

## MEETING MINUTES

### Riley-Purgatory-Bluff Creek Watershed District

#### October 4, 2023, RPBCWD Board of Managers Regular Monthly Meeting

**PRESENT:**

**Managers:** Jill Crafton, Treasurer  
Tom Duevel, Vice President  
Larry Koch  
Dorothy Pedersen, Secretary  
David Ziegler, President

**Staff:** Amy Bakkum, Office Administrator  
Zach Dickhausen, Natural Resources Coordinator  
Liz Forbes, Communications Manager  
Terry Jeffery, District Administrator  
Joshua Maxwell, Water Resources Coordinator  
Mat Nicklay, Natural Resources Technician  
Louis Smith, Attorney, Smith Partners  
Scott Sobiech, Barr Engineering Company

**Other Attendees:** Andrew Aller, CAC                      iPhone 6127436467  
Any's iPhone    Ted Melby  
Jeff Borowiak    Dylan Monahan  
Tina Decker    Madhur Patil  
Chesney Engquist                                        Alaina Portoghese  
Jack Hopkins    Michael Pressman  
iPhone 358     Kate Rohlfen  
David Knaeble    Maya Santamaria  
Dean Lotter     Dean Suchy

*Note: the Board meeting was held remotely via meeting platform Zoom because it was deemed not prudent to meet in person due to COVID-19.*

#### 1. Call to Order of Board of Managers Regular Monthly Meeting

1 President Ziegler called to order the Wednesday, October 4, 2023, Board of Managers Regular  
2 Meeting at 7:01 p.m. He stated the Board is conducting this meeting via Zoom out of an  
3 abundance of caution regarding COVID.

4 Louis Smith called attendance for the Board of Managers as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Present
Duevel	Present
Koch	Present
Pedersen	Absent
Ziegler	Present

5

**2. Approval of Agenda**

6 President Ziegler recommended splitting the Matters of Public Interest into two parts – one for  
 7 the general matters of public interest and one related to the 7i – Matters of Spring Road item to be  
 8 handled at the same time as item 7i. Manager Koch moved to adopt the agenda with changes as  
 9 follows: Removing all items off the Consent Agenda and tabling items 7h, 7i, and 7j because he  
 10 does not believe the appropriate notice has been provided as required by law. Manager Koch’s  
 11 motion died due to lack of a second.

12 Manager Pedersen moved to approve the agenda with the revisions to remove all items from the  
 13 consent agenda and splitting the Matters of Public Interest into two comment periods. Manager  
 14 Crafton seconded the motion.

15 Manager Koch said he does not believe proper notice, etcetera has been provided with respect to  
 16 items 7h, 7i, and 7j. He said he believes dealing with those matters would be a violation of 103D.

17 Administrator Jeffery said in response to Manager Koch’s comment prior to the meeting  
 18 regarding his opinion that proper notice was not provided, Administrator Jeffery asked Legal  
 19 Counsel to review the notices. Administrator Jeffery reported Mr. Welch said the notices meets  
 20 the intent and were properly noticed. Mr. Smith clarified Mr. Welch’s review was regarding the  
 21 budget and tax levy hearing and there are no published notices required for the items on this  
 22 evening’s agenda.

23 Manager Koch said he does not believe Mr. Smith is correct. Manager Koch moved to amend the  
 24 motion to move the items 7h, 7i, 7j to the top of the agenda as he believes they will take some  
 25 time. The motioned died due to lack of a second.

26 Upon a roll call vote, the motion carried 4-1 as follows:

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

Pedersen	Yes
Ziegler	Yes

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**3. Matters of General Public Interest**

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President Ziegler explained the procedures for raising matters of public interest.

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Manager Koch said in his view items 7h, 7i, and 7j were all listed in a way to hide the ball as to what was really going to happen and are misleading by omission. He said this is not the way to conduct business or provide information to the public. Manager Koch said when he looked at the meeting documentation there was no agreement attached regarding the assignment. He said the Board has not split a public comment period previously and no notice has gone out about a public comment period with respect to Spring Road or the acquisition of property, which is the topic of agenda items 7h, 7i, 7j. He said he believes the Board should reconsider the agenda.

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**4. Reading and Approval of Meeting Minutes**

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**a. Approve Minutes of the September 13, 2023, Regular Monthly Meeting of the RPBCWD Board of Managers with Continuation on September 21, 2023.**

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Manager Crafton moved to accept the minutes of the September 13, 2023, Regular Monthly Meeting. Manager Pedersen seconded the motion.

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Upon a roll call vote, the motion carried 4-1 as follows:

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

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Manager Pedersen moved to accept the minutes of the September 21, 2023, Continuation of the September 13, 2023, Regular Monthly Meeting with a change to line 119 to correct the spelling of the word “manager.” Manager Duevel seconded the motion. Manager Crafton noted an edit to line 62 change “is recommended” to “is recommending.”

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50 Upon a roll call vote, the motion carried 4-1 as follows:

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

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**5. Committee Reports**

53 **a. Acceptance of the Citizens Advisory Committee Report and Minutes**

54 Andrew Aller reported the Citizens Advisory Committee (CAC) met on September 18,  
 55 2023. He said the CAC passed several motions including commending the Board of  
 56 Managers and the District on its community education and outreach and suggesting the  
 57 addition of a climate resiliency landscaping workshop to supplement the District’s  
 58 education and information resources. Mr. Aller said the workshop could cover best  
 59 practices for water quality, soil health, and climate mitigation and adaptation as well as  
 60 homeowner responsibilities regarding water quality.

61 Mr. Aller reported the CAC requests the ability to look for information so the CAC can  
 62 disseminate information and educate the public as to best practices of providing  
 63 information and notification to the appropriate individuals about bad practices for water  
 64 quality.

65 Mr. Aller reported the CAC’s second motion was that the Committee gets started with  
 66 meeting in public and in person. He said it is the CAC’s intention is to meet in person  
 67 starting with its October 16<sup>th</sup> meeting.

68 Mr. Aller said the CAC’s third motion was to request Administrator Jeffery make a  
 69 presentation on EHAP at the CAC’s October 16<sup>th</sup> meeting.

70 Manager Pedersen said she thinks it is a good idea for the District to develop a workshop  
 71 on landscaping for climate resiliency so the workshop would be available in the winter or  
 72 spring before seasonal landscaping begins.

73 Manager Crafton moved to accept the Citizens Advisory Committee Minutes and Report.  
 74 Manager Pedersen seconded the motion.

75 Upon a roll call vote, the motion carried 5-0 as follows:

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<i>Manager</i>	<i>Action</i>
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Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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**b. Confirm Board Representative for October 16, 2023, CAC Meeting**

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Manager Crafton volunteered to be the Board representative at the CAC’s October 16, 2023, meeting.

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Manager Koch recommended no more than two managers attend any one committee meeting. Mr. Smith said it is simpler to have just one or two managers attend but the District can, in an abundance of caution, public notice meetings to notify the public there may be a quorum attending meetings but attending in an observing capacity. Mr. Smith said that function is served well by one or two managers.

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Manager Koch asked the CAC to reconsider recording its meetings.

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Manager Crafton commented the minutes of the CAC meeting are a good indication of what exactly happens at those meetings. She said she thinks the CAC is doing due diligence to communicate what is going on at the CAC meetings. Manager Koch said he has no idea if the minutes accurately reflect what is happening. He said one picture is worth a thousand words, and if he has the recording it is worth more.

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**c. Receive Governance Committee Report (No meeting held)**

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President Ziegler said no meeting was held and there is no report.

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**d. Receive Audit and Finance Committee Report**

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Manager Duevel moved to receive the Audit and Finance Committee Report. Manager Crafton seconded the motion.

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Manager Koch asked for an explanation about the item on page 2 regarding the update on the per diem policy. He said it was not clear to him if the Committee made any recommendations and if so, on what basis the Committee is making recommendations. Mr. Jeffery said at this point the Committee has not put forward any recommendations.

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Manager Koch asked about the motion noted in the minutes regarding using 1099s and if the motion was adopted and what the basis is for using a form 1099.

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Manager Crafton said the Committee is planning to make a recommendation to the Board but has not made it yet.

107 Administrator Jeffery said the basis for the motion regarding using 1099s is the statewide  
 108 survey and the varied approaches watershed districts take between using 1099s and W-2s  
 109 and the ancillary benefits of using the 1099 approach.

110 Manager Koch said he has sent references from the IRS website because the apparent  
 111 position of the IRS set forth on its website is that Board managers are employees for  
 112 purposes of W-2s and that compensation is to be reported on Form W-2. He said it seems  
 113 to him the District needs some authority before deviating from that position and to use  
 114 1099s. Manager Koch said his mother always told him just because one person jumps off  
 115 a bridge it does not mean you should too. He said he does not care what percentage of  
 116 watershed districts use 1099s or does not use W-2s, there is going to be an official  
 117 position and he suggests the people at Minnesota Watersheds request a revenue ruling  
 118 from the IRS. He said if wishes were horses beggars would ride.

119 Manager Crafton said 1099s would allow the District to process per diems quicker and  
 120 would save the District money. Manager Koch said all too often managers make  
 121 decisions based on what they think is a good idea and ignoring the law. He said the Board  
 122 needs to know if there is a law about it.

123 Manager Koch said with 1099s the recipient is responsible for paying self-employment  
 124 taxes and with W-2s the employer is responsible for half and the employee is responsible  
 125 for the other half. He said if the District’s managers are W-2s and being treated as 1099s,  
 126 then basically the District is cheating the government. Manager Koch suggested the  
 127 District get as definitive an answer as possible from authorities before making a decision.

128 Upon a roll call vote, the motion carried 5-0.

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<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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**6. Consent Agenda**

132 President Ziegler noted all items were removed from the Consent Agenda.

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**7. New Business**

134 **a. Items Removed from Consent Agenda**

135 **i. Receive September Staff Report**

136 Manager Crafton moved to receive the September staff report. Manager  
 137 Pedersen seconded the motion.

138 Manager Koch said he thinks the District should review its rules in time for the  
 139 District’s review of the member city local surface water management plans in  
 140 order to be in a position to comment or require changes to any of the LSWMPs.  
 141 He said his understanding is there is a 10-year moratorium, meaning if the  
 142 District adopts rules, the District cannot force cities to make changes to their  
 143 plans except every 10 years.

144 Manager Koch commented about the zebra mussel and eDNA found in Lotus  
 145 Lake. He asked if there were zero veligers found in the District’s lakes or  
 146 streams. Josh Maxwell said the District conducts veliger sampling on all  
 147 District lakes and Carver County also conducts sampling. He reported the  
 148 District only found veligers on Lake Riley. Mr. Maxwell said Carvey County  
 149 found some veligers on Lotus Lake in the east lobe and did not find any on  
 150 Lake Anne.

151 Manager Koch asked if any treatment is planned for Lotus Lake. Mr. Jeffery  
 152 said no.

153 Manager Koch asked if there is a database for the District’s stewardship grant  
 154 program. Mr. Jeffery said yes, staff plans to present it at a Board workshop.

155 Manager Koch commented he thinks the District’s website needs a lot of work.

156 Manager Koch asked if items still remain to be recorded regarding the Middle  
 157 Riley Creek project. Administrator Jeffery said yes. Manager Koch said if in the  
 158 future the District does projects with private parties, the District should consider  
 159 including contract provisions to authorize the District to sign easements on  
 160 behalf of the landowner if the landowner refuses to do so within a certain period  
 161 of time or include a provision of going to court with them and they pay all the  
 162 costs.

163 Manager Crafton said at some point she would like the Board to receive more  
 164 information about the NPDES general construction stormwater permit regarding  
 165 water discharge. Administrator Jeffery said he can prepare a memo on that after  
 166 he studies it further.

167 Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes

Pedersen	Yes
Ziegler	Yes

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**ii. Receive September Engineer’s Report**

Manager Pedersen moved to accept the September Engineer’s Report. Manager Duevel seconded the motion.

Manager Koch asked how many acres of forest are in the watershed. Mr. Jeffery said he would need to look at the GIS to determine that. Manager Koch said he thinks the Board should know this before investing time in something that may be so small as to not be worthy of the District’s attention at this time given other matters such as the significant erosion on two streams in the watershed.

Manager Koch asked if the managers receive a Gannt chart of all the projects. Mr. Sobiech said yes, quarterly. Manager Koch said he would like to see the snapshot each month, even if project status does not change much month to month.

Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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**iii. Receive September Regulatory Report**

Manager Crafton moved to receive the September regulatory report. Manager Pedersen seconded the motion.

Manager Koch asked if the category “applications received” includes the first three listed. Administrator Jeffery said the permits received are not included in permits executed category. Administrator Jeffery said staff will separate out those two categories going forward. Manager Koch said he would like to see information on applications and permits closed out. He said he would like noncompliant permit issues to move to resolution.

Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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**iv. Approve Final Pay Application #9 for \$7,906.95 to Sunram Construction for Bluff Creek Tributary Restoration Project;**

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Manager Pedersen moved to approve the final pay application #9 for \$7,906.95 to Sunram Construction for Bluff Creek Tributary Restoration Project .

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Manager Crafton seconded the motion.

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Manager Koch moved to amend the resolution as follows: that the revised pay application provided by Administrator Jeffery to the Board of Managers be inserted into record of this meeting and upon Administrator Jeffery’s receipt of the revised recommendation by Barr Engineering and pay application by Sunram, the officers are authorized and directed to cause the sum of \$7,906.95 to be paid to Sunram in full payment of such revised payment application.

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Manager Pedersen and Manager Crafton consented to Manager Koch’s revision to the motion.

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Upon a roll call vote the motion to amend 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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Manager Koch asked for a 10-minute break. At 8:14 p.m. President Ziegler announced a 10-minute break.

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At 8:24 p.m. President Ziegler reconvened the meeting.

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**v. Approve Permit 2023-026 Café Zupas as Presented in the Proposed Board Action Section of the Permit Review Report**

Manager Crafton moved to approve Permit 2023-026 Café Zupas as Presented in the Proposed Board Action Section of the Permit Review Report subject to the conditions and stipulations set forth in the recommendation section of the report attached to the permit item in the meeting packet and resolve the determination by the Administrator that the conditions of approval have been affirmatively resolved and the Watershed District President or Administrator is authorized and directed to sign and deliver permit 2023-026 to the applicant on behalf of the Watershed District. Manager Pedersen seconded the motion.

Upon a roll call vote the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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**vi. Approve Permit 2023-055 Ridgewood Ponds Development as Presented in the Proposed Board Action Section of the Permit Review Report**

Manager Crafton moved to adopt the resolutions proposed in the District’s permit review application for Permit 2023-055 and resolving that the application for Permit 2023-055 is approved subject to the conditions and stipulations in the report attached to this permit item in the meeting packet and resolve that on the determination by the Administrator that the conditions of approval have been met and the Watershed District President or Administrator is authorized and directed to sign and deliver permit 2023-055 to the applicant on behalf of the Watershed District.

Manager Koch asked if the project eliminates a number of wetlands and replaces them with infiltration basins.

Mr. Sobiech said for this Permit 2023-055 Ridgewood Ponds, the project is not eliminating a wetland. He said the City of Minnetonka through its WCA authority has allowed the project to excavate out six inches of material from the wetland but the wetland will remain.

245 Manager Koch said he pulled this item off the agenda to bring up for  
 246 consideration the question of why the District is not buying this property. He  
 247 said that by purchasing this property, the District would be saving a wetland and  
 248 preserving property surrounding the wetland.

249 Upon a roll call vote the motion carried 5-0 as follows:

250

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

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252 **vii. Approve Permit 2023-056 Kinsley Development as Presented in Proposed**  
 253 **Board Action Section of the Permit Review Report**

254 Manager Crafton moved to approve Permit 2023-056 and resolving that the  
 255 application for Permit 2023-056 is approved subject to the conditions and  
 256 stipulations in the report attached to this permit item in the meeting packet and  
 257 resolving that on the determination by the Administrator that the conditions of  
 258 approval have been met, the Watershed District President or Administrator is  
 259 authorized and directed to sign and deliver permit 2023-056 to the applicant on  
 260 behalf of the Watershed District. Manager Pedersen seconded the motion.

261 Manager Koch pointed out that on page 9 of the report, the information under  
 262 findings No. 2 is a little different than what is presented in the other permit  
 263 request. He suggested the District have a template having to do with general  
 264 requirements, findings, and recommendations.

265 Manager Koch said a lot of units are being squeezed in to this property and if  
 266 the Board votes to approve this permit, it seems the Board is indicating it thinks  
 267 the District’s rules are sufficient to protect the watershed’s waterbodies from  
 268 runoff and all concerns addressed in the District’s rules.

269 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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viii. **Approve Resolution 23-060 Approving Watershed Stewardship Grant with Hackamore Brewery in the Amount of \$34,176 for the Installation of a Pervious Paver Patio and Native Plantings**

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Manager Pedersen moved to approve Resolution 23-060 Approving Watershed Stewardship Grant with Hackamore Brewery in the Amount of \$34,176 for the Installation of a Pervious Paver Patio and Native Plantings. Manager Crafton seconded the motion.

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Manager Koch said when he looked at the Board packet the only document posted for this item was the resolution. He said he believes the District needs to have all the information in the Board packet the day it is published or otherwise affirmatively notify if any other documents are added to the Board packet after the fact. He said he has issues approving this because he has not reviewed all the information.

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Upon a roll call vote the motion carried 4-1 as follows:

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

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ix. **Adopt Resolution 23-065 Authorizing the Expenditure of District Funds to Send up to Five Managers to the Minnesota Water Resources Conference**

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Administrator Jeffery said there is funding available in the District’s budget for all five managers to attend, including covering the costs of the per diems and parking. Manager Pedersen moved to Adopt Resolution 23-065 Authorizing the Expenditure of District Funds to Send up to Five Managers to the Minnesota Water Resources Conference. Manager Crafton seconded the motion. Manager

296 Pedersen and President Ziegler noted they are not available to attend the  
 297 conference.

298 Upon a roll call vote the motion carried 5-0 as follows:

299

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

300

301 **b. Accept September Treasurer’s Report**

302 Manager Crafton moved to table the September Treasurer’s report. Manager Duevel  
 303 seconded the motion. Manager Crafton said she noted two discrepancies in the report in  
 304 the new format. She said all the invoices and payables tied out.

305 Upon a roll call vote the motion carried 4-1 as follows:

306

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

307

308 **c. Resolution 23-061 Approving Payment of the Bills**

309 Manager Crafton moved to adopt Resolution 23-061 Approving Payment of the Bills.  
 310 Manager Pedersen seconded the motion.

311 Manager Koch said there is no provision for paying the interest and/or penalties for  
 312 failure to pay his per diem in the time prescribed by law. He said he is hereby  
 313 demanding payment of that interest and penalties in accordance with applicable law as  
 314 well as failure to pay the other payments set forth on his claims forms.

315 Manager Koch said he sent the request asking for information regarding the payment or  
 316 nonpayment on the amount put forth on his claims forms and he has not received that  
 317 and certainly not in a timely manner.

318 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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321 **d. Consider Permit 2023-012 Audubon Business Park Variance Request from**  
 322 **Rule B – Floodplain for Placement of Fill Within Floodplain**

323 President Ziegler moved to consider Permit 2023-012 Audubon Business Park Variance  
 324 Request from Rule B – Floodplain for Placement of Fill Within the Floodplain.  
 325 Manager Pedersen seconded the motion.

326 Mr. Sobiech explained the project is located on a 28-acre site and the applicant is  
 327 looking to construct two commercial buildings with associated streets and utilities. He  
 328 said six wetlands are currently on the site. He said two wetlands, #1 and #2, will be  
 329 preserved, and wetlands #3, #4, #5, and #6 will be filled and replaced under a WCA  
 330 replacement plan approved by the City of Chanhassen.

331 Mr. Sobiech reminded the Board of the District’s Rule K variance criteria, which requires  
 332 the Board of Managers to find that because of unique conditions inherent to the subject  
 333 property the application of rule provisions will impose a practical difficulty on the  
 334 applicant. Mr. Sobiech reviewed the specific criteria against which assessment of  
 335 practical difficulty is conducted.

336 Mr. Sobiech summarized the engineer’s analysis of the variance request against Rule K.  
 337 He said the project will provide a net increase of floodplain storage, which will be used  
 338 for stormwater management on the site. Mr. Sobiech said that because the proposed  
 339 project will reduce the site discharge volume and rate leaving the site relative to existing  
 340 conditions, the proposed project is not reasonably likely to cause offsite adverse  
 341 impacts. He pointed out the proposed project is not likely to adversely affect offsite  
 342 governmental services, water resources, flood levels, or neighboring properties because  
 343 the project provides a net increase of storage below the 100-year flood elevation and the  
 344 proposed variance only impacts the applicant’s property.

345 Mr. Sobiech explained that the technical measures incorporated into the project plan to  
346 alleviate the practical difficulty include the creation of compensatory flood storage  
347 volume in the wet detention basin and five infiltration basins to comply with the  
348 District's requirements, although not within the same floodplains. He said that routing  
349 the developed site runoff to the proposed stormwater management facilities will allow  
350 the runoff to be stored in the facilities, resulting in reduced site discharge as  
351 summarized in the rate control analysis. Mr. Sobiech stated that because the wetlands  
352 will no longer exist, the compensatory storage cannot be provided within the floodplain  
353 of the same waterbody.

354 Mr. Sobiech explained that the applicant has created the circumstances leading to the  
355 variances though it did so with the approval of another relevant regulatory body, the  
356 LGU (Local Governmental Unit) administering WCA. He summarized that the District  
357 Engineer finds there is adequate technical basis for the managers to rely on to grant the  
358 requested variance. Mr. Sobiech highlighted the District Engineer recommends the  
359 applicant revise the design of the wet detention basin to promote and establish wetland  
360 characteristics to offset the loss of some of the wetland and floodplain functions.

361 Manager Crafton said she cannot in good conscience approve this variance. She said  
362 compensatory storage is supposed to be done within the same floodplain. Manager  
363 Crafton said there is a great issue of climate impacts in terms of the interest of justice.  
364 She said projects need to allow more infiltration and have working hydrology to help  
365 recharge aquifers if nothing else.

366 Manager Koch said based on the engineer's analysis, the project plans to provide the  
367 same infiltration as the District requires, and if those are the District's rules, then those  
368 are the District's rules. He said the infiltration not taking place within the same  
369 floodplain is a minor issue, given that the LGU gets to decide if the wetlands get taken  
370 out.

371 Manager Pedersen commented that the fact the District does not have WCA authority  
372 takes that decision out of the District's hands. She said the project fills in 785 cubic  
373 yards on that site and she is wondering how many more of these projects will the  
374 District see.

375 Manager Koch said the applicant is meeting the District's rules. He said he does not  
376 think the floodplain element is sufficient basis to deny a variance and in his view the  
377 floodplain goes away because effectively the LGU approved the floodplain going away.  
378 Manager Koch said he thinks a good solution is for the applicant to add wetland  
379 characteristics to the pond. He said he thinks to not grant a variance would be arbitrary  
380 and capricious.

381 Manager Pedersen said she is concerned that the applicant is only putting down a seed  
382 mix and not any other plantings. She said the project proposes a lot of impervious  
383 surface.

384 Manager Koch said the Board just approved a permit for a project that constructs almost  
385 wall-to-wall impervious surface. He said he does not think the Board can toss this  
386 project and approve others. Manager Koch said if the Board does not like the District's  
387 rules, the Board needs to change the rules. He said permit applicants are entitled to the

388 benefits of the District’s rules. Manager Koch said the Board has some latitude with  
 389 variances but cannot be arbitrary and capricious. He said the Board has to be consistent.

390 Manager Crafton said on page 14 the engineer recommends the applicant revise the  
 391 design of the wet detention basin to promote and establish wetland characteristics, but  
 392 right now the applicant is not required to redesign it.

393 Mr. Smith reminded the Board there is a motion in front of the Board.

394 President Ziegler made a new motion to approve the variance for Permit 2023-012 and  
 395 requesting the permit applicant includes more vegetation and more detail on how they  
 396 will make the infiltration basins mimic wetland characteristics. Manager Koch seconded  
 397 the motion.

398 Manager Crafton said based on the variance exceptions she will vote against this motion  
 399 based on the District’s Rule K criteria 5 and 6.

400 Manager Koch said he believes the applicant has demonstrated the request for the  
 401 variance meets a substantial majority of the criteria established in the District’s rules for  
 402 approving a variance and it would be consistent with the Board’s past variance  
 403 approvals.

404 Administrator Jeffery asked if the applicant provided the District with any other site  
 405 layouts for this property. Mr. Sobiech said he recalls that alternative layouts were  
 406 submitted as part of the wetland submittal to the TEP. He said that submission was for  
 407 the WCA process and once the project plan was submitted to the District as part of the  
 408 District regulatory program there were not alternative layouts considered to avoid the  
 409 wetlands because the TEP had already decided the wetlands could be filled.

410 Administrator Jeffery said something the District could consider moving forward as it  
 411 discusses its rules is putting language into the floodplain rule similar to the District’s  
 412 Rule J that the applicant must consider other layouts if the constraint is of the  
 413 applicant’s own making.

414 Manage Koch moved to call the question.

415 Upon a roll call vote, the motion carried 4-1 as follows:

416

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

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e. **Approve Permit 2023-012 Audubon Business Park as Presented in the Proposed Board Action Section of the Permit Review Report**

Manager Koch moved to adopt the Resolution set forth on page 1 of the engineer’s report pertaining to Permit 2023-012 and upon approval the resolutions be set forth in the minutes. President Ziegler seconded the motion with the amendment of the addition of the recommended improvements to mimic the wetland. Manager Koch consented to President Ziegler’s amendment.

Upon a roll call vote, the motion carried 4-1 as follows:

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

[The resolutions set forth on page 1 of the engineer’s report pertaining to for Permit 2023-012 comprise:

Resolved that the application for Permit 2023-012 is approved, subject to the conditions and stipulations set forth in the Recommendations section of the attached report;

Resolved that on determination by the RPBCWD administrator that the conditions of approval of the permit have been affirmatively resolved, the RPBCWD president or administrator is authorized and directed to sign and deliver Permit 2023-012 to the applicant on behalf of RPBCWD.]

Manager Koch requested a 10-minute break. At 9:36 President Ziegler called for an eight-minute break.

At 9:44p.m. President Ziegler reconvened the meeting.

f. **Consider Permit 2023-022 CorTrust Bank Parking Lot Improvements Variance Request from Rule D Minimum Buffer Width Requirement**

President Ziegler moved to approve the variance for Permit 23-022 CorTrust Bank Parking Lot Improvements Variance Request from Rule D Minimum Buffer Width

447 Requirement with the recommendations from the engineer per the engineer’s report.  
 448 Manager Pedersen seconded the motion.

449 Manager Pedersen thanked the applicant for coming back with this revised variance  
 450 request.

451 Engineer Sobiech shared a PowerPoint slide “Permit 2023-022: CorTrust Bank Parking  
 452 Lot” and photographs of the site. He explained the applicant proposes to add a small  
 453 amount of fill in some areas and to provide compensatory storage in other areas such  
 454 that there is no floodplain variance needed. He said the applicant proposes to construct a  
 455 small stormwater pumping station to collect the stormwater and pump it up and  
 456 discharge it into an existing catch basin, which discharges into the existing stormwater  
 457 facility to provide for a stormwater treatment and rate control. He said the applicant  
 458 does not need a floodplain variance but the variance is related to the floodplain buffer  
 459 requirements.

460 Mr. Sobiech reported the proposed wetland buffer will have a minimum width of 0.1  
 461 feet, which is less than 1% of the required minimum from the entrance road. Mr.  
 462 Sobiech described the proposed buffer design for the areas in which the curb will be  
 463 disturbed and the runoff can get to the wetland. He said the variance also requests the  
 464 District grant the applicant the ability to reconstruct some of the imperviousness within  
 465 the minimum buffer width such that the facilities can function as intended.

466 President Ziegler asked if the amount of imperviousness will remain the same. Mr.  
 467 Sobiech responded there will be a slight reduction.

468

469

470 Upon a roll call vote, the motion carried 5-0 as follows:

471

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

472

473 g. **Approve Permit 2023-022 CorTrust Bank Parking Lot Improvements as**  
 474 **Presented in the Proposed Board Action Section of the Permit Review**  
 475 **Report**

476 Manager Koch moved to adopt the Resolution set forth on page 1 of the permit  
 477 application review for Permit 23-022 CorTrust Bank Parking Lot Improvements as  
 478 Presented in the Proposed Board Action Section of the Permit Review Report. Manager  
 479 Pedersen seconded the motion.

480 Mr. Sobiech said the applicant and engineer attended tonight’s meeting. Mr. Sobiech  
 481 thanked the applicant for getting get creative and coming back with a good solution.

482 Upon a roll call vote, the motion carried 5-0 as follows:

483

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

484

485

486 **h. Adopt Resolution 23-062 Affirming Trek Development Inc. Documents as**  
 487 **Trade Secret Information**

488 Mr. Smith said as one of the preconditions to proceeding to consider the assignment  
 489 agreement or the means by which the District is considering acquiring the Spring Road  
 490 properties, one of those conditions in the agreement is the District classify the  
 491 underlying transaction between Trek Development Inc. and the Standals as trade secret  
 492 information. He said Resolution 23-062 had been prepared to consider that condition.  
 493 He said he previously provided advice about this matter and if there is a desire for the  
 494 Board to discuss this matter in detail then he recommends the Board go into closed  
 495 session as the topic relates to one of the agreements to acquire real estate and under the  
 496 Open Meeting Law would be the basis to hold a closed meeting discussion.

497 Manager Koch said he is not sure closed session is appropriate but he has questions. He  
 498 said he believes he has authority to discuss this topic in open session but he is trying to  
 499 understand what is considered to be trade secret.

500 Manager Koch moved to go into closed session to have a discussion to find out at least  
 501 what the Board is talking about to determine the subject matter and how it might apply  
 502 to this case. President Ziegler seconded the motion.

503 President Ziegler said the Board will still have a public comment session after the Board  
 504 returns from closed session.

505 Upon a roll call vote, the motion carried 4-1 as follows:

506

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

507

508 At 10:01 p.m. the Board moved into closed session.

509 At 10:20 the Board reconvened the public meeting.

510 President Ziegler moved to adopt Resolution 23-062 Affirming Trek Development Inc.  
 511 Documents as Trade Secret Information. Manager Pedersen seconded the motion.

512 Manager Koch said this motion is asking the District to deem documents supposedly  
 513 provided to the District although no list has been provided to the Board to identify what  
 514 is identified as being trade secret, and the managers are proposing the Board approve  
 515 essentially a blank slate of documents provided to the District that are supposedly trade  
 516 secrets and the District allegedly would not be able to disclose to anyone. Manager

517 Koch said the next agenda item is regarding providing an assignment agreement, which  
 518 exactly relates to the documents that he assumes are going to be on this invisible list of  
 519 trade secret documents. He asked how the managers can do their jobs when the  
 520 managers do not have access to the documents and the public does not have access to  
 521 the documents.

522 Manager Koch said there has been no demonstration of what the documents are and no  
 523 demonstration that there have been reasonable efforts to maintain the confidentiality of  
 524 these documents. He said the managers have not been given any history or information  
 525 about to whom the documents have been disclosed about their nature. Manager Koch  
 526 said the Board has no idea if in fact one can derive independent economic value by it  
 527 not being known by someone else. He said from the information he has seen it will not  
 528 make any difference because Trek has pretty much sewed up this property indefinitely.

529 Manager Koch said he fails to see why these documents are trade secrets. He said the  
 530 District cannot deem something a trade secret because it either meets the qualifications  
 531 of a trade secret or it does not. Manager Koch said the Board’s adopting the proposed  
 532 resolution is a waste of time because the Board is not in a position to make that  
 533 determination.

534 Manager Koch said a much simpler agreement could be put in place and that totally  
 535 avoids the issue of documents and instead would be a straightforward document saying  
 536 Trek will pay \$5,700,000 if you deliver clear title. Manager Koch said this resolution is  
 537 too nebulous, does not cover the requirements of something being a trade secret, there is  
 538 no factual support for something being considered a trade secret, and he does not even  
 539 know what documents are being discussed and whether he has been given all the  
 540 documents.

541 Manager Crafton called the question.

542 Upon a roll call vote the motion carried 4-1 as follows:

543

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

544

545

546 i. **Adopting Resolution 23-063 Approving Assignment Agreement and**  
547 **Authorizing Execution of the Assignment Agreement (Board May go into**  
548 **Closed Session)**

549 i. **Public Comment on Adopting Resolution 23-063 Approving**  
550 **Assignment Agreement and Authorizing Execution of the**  
551 **Assignment Agreement (Board May go into Closed Session)**

552 Mr. Smith recommended a brief presentation of the action the District is  
553 considering with Resolution 23-063 whereby the District is acquiring rights to  
554 acquire the three parcels known as the Spring Road properties.

555 Mr. Smith reported the District has gone through a series of discussions over  
556 five to six months and the Board discussions have been in closed session. He  
557 said the District is now ready to present for the Board’s public action this  
558 proposed agreement with Trek Development whereby the District enters into an  
559 agreement with Trek for Trek to assign it rights to the three parcels of property  
560 to the District.

561 Mr. Smith said there are conditions before closing. He said conditions include  
562 the District going through a process to assure it has financing with Hennepin  
563 County to finance this acquisition and going through an orderly process to  
564 amend this as a project in the District’s plan and providing for detailed public  
565 hearings to take place some 60 days for now for the public to again comment if  
566 this kind of project belongs in the District’s Plan as an opportunity project and  
567 whether it should be ordered as a project of the District. Mr. Smith asked Mr.  
568 Pressman, the conservation consultant the District has retained, to, in general  
569 terms, describe the property being acquired and the process he has gone  
570 through.

571 Mr. Pressman described the process including being contacted by the District,  
572 reaching out to Trek Development who was seeking a buyer for the property,  
573 securing a property appraisal from Nicollet Partners, entering into negotiations  
574 with Trek Development, and coming up with the best transaction that both sides  
575 would agree to, which is the assignment agreement in front of the Board  
576 tonight. He said it is in the form of an assignment agreement because Trek  
577 Development has a contractual right to acquire the property and there is ease of  
578 administration and transaction cost savings by assigning the transaction to the  
579 District at closing and then having the District close directly with the Standals.

580 Mr. Pressman said the agreement includes a due diligence period that will allow  
581 the District to do additional due diligence work on title and environmental  
582 assessment and there is time for the District to line up financing and get  
583 regulatory approvals as well as time should the District wish to explore further  
584 the possible sale of a conservation easement to Hennepin County to help with  
585 the funding of the project.

586 Mr. Pressman said if the District approves entering the agreement and signs it,  
587 the District will pay some is earnest money, which is in most cases refundable.

588 He said if the District signs the agreement it will then have a 60-day feasibility  
589 period that the District has to determine that its due diligence is satisfied and the  
590 District wants to proceed. Mr. Pressman said closing is 30 days after the  
591 expiration of the due diligence period. He said the District has a one-time right  
592 to extend the time to closing by 60 days in order to finalize financing and/or  
593 regulatory approvals by paying an extra deposit as identified in the agreement.  
594 Mr. Pressman said the agreement includes conditions and default provisions.

595 Mr. Pressman said his recommendation is to approve the agreement and enter  
596 into it and then work to finish the feasibility period, double check the District  
597 does not have any concerns, and proceed to closing once the regulatory  
598 approvals and financing are in place.

599 Alex Selke, real estate attorney with Ballard Spahr, introduced himself, noting  
600 he works in all aspects of commercial real estate transactions. He said because  
601 the property is currently under contract and there is an existing purchase  
602 contract out there between TI holdings/Trek and the Standals, the District's best  
603 opportunity to acquire the property and ensure that it has contractual rights to  
604 obtain it is to work with TDI to take assignment of the existing contract. Mr.  
605 Selke said the assignment agreement provides the District with the most  
606 protections. He said the assignment will not happen until closing, so most of the  
607 contractual rights and obligations are directly with Trek.

608 Mr. Selke explained if the District needs to enact a 30-day extension to closing,  
609 beyond the 90 days, to finalize financing or its plan amendment, the District  
610 will need to pay an additional \$50,000 nonrefundable deposit.

611 Mr. Smith said the action in front of the Board is whether or not to enter into  
612 this agreement with Trek, which would launch a process and later there will be  
613 public hearings on amending the District's Plan and ordering the projects.

614 Madhura Patil asked what the process will be about how public comments will  
615 be addressed and how the public will know what comments were received. She  
616 asked how the public will know the progress of the feasibility report and what  
617 determination has been made. Ms. Patil asked where the public can get more  
618 information about that. Ms. Patil asked about what will be included in the  
619 Hennepin County conservation and preservation. President Ziegler said the  
620 Board might not have all the answers to questions this evening but will try to  
621 provide answers at a general time. Administrator Jeffery said to feel free to send  
622 him questions as well and he will try to respond.

623 Morgan Jacob of Carver said he recently volunteered to be president of Spring  
624 Valley Friends. He said he speaks for Spring Valley Friends in saying the group  
625 supports the District purchasing this property.

626 Manager Koch said as a member of the public it is his position that it is  
627 probably a great piece of property to preserve but purchasing the property is  
628 outside the scope of the powers of a watershed. He recommended people read  
629 state statute 103D.

630 Manager Koch said furthermore the financing that is being proposed is also  
631 outside the powers granted by 103D. He said this is not a necessary acquisition.  
632 He said it is too expensive. Manager Koch said the managers were told this  
633 acquisition will delay by several years a number of projects. He said before the  
634 Board decides about this agreement and before the public comment period,  
635 there should be a complete presentation as to the impact of this acquisition on  
636 projects already in the District's 10-Year Plan.

637 Manager Koch said doing this acquisition would further violate 103D and 103B  
638 because the cost would exceed the District's levy authorizations. He said there  
639 are multiple reasons why this is not an authorized transaction.

640 Manager Koch said this acquisition is too expensive per acre and other  
641 conservation partners will do other projects in which they get more bang for  
642 buck. He said there is no reason under the District's rules why this property  
643 needs to be acquired. Manager Koch said taxes will be raised by a minimum of  
644 9% and proposed budget increases, which the District is not even able to do,  
645 would lead to something like a 300% increase in taxes for something the  
646 District is not authorized to do.

647 Manager Koch said the Board should not be voting on this item now. He said  
648 the District should hold a hearing so everyone can get all the information to  
649 properly weigh in and ask questions. He said it is too late to go all the way  
650 down the path, pay money, perhaps additional deposits to the seller and not be  
651 able to close for many of the reasons he has set forth.

652

653 ii. **Adopting Resolution 23-063 Approving Assignment Agreement and**  
654 **Authorizing Execution of the Assignment Agreement (Board May go**  
655 **into Closed Session)**

656 Manager Pedersen moved to adopt Resolution 23-063 Approving the  
657 Assignment Agreement and Authorizing Execution of the Assignment  
658 Agreement. Manager Crafton seconded the motion.

659 Manager Koch said in addition to what he has already stated, he wants the  
660 people of Carver County to know they will be paying 40% of some \$6,000,000  
661 for acquisition of property for which they will receive no benefit and that will  
662 provide no benefit to the watershed and the waters in the district.

663 Manager Koch said the Board approved a permit to build some 20 or 30 houses  
664 on this property, and this shows acquiring this property is not necessary to  
665 protect this property under the District's rules. He said therefore purchasing this  
666 property is not necessary and not authorized under state statute 103D.

667 Manager Koch said the proposed funding mechanism violates Chapter 103D of  
668 the Minnesota Statutes. He said no funding mechanism has been proposed that  
669 meets that requirement and no one has come forward to put in money for  
670 funding the acquisition.

671 Manager Koch said he is against giving Hennepin County a conservation  
 672 easement for \$500,000 and that would essentially lock up the property forever.  
 673 He said at a minimum Hennepin County needs to pay the full market value if it  
 674 wants an easement on the entire property or needs to get an easement on a  
 675 portion of the property that is worth \$500,000.

676 Manager Koch said the acquisition blows the District’s levy and budget and is  
 677 not authorized under state statutes.

678 Manager Koch said there are other properties that have issues and the District  
 679 has not considered buying them. Manager Koch said there is no reason to buy  
 680 this property. He said under the District’s rules the District can adequately  
 681 protect water resources, which is what the District is tasked to do under state  
 682 statute. He said the statutes specifically say the District can only acquire  
 683 property that is necessary and the purchase of this property is not necessary.

684 Manager Koch said this agreement is way too complicated. He said it can be  
 685 simpler by Trek Development agreeing to give the District fee simple title.

686 Manager Koch said there has not been a presentation on the District’s projects  
 687 that would be delayed and by how long. He said voting on this agreement today  
 688 is premature. He said there is no reason to be in a hurry. Manager Koch said the  
 689 District should get the public’s opinion before making a decision. He said he  
 690 believes it would not be consistent with the District’s duty to the public to ram  
 691 forward with this project when in fact this project’s agreement was not even  
 692 posted with the Board meeting packet at the time the original resolution was  
 693 posted.

694 Manager Koch said the property acquisition project does not score as high as  
 695 projects the District already has in its Watershed Plan. He said the scoring of  
 696 the project was a self-fulfilling prophecy and his own scoring came in way  
 697 below the threshold of the District moving forward with the project.

698 Manager Koch said the public deserves an explanation and more information  
 699 before the District agrees to sign a document that will at minimum cost the  
 700 District \$25,000 plus an untold amount of money for services by Mr. Pressman,  
 701 Mr. Selke, and Mr. Smith.

702 Manager Crafton called the question.

703 Upon a roll call vote, the motion carried 4-1 as follows:

704

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

Pedersen	Yes
Ziegler	Yes

705

706

707

708

**j. Adopt Resolution 23-064 Authorizing Notification of Public Hearing on Plan Amendment and a Public Haring on Ordering the Project**

709

710

Manager Pedersen moved to Adopt Resolution 23-064. Manager Crafton seconded the motion.

711

712

Manager Koch moved to table this item. Manager Koch’s motion died due to lack of a second.

713

714

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718

Manager Koch said the proposal for a plan amendment is incomplete. He said it only covers a change to the plan for an acquisition, and the change in the table refers to another amount that is not addressed in the plan amendment. Manager Koch said the inclusion of the purchase goes beyond the District’s levy amount and if the District spends that amount the District will violate the law by spending more money than the District is allowed to.

719

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721

722

Manager Koch said the levy would be \$9,000,000, which would be three times the District’s normal levy amount. Manager Koch said the public can only imagine what this would do to their taxes. Manager Koch said moving the cost to 2024 would not matter because it would still violate the budget and levy the Board approved.

723

Manager Pedersen called the question.

724

Upon a roll call vote, the motion carried 4-1 as follows:

725

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

726

**8. Discussion Items**

727

**a. Board Room**

728 Administrator Jeffery said there are delays with the delivery of the tables due to a delay  
729 on the electronic components. He said he will see if the tables can be delivered without  
730 the electronics, which could perhaps be installed after the fact. Manager Koch  
731 recommended the Board wait until everything is set up to go back to in person meetings.

732 Manager Pedersen concurred with Manager Koch.

733 Manger Crafton said some committees really want to meet in person, so if the Board's  
734 delay does not delay the committees meeting in person, she is ok with the idea of  
735 waiting until everything is set up.

736 Mr. Smith clarified the resolution the Board adopted earlier in regard to the Covid  
737 situation was a finding that it was not prudent and feasible for all managers to meet in  
738 person as health wise it was not comfortable for all managers to meet in person. He said  
739 if there are committees in which this does not apply, meeting in person can be  
740 accommodated.

741 Administrator Jeffery said the interactive meeting technology is up and running and  
742 fully functioning.

743  
744 President Ziegler said the Board is not proposing at this time to hold the Board meetings  
745 in person and Administrator Jeffery will keep the Board informed about how the testing  
746 of the technology is going.

747

748 **b. Workshop Schedule**

749 Administrator Jeffery said the December workshop falls on December 21. The  
750 managers indicated their availability to attend the December 21<sup>st</sup> workshop. He said  
751 upcoming workshop topics include EHAP and the Governance Manual. Manager Koch  
752 asked staff to provide the managers with a 2024 workshop schedule at the December  
753 workshop. Administrator Jeffery said staff can provide at least a good outline of a  
754 workshop schedule at the December workshop.

755

## 9. Member Reports

756 **a. Manager Reports**

757 Manager Koch said he thinks the Board did not fulfill its fiduciary obligation with  
758 respect to the three resolutions regarding Noble Hills. He said he does not believe the  
759 District provided proper information in advance. He said whether required or not the  
760 District should have provided a full opportunity for people to see all the documentation  
761 and should have been given a presentation on the schedule. Manager Koch said the  
762 District should have made clear what was going to be discussed. He said all of the  
763 information was not timely provided. Manager Koch repeated his statement regarding  
764 his manager report from last month and said he has seen no improvement in any of the  
765 items he raised.

766

767 **b. Administrator Reports**

768 No administrator report.

769

770 **c. Legal Counsel Reports**

771 No legal counsel report.

772

**10. Upcoming Board Topics**

- 773 • EHAP Workshop

774

**11. Upcoming Events**

- 775 • Gravel Bed Tree Giveaway, 10/5/23

- 776 • Soil Health Walk-shop, 10/7/23

- 777 • Cycle the Creek, 10/7/23

778

**12. Adjournment**

779 Manager Pedersen moved to adjourn the meeting. Manager Crafton seconded the motion.

780 Upon a roll call vote, the motion carried 5-0:

781

<i>Manager</i>	<i>Action</i>
Crafton	Yes
Duevel	Yes
Koch	Yes
Pedersen	Yes
Ziegler	Yes

782

783 The meeting adjourned at 11:20 p.m.

784

785

786

787

Respectfully submitted,

788

789

**790**

**Dorothy Pedersen, Secretary**