

**MINUTES OF THE REGULAR MEETING
OF THE
COMFORT LAKE–FOREST LAKE
WATERSHED DISTRICT
Thursday, March 12, 2020**

1. Call to Order

President Spence called the March 12, 2020 regular board meeting to order at 6:30 p.m. in the Comfort Lake-Forest Lake Watershed District offices, 44 Lake Street South, Suite A, Forest Lake.

Present: President Jon Spence, Vice President Jackie Anderson, Secretary Jen Oknich, Treasurer Steve Schmaltz, Manager Jim Dibble.

Others: Mike Kinney (via telephone), Jessica Lindemyer, Blayne Eineichner, Jason Kuennen (CLFLWD staff); Meghan Funke, Cecilio Olivier (Emmons & Olivier Resources); Chuck Holtman (via telephone) (Smith Partners); Wendy Hulsebus (Big River Group); Tom Furey (Citizen Advisory Committee).

2. Setting of Meeting Agenda

Manager Anderson moved to approve the agenda as presented. Seconded by Manager Dibble. Upon a vote, the motion carried 5-0.

3. Public Open Forum

There were no comments.

4. New Business

a) Watershed Management Plan Update

Wendy Hulsebus, meeting facilitator for Big River Group, gave a presentation on the four public listening sessions that were held in the past months. Some sessions were more heavily attended than others. Consistent topics that attendees said the District is doing well included education of the community and in schools specifically, aquatic invasive species (AIS) programing including lake access and education, grant program and education for native species, cleanup of Forest Lake project, and agricultural erosion control projects. Challenges that session attendees identified included some things that are in the District's control and some that are not. Common themes included needing more engagement with community, District's role in development process is unclear and cooperation with cities is muddled, poor enforcement of erosion control rules, newer development effects on drainage and flooding, and invasive species continue to be a concern. Ms. Hulsebus suggested that citizen frustration with regulations may stem from the District being involved later in the regulatory process and therefore being seen as

the one holding things up. She recommended that the District try to get involved sooner in the process and continue trying to increase visibility to the public. Ms. Hulsebus indicated that most attendees agreed that the District is doing a lot of things well. The goal of the sessions was to obtain high level input and reinforcement on broad topics, as well as to let constituents see what the District is doing.

In response to a question from Manager Anderson, Ms. Hulsebus explained that the smallest session had four attendees in addition to staff and board members, while the largest had 11 attendees in addition to staff and board members. There was further discussion about participation rates. Manager Dibble indicated that he was impressed with how engaged the attendees were at the session held in Scandia. Manager Anderson suggested communicating with local city councils in order to increase coordination between the District and municipalities and ensure city staff is checking with the District on its requirements before issuing building permits. There was discussion about staff-level coordination between the District and local cities. Mr. Kinney noted that the District is listed on the cities' permit application checklists, but it is among many other steps. Manager Anderson noted that the total number of attendees is a very small percentage of the total District population, so this feedback may be more anecdotal than statistically significant. Manager Schmaltz noted that the District's online survey received 160 responses; the Lower St. Croix One Watershed One Plan survey received 80.

b) Manager Per Diem

Administrator Kinney explained that the recommended conversation is twofold: policy guidance on manager per diem reporting outside of meeting days and manager tax form requirements (1099 vs W-2). Mr. Kinney suggested that watershed districts should work with state agencies to develop uniform guidance on topics like these. Manager Anderson noted that the District changed its bylaws to compensate managers for their work outside of regularly scheduled meetings such as participation in assigned work groups/committees. She indicated that, as long as managers are providing detailed reporting on their hours, the auditors will have no issues with the concept. She noted that, according to statute, the maximum payment a manager can receive per day is \$125, regardless of how many hours were worked. Manager Anderson explained that the other issue is whether managers should be issued 1099 forms (like outside contractors/consultants) or W-2 forms (like staff). Most districts use W-2s, but some still use 1099s. There was consensus to direct Manager Anderson to discuss this topic with the MN Association of Watershed Districts (MAWD) in an attempt to reach some uniformity on the matter. Legal Counsel Holtman indicated that there exists IRS guidance on the choice between the two. The IRS has clearly indicated that the choice involves a weighing of factors and the exercise of judgment, and that in the event of an IRS audit of a watershed district, the IRS will look to see if a reasoned judgment was made determining which form will be used. He suggested that, while MAWD may provide guidance, it should ultimately be up to each district to decide. He also suggested that the district accountant should be consulted and provide reasoning behind which

form will be used. Manager Anderson asked Mr. Holtman to provide her with a synopsis of his findings from the IRS guidance.

Manager Dibble suggested that the Board consider authorizing per diem for non-meeting work in advance. Manager Anderson indicated that work subject to per diem is stated in adopted Board policy and that the Board already went through a formal process of assigning managers specific committees and workgroups. President Spence suggested that the managers provide a rough estimate of time involved in their committee assignments so that the Board has an idea of how much will be spent on per diems in a given year. Manager Anderson noted that hours are spent episodically. She suggested that managers should be compensated for their time spent working on District initiatives, as assigned.

c) Permit Invoicing Policy

Mr. Kinney explained that the District has recently hired more staff who are capable of reviewing permit applications. Previously, all permit review expenses billed to permittees came from consultants. With staffing increases, more review can be done in-house, resulting in lower costs for permittees. Staff proposes adopting an internal policy regarding billing permittees for staff time related to permit review. Manager Anderson requested several edits to the policy. In response to a question from Manager Dibble, Legal Counsel Holtman explained that the Board makes all permit decisions except for permits that only trigger the Erosion Control rule. Permit applicants have the right to appeal any permit decision to the district court or the Board of Water and Soil Resources. There is no formal requirement for an arbitration in between. Mr. Kinney noted that it is the responsibility of the permit applicant to prepare application exhibits in compliance with District rules, and all applications that trigger rules beyond Erosion Control are reviewed thoroughly by the District Engineer.

Manager Schmaltz moves to adopt Policy #5: Policy and Procedures for Invoicing Permittees as amended. Seconded by Manager Oknich. Upon a vote, the motion carried 5-0.

d) Bone Lake Community Gravel Bed

Tom Furey, Bone Lake resident and Citizen Advisory Committee (CAC) member, explained that a gravel bed is a way to nurse new trees for one season (from spring to early fall) and maximize root strength and survival rates after replanting. Gravel bed trees have a 90% survival rate after transplanting while traditionally grown trees have a 20% survival rate. He described common characteristics of gravel beds including typical bed size, gravel particle size, and need for frequent watering. He suggested implementing gravel beds this year to provide trees to Bone Lake shoreline residents affected by the tornado/severe winds that occurred last summer. Volunteers and District staff would help coordinate. Mr. Furey estimated that construction of a gravel bed would be under \$1,000. The Bone Lake Apiary, located just northeast of Bone Lake, has expressed interest in providing the space for the gravel bed. A 20'x20' bed could hold

44-169 trees, depending on tree size. Mr. Furey was unsure how many trees are needed to repair shoreline damage around Bone Lake. The Bone Lake Apiary was interested in obtaining about 40 trees to replace some they lost last year.

Mr. Furey suggested that homeowners purchase trees from the gravel bed. Manager Anderson recommended that Mr. Furey work closely with District staff on this project so that the District can duplicate in other areas in response to future crises such as this. Manager Schmaltz suggested that the Bone Lake Association (BLA) take leadership on the project.

Manager Anderson moved to pursue a community gravel bed joint venture/collaboration with the Bone Lake Association, the City of Scandia, and others for the purposes of shoreline restoration on Bone Lake, and to direct staff to begin developing a program for implementation elsewhere in the District. Seconded by Manager Oknich.

Discussion: Manager Schmaltz suggested that more pricing figures for the trees be obtained. Manager Anderson indicated that costs will be part of the analysis that the Board is directing staff and others to proceed with. Mr. Furey noted that, in addition to helping stabilize shorelines and prevent erosion, trees are also excellent food sources for pollinators. It was clarified that the trees will be native species and grown as naturally/organically as possible. Mr. Kinney noted that the District's plant grant program reimburses recipients after the plants are planted, so the District could have input on planting location/specifications before providing grant funds. Mr. Furey indicated that he will present on this topic at the next BLA meeting and post on Facebook about it.

Upon a vote, the motion carried 5-0.

e) MAWD Legislative Update

Manager Anderson indicated that MAWD is unsure whether it will still hold the Day at the Capitol event, but it seems that it will likely be canceled. She reported that MAWD has three top level ("Priority A") priorities this year:

1. Increase the \$250,000 general fund levy limit.
2. Secure a strong bonding allocation for flood hazard mitigation projects.
3. Permit temporary storage of water on DNR land during major flood events.

She recommended that managers watch the legislative update video from MAWD Lobbyist Ray Bohn. MAWD Director, Emily Javens, also provides a weekly written update.

f) Emergency Response Planning

Mr. Kinney explained that the general discussion of emergency response planning was started last summer with the tornado and is now pertinent given the COVID-19 pandemic. It was confirmed that all District staff could begin working remotely starting

tomorrow, if necessary. He suggested that staff identify activities in the 2020 budget and work plan that can be modified in order to reduce potential staff exposure to the virus. For example, permit application materials can be submitted electronically rather than hard copies. Other events, such as Turf Talks, should be canceled or postponed until later this year. Staff is also considering how it can implement social distancing practices in its coordination with the District's interagency partners. Mr. Kinney requested direction from the Board on this matter and suggested that staff can proceed with more details and bring back a policy to the next meeting. He also suggested the Board advise whether it wants to convene the next meeting entirely remotely.

President Spence expressed that the District needs to minimize person-to-person contact as much as practical while still achieving the District's basic responsibilities. He suggested that board meetings be held remotely and explained that the Open Meeting Law allows for remote attendance in situations such as this. He indicated that there are several options available for remote conferencing. Mr. Dibble suggested that assessing remote work capabilities during this time might help the District decide on office space sizing in the future. Mr. Kinney clarified that the District already has one employee that works remotely full time. He indicated that an in-office rotation schedule could be another option to consider. He suggested that staff can begin working on a more detailed policy to be brought to the next board meeting. Managers Anderson and Schmaltz indicated they would work with Mr. Kinney on the policy given that they are both on the District's personnel committee. Manager Anderson recommended that staff try to keep up permit site inspections during the spring melt while maintaining safe health practices during this time.

President Spence recommended that the District offer remote attendance to all future board meetings. Mr. Holtman recommended that the Board President make a declaration that, due to the pandemic, all meetings will be held remotely. Meetings held by teleconference require a 3-day notice, similar to a special meeting. Mr. Holtman clarified that there does not need to be anyone at the meeting site during a remote meeting. Manager Anderson suggested that, until things worsen, some individuals can still attend in-person if they wish, so long as the total number is limited and spacing is practiced. This may have to change to entirely teleconference in the future, depending on how the situation evolves. Mr. Holtman indicated he would prepare a declaration for President Spence to sign, and the District can keep that document on file.

5. Old Business

a) Monitoring Program

Mr. Kinney summarized that the Board decided at the last meeting to utilize Citizen Assisted Monitoring Program (CAMP) volunteers as the main source of monitoring data for lakes that already have a volunteer. The District must decide how to monitor the remaining lakes that don't already have a volunteer. Emmons & Olivier Resources (EOR) provided a quote to monitor those nine lakes. Mr. Kinney indicated that targeted tributary monitoring will continue using IO Rodeo technology.

Manager Anderson moved to authorize the Administrator, on advice of counsel, to enter into an agreement with Emmons & Olivier Resources for 2020 lake monitoring services and in an amount not to exceed \$56,083. Seconded by Manager Oknich.

Discussion: Dr. Funke explained the various components of the 2020 monitoring program including lake monitoring (as already described), stream monitoring and report writing (for which the District is contracting with EOR), targeted tributary monitoring, project effectiveness monitoring (for some projects), and citizen assisted tributary (CAT) monitoring (which will be led by District staff). She noted that EOR will be ready to deploy stream monitoring equipment by the end of March.

Upon a vote, the motion carried 5-0.

b) Watershed Champion Award Review Committee Delegate

Ms. Lindemyer explained that, same as last year, the review committee will consist of three CAC members, one staff member, and one board member. She noted that the review committee could meet via teleconference. President Spence volunteered to participate in the review committee. Mr. Kinney indicated that the State of the Watershed Public Meeting may need to be canceled, depending on how the pandemic evolves.

c) Wetland Bank Update

Mr. Kinney explained that there are two adjacent property owners within the District who have communicated that they are interested in selling property to the District. He indicated that it is yet uncertain what the owners are expecting on price, but they appear to have potential for wetland banking. He recommended further evaluation of the parcels. Dr. Funke noted that the process for evaluating the parcels would be similar to the recent Banta Parcel scope of work, with completion of Task 1 then check-in with the Board before proceeding further. The parcels are generally located in between Fourth Lake and Lendt Lake, just north of Moody Lake. In response to a question from Manager Schmaltz, Dr. Funke explained that Task 1 entails primarily desktop analysis. Mr. Kinney noted that EOR will also attend a meeting with one of the landowners that is scheduled next week.

Manager Anderson moved to authorize the Administrator on advice of counsel to enter into an agreement with EOR in accordance with Task 1 of the March 11th scope of work, as revised to indicate that authorization to proceed to Task 2 will be granted upon review of findings by district staff and legal counsel and approval by the Board, and in an amount not to exceed \$2,500. Seconded by Manager Schmaltz.

Discussion: It was clarified that an offer would not be made until an appraisal was performed.

Upon a vote, the motion carried 5-0.

6. Summary and Approval of Board Direction

Directives from the meeting were summarized:

- Mr. Holtman will prepare the open meeting law declaration for President Spence
- Mr. Holtman will send to Manager Anderson IRS guidance regarding the 1099 vs W-2 question
- Mr. Kinney will check with Stella's Restaurant regarding the State of the Watershed Public Meeting

7. Adjourn

a) Next regular board meeting – March 26, 2020

Manager Schmaltz moved to adjourn the meeting. Seconded by Manager Anderson. Upon vote, the motion carried 5-0, and the meeting was adjourned at 8:31 p.m.

Jen Oknich, Secretary _____