

**MINUTES OF REGULAR MEETING
OF THE
COMFORT LAKE - FOREST LAKE
WATERSHED DISTRICT**

Thursday, August 26, 2010

1) Call to Order

The President called the August 26, 2010 regular Board meeting to order at 6:30 p.m. at the Forest Lake City Offices, 220 North Lake Street, Forest Lake, Minnesota

Present: President Richard Damchik, Vice President Jackie Anderson, Secretary Wayne Moe, Treasurer Tom Lynch, Manager Jon Spence

Absent: None

Staff: Doug Thomas (CLFLWD), Chuck Holtman (Smith Partners) Lisa Tilman (EOR)

Other: Linda Nanko-Yeager (Wyoming City Councilmember), Dan Fabian (EOR)

2) Open the Regular Meeting

The President opened the regular Board Meeting.

3) Reading and Approval of Agenda

The President called for the reading and approval of the August 26, 2010 regular Board meeting agenda. Motion to approve the agenda was made by Manager Lynch and seconded by Manager Moe. Upon vote, the motion passed unanimously.

4) Reading and Approval of Minutes

The President called for the reading and approval of the minutes of the July 22, 2010 regular Board meeting. Following discussion on the draft minutes Administrator Thomas reviewed a number of corrections to the minutes. Manager Anderson also noted a number of typographical errors and passed them on to the Administrator. Motion to approve the July 22, 2010 regular Board meeting minutes with corrections was made by Manager Anderson and seconded by Manager Spence. Upon vote, the motion passed unanimously.

5) Public Hearing on 2011 Budget and Levy

Manager Damchik recessed the regular meeting and called to order the public hearing on the Comfort Lake-Forest Lake Watershed District proposed 2011 budget and levy. Manager Damchik stated that the purpose of the hearing is to hear comments and take testimony from parties having an interest in the proposed 2011 budget and levy. Manager Damchik then asked Administrator Thomas to provide a brief summary of the proposed 2011 budget and levy for the record. Administrator Thomas noted that the proposed 2011 budget carries on the base district functions of;

- District operations
- Lake & stream monitoring

- Water quality best management practice cost-share/incentive program
- Education and outreach, and
- Permit/regulatory program.

He then commented that the projects that are proposed or continued in 2011 include;

- FL44 wetland restoration and cattle exclusion project
- NBL12 wetland restoration and cattle exclusion project
- Completion of the watershed management plan update
- Bone and Moody Lakes rough fish control program
- Moody lake alum treatments, and the
- Initiation of the Sunrise River Water Quality/Quantity Regional Stormwater Project.

Administrator Thomas noted that the proposed budget expenditures are \$1,025,010, which is \$134,433 less than 2010 a 13.11% reduction from 2010. The proposed levy for 2011 is \$755,000 which is the same amount that was levied in 2010. He also noted that in the Board packet and on the side table for those in attendance is a one page 2011 budget summary and the detailed 2011 budget and levy.

Manager Damchik asked if there was anyone in attendance that wished to offer any comments on the draft budget and levy. Hearing none Manager Damchik closed the 2011 budget and levy hearing.

6) Public Open Forum

Manager Damchik opened the floor to anyone in attendance wishing to comment on items that are not already scheduled to be discussed as part of the meeting agenda.

7) New Business

a) 2011 Budget & Levy adoption and certification

Administrator Thomas reviewed the following five items that were included in the Board packet regarding the 2011 budget and levy:

- Board memorandum which outlined the major on-going District programs and 2011 projects.
- One page 2011 budget/work plan and levy summary.
- Detailed budget and levy spreadsheet. Noted that the budget includes allocating \$311,335 to the designated project reserve fund and \$15,000 into the administrative reserve fund.
- Resolution 2010-08-01 – resolution to adopt 2011 budget and tax levies.
- 2011 budget & levy information flyer.

Manager Anderson asked how the total market value has changed since 2009. Administrator Thomas responded that the change, based on information that Randy Anhorn had shown him, in 2010 values were down approximately 4% from 2009. He noted that final numbers have not yet been received from Washington County.

Manager Spence moved resolution 10-08-01 to set the 2011 budget at \$1,025,010 and total levy at \$755,000. Manager Moe seconded the motion. Manager Damchik conducted a roll call vote. Anderson-yes, Damchik-yes, Lynch-yes, Moe- yes, and Spence-yes.

b) Professional Services Request for Proposals

Administrator Thomas reviewed his Board memo regarding the recent solicitation for professional services. MN Statutes 103B requires that metropolitan water management organizations, including watershed districts, solicit interest proposals at least every two years for professional services including engineering, legal, and accounting if applicable. The District provided notice in the Forest Lake Times and Chisago County Press for two consecutive weeks ending the week of July 19th. The deadline for submitting interest proposals was Friday, August 13, 2010. In response to the notice proposals were received from EOR Inc (engineering), Smith Partners (legal) and Kathleen Blackford LLC (accounting). Administrator Thomas then provided a short summary of each proposal and proposed rates.

Accounting - KMB proposes continuing the current rate of \$600/month for another year which is based on a discounted hourly rate of \$100/hr.. The rate is qualified by the assumption that the administrator position will continue with the same level of support to that in the past.

Legal – Proposal is to offer a discounted/blended hourly rate for all attorneys at \$175.00/per hour (current amount) for the balance of 2010, \$180.00 per hour for 2011, and \$185.00 per hour for 2012.

Engineering - EOR's proposal is to keep their 2011 rates the same as 2010. The proposal identifies that rates are to be adjusted annually.

Manager Damchik asked if there were any questions. Manager Anderson moved resolution 2010-08-03 to extend the services agreement for engineering services with EOR Inc. for an additional two year period. Manager Lynch seconded the motion. Manager Damchik conducted a roll call vote. Anderson-yes, Damchik-yes, Lynch-yes, Moe- yes, and Spence-yes.

Manager Anderson moved resolution 2010-08-04 to extend the services agreement for legal services with Smith Partners for an additional two year period. Manager Moe seconded the motion. Manager Damchik conducted a roll call vote. Anderson-yes, Damchik-yes, Lynch-yes, Moe- yes, and Spence-yes.

Manager Lynch moved resolution 2010-08-05 to extend the services agreement for accounting services with Kathleen M. Blackford LLC for an additional two year period. Manager Spence seconded the motion. Manager Damchik conducted a roll call vote. Anderson-yes, Damchik-yes, Lynch-yes, Moe- yes, and Spence-yes.

c) Public Employees Insurance Program

Administrator Thomas gave an update on his investigation into acquiring insurance coverage pursuant to his employment agreement with the District. He noted that he had contacted three private insurance brokers to get quotes on health, dental and life insurance along with short term and long term disability insurance coverage. One of the brokers was the Bearence Management Group which also writes insurance through the League of Minnesota Cities. This broker confirmed that the Administrator was eligible to participate in the MN Public Employee Insurance Program (PEIP) which is administered by the MN Department of Employee Relations and mimics the coverage that is available to employees of the State of MN. In addition to being the most cost competitive Administrator Thomas noted that the broker also described that PEIP is in a better advantage to control inflation of premiums as it represents a pool of approximately 30,000. The one stipulation is that the Comfort Lake-Forest Lake Watershed District must enroll as a member in PEIP in order for an employee of the District to enroll.

Administrator Thomas requested that the Board consider enrolling in the program so that he would be able to secure his health, dental and life insurance through PEIP. He noted that he would still negotiate for long and/or short term disability insurance on his own and that the combined premiums would stay below the amount authorized by the Board of Managers as stated in his employment agreement.

Manager Damchik asked if there were any questions or comments. Manager Anderson commented that this is exactly what the District was looking for when they hired Randy and at that time found that they were not eligible due to the fact that you needed a minimum of two employees to enroll. Administrator Thomas indicated that there had been a number of changes to PEIP in the last couple of years including becoming much more cost competitive than it had been in the past. He noted that the insurance broker had checked and that a local unit of government with only one employee is now eligible. Manager Anderson again commented that this is good news and the way to go. She also commented that this information should be passed on to BWSR so that they can inform other watershed districts that may be in the same situation.

Manager Anderson made the motion to enroll the Comfort Lake-Forest Lake Watershed District in the MN Public Employees Insurance Program and authorize the Board President to execute the group application form and further authorize the Administrator to write a check to PEIP in the amount of \$880.54 for the required one month advance payment. Manager Moe seconded the motion. Upon vote, the motion passed unanimously

8) Old Business

a) Chisago County Petition Update

Administrator Thomas noted that on August 11, 2010 the District received a certified copy of the Chisago County Board of Commissioners resolution 10/0721-1 approving the petition to Comfort Lake-Forest Lake Watershed District for a Sunrise River Water Quality Improvement and Flowage Management Project to address stormwater runoff concerns along the Sunrise River. Noting the lengthy history and familiarity of this project by the Board of Managers Administrator Thomas stated that he was not planning on giving any additional background information on his part for the Board. He briefly discussed the draft resolution 2010-08-02 which is designed to accept the petition and begin the project. Specifically he noted that the resolution directs that:

1. The project be designated the "Sunrise River Water Quality Improvement and Flowage Management Project, No. 10-01.
2. The District Engineer prepare a detailed feasibility report and plan for the Project, including an estimate of costs.
3. The District Administrator continue to work cooperatively with the County to implement the resolution and assist in the preparation of the engineer's report.
4. The District Administrator prepares the necessary notices and documentation to facilitate the Board of Managers consideration of the project pursuant to 103D.605 and 103B.251.

Manager Damchik asked if there we any questions or discussion. Manager Anderson moved resolution 2010-08-02 to accept the Chisago County petition for the Sunrise River Water Quality Improvement and Flowage Management Project and to authorize further proceedings. Manager Spence seconded the motion. Manager Damchik conducted a roll call vote. Anderson-yes, Damchik-yes, Lynch-yes, Moe- yes, and Spence-yes.

b) District Rule 4.0 Draft Rule Amendment

Administrator Thomas noted that the Board members had received under separate cover a memo from Attorney Holtman regarding draft language for a potential rule revision that would provide further guidance on the definition of “new primary use” as instructed by the Board at the July meeting. In particular it addresses the situation where the use stays the same, such as residential, but the modifications to the property could result in a greater intensity or different location of activity or use of the property and cause the potential for an adverse impact to a downstream water resource. Administrator Thomas then asked Attorney Holtman to review his memo with Board, paying particular attention to the language at the bottom of page two which raises a question for the Board in that are you, the Board, contemplating that where you might have existing lots of record and the building a house on it would require the buffer be installed as well as a tear down of an existing structure. He noted that the Board may want to have a bit of discussion on that. In the last paragraph he notes under “next step” that the Board could choose to initiate a rulemaking process now or operate on a less formal interpretive guidance and allow some more time to lapse to identify other potential rule changes that could be bundled together and dealt with some time in 2011. Administrator Thomas noted that he has had some discussion with the Engineer and there are some issues that have come up relating to calculating volume control requirements and crediting BMP’s that could be explored over the next few months and bundled together with this potential rule revision in the next couple of months.

Attorney Holtman noted previous month’s discussion but basically what was discussed last month was two components of preparing the interpretation of the definition of new primary use. One is a general standard which allows the Board to look at a situation and determine whether there is an impact sufficient enough to warrant implementation of the buffer on the property. The second is to actually state specific situations in which the buffer will be triggered. The discussion at the last meeting was rightly that it is difficult to state all of those categorical cases up front that would trigger the buffer. The one situation that was defined and is retained is where there is an actual change in a use category. What this rule suggests is that there are six use categories and changing from one use to another would trigger the buffer rule. Beyond that it does not define specific actions within a use category with the exception of the situation that Administrator Thomas pointed out. So basically the Board would review actions and if they determined that there would be a measureable adverse impact to the resource from the proposed activity it could require the buffer requirement. The other item proposed is where there is construction on an existing lot of record or a tear down and rebuilding which would also trigger the buffer. There can still be cases that come up where this does not seem reasonable or fair so when you think about that you might consider the frequency at which these situations may come up. If you would expect them to come up frequently you might not want to add the specific criteria. On the other hand if you expect these types of situations to come up infrequently then having the more specific language may be preferable knowing that the infrequent case can always be addressed through the variance process. Mr. Holtman reminded the Board that no matter how “new primary use” is defined, the buffer requirement is not triggered unless the work requires a rezoning or variance from the local land use authority.

On the process if the Board decides to proceed this evening the method would be to not decide on specific language but to agree on the intent, keeping the language general and getting it out for public comment at this time. This will allow the Board to seek out comment and then refine the statement later in the rulemaking process. In either case if you decide to move forward with rulemaking or not it would make some sense to adopt an approach as interpretive guidance for the time between now and when an amended rule would be adopted.

Manager Anderson asked, or we could look at each circumstance as it would come up without having the interpretative guidance at this time as we would look at them individually anyway because if we did not capture all of the different situations in the interpretive guidance we would have to look at them

individually anyway. Attorney Holtman responded that yes you can do that. The preference from a legal point of view is to have a written standard of some sort in place before deciding a specific case.

Manager Anderson clarified the question as that she was speaking just about the interim period while seeking comments. She commented that she thought that an internal guidance piece was being recommended and was asking if we could not operate as we are now without additional interpretive guidance and leave it open to operate on a case by case basis. Attorney Holtman responded that yes you can absolutely operate that way and it is not likely that you are going to see a lot of permit related activity related to this rule in the coming months.

Manager Lynch commented that basically it is a two part approach with trying to get this problem solved with number one being setting up an interim step and two to send out the feelers for getting public comment into the thinking behind writing the rule and then using that information to incorporate what we hear into the final rule language. Attorney Holtman responded that was correct and rulemaking can be done to correct the language now or operate on a case by case basis for a time and incorporate other issues into a rulemaking process later on. Manger Lynch commented that he would prefer to do something to take care of the problem that can arise but if we are going to redo the rule then let's take time to get it right. Manager Anderson clarified that she was not suggesting taking more time until we have more rules to adjust but simply leaving it as it is while we seek comment on the proposed change. Our pattern has been to send it out to our communities to seek their input and comment. And then as Chuck said follow that up with a series of meetings and public hearing. She also commented that this is an important enough rule to follow the rulemaking process. Manager Lynch noted that if we are going to go through this for 2 or 3 months it would not be a bad idea to look at other items as well. Manager Anderson commented that she likes an approach of handling these issues separately as they arise and not looking for something that might be a problem. There is time to do it and not a lot of other things going on. We have talked about this issue casually of structures being built close to the water and this may provide us with the opportunity to provide comments back to the communities before they make their final decisions.

Manager Damchik asked what the Board wants to do. Manager Anderson stated that her preference is to start the process and she likes what Attorney Holtman has provided. She noted the issue on the bottom of page two regarding existing lots but does not see any reason to change what is proposed. Her preference would be to have the Administrator send this out to our communities for comment and then when we have those back follow the rulemaking process using the TAC then take it back for comment by the CAC and then back to the Board for final action. Manager Moe commented that if somebody triggered the buffer rule he understands that one of the Administrator concerns is that it may be unreasonable to require a buffer on a very small lot. Administrator Thomas noted that he was not stating any objection to the proposed language but rather pointing it out so that the Board was aware of the specific requirement and had an opportunity to discuss it before making a decision.

Manger Lynch commented that it would be interesting if we could get from the County the number of lots on the lakes of that smaller size. Manager Anderson commented on a recent newspaper article that reported about the Governor's office not supporting the new shoreland standards and how it pointed out the problems with past building codes/zoning ordinances, variances, etc., and the negative impact those old standards have had on the lakes in Minnesota. She noted that she likes the language and the ability it gives the Board to look at this issue with the knowledge of the ability to have a variance process to consider specific grievances.

Attorney Holtman offered a process suggestion. The basic process simply involves a 45 day comment period for BWSR and local road authorities and a public hearing. An alternative would be to authorize the Administrator to use that process and check in with communities and TAC/CAC as discussed before going to final public hearing.

Manager Anderson motioned to start the basic rulemaking process and authorize the Administrator to use the TAC/CAC to gain input in the rulemaking process prior to any final public hearing. Motion was seconded by Manger Moe. Upon vote, the motion passed unanimously

c) Bone & Moody Lake Fish Barriers

Administrator Thomas gave an overview/summary of the events that have taken place since the last Board meeting as follows:

- Original design & cost estimates provided by DNR
- 2009 DNR Conservation Partners Legacy (CPL) grant awarded based on DNR estimate of approximately \$49,000 with included DNR doing the work and the District doing the design and purchase of materials.
- Administrator Anhorn had worked with EOR on more detailed site investigations and designs during summer of 2010.
- EOR at the July 22, 2010 meeting provided a memo updating the Board on the project:
 - Original designs by DNR were undersized due to much higher volumes of water
 - DNR assumed simple construction techniques which proved to not be true (i.e. constructing in peat soils and on lake bottom)
 - DNR would be unable to do the work due to increased size and complexity of structures.
 - EOR provided a revised estimate of construction cost at \$283,000.
- Board indicated its desire to construct the barriers, agreed in concept that additional District funds could be used, and instructed staff to meet w/DNR regarding modification of grant work plan and budget.
- E-mail from Attorney Holtman advising that since DNR would not be able to do the installation the project shifts from one of providing just professional assistance and supplies to one where the District would be constructing the project so it shifts it into the realm of a Capital Improvement Project which is not very well supported in current plan.
- Meeting with DNR on August 18th. Attended by District, EOR, DNR fisheries and CPL program staff. Discussed the change in scope and complicating factors and options for moving ahead. DNR noted that the Bone Lake Inlet was the highest priority followed by the Bone Lake outlet and then Moody Lake. Options discussed were:
 - Amend the existing grant to drop two of the structures. DNR staff felt that this would be difficult due to the large change in scope.
 - Cancel existing grant agreement.
 - Cancel existing grant agreement and reapply for 2011 grant program (September 16th deadline).

Administrator Thomas recommended that the District:

- Cancel the existing grant agreement and reapply under the 2011 program which recognizes that:
 - Low velocity barriers are still experimental in their design and use.
 - It would be possible to get all of the construction costs covered. Our match on a \$283,000 grant would be 15% or @\$42,450 of which \$14,000 can be in-kind which would leave cash contribution of \$28,450 which is what we already have committed.

- DNR indicated that the demonstration of low-flow barriers is a high priority and the request is below the \$400,000 program cap.
- Higher state contribution would recognize the experimental nature and reduce some of the District's risk if they do not work as designed.

Motion by Manager Moe to cancel the 2009 CPL grant with DNR and reapply under the 2011 CPL grant program. Manager Spence seconded the motion. Discussion, Manager Anderson asked about comment on partial funding and her concern about giving the impression that the project could be done for less money. Administrator Thomas noted that it is common that grant programs in the application process ask if partial funding is acceptable. If partial funding was offered his assumption would be that we would only do one or two barriers instead of three. Manager Moe asked about the role of the City. Administrator Thomas noted that the City of Scandia and Washington County have been contacted and both had indicated their willingness for the barriers to be on public land and/or right-of-way. Administrator Thomas also noted that we would work closely with the City to explore the option of doing the Bone Lake Inlet barrier in a way that would also replace a failing road culvert at the same time. Manager Lynch commented that he would like to see all three barriers installed. Manager Damchik asked to renew the motion. Upon vote, the motion passed unanimously

Manager Anderson commented that there are other possible sources of funds out there such as Ducks Unlimited that we should keep in mind if the DNR offers partial funding.

It was also noted that Manager Damchik needs to be sworn in at the next Board meeting with his re-appointment to the Board for another term by Washington County.

9) **Report of Staff**

a) Administrator

Administrator Thomas presented his report and noted that the transition has been going well and he did not have anything more to add. Administrator's Report (a copy each is annexed and incorporated by reference).

b) Emmons and Olivier Resources (EOR)

Lisa Tilman presented the engineer's report (a copy is annexed and incorporated by reference). Ms. Tilman noted that the 12th Street permit will be issued administratively and that she expected that we will start up the plan amendment process with the CAC in September.

c) Smith Partners

Chuck Holtman commented that he did not have anything to report at this time.

9) **Report of Treasurer**

a) Approval of Bills

Treasurer Lynch discussed the Treasurer's Report (A copy of which is annexed and incorporated by reference) and bills totaling \$15,627.57, as well payroll expenses of \$4,883.09 and \$4,328.66 for August 26, 2010.

Motion was made by Manager Moe to approve the August 26, 2010 Treasurer's Report and pay the bills as presented. Manager Spence seconded the motion. Upon vote, the motion passed unanimously.

10) Reports of Officers and Manager

Manager Anderson–

Noted that she and Manager Spence will be meeting with EOR to discuss how things are going.

Manager Damchik–

Nothing to report

Manager Moe –

Nothing to report

Manager Spence –

Nothing to report

11) Adjournment

Motion to adjourn the CLFLWD regular Board meeting at 7:50 pm was made by Manager Anderson and seconded by Manager Lynch. Upon vote, the motion carried unanimously.

Wayne S. Moe, Secretary