

MEETING MINUTES

Riley-Purgatory-Bluff Creek Watershed District

June 2, 2021, RPBCWD Board of Managers Workshop and Monthly Meeting

PRESENT:

Managers: Jill Crafton, Treasurer

Larry Koch

Dorothy Pedersen, Vice President

Dick Ward, President

David Ziegler, Secretary

Staff: Amy Bakkum, Administrative Assistant

Zach Dickhausen, Water Resources Technician II

Liz Forbes, Grant Coordinator

Terry Jeffery, Interim District Administrator and Watershed Planning Manager

Eleanor Mahon, Education and Outreach Coordinator

Josh Maxwell, Water Resources Coordinator

Louis Smith, Attorney, Smith Partners

Scott Sobiech, Engineer, Barr Engineering Company

Other attendees: Jeff Abrahamson Teresa Halonen*

Calvin Alexander* Greg Hawks*

Pat Andrican* Elizabeth Henley

Miel Arredondo* Paul Heuer, Pulte Homes*

Kim Behrens* Susu Jeffery*

Sue Bennetts* David Klopp*

Jeff Borowiak* Seth Loken*

Justin Blum* Dean Lotter*

Brinkley* Peter Loyle*

Briana Crusan* Madhura*

Chesney Engquist* Jesse Mercado*

Elaine Evans* Rebecca Prochaska*

Liz Forbes Rod Rue*

Heidi Groven*

**Indicates attendance only at the Regular meeting*

Note: this workshop and meeting were held remotely via meeting platform Zoom in accordance with the District's procedures in response to state COVID-19 actions, mandates, and guidance.

1. Workshop: 10-Year Plan Review

1 Interim Administrator Jeffery said this workshop is to discuss the District's 10-Year Plan project
2 prioritization metrics and benefits and four approaches staff has been discussing internally. He
3 reviewed the nine project benefits considered as part of the District's project prioritization
4 process for the 10-Year Plan:

- 5 •District Goals
- 6 •Sustainability
- 7 •Volume Management
- 8 •Pollutant Management
- 9 •Habitat Restoration
- 10 •Shoreline/Streambank Restoration
- 11 •Watershed Benefit
- 12 •Partnership Opportunities, and
- 13 •Public Access/Education

14 Interim Administrator Jeffery asked for feedback on whether any of these benefits should be
15 removed from the consideration and prioritization process. He gathered managers comments.

16 Interim Administrator Jeffery asked for feedback on whether any project benefits should be
17 redefined. There was manager discussion about points he raised, including points about pollutant
18 management, habitat restoration, shoreline/streambank restoration, and watershed benefit.
19 Managers and staff talked about soil health and whether it should be included as part of habitat
20 restoration or as an additional project benefit. Interim Administrator Jeffery said staff will bring
21 something back to the Board about soil health.

22 The group talked about whether project benefits should be added, such as a social vulnerability
23 metric, protection of sensitive or at-risk habitats, project logistics, or alignment with cities'
24 Capital Improvement Programs. Interim Administrator Jeffery recommended getting up and
25 running again a subcommittee on Diversity and Inclusion to meet and bring something to the
26 Board.

27 Interim Administrator Jeffery raised the question of what the District plans to do about marginal
28 or high-risk areas that will be under development pressure. He brought up ideas such as acquiring
29 property or partnering with MN Land Trust. Several managers commented about approaching
30 these possible projects as opportunity projects. Regarding alignment with cities, the managers
31 talked about making sure cities are aware of the District's Cost-Share program.

32 Interim Administrator Jeffery thanked the managers for their feedback and said staff will prepare
33 something based on the comments provided and will bring it back in front of the Board at its next
34 regular meeting, after which the CAC and TAC will be engaged.

35 The workshop concluded at 6:06 p.m.

36

2. Call to Order of the Regular Meeting of the RPBCWD Board of Managers

37 President Ward called to order the Wednesday, June 2, 2021, Board of Managers Regular
38 Meeting at 7:01 p.m. The meeting was held remotely via meeting platform Zoom.

39

3. Introduction of New Staff

40 Interim Administrator Jeffery introduced new District staff member Eleanor Mahon, Education
41 and Outreach Coordinator. Ms. Mahon shared about her previous experience including her
42 education in conservation biology and environmental education and her previous professional
43 roles.

44

4. Approval of Agenda

45 Manager Koch requested removing Consent Agenda items 8d – Accept 2020 Audit and Authorize
46 Staff to Distribute, and 8e – Approve Permit #2021-014 St. Hubert School Water Quality
47 Improvement Project with staff Recommendations. He requested adding item 9f – Authorization
48 of managers and staff to attend seminars put on by the Minnesota Department of Administration
49 regarding the Minnesota Data Practices Act and the Open Meeting laws.

50 Manager Ziegler moved to approve the agenda as amended. Manager Pedersen seconded the
51 motion. Upon a roll call vote, the motion carried 5-0 as follows:

52

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

53

5. Matters of General Public Interest

54 President Ward explained the procedures for speaking during the matters of general public
55 interest and stated comments can also be submitted in writing to District Interim Administrator
56 Jeffery.

57 Ms. Sue Bennetts of 9992 Indigo Drive, Eden Prairie, commented she has been a resident for 30
58 years and as a concerned citizen she wants to protect the Lower Riley Creek area from the
59 negative environmental impacts of the Noble Hill project. She said the project will make it more
60 difficult to restore the creek. Ms. Bennetts said more than two million dollars have been spent on
61 Lower Riley Creek stabilization projects, which is alarming to her since the MPCA has issued a
62 report showing the creek water quality has declined due to increasing phosphorous levels. She
63 raised her concerns about long-term effects of the project on this area of Eden Prairie, effects
64 including soil erosion, storm water runoff, the Noble Hill retaining walls, grading the project
65 would require, and impacts from removing 455 mature trees. Ms. Bennetts said one of the City of
66 Eden Prairie Council Members stated that the District, as an independent body, would make sure
67 the Council did not make any mistakes on the Noble Hill project. Ms. Bennetts commented that
68 without an EAW study, it isn't possible to understand the long-term effects of the project on this
69 area. She said she is asking the District Board to delay the permit process for this project, so she
70 has time to pursue an EAW appeal. She said she would like to work with the District to ensure the
71 safety and protection of this area.

72 Professor Calvin Alexander, professor emeritus at the University of Minnesota and resident at
73 4216 11th Avenue S., Minneapolis, shared PowerPoint slides on the topic of slope stability. He
74 commented that a slope stability investigation of the Noble Hill Project was recommended in a
75 Braun Intertec report. Professor Alexander read an excerpt of item C.1.e. of the report, addressing
76 slope stability and recommending that "a slope stability analysis be performed to estimate the
77 safety factor of the proposed slopes to evaluate that the safety factor is adequate." He commented
78 that the soils on the north side of the Minnesota River are subject to collapse, and he shared
79 images of slope failure in the Richard T. Anderson Preserve. Professor Alexander talked about
80 the effects of cutting into the toe of a slope, the delicate equilibrium of the site and the
81 significance of the presence of the springs at the site. He said he thinks slope stability needs to be
82 investigated further before the project process proceeds. Professor Alexander said he is open to
83 answering questions if they are submitted to him.

84 Mr. Justin Blum of 6155 Church Road, Shorewood, provided a summary of his professional
85 experience as a hydrologist and stated he was the Chair and Treasurer of the Hennepin County
86 Conservation District for four years. He said he has seen repeatedly that some developers submit
87 plans, which after getting approved and projects getting constructed, they walk away with the
88 profits and the infrastructure that's turned over to the City or local government to maintain have
89 problems. Mr. Blum said it has been his experience that those problems take a minimum of five
90 years to get addressed. He requested the District Board delay approving the project permit so
91 additional information can be gathered. Mr. Blum said the landscape of the proposed Noble Hill
92 project site is prone to problems.

93 Mr. Ken Brown of 6840 Parkview Lane, Eden Prairie, said his experience with slope stability
94 comes from working as a geologist with the U.S. Forest Service. He said he had wondered why
95 Gonyea Homes decided not to build on this site, and he talked about his review of the
96 geotechnical analysis conducted by Braun Intertec for Gonyea Homes and also submitted by
97 Pulte. Mr. Brown said he thinks the risks and costs made the project prohibitive for Gonyea, and
98 he listed the reasons he thinks this. He commented removing the toe of the slope would create a
99 significant stability problem and added that a retaining wall is only as stable as what it is built

100 upon. Mr. Brown said Braun Intertec recognized this, which is why Braun recommended a slope
101 stability analysis, which didn't occur. He talked about the soils on the site and went into more
102 detail about Braun Intertec's recommendations. Mr. Brown said Gonyea Homes pulled out of the
103 project and shared his opinion on why Gonyea pulled out. He said Pulte provided the Gonyea
104 report prepared by Braun to the Eden Prairie City Council, but even through Braun said their
105 evaluation shouldn't be used for another project proposal, the City of Eden Prairie accepted it.
106 Mr. Brown said retaining walls have a limited life, and Noble Hill project lacks data.

107 Ms. Briana Crusan of 2910 Thomas Avenue North, Minneapolis, commented her biggest concern
108 is that decisions about this project are being made based on a fourteen-year-old EAW. She noted
109 the EAW was prepared for a roadway project, not a development. Ms. Crusan said she is
110 concerned that the 2007 EAW is inadequate to address the impact of a new housing project. She
111 remarked the Riley Purgatory watershed is 22% covered by impervious surface, and stream
112 quality impairment begins when the percentage of impervious surface area reaches 10%.Ms.
113 Crusan commented that almost \$2,000,000 has been spent already to try to repair the damage that
114 has been done. She encouraged the Board to delay the release of the permit to Pulte while she and
115 others investigate what is going on and get a new EAW. Ms. Crusan said she and a group are
116 going into a legal process to appeal the City Council's decision, and she requested the Board to
117 delay the Board's decision while her group goes through the District court proceeding. She
118 requested the Board invest in prevention as it is significantly less costly than investing in
119 recovery.

120 Ms. Chesney Enquist of 4549 41st Avenue South, Minneapolis, said she is here to speak about her
121 concerns on slope analysis and discussing the deforestation, which impacts the potential for
122 erosion and landslide. She said when tree boughs are removed and soil microbes are disrupted,
123 there is an increased potential for erosion and landslide. Ms. Enquist said she found a 2-D model
124 that shows how this works, and she will send it to the Board. She said sheer tensile strength has
125 not been considered as part of this proposal in terms of the slope analysis in terms of the
126 vegetation and soil organisms in the hillside. Ms. Enquist said as part of her oath as a mechanical
127 engineer she is speaking out about her understanding and knowledge to protect others, and the
128 slope analysis needs to be done. She said she would try to figure out the hydrological approach
129 that the Board would want to consider when taking on the liability of the City's decision to
130 rezone and develop because there are many environmental factors and water quality factors in the
131 EAW that the City Council is asking the watershed to burden in terms of information and purview
132 that may not be within the watershed's jurisdiction and focus regarding code and permitting. Ms.
133 Enquist spoke in favor of the Board delaying the project permit approval so she and her group can
134 go through the legal appeal process and protect everyone in terms of authority, accountability,
135 and accuracy.

136 Dr. Elaine Evans of 1171 Edmund Avenue, St. Paul, spoke about the rusty patched bumblebee,
137 which is an endangered species and has been documented to be highly likely to be in the area of
138 the proposed Noble Hill project due to the habitat. She said she is a researcher at the bee lab at the
139 University of Minnesota and has worked studying this bee for a long time. Dr. Evans said the
140 construction would most likely be lethal to bees present in the proposed project area, and this bee
141 is already at risk of extinction. She explained the rusty patched bumblebee has already
142 disappeared from 95% of the places it used to be found, and the area around the Twin Cities is

143 one of the last havens for this species Dr. Evans asked the Board to consider the impact of the
144 project on this endangered species that's in need of protection in this area. She said people can
145 contact her directly with any questions.
146

147 Ms. Miel Arredondo of 2214 Lincoln Street Northeast, Minneapolis, acknowledged that many of
148 the people on the meeting were on Dakota territory. She commented on Pulte's environmental
149 record and her concern for past permit violations. She asked the Board to postpone issuing a
150 permit and allow for due process for the EAW appeal. Ms. Arrendondo said in conversation with
151 Dr. Waski from the University of Wisconsin, an expert in earth science, he asked if Pulte is using
152 the latest adaptation strategies for the development or are they relying on stormwater and erosion
153 management methods developed for the last century. She said the current erosion concerns for the
154 proposed Noble Hill project are amplified by climate change and rainfall, evident in Eden Prairie
155 with the 2014 Bur Ridge home landslide, gas leak, and neighborhood evacuation, induced by
156 stormwater erosion. She provided details about that event, noting it occurred only four miles the
157 proposed Noble Hills site. Ms. Arrendondo stated the event occurred because the climate change
158 induced an above-average rainfall, one-month's-worth in one day, She said climate change plus
159 slope failure is a viable concern at Noble Hill and in conjunction with Pulte Homes seeming
160 inability to conduct due diligence and best management practices, she questions Pulte Homes'
161 track record and integrity in carrying out any permits. She asked the Board to postpone issuing a
162 permit until a slope stability analysis can be completed as recommended by experts. Ms.
163 Arrendondo commented the Dakota Territory ancestral cemeteries are all within the region
164 around the Noble Hill site.

165 Mr. Justin DeAngelo of 112366 Idle Circle in Chaska, Minnesota, commented one of the aspects
166 of denial for more study was a study Pulte conducted for rare plants in the area dated April 27. He
167 said April had 10 days below freezing, so there was not enough time for endangered plant species
168 to show up and be easily recognizable. Mr. DeAngelo commented that is another reason why the
169 Board should delay permits to allow more study.

170 Ms. Madhura of Shakopee said Sue and Brianna covered the topics she was planning to raise in
171 her comments.

172 Ms. Rebecca Prochaska of Porchlight Lane, Eden Prairie, commented there is a line between
173 what is in the District's authority and what is not. She said it looks like a lot of the serious
174 concerns around slope and cumulative effects may not be. Ms. Prochaska asked the Board to
175 delay issuing the permit because there is a big misunderstanding as it relates to the City Council's
176 understanding of the District's responsibilities and roles. She read excerpts from the City Council
177 meeting minutes regarding the point that the District is an independent body that will review the
178 project. Ms. Prochaska asked the Board to postpone its action on the permit until the EAW appeal
179 and to conduct a slope stability analysis to determine risk. She said she is hearing slope stability is
180 a unanimous concern, and she thinks it would be prudent for the Board to check budget and see if
181 it would make sense to work with citizens groups or experts to conduct a slope stability analysis
182 would make sense.

183 Mr. David Klopp of 3715 Cedar Lake Road South, Minneapolis, and the Cedar Lake Park
184 Association, commented the Cedar Lake Trail was the first greenway trail in America. He said it

185 runs into the Minnesota Bluffs Trail, which collapsed under a landslide and was closed for years.
186 He said he lives by the Great Medicine Spring in Wirth Park. Mr. Klopp said the spring is
187 contaminated with arsenic and high levels of bacteria and good water quality is not attainable. He
188 said across the river from the RPBCWD is Eagle Creek, which is the last trout stream on the
189 Minnesota River. Mr. Klopp said the watershed managers between Savage and Shakopee new the
190 value of that water and that trout creek. He said Boiling Springs was a unique geological asset to
191 the community. Mr. Klopp said the city is going to grow, and it needs areas like this. He asked
192 everyone to think about how many areas are like this where one can go fill up a jug of great
193 tasting spring water without paying a nickel. Mr. Klopp said he is a citizen activist and has a
194 history of going to the legislature, doing bonding bills, and has had successes like with Eagle
195 Creek. He commented on working with the managers of the watershed between Savage and
196 Shakopee, and funding including a grant. Mr. Klopp talked about the idea of Pulte putting fewer
197 homes in the development proposal and leaving a greater amount of undeveloped area around the
198 spring.

199 Ms. Susu Jeffery, founder of Friends of Cold Water, said Cold Water was one of the last
200 accessible springs in Hennepin County. She said the spring is no longer accessible. She described
201 the status of other area springs, noting the Frederick Miller Spring is the last of the free good
202 water access. Ms. Jeffery displayed a map from DNR landslide inventory indicating landslides
203 along the Minnesota River slippery ridge area. She commented Pulte Homes will not guarantee
204 the retaining wall, and it will be the responsibility of the homeowners to sustain the wall. Ms.
205 Jeffery said she thinks if the wall were a good wall, Pulte Homes would guarantee it. She said the
206 fact that Pulte Homes isn't going to guarantee the retaining wall is a big no-no for her. She asked
207 the Board to consider her points.

208 Mr. Jeff Abrahamson stated he represents the Standahl family who owns the property being
209 discussed. He said he resides at 631 Arcade Street, St. Paul, Minnesota. He said the Standahl
210 family respects the Board and its decisions and all the individuals here to speak tonight. Mr.
211 Abrahamson said the point Ms. Prochaska raised about the Board's jurisdiction and purview is
212 correct, and many of the comments shared tonight are not within the Board's jurisdiction or
213 purview. He asked the Board to rule within its jurisdiction and purview. Mr. Abrahamson said the
214 Standahl family has owned the property since 1977 and have been good stewards of the property
215 including the area that abuts the Riley Creek spring. He said the family has worked diligently
216 with Pulte Homes to put property protections in place while allowing the development to go
217 forward. Mr. Abrahamson said for the last 20 years, the Standahl family has looked at this
218 property as retirement for the family. He provided details about the previously considered
219 development project by Gonyea Homes, explaining the company didn't pull out because of
220 concerns about landslides. He said Gonyea Homes pulled out because of everything going on
221 regarding the pandemic. Mr. Abrahamson said the Standahls have been delayed well over a year
222 from achieving their retirement. He said everyone commenting this evening has asked the Board
223 for a delay, and these requests were raised in front of the Eden Prairie City Council on May 4.
224 Mr. Abrahamson said he understands people may not like the Council's ruling, but the watershed
225 is not the place to relitigate those issues. He said the Board delaying its obligation to allow people
226 to seek legal recourse isn't the Board's jurisdiction or venue. Mr. Abrahamson stated his clients
227 asked him to be here tonight to ask the Board to rule on the rules, regulations, and requirements

228 that the Board rules on. He said there are legal ramifications if the project is delayed another 30
229 days, because it could cause his clients and Pulte Homes to miss their closing. He asked the
230 Board to follow through within its jurisdiction and purview to go ahead and ultimately do the
231 work the Board is asked to do.

232 Ms. Prochaska responded to Mr. Abrahamson and commented the reason she is here is because
233 the City Council did not address these serious concerns and said it was under the watershed's
234 purview to look at these things, which he just said it isn't. She said this is a problem, and an EAW
235 is needed to sort it out. Ms. Prochaska said the project can't be pushed through when there is
236 confusion over the impacts and who has responsibility.

237 President Ward reiterated that additional comments can be submitted to the District in writing to
238 Interim Administrator Jeffery.

6. Reading and Approval of Meeting Minutes

239 a. May 5, 2021, RPBCWD Board of Managers Regular Meeting, Including Continuance

240 Manager Pedersen noted the word "it" should be removed from line 31, on line 56 revise
241 the word comments to comment, on line 64 remove the word "the" before the word
242 "checklists", and on line 353 add the missing 0 to \$5,000. Manager Crafton said the
243 words "stated the" should be deleted on line 255, and the words "of way" should be added
244 on line 263, so the phrase reads "right of way." President Ward noted on line 109 of the
245 meeting continuation, the words "by Manager Koch" should be added, so the sentence
246 reads, "...comments provided by Manager Koch in previous Board meetings..."

247 Manager Ziegler moved to approve the minutes of the May 5th Board of Managers
248 Regular Meeting and meeting continuance. Manager Pedersen seconded the motion.

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

250

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

251

7. CAC

252 Ms. Kim Behrens stated the CAC report includes two items regarding the Noble Hill project. She
253 said four of the individuals here tonight presented at the CAC meeting. Ms. Behrens reported the

254 CAC passed a motion to recommend the Board delay its decision on the Noble Hill project permit
255 as statutorily allowed to give citizens petition time to go through the appeal process through the
256 District Court. She reported the CAC passed a second motion to ask the Board to direct District
257 staff to compile spring and seep data for the lower reaches of Riley, Purgatory and Bluff Creek to
258 input into the Minnesota DNR's spring inventory. She reported on other items discussed at the
259 meeting, including the District's 10-Year Plan. Ms. Behrens said a survey of CAC members is
260 being conducted to find out interests of the group. She said at least two CAC members are
261 interested in participating in the District's strategic planning process.

262 President Ward said he will attend the CAC's June meeting as the Board representative.

263

8. Consent Agenda

264 President Ward reported the May Construction Report isn't yet available, so isn't part of today's
265 Consent Agenda. Manager Ziegler moved to approve items A - Accept May Staff Report, and B-
266 Accept May Engineer's Report, on the Consent Agenda. Manager Pedersen seconded the motion.

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

268

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

269

270

9. Action Items

271 a. Items Pulled from Consent Agenda

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273 i. **Accept 2020 Audit Report and authorize staff to distribute**

274 Manager Koch stated he presented the auditors with several pages of issues, to
275 which he received an acceptable response to half of the issues he raised. He said
276 several important issues remain to be addressed, and he listed the issues.

277 Manager Koch moved to lay this item over to a follow up meeting before the
278 District must submit it and ask the auditors to respond to his questions.

279 President Ward, Interim Administrator Jeffery, and Attorney Smith confirmed
280 the District needs to submit the audit by June 30. President Ward seconded the
281 motion.

282 Manager Pedersen asked Treasurer Crafton about her opinion of the audit
283 report. Manager Crafton said she had some of the same concerns Manager Koch
284 raised. She said she doesn't think the issues are significant and the audit could
285 be submitted as is, but it would be worth the time to clarify some of the
286 questions Manager Koch has raised. Manager Ziegler made the friendly
287 amendment that the Board direct Administrator Jeffery to set up the meeting.
288 Manager Koch and President Ward accepted the friendly amendment. President
289 Ward made the friendly amendment that Manager Crafton and Manager Koch
290 interact with the auditor to get the Board's questions answered. Managers Koch
291 and Ziegler agreed to the friendly amendment.

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

293

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

294

295

296 ii. **Approve permit #2021-014 St Hubert School Water Quality** 297 **Improvement Project with staff recommendations**

298 Manager Koch asked for more details about the project, and Interim
299 Administrator Jeffery provided them. Manager Koch moved to approve permit

300 #2021-014 to adopt the resolution based on the staff recommendations in the
301 staff report in the Board packet. Manager Ziegler seconded the motion.

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

303

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

304

305 **b. Accept April Treasurer’s Report**

306 Manager Crafton stated the report has been reviewed in accordance with internal
307 controls and procedures. She moved to accept the Treasurer’s Report. Manager Ziegler
308 seconded the motion. Manager Koch asked for more details about the payment to
309 Freshwater Scientific and the payment to Houston Engineering. Treasurer Crafton and
310 Mr. Maxwell provided more information about the invoice from Freshwater Scientific.
311 Manager Koch said his understanding is the District doesn’t have anything budgeted for
312 the database work for this year. Manager Koch asked if the Board should look to move
313 money out of its reserve to cover the permit, the grant database, and excess professional
314 services cost. Interim Administrator Jeffery said a discussion about the best path
315 forward can be part of the Board’s agenda for its July meeting.

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

317

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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c. Approve Paying of Bills

Manager Crafton moved to pay the bills. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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324

d. Authorize Advertisement for Bids for Pioneer Wetland Restoration Project

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Interim Administrator Jeffery reminded the Board the District has a BWSR grant for this work. He displayed proposed plans for the project, showing the grading and utility plans and the restoration plan. He reported the engineer’s opinion of probable construction cost based on the final design configuration is \$468,000, noting it’s a \$100,000 reduction in price compared to the engineer’s opinion of probable cost at the feasibility stage. Interim Administrator Jeffery stated the annual total phosphorous removal based on final design is 4.2 pounds per year, the final design annual cost per pound of total phosphorous removed is \$3,710 per year. He reviewed the anticipated project schedule.

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Interim Administrator Jeffery asked the Board to authorize staff to solicit bids. There was discussion about the restoration plan. Manager Ziegler moved to authorize staff to go out for bids for the Pioneer Wetland Restoration Project. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

338

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

339

340 **e. Approve Permit 2021-012 Nobel Hill with Staff Recommendations**

341 Engineer Sobiech displayed slides and indicated on a map where the proposed project is
342 located. He described the current site and the proposed project, noting the proposed
343 project is on the east side of Riley Creek and the Fredrick Miller spring is on the west
344 side of the creek. He went through the permit review summary and explained the
345 engineer's two permit-specific conditions and stipulations, including the applicant needs
346 to enter into a maintenance declaration and have it recorded on the property.

347 Engineer Sobiech summarized the Engineer's recommendation, which is approval of the
348 permit contingent upon:

- 349 • Continued compliance with General Requirements
- 350 • Financial Assurance in the amount of \$150,030
- 351 • Applicant provides documentation demonstrating the necessary land-use rights
352 have been obtained for the proposed activities within the right of way
- 353 • Applicant provides name and contact information of the general contractor
354 responsible for erosion and sediment control at the site
- 355 • Additional soil investigation will be needed to verify adequate separation to
356 groundwater
- 357 • Receipt in recordation of a maintenance declaration for the stormwater
358 management facilities and buffers. Drafts of any and all documents to be
359 recorded must be approved by the District prior to recordation.

360 Manager Ziegler asked Engineer Sobiech if given the questions raised today about the
361 project, if he would change any recommendations. Engineer Sobiech responded that
362 when looking at the permit with respect to the regulatory program and the criteria, the
363 project is consistent and compliant with the criteria the way they are established in the
364 regulatory program today.

365 Engineer Sobiech responded to questions. Manager Koch described his concerns about
366 the slope and said he would like legal to weigh in on the extent of the District's rules
367 and requirements. Manager Koch commented he doesn't have enough data to make a
368 decision. President Ward asked if an EAW has been ordered. Interim Administrator
369 Jeffery said the City of Eden Prairie decided there is enough data that it's not necessary
370 to move forward with an EAW.

371 Managers commented about the steep slope on the proposed project site and their
372 concerns about slope failure and the lack of a slope stability analysis. Manager Pedersen
373 said she doesn't think the Board has enough information at this point to move forward.
374 President Ward concurred and stated he is concerned about the high-risk erosion area so
375 close to the stream. He said he would like to see a slope stability analysis. Manager
376 Crafton talked about information Dr. Alexander, who commented tonight, presented at
377 the District's CAC meeting, including he recently walked the proposed project site and
378 found 12 springs that had not been previously identified to submit to the DNR spring

379 inventory. She said there isn't enough information about what's below the surface, and
380 she's concerned about what the removal of trees will do to the soil stability. Manager
381 Crafton said the Board should delay its decision on the permit for 60 days to allow the
382 citizen petition to go to District Court and get a ruling given the Board doesn't have
383 adequate information. Manager Pedersen agreed.

384 Manager Ziegler said the presentation to the city indicated which trees were being saved
385 and which trees were being removed, which would be useful information for the Board
386 to have.

387 Manager Koch remarked the citizens' petition isn't this Board's bailiwick, and instead
388 the District needs adequate information to determine application of the District's rules.
389 He said he doesn't want that hillside filling up Riley Creek. Manager Koch said the
390 Board needs additional data and then advice of its legal counsel regarding application of
391 the District's rules. He said he supports extending the District's review of the permit
392 application based on his comments.

393 Manager Koch moved to formerly approve an extension of 30 days direct staff to gather
394 the information mentioned and re-evaluate and get the advice from counsel. Manager
395 Crafton seconded the motion and made the friendly amendment to extend for 60 days.
396 Manager Koch accepted the friendly amendment.

397 Mr. Heuer of Pulte Homes stated he will address misstatements he has heard presented
398 this evening. He said the previous applicant, Gonyea Homes, didn't withdraw due to
399 their fear of the site's slopes but due to the pandemic. Mr. Heuer stated the geotechnical
400 report for Gonyea Homes proposed project was created for Gonyea Homes' plan, which
401 had steeper slopes than Pulte's plan. He said it is clear from comments tonight that this
402 wasn't known. Mr. Heuer said Gonyea Home's plan included slopes at a 2:1 gradient,
403 and Pulte Home's plan includes slopes no steeper than 3:1, which is a huge difference
404 and leaves no geotechnical questions.

405 Mr. Heuer said an EAW hasn't been done for this project, but Pulte Homes completed
406 pretty much every study in an EAW for this property. Mr. Heuer said the LGU, the City
407 of Eden Prairie, determined an EIS is not required, and the Environmental Quality
408 Board didn't determine an EAW is warranted but determined administratively that the
409 petition met the legal precedence to forward it on to the City for its decision, and the
410 EQB expressed no support of requiring an EAW. Mr. Heuer expressed his frustration
411 with comments made against the integrity of Pulte Homes and said context is important,
412 understanding the size of Pulte Homes as a company. He commented on his long career
413 marked by working with integrity and honesty and expressed his displeasure in the
414 comments and innuendos earlier in the meeting suggesting that he and Pulte Homes are
415 dishonest and have been dishonest in this development process.

416 Mr. Heuer addressed the comment about the rare plant study, adding that the
417 commentor didn't say that the ecologist went to a known colony of rare plants in
418 another known area, and the plants were at a stage of growth that they were identifiable.
419 Mr. Heuer said Pulte Homes builds retaining walls through a contractor, who gives a

420 warranty for the construction of the wall, and their maintenance is the responsibility of
421 the homeowners' associations in perpetuity, and this is standard procedure.

422 Mr. Heuer listed the ways Pulte Homes worked with the City and Watershed District to
423 make this a better application than the one from Gonyea Homes, and he said the project
424 complies with all the City and Watershed District rules. He stated the Board delayed
425 action on this item by one month already and delaying 60-days could cause damage to
426 the Standahls and Pulte Homes because of the effects of the delay on the contract and
427 schedule. Mr. Heuer requested the Board not delay longer than necessary because
428 damages start accruing quickly.

429 Mr. Abrahamson said the Board has a duty and rules, and his clients, the Standahls, has
430 worked diligently with Pulte Homes. He said the comments provided to the Board
431 tonight were presented to the City of Eden Prairie along with 1,600 pages of
432 documentation about the proposed project. However, he said, it worries him that the
433 Board seems to be taking the comments of the public, who may not have professional
434 technical backgrounds, over the recommendation of the District's own technical staff.
435 He said if the Board needed more information, why did the Board not request it 30 days
436 ago. Mr. Abrahamson said delaying this permit by even 30 days harms his clients, and
437 his clients are residents of Eden Prairie and this property since 1977. He said citizens
438 can pursue legal recourse through the District court, and the comments shared tonight
439 informed the group that citizens are pursuing legal recourse. Mr. Abrahamson said it is
440 not the Board's purview to say the Board is going to delay action to allow citizens time
441 to seek recourse. He said if the Board needed more information, the Board should have
442 notified Pulte Homes 30 days ago with the request because the discussion tonight could
443 have addressed any issues. Mr. Abrahamson said a delay of 60 days could effectively
444 terminate Pulte's ability to move forward this year with any project whatsoever in this
445 building season.

446 Attorney Smith reiterated that the Board's request for an extension of 60-days for the
447 permit application is for further review of the application based on Minnesota Statutes
448 1599.

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

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<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	No

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f. Authorization of Managers and Staff to Attend Seminars put on by the Minnesota Department of Administration Regarding the Minnesota Data Practices Act and Open Meeting Laws

Manager Koch moved to authorize staff to attend the seminars put on by the Department of Administration regarding the Minnesota Data Practices Act and the Open Meeting laws. Manager Ziegler seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye
Pedersen	Aye
Ward	Aye
Ziegler	Aye

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10. Discussion Items

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a. In-Person Meetings Timeline

Attorney Smith summarized the recent Governor’s order. The managers, staff, and legal counsel discussed the District’s approach to determining what is practical and prudent regarding in-person meetings and staff returning to working in-person. Attorney Smith recommended the Board discuss this item at its next monthly meeting and in the meantime staff should discuss what it sees as practical and prudent regarding returning to in-person working conditions.

Manager Koch moved that the Board would continue to hold its meeting remotely until it makes a further determination based on further guidance because at this time the Board does not see it is prudent to meet in person due to the lack of vaccinations and moved to direct Interim Administrator Jeffery to develop recommendations to present to the Board regarding a return to in-person work policy regarding the status of COVID-19. Manager Pedersen seconded the motion. Upon a roll call vote, the motion carried 5-0 as follows:

<i>Manager</i>	<i>Action</i>
Crafton	Aye
Koch	Aye

Pedersen	Aye
Ward	Aye
Ziegler	Aye

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b. Attorney Report

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Attorney Smith said it is his understanding that the term of the managers was established in the original establishment order that the state water resources board issued, and that term expiration is July 31. He said that establishment order is what Carver County and Hennepin County rely on to establish the terms, and it is up to the counties to follow.

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Manager Koch said he didn't find this information in the Board's Governance Manual or Bylaws, and the District may want to consider adding such information about the term of the managers. Attorney Smith said it is addressed in statute, but the Board could address it in the manual as well.

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c. Administrator Report

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Interim Administrator Jeffery reported on working with citizens about their concerns about a decrease in Silver Lake's lake level. He noted a cost of approximately \$100 to the District to have surveyors take readings about the outlet structure, which will help the District understand what might be going on.

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Interim Administrator Jeffery reported about a policy drafted by MAWD regrading distribution of the Clean Water Implementation Grants, explaining several watershed districts have drafted letters of support to send to John Jaschke and the Minnesota Board of Water and Soil Resources. Interim Administrator Jeffery said he would like to draft a letter of support from this District to provide to the Board for its review. The managers indicated agreement with Interim Administrator Jeffery drafting a letter for the Board's review.

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d. Managers' Report

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Manager Koch commended Interim Administrator Jeffery on the job he has been doing in his new role as Interim Administrator for the District and particularly in his communication with Manager Koch.

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11. Upcoming Board Topics

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President Ward noted upcoming events and said he would like the Board to have a budget workshop prior to the Board's July 7th meeting. The managers agreed by consensus for staff to schedule a budget workshop.

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President Ward adjourned the meeting at 9:52 p.m.

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Respectfully submitted,

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David Ziegler, Secretary