

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

March 26, 2024, Continuation of March 13, 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: Zach Dickhausen*, Natural Resources Coordinator
Liz Forbes*, Communications Manager
Terry Jeffery, District Administrator
Josh Maxwell, Water Resources & Fisheries Manager
Dylan Monahan, Administrative Assistant
Louis Smith, Attorney, Smith Partners

Other Attendees: Morgan Jacobs
Alex Sellke,* Attorney – Ballard-Spahr
**Attended the meeting virtually.*

1. Continuation of Board of Managers March 13th Regular Monthly Meeting

1 President Dorothy Pedersen continued the March 13, 2024, Board of Managers Regular Meeting
2 at 10:16 a.m. on Tuesday, March 26th at the District Office, 18681 Lake Drive East, Chanhassen,
3 Hennepin County, Minnesota.

4 President Pedersen stated this meeting is being held in person in public as well as hybrid as the
5 District recognizes a manager may, based on advice from a healthcare professional, have a
6 legitimate reason for not attending a meeting in a public place in person, such as Covid-19
7 exposure or infection, and in such circumstances may participate in the meeting remotely.

8 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

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11. Discussion Items

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b. Acquisition of 9955 Spring Road, 9875 Spring Road, and PID 281162230005 (the Board may go into closed session)

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President Pedersen asked for a motion to add back as action items on the meeting Resolution 24-025 Approving First Amendment Agreement for assignment of Purchase Agreement and Promissory Note with TDI Holdings, LLC, Seventh Amendment to Purchase and Sale Agreement with Carol L. Standal, and Contract for Deed with Carol L. Standal for Spring Road Conservation Project, and Resolution 24-026 Approving Agreement with the City of Eden Prairie Regarding Deferred Special Assessments for Spring Road Conservation Project.

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Manager Duevel moved to add Resolutions 24-025 and 24-026 back as action items on the meeting agenda. Manager Crafton seconded the motion. Upon a roll call vote, the motion carried 4-1.

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

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Mr. Smith said the two resolutions in front of the Board allow the District to acquire the Spring Road property in the Spring Road Conservation project through a contract for deed arrangement.

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Mr. Smith explained Resolution 24-025 would approve the first amendment to the agreement for the assignment of the purchase agreement and a promissory note with TDI Holdings and a seventh amendment to the purchase and sale agreement with Carol Standal, with that amendment placing the District in the position of purchaser, and a contract for deed with Carol Standal for the project, providing the short-term financing for the acquisition.

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34 Mr. Smith explained Resolution 24-026 would have the District approving an agreement
35 with the City of Eden Prairie regarding the deferral of special assessments on the
36 property and approving an agreement of payment to the City. Mr. Smith said regarding
37 this matter there may be some aspects that call for going into a closed session.

38 Alex Sellke, special real estate counsel with Ballard-Spahr, reviewed the high-level
39 terms of the contracts that are stated in the resolutions. He started the review with the
40 contract for deed, noting the terms are the same as presented in term-sheet form at the
41 Board's previous meeting but with the final interest rate of 7% as agreed on by the
42 parties, subject to the Board's approval. Mr. Sellke explained the term is five years until
43 maturity and payments are interest-only beginning in the third quarter of 2024 until the
44 contract for deed is paid off. He said the final purchase price, \$5.4 million with
45 \$250,000 paid at closing as down payment, is consistent with what was in the original
46 information in the Board's meeting packet.

47 Mr. Sellke said there is a senior mortgage on the property, which brings unique risk to
48 this transaction. He said there are general risks that come with a contract for deed. Mr.
49 Sellke explained contract for deed has a relatively short period for the District, as the
50 buyer, to cure any defaults. He said contract for deed does not have a long redemption
51 period like found with a mortgage. Mr. Sellke said it is used for circumstances like this
52 one in which traditional financing is not available and perhaps for bridge transactions to
53 close before permanent financing is available. He stated under Minnesota statutes if
54 there is a default under the contract for deed by the buyer, there is only a 60-day cure
55 right before the contract can be terminated and the seller would be entitled to terminate
56 the contact, retain the payments, and get the property back.

57 Mr. Sellke stated to mitigate some risk, the contract is for interest-only payments and
58 includes an additional 60-day cure period for all types of events of default. He said also
59 there is a level of risk taking a contract for deed subject to an existing mortgage. Mr.
60 Sellke said there are possible scenarios, such as Carol Standal could stop paying her
61 mortgage payments and the existing mortgagee could start foreclosure proceedings, or
62 the existing mortgagee could accelerate the debt under the mortgage. He described
63 various contractual rights for the District as laid out in the contract.

64 Mr. Sellke said one change from the term sheet is Trek has requested, and this is
65 reflected in the current draft of the promissory note, interest-only payments on the debt
66 starting in 2025 if final financial closing has not occurred by then.

67 Mr. Selke noted the terms of the payment agreement with the City of Eden Prairie for
68 the special assessments remain the same, which is interest at 6% of the approximately
69 \$275,000 of existing deferred special assessments that will be further deferred for two
70 years. Mr. Smith added the City of Eden Prairie has requested the District indemnify the
71 City and provide for defense in the event there is any litigation involving the special
72 assessments.

73 Manager Koch asked if the District is under any obligation to agree to the proposed
74 amendment. Mr. Selke asked if the question is if the District is under any obligation to
75 agree to the assignment and purchase agreement amendments he described. Manager
76 Koch said that is his question. Mr. Sellke responded no.

77 Manager Koch asked if TDI and the seller have any unconditional right to terminate the
78 purported current agreement. Mr. Sellke responded we are currently within a cure
79 period to get to closing and their right to terminate is 30 days after the original closing
80 date.

81 Manager Koch said if Mr. Sellke reviews Manager Koch's complaint filed with court,
82 he thinks it is clear from a reading of the purported agreement there is no right of either
83 the seller or TDI to terminate this agreement. Manager Koch said in his opinion it is
84 unnecessary to agree to any amendments until the issues set forth in the complaint have
85 been resolved.

86 Manager Koch asked if we have received any financial statements regarding the seller.
87 Mr. Sellke said not that he is aware of.

88 Manager Koch stated it is his understanding that watershed district managers have the
89 fiduciary obligation to act in the best interest of a district's constituents. Manager Koch
90 said there is a significant risk if the District goes through with this that the District could
91 end up losing the property and not be able to redeem it because the District has
92 significant restrictions on money it can raise and payments it can make.

93 Manager Koch said going forward with a contract like this is not in the District's best
94 interest because the District has, in his opinion, the ability to sit on its hands until the
95 issues regarding the purchase of this property set forth in the lawsuit have been
96 resolved. Manager Koch said the District is in the driver's seat and cannot be forced to
97 close on the property. Manager Koch stated he thinks this would only be leading to
98 more litigation and unnecessary litigation. Manager Koch said he thinks moving it
99 forward would be an intentional violation of District manager duties and there would be
100 questions as to whether or not managers would be entitled to defense and/or
101 indemnification.

102 Mr. Smith noted there is one aspect of the agreement with the City and that resolution in
103 which Manager Koch has made references to the existing litigation as well as threatened
104 litigation. Mr. Smith recommended a brief closed session among the four managers to
105 discuss that litigation and threatened litigation and receive advice of counsel regarding
106 that.

107 Manager Duvel moved to go into closed session to discuss the litigation and threatened
108 litigation and receive advice of counsel regarding that litigation and threatened
109 litigation. Manager Crafton seconded the motion.

110 Manager Koch said if he understands Mr. Smith's proposal, it is to exclude Manager
111 Koch and to the extent that this would involve any discussion of litigation with the City
112 of Eden Prairie, it would not be appropriate to exclude him. Manager Koch objected to
113 excluding him with respect to any discussion of any potential litigation with the City of
114 Eden Prairie, given the City is a different party and there is no current litigation in
115 between them. Manager Koch stated if the Board wants to have a closed session about
116 the current litigation, which includes the District and Administrator Jeffery, then
117 although Manager Koch thinks he still represents the District, Manager Koch
118 understands the potential of a conflict issue and he will agree without waiving his
119 arguments that the other four managers could meet in a closed session to discuss that

120 litigation but not any potential litigation against the City of Eden Prairie or the terms of
121 any agreement regarding indemnification.

122 Mr. Smith clarified that his recommendation is the four managers go into closed session
123 for the purpose of discussing the existing litigation by Mr. Koch as well as his
124 threatened litigation in his letter addressed to Eden Prairie, the Standals, and TDI, and it
125 is the District's legal counsel's judgement that with that threat there is a reason for the
126 Board to receive confidential legal advice concerning that threatened litigation and
127 strategy to respond to that litigation. Mr. Smith said he respectfully disagrees with
128 Manager Koch's assessment of that matter.

129 Manager Koch stated he disagrees with Mr. Smith. Manager Koch said Mr. Smith has
130 actually stated the reason why Manager Koch does not believe Mr. Smith's statement
131 applies as this has to do with Eden Prairie and we do not represent Eden Prairie and if
132 Eden Prairie was sued, it does not have any direct import on the District, at least not at
133 this time.

134 Upon a roll call vote, the motion carried 4-1.

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

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137 The Board moved into closed session at 10:46 a.m. to discuss the litigation and
138 threatened litigation and receive advice of counsel regarding that litigation and
139 threatened litigation.

140 The Board reconvened the public meeting at 10:55 a.m.

141 Mr. Smith announced the first item in front of the Board is Resolution 24-025
142 Approving First Amendment Agreement for assignment of Purchase Agreement and
143 Promissory Note with TDI Holdings, LLC, Seventh Amendment to Purchase and Sale
144 Agreement with Carol L. Standal, and Contract for Deed with Carol L. Standal for
145 Spring Road Conservation Project,

146 Manager Duevel moved to accept Resolution 24-025. Manager Crafton seconded the
147 motion.

148 Manager Koch said that for purposes of the record he repeats everything he stated
149 before and furthermore he thinks it is important to state that this money, \$5.775 million,
150 is better spent in fixing our creeks on projects that have been on the 10-Year Plan for
151 years instead of buying property that has no water management issues. Manager Koch

152 stated he not only thinks it is likely illegal but it is also imprudent and not in the best
 153 interest and he refers everybody to the article regarding Minnehaha Creek and its
 154 attempt to work on their creeks as we should be aligning ourselves with that kind of
 155 thought process, that we devote our time, attention, and dollars to fixing creeks we
 156 know have issues instead of buying land that has no water management issues and does
 157 not rank in priority according to Minnesota rules. Manager Koch stated he objects to
 158 discussing this issue on a Tuesday morning when most of our meetings are in the
 159 evening and most of our constituents are working. He said he thinks this shows a
 160 disrespect for our constituents on such an important matter and he could say more on
 161 why he thinks maybe it is happening but he will refrain at this time.

162 Upon a roll call vote, the motion carried 4-1.

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

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165 Mr. Smith said regarding Resolution 24-026 Approving Agreement with the City of
 166 Eden Prairie Regarding Deferred Special Assessments for Spring Road Conservation
 167 Project, as he noted earlier the City asks that the District defend and indemnify the City
 168 in any litigation concerning this special assessment matter. Mr. Smith said District legal
 169 counsel recommends the Board amend the resolution language to read that “the Board
 170 of Managers hereby approves the proposed agreement for deferred special assessments
 171 with the City of Eden Prairie, subject to the condition of District defense and
 172 indemnification of the City on terms negotiated by legal counsel and further authorizes
 173 the President to execute the agreement with non-substantive changes on advice of legal
 174 counsel.”

175 Manager Duevel moved to adopt Resolution 24-026 Approving Agreement with the
 176 City of Eden Prairie Regarding Deferred Special Assessments for Spring Road
 177 Conservation Project, with the changes highlighted by Mr. Smith. Manager Crafton
 178 seconded the motion.

179 Manager Koch said he does not believe the proposed amendment to the resolution has
 180 been duly brought forth for approval. Mr. Smith stated the motion on the floor is to
 181 adopt the resolution with the changes he described.

182 Upon a roll call vote, the motion carried 4-1.

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

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15. Adjournment

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Manager Crafton moved to adjourn the meeting. 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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The meeting adjourned at 11:02 a.m.

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Respectfully submitted,

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Tom Duevel, Secretary