

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

Thursday, May 24, 2012

1. Call to Order

The President called the May 24, 2012 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, and Treasurer Tom Lynch

Absent: Manager Jon Spence (with prior notice)

Others: Doug Thomas (CLFLWD), Jason Naber (EOR), Chuck Holtman (Smith Partners), and Mark Lobermier (Wyoming).

2. Setting of Agenda

The President called for the reading and approval of the May 24, 2012 regular Board meeting agenda. President asked if there were any changes or additions. Motion to approve the agenda was made by Manager Moe and seconded by Manager Lynch. Discussion. Upon vote, the motion passed.

3. Reading and Approval of Minutes

The President called for the reading and approval of the minutes of the April 26, 2012 regular Board Meeting. Manager Moe pointed out two spelling errors on pages four and six. Motion to approve the April 26, 2012 regular Board meeting minutes, as amended, was made by Manager Moe and seconded by Manager Anderson. Discussion. Upon vote the motion passed.

4. 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.

5. New Business

a) Bone Lake Fish Barrier – Awarding Construction Contract

Administrator Thomas noted the EOR memo in the Board packet along with Resolution 12-05-01. He gave a summary of the EOR memo which included the bid opening, a tabulation of the bids, and a recommendation to award the contract to Rachel Contracting out of St. Michael, MN. Rachel Contracting's bid was for \$277,499. The engineers estimate was \$241,480. He also noted the other bids received from Dressel Contracting and Penn Contracting. Both of which were significantly higher and may represent the timing of the request for bids being done in the spring vs. winter, the experimental nature of the work, and having to do the work in the lake itself. He then went through Resolution 12-05-01, which was offered by staff for the Board's consideration, and explained that it 1) awards the construction

project to Rachel Contracting, 2) authorizes the Administrator to sign and transmit the necessary contracting documents, and 3) authorizes the administrator, upon recommendation of the engineer, to issue change orders not to exceed 10% of the original contract amount. President Damchik asked if there was any discussion.

Manager Lynch asked if anyone had spoken to Dressel after the bid opening. Jason Naber responded that they had not. Manager Moe mentioned that he initially had concerns about the price differences but had spoken to Administrator Thomas earlier about that. He also noted that he had asked if there was a bid bond to make sure that the contractor could not pull out half way through the project. Administrator Thomas asked Attorney Holtman to go over the contracting documents that will be required which are designed to prevent what Manager Moe commented on. Attorney Holtman noted the contract requirements which will include 1) bid bond which holds the contractor to their bid price if awarded the contract, 2) performance bond, which assures that the District can complete the work if for some reason the contractor is unable to, 3) a payment bond which covers all subcontractors and material suppliers to prevent liens against the District from them, and 4) insurance documents.

Motion by Manager Lynch to offer Resolution 12-05-01 and moved its adoption. Motion was seconded by Manager Moe. Discussion. Upon vote the motion passed. President Damchik called for a roll call on Resolution 12-05-01, Anderson yes, Damchik yes, Lynch yes, Moe yes, Spence absent. With a vote of 4 yes and 0 no the chair declared the resolution adopted.

b) CAMP – Lake Monitoring Contract

Administrator Thomas noted his staff memo in the Board packet. He explained that the District has worked with the Metropolitan Council and its Citizen Assisted Monitoring Program to do lake water quality monitoring in District lakes since 2007. The proposed contract will cover Bone, Comfort, Little Comfort, Forest Lake (all three basins), Moody, Shields, and Sylvan lakes. Shields Lake is a new addition for 2012. The cost to the District for 2012 will be \$5,100. He noted that staff is recommending approval of the 2012 Intergovernmental Agreement Between the Metropolitan Council and the Comfort Lake Forest Lake Watershed District as presented.

Motion was made by Manager Anderson to approve the 2012 Intergovernmental Agreement between the Metropolitan Council and the Comfort Lake Forest Lake Watershed District and to authorize execution of the agreement by the Board President. Motion was seconded by Manager Moe. Discussion. Upon vote the motioned passed.

c) 2013 Budget Development Schedule

Administrator Thomas noted his staff memo in the Board packet. He went over two options/timelines that he had put together for the Board to consider regarding the preparation and adoption of the 2013 budget and levy.

Option 1 would use one regular meeting and one special meeting to work on the budget with the hearing scheduled for the July 26th meeting and adoption of the budget and certification of the levy at the August 23rd meeting. He pointed out that this would leave room for another special meeting in August, if needed.

He then explained Option 2, which differed from Option 1 in that the Board would hold budget workshops prior to the June and July meetings and then hold the budget hearing along with adoption of the budget and certification of its levy at the August 23rd meeting. This schedule also allows time for a special meeting in August if determined necessary.

After discussion Manager Moe made the motion to adopt the 2013 Budget planning schedule as outlined in Option 1. Motion was seconded by Manager Anderson. Discussion. Upon vote the motion passed.

c) Comprehensive Monitoring Plan – Work Order

Administrator Thomas noted his staff memo and EOR task order that were in the board packet. He commented that the task order is to develop a 10 year comprehensive water monitoring plan. He pointed out that this activity is in the District's 2012 budget and recognizes that the District does not have a document that guides our overall monitoring efforts including things like our long-term/legacy sites, investigative monitoring, and effectiveness monitoring. Another advantage of having a plan in place is that it provides continuity as staff, Board members, and consultants change. It will also give us a technical evaluation of the quality of the sites we currently have and their suitability to provide us with the data that will meet our needs. It will also take into account the discussion and motions from the previous meeting about e-coli testing, invertebrate surveys, and hot spot monitoring. He also commented that although the tasks should be completed by August 23rd we can expect to have some preliminary recommendation back from EOR earlier than that to help with development of the 2013 monitoring budget.

Manager Lynch commented that e-coli finger printing is a new term that he was not familiar with. Jason Naber explained that this came up at the last meeting during the discussion that the Board had after the 2011 monitoring report was presented. In that report it was noted that a number of samples had elevated levels of bacteria in them and that this finger printing was a laboratory method of helping to determine the source, but that the test is not definitive. Manager Anderson asked why Jason said that they are not definitive. Jason Naber commented that certain animals such as humans and pets are not distinguishable and as such the number of markers are limited. Manager Anderson commented that if this is the case what is the value. Jason Naber commented that one of their staff that has worked with this technology and felt that it is not as useful as most people think because of the high cost and because the genetic markers cannot breakout things like ruminants such as deer vs. cattle.

Manager Moe commented that at the last meeting there was some of this discussion and that with some of this stuff where we are working under laboratory conditions it is different than under real world conditions which can change from one year to the next and he is concerned that we could be throwing away money at a hot spot which may not be a hot spot the next year. Administrator Thomas commented that part of developing a monitoring plan is to address this type of concern by thinking about it in advance and defining the scenarios, such as three positive tests in a row, which would trigger certain types of monitoring and which constituents should be monitored for. Manager Moe asked if it will breakdown between cattle and wildlife. Jason Naber explained that it can in a limited way and that when a sample is sent to the lab the lab is told what you believe the most likely sources are and that is what they would focus the testing on.

Manager Anderson commented that the bigger thing here is for us to able to tie all of this together with a type of master plan. It is important for us to have this as we have some of this discussion every spring after the monitoring report is presented. We need to look at this like an infrastructure plan similar to what a City does.

Motion by Manager Anderson to approve the attached EOR work order for developing a Comprehensive Monitoring Plan for the amount of \$14,242.00 and to authorize execution of the work order by the Board President. Motion was seconded by Manager Moe. Discussion. Manager Lynch had a follow up question regarding the e-coli testing and is it correct that when it is sent to the lab you need to give them some guidance as to what to compare it against. Jason Naber commented that yes that is correct. Manager Anderson pointed out that the plan will not result in doing any testing at this time. Instead it will provide for a discussion and method for when it may be needed and/or called for. Administrator Thomas

commented that we spend a lot of money on monitoring and the plan will give us direction so that funds are well spent and we are getting the right information to support our ability to make the right decisions on District programs and projects. The chair called for the question. Upon vote the motion passed.

6. Old Business

a) Sunrise River Project – Approval of Final Engineers Invoice

Administrator Thomas noted his memo in the Board packet. He pointed out that this agenda item is a carryover from the last meeting at which time the Board approved partial payment to EOR related to items that they were requesting additional payment for and that were outlined in EOR's March 28, 2012 memo which presented a final budget summary and payment request. At the April 26, 2012 meeting the Board tabled the \$13,944.00 request for payment for the additional work that was done regarding Shallow Pond along with a request to be provided with additional background information. He noted that in the Board packet Managers were provided with 1) the May 11, 2012 EOR Memo – Shallow Pond Evaluation & Design Cost, 2) the May 1, 2012 EOR Memo – Sunrise River Water Quality Flowage Project, Shallow Pond Scope of Review, 3) the May 26, 2011 EOR Memo – Sunrise River Water Quality and Flowage Project Work Plan, and 4) the January 12, 2011 EOR Memo – Sunrise River Water Quality and Flowage Project: Project Charter and Initial Feasibility Study. He then turned the discussion back to the Chair.

Manager Moe commented that 1) he always expected that Shallow Pond was to be included in the work, 2) that although the main work was to be done between Greenway & Bixby there was mention of streambank interaction with the floodplain and he was under the impression that it always included Shallow Pond, 3) felt the District should not pay, and 4) in the work order it clearly stated that the original cost would not be exceeded without approval by the Board and nothing that he could see in the final request for payment was an emergency and which could not have been brought to the Board for that prior approval.

Manager Lynch commented that his only concern in going back over the material is what was part of or not part of the deliverables. He mentioned the storyboard and St. Croix River Basin Team meeting. Administrator Thomas commented that the storyboard was given to the Board previously and that we did not pay for the St. Croix River Basin Team meeting and then pointed out in his memo the actions that the Board took on the final pay request at the last meeting. Manager Lynch then stated that after going through all of the information that he did not have an issue regarding the payment for the Shallow Pond request. He then described his initial reactions of the first work and feasibility analysis and that to do anything with Shallow Pond was going to be at the upper end of the cost and that seemed to preclude Shallow Pond from additional consideration. Manager Anderson commented that she agreed with Manager Lynch but that she appreciates the issues and concerns that Manager Moe has brought up. She noted that care must be taken with the relationship between the District and its consultants and how it can become a problem if we are not vigilant in monitoring it and thanked Manager Moe for his diligence.

Manager Anderson referenced the May 1, 2012 EOR memo and commented that it did a good job of giving the history of Shallow Pond and that we were originally working with the idea of a project on the tax forfeit lands. She commented that she thought we had always contemplated more on the tax forfeit land and that Shallow Pond would be an added benefit if we could do it. She supports the additional engineering time and that she remembers that it was done at the Board's direction. Manager Moe commented that in the future we could save ourselves some of this trouble by making sure that things like this are brought to the Board for approval before any added expenditures or tasks are done. Manager Anderson asked Administrator Thomas about the minutes from the meeting where the storyboard was presented and if there was a vote or not. Administrator Thomas commented that he could not recall. The Chair asked if there was any other comments.

Manager Anderson commented that she finds it hard to believe that EOR would have gone ahead without some direction then made the motion to table action on this item and for staff to go back and look at the minutes from the presentation meeting. Motion was seconded by Manager Lynch. Discussion. Upon vote the motion passed.

b) CLFLWD/City of Wyoming – Coordination Agreement

Administrator Thomas noted his memo in the Board packet. He explained that the draft cooperation agreement was developed as a result of the Board's discussion and direction back in November of 2011 after the Mastell shoreland violation occurred on Comfort Lake. The direction that was provided by the Board was to have staff develop a cooperative agreement that could be used with the City to develop a more formal process for coordinating activities in shoreland and floodplain areas with the goal of reducing the chance for violations to occur as well as continue to improve on our already good working relationship with the City. Administrator Thomas noted that he was looking to the Board to determine if the draft document fulfills what the Managers were looking for back in 2011 and if it does he would then begin to work with staff at the City of Wyoming to get their review and comment and work towards a document that is acceptable to both the District and the City.

After discussion it was the consensus of the Board that the agreement met what their expectations were. Manager Anderson suggested that under the City responsibilities that it clearly states that this is only for the area of the City that is within the District. Manager Lynch suggested the inclusion of a map.

c) Sunrise River Project – Land Appraisal

Administrator Thomas noted his memo in the Board packet. He commented on a follow-up meeting with Mr. Ducharme, Manager Anderson, and Commissioner Montzka to answer some follow-up questions that Commissioner Montzka and Mr. Ducharme had about the possible sale of the Ducharme property. Manager Anderson discussed the general nature of the discussion along with Mr. Ducharme's desire to sell his property. She also pointed out that Mr. Ducharme mentioned the wetland banking potential of the property and how would that be considered. It was agreed that the next logical step if the District is interested is to get an appraisal to assist in working towards a sale.

Administrator Thomas commented that a motion would be needed to move ahead with an appraisal. He discussed how he had made some inquiries into appraisers and was given the name of one appraiser who had expertise in the area of ditches and wetland banking. He then described the two actions that are in the draft motion that Attorney Holtman had drafted for this purpose which were 1) authorization for counsel to obtain an appraisal up to \$5,000 and 2) authorizes the District engineer to provide up to 25 hours of time to assist in developing the technical basis for the appraisal.

Manager Moe commented on the cost of the appraisal being excessive and what you can get an appraisal for a house done for. Administrator Thomas pointed out some aspects of this appraisal which make it different than a normal appraisal, particularly how the potential development value needed to be supported by engineering to make sure that the appraisal can accurately evaluate this. Administrator Thomas also pointed out the significance of this land to the overall Sunrise River Project. Manager Anderson commented on the importance of this property in relationship to the overall Sunrise River Project and that with Mr. Ducharme's interest in selling the only credible way to have a starting point is to get an appraisal. Attorney Holtman commented that on average an appraisal might be in the range of \$1,500 to \$3,000 but because of the complexity and the need to evaluate wetland credit development cost he used \$5,000 as the upper limit before he would be required to come back and consult with the Board. He also stressed that because the District would like to reach a voluntary agreement with the landowner on the land acquisition,

it is important for the appraisal to present a sound and thorough analysis of the feasibility of wetland credit banking and its effect on property value, in order to be seen as credible by the landowner and help calibrate the landowner's reasonable expectations as to his property value.

Manager Anderson made the motion to (a) for the purpose of advising the District on acquisition of property for the Sunrise River project, and in coordination with the District Administrator regarding price and scope, District counsel may obtain an appraisal of the fee interest for the Ducharme property, 24011 Forest Blvd. N. Before committing to more than \$5,000 in appraisal fees, counsel will consult with the Board, and (b) At the request of District counsel in coordination with the District Administrator, the District engineer may provide up to \$3,000 of time to assist in developing the technical basis for the appraisal including but not limited to assessing hydrologic conditions that may affect property value. Motion was seconded by Manager Lynch. Discussion. Upon vote the motion passed.

7. Report of Staff

Administrator Thomas noted his written report in the Board packet.

Emmons and Olivier Resources (EOR) – Nothing new to report

Smith Partners – Nothing new to report

8. Report of Treasurer

Approval of Bills

Treasurer Lynch presented the Treasurer's Report (A copy of which is annexed and incorporated by reference) and bills and payroll totaling \$53,227.21.

Motion was made by Manager Lynch to approve the May 24, 2012 Treasurer's Report and pay the bills and payroll as presented. Manager Moe seconded the motion. Discussion. Upon vote, the motion passed.

9. Reports of Officers and Managers

Manager Damchik – Nothing new to report

Manager Lynch – Nothing new to report

Manager Spence – Absent

Manager Anderson – Nothing new to report

Manager Moe – Nothing new to report

10. Adjournment

Motion to adjourn the CLFLWD regular Board meeting at 8:35 pm was made by Manager Anderson and seconded by Manager Lynch. Upon vote, the motion passed.

Wayne S. Moe, Secretary _____