings. She said this
229 collaboration could move forward water conservation policy.

230 Manager Pedersen moved to direct staff to coordinate a brainstorming session in the form of a watershed
231 development workshop to discuss the topics as mentioned. Manager Crafton seconded the motion. Upon a
232 vote, the motion carried 5-0.

233 e. Tracking Ecological Services

234 Manager Crafton remarked that the District has focused on water, but there are a lot of natural systems in
235 place in the watershed. She said an example is that when a project removes trees, the functions of those
236 trees are removed from the ecological system.

237 Manager Crafton moved to direct staff to figure out how and start tracking lost ecological services and
238 gains, too. Manager Pedersen seconded the motion. Manager Koch moved to amend the motion to direct
239 staff to gather the information about what is available and what could be accomplished and to report back
240 to the Board. Manager Crafton seconded the motion to amend. The motions were acted upon in one vote.
241 Upon a vote, the motion carried 5-0.

242 f. Accept October Staff Report

243 Manager Koch raised the topic of 3D imaging for data collection. Engineer Sobiech described collecting
244 data by drone and 3D-imaging. Manager Koch said he thinks the District should review its Aquatic

245 Invasive Species (AIS) monitoring program. He commented that he learned that zebra mussels can spread
246 between waterbodies via transport on watermilfoil. He asked for updates on the Chanhassen High School
247 and Lake Susan Park Pond projects. Engineer Sobiech provided the updates. Manager Koch asked for an
248 update on the District's wetlands work. Mr. Jeffery responded. Manager Koch asked staff to provide at a
249 future meeting an update on the Lakes AIS meeting.

250 Manager Ziegler moved to accept the October staff report. Manager Koch seconded the motion. Upon a
251 vote, the motion carried 5-0.

252 **g. Accept October Engineer's Report**

253 Manager Koch noted his questions about the hydrologic and hydraulic model referenced in the report and
254 asked for more information on what the Engineer is proposing. Engineer Sobiech noted the District has
255 routinely budgeted for routine updates of that model. He said that to take it a step further, staff met with
256 the City of Bloomington, and the City is willing to provide its model to incorporate it into the District's
257 model. Engineer Sobiech said this work with the model will allow finer resolution and address not only
258 flooding but also water quality and trying to tack on protecting creeks downstream from further erosion.
259 Engineer Sobiech said the idea is to use the City of Bloomington and its model integration as a scalable
260 pilot test and come up with an idea and go back to the TAC to discuss how it worked and benefits and
261 enhancements and ask if other cities are interested.

262 Manager Koch asked about the status in which certain construction was taking place without a permit.
263 Mr. Jeffery said yes, in Saville West a house was constructed, and the homeowner has brought his
264 property into compliance by installing the stormwater reuse system. Mr. Jeffery reported that the
265 developer has resubmitted to the District, and Engineer Sobiech is in the process of reviewing that
266 submittal. Mr. Jeffery said that progress is being made, but there is still a disconnect.

267 Manager Ziegler moved to accept the Engineer's Report. Manager Pedersen seconded the motion. Upon a
268 vote, the motion carried 5-0.

9. Upcoming Events

- 269 • Citizen Advisory Committee Meeting, November 19, 6:00 p.m., District Office, 18681 Lake Drive East,
270 Chanhassen
- 271 • RPBCWD office closed, Friday, November 23, 2018.
- 272 • MAWD (Minnesota Association of Watershed Districts) Annual Meeting, November 29-December 1,
273 Alexandria, Minnesota.
- 274 • RBCWMD Board of Managers Regular Board Meeting, December 5, 2018, 7:00 p.m., District Office, 18681
275 Lake Drive East, Chanhassen

10. Adjourn

276 Manager Koch moved to adjourn the meeting. Manager Ziegler seconded the motion. Upon a vote, the motion
277 carried 5-0. The meeting adjourned at 9:34 p.m.

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Respectfully submitted,

David Ziegler, Secretary