

Bassett Creek Watershed Management Commission

Minutes of the Meeting of November 18, 2009

1. Call to Order

The Bassett Creek Watershed Management Commission (BCWMC) was called to order at 11:40 a.m., Wednesday, November 18, 2009, at Golden Valley City Hall by Chair Welch. Ms. Herbert conducted roll call.

Roll Call

<i>Crystal</i>	Commissioner Pauline Langsdorf, Secretary	<i>Counsel</i>	Charlie LeFevere
<i>Golden Valley</i>	Commissioner Linda Loomis, Treasurer	<i>Engineer</i>	Karen Chandler
<i>Medicine Lake</i>	Alternate Commissioner Ted Hoshal	<i>Recorder</i>	Amy Herbert
<i>Minneapolis</i>	Commissioner Michael Welch, Chair		
<i>Minnetonka</i>	Commissioner Kris Sundberg		
<i>New Hope</i>	Alternate Commissioner John Elder		
<i>Plymouth</i>	Commissioner Ginny Black		
<i>Robbinsdale</i>	<i>Not represented</i>		
<i>St. Louis Park</i>	Commissioner Jim deLambert		

Also present: Derek Asche, BCWMC Technical Advisory Committee, City of Plymouth
Alye Bohn, City of Golden Valley intern
Jack Frost, Metropolitan Council
Dave Hanson, Alternate Commissioner, City of Golden Valley
Tom Mathisen, BCWMC Technical Advisory Committee, City of Crystal
Jeff Oliver, BCWMC Technical Advisory Committee, City of Golden Valley
Stu Stockhaus, Alternate Commissioner, City of Crystal
Liz Stout, BCWMC Technical Advisory Committee, City of Minnetonka
Liz Thornton, Alternate Commissioner, City of Plymouth

2. Approval of Agenda and Consent Agenda

Ms. Black moved to approve the agenda as amended. Ms. Loomis seconded the motion. The motion carried unanimously [City of Robbinsdale absent from the vote]. Chair Welch requested the removal of the October 15, 2009, meeting minutes and the November financial report from the Consent Agenda and announced that there is no need to take action on the Consent Agenda. Chair Welch introduced the New Hope Alternate Commissioner John Elder, who will be taking over the Commissioner role on February 1st.

3. Citizen Input on Non-Agenda Items

No citizen input on non-agenda items.

4. Administration

- A. Presentation of the October 15, 2009, BCWMC meeting minutes. Chair Welch requested on behalf of Commissioner Langsdorf that the meeting minutes be amended on page 6, second to last paragraph, third sentence to read, "She said he responded that when included as part of a larger project application that funding would rank higher if there was a component of public outreach." Ms. Black moved to approve the minutes as amended. Ms. Loomis seconded the motion. The motion carried unanimously [City of Robbinsdale absent from the vote].

- B. Presentation of the Financial Statement.** Chair Welch stated he removed the financial report from the Consent Agenda so the Commission would take a few minutes to review it since the Commission is approximately three-fourths of the way through its fiscal year. Chair Welch noted the amount of permit revenue received to-date is lower than anticipated and reflects the economy. Chair Welch asked Ms. Chandler to look at the amounts remaining in the Engineering water quality/ monitoring budget and Engineering Administration budget and asked if there are water quality/ monitoring expenses that haven't yet been billed to the BCWMC. Ms. Chandler said Barr will be reviewing the monitoring data and writing the reports. Chair Welch stated that if the Administration costs run over budget then the BCWMC would want an explanation.

Ms. Loomis announced that the date for non-interest bearing accounts being FDIC secured has been extended to 2013. Ms. Loomis also mentioned that the BCWMC may want to consider during its 2011 budget process using financial incentives for residents to encourage installation of Best Management Practices (BMPs) as part of the TMDL implementation process. Chair Welch stated that the Commission would receive and file the financial report.

The general and construction account balances reported in the November 2009 Financial Report are as follows:

<u>Checking Account Balance</u>	<u>509,057.25</u>
<i>TOTAL GENERAL FUND BALANCE</i>	<i>509,057.25</i>
Construction Account Cash Balance	2,635,670.77
Investment due 10/18/2010	533,957.50
<u><i>TOTAL CONSTRUCTION ACCOUNT BALANCE</i></u>	<u><i>3,169,628.27</i></u>
<u>-Less: Reserved for CIP projects</u>	<u>3,256,699.00</u>
<i>Construction cash/ investments available for projects</i>	<i>(87,070.73)</i>

- C. Presentation of Invoices for Payment Approval.**

Invoices:

- i. Kennedy & Graven – Legal Services through September 30, 2009 - invoice for the amount of \$2,564.90.
- ii. Barr Engineering Company – September Engineering Services - invoice for the amount of \$28,329.33.
- iii. Amy Herbert – October Recording Administrator Services - invoice for the amount of \$3,272.62.
- iv. Judy Arginteanu – Contract for three watershed education articles in 2009 - invoice for the amount of \$900.00.
- v. City of New Hope – Final reimbursement for Northwood East Sediment Pond – request in the amount of \$10,754.14.
- vi. SEH, Inc. – Review of St. Louis Park Local Water Management Plan - \$1,200.00.

Ms. Loomis moved to approve the payment of the invoices. Ms. Black seconded the motion. By call of roll, the motion carried unanimously with seven votes in favor [City of New Hope abstained from the vote. City of Robbinsdale absent from the vote].

- D. The Open Meeting Law and E-Mail.** Mr. LeFevere said the League of Minnesota Cities

Insurance Trust (LMCIT) Open Meeting Law policy is a good guideline for the Commission to keep in mind. He stated that the Open Meeting Law also applies to BCWMC committees. Mr. LeFevere reminded the Commission that an e-mail communication involving a quorum of the Commission may be a violation of the Open Meeting Law. Mr. LeFevere advised the Commission that if the members have an electronic communication that is more than a one-to-one person communication, the communication should be funneled to Ms. Herbert and she can pass it on and can also consult with Mr. LeFevere with respect to Open Meeting Law guidelines.

Chair Welch remarked that the BCWMC doesn't really have a set of governance policies and he thinks the Commission should review whether it needs some in place. He said that he has asked staff to look at background information on a records retention policy, which the Commission does not have but needs to have. Chair Welch pointed out that one-on-one electronic communication forwarded ahead to one, then again to one, and then again to one is a violation of the Open Meeting Law. Mr. LeFevere reminded the Commission that a few years ago it did add Open Meeting Law insurance to provide some, although limited, protection in case of a violation of the Open Meeting Law. He said that however, a lengthy lawsuit that is won isn't better than not having to go through the lawsuit in the first place.

Chair Welch said the best practice for the Commission is to route things through Ms. Herbert. Mr. LeFevere reminded the Commission to use him as a resource for questions. Ms. Langsdorf asked if she should send out committee meeting agendas through Ms. Herbert. Chair Welch said it would be best because otherwise it would be easy for someone to receive the e-mail, reply to all, and begin a discussion that way. Mr. LeFevere mentioned that related to the Data Practices Act, e-mail communications are subject to recovery as public data.

5. New Business

- A. **Presentation by Alye Bohn on her thesis "BASSETT CREEK: PERCEPTIONS OF AN URBAN STREAM: Discovering why Bassett Creek developed as it did and resident perceptions today."** Ms. Alye Bohn, a current intern with the City of Golden Valley, presented to the Commission her spring 2009 undergraduate senior honors thesis "Bassett Creek: Perceptions of an Urban Stream: Discovering why Bassett Creek developed as it did and resident perceptions today". Ms. Bohn described her research process including a 21-question mailed survey sent to residents through a random selection based on Hennepin County tax parcel data. She shared the historical information she had gathered about the creek including its physical geography, early settlement and development, and urbanization. Ms. Bohn discussed the data she received from the 51 completed or partially completed surveys out of the 161 surveys received via mail by residents. She highlighted that 95% of the respondents believed that Bassett Creek is an important environmental element in the community. Ms. Bohn summarized that respondents show a high concern and interest for the creek and its surroundings and the five important factors residents base their perceptions of the creek on are recreation, scenery, water quality, participation, and maintenance.

Following the presentation the Commission discussed whether Bassett Creek historical information is archived and the Commission recommended that the Education Committee discuss the topic and bring ideas back to the Commission at some point.

6. Old Business

- A. **Administrative Services Committee Update on Request for Proposals.** Chair Welch clarified that the request for proposals is for administrative services tasks. He reported that the Committee

has meet with Springsted, Inc., who is contracted with the BCWMC to develop a scope of services for the administrative tasks. Ms. Black reported that she has spoken with Springsted, Inc. who will be sending the Committee a draft scope of services either today or tomorrow. Ms. Black said the Administrative Services Committee will meet after Thanksgiving to discuss the draft scope of services and will bring the draft scope and the Committee's comments to the Commission at the December meeting.

- B. Resource Management Plan.** Chair Welch provided the background of the Resource Management Plan (RMP). He said the Commission packaged a number of projects together for the purpose of preliminary permitting with the U.S. Army Corps of Engineers (Army Corps). Chair Welch said the process for getting the RMP approved by the Army Corps is coming to a close and two agencies responded as part of the public comment process.

Ms. Chandler said the Minnesota Department of Natural Resources (DNR) commented as did the Minnesota Historical Society. She said the DNR letter had specific comments and addressed three projects in particular and its concern about the proposed excavation for stormwater ponds in wetlands. Ms. Chandler explained that the Grimes Pond and Wirth Lake ponds are probably not going to end up being projects in the long run. She stated that the City of Robbinsdale is considering eliminating the Grimes Pond project and the Wirth Lake TMDL as it is currently being crafted calls for the modification of the Wirth Lake outlet, which will eliminate the need for the pond. Ms. Chandler said a response would be needed only for the proposed pond in the Main Stem Watershed. She said the DNR also commented regarding the use of specific design principles for stream restoration projects. Ms. Chandler said the Commission Engineer recommends responding to comments from the Army Corps and also to the comments from the DNR.

Chair Welch said he was glad the Commission heard from the DNR. He said one of the values of the RMP proved itself already with this letter in the fact that the DNR now knows what the BCWMC has in mind in terms of future projects. Chair Welch said the Commission could work with the DNR on how to modify the idea or design before the Commission spends money on the feasibility study or capital project.

Chair Welch said the Historical Society letter refers to a review process that is very long and costly. He said the Commission needs to decide how to proceed. Chair Welch suggested the Commission begin to assess the costs of a cultural 106 review and to have at least a telephone conference if not a sit down conference with the Army Corps regarding the area of possible effects and next steps. Ms. Chandler said that Barr had hired a firm to conduct the first level of a cultural review for the RMP. Mr. LeFevere suggested that Barr call the consultant before calling the Corps or the Historical Society since the consultant may have some ideas on how to frame the issues. Chair Welch asked Ms. Chandler to make a phone call to that firm to ask about what the Commission's next steps would be and then to contact the Army Corps to set up a discussion. He said he is willing to participate in the discussion with the Army Corps and Mr. deLambert also volunteered to participate in the discussion with the Army Corps. Ms. Chandler said that Barr can contact the firm and ask about the next steps and get back to the Commission and can also contact the Army Corps.

- C. Comments on Medicine Lake TMDL Public Meeting.** Chair Welch reported that based on the Medicine Lake Steering Committee and the public meeting the MPCA is redoing the draft TMDL, which the MPCA thought would be ready by now. He said the TAC didn't want to spend time reviewing the draft until it is in its final form but said it could hold a special meeting to review the draft TMDL if the Commission concurs. Chair Welch reported that Joel Settles of Hennepin County indicated that the County is interested in being part of the categorical wasteload allocation.

Chair Welch stated that the Commission should consider whether it wants to communicate to the MPCA before it finishes the next draft. He said the TAC is not interested in doing so and would rather see how the MPCA handles the comments the Commission and other stakeholders have already provided. Chair Welch remarked that there is a lot that still needs to be figured out. He said there is concern about the aspect that the draft TMDL states that the internal load will be zero. Chair Welch said that issue is the one he thinks the Commission should consider whether or not it wants to comment on prior to the MPCA finishing the next TMDL draft. He said he thinks the Commission may want to comment on the issue before it agrees to the assumption of zero internal load. Chair Welch asked the Commission if it wants to communicate to the MPCA right now or to wait for the draft TMDL. The Commission agreed it wanted to comment on the draft once it is received. Chair Welch stated that the Chair and staff will work together to convene a TAC meeting as soon as the Commission receives the draft TMDL from the MPCA and the TAC will provide the input to the Commission at either the December or January BCWMC meeting.

Mr. Oliver said that even if the City and the members of the categorical wasteload allocation remove the majority of the phosphorus assigned, Medicine Lake still won't meet its goal once the wind blows. He said the City is concerned that the MPCA through the MS4 permits will come back and say the cities did not meet their allocation goals and that it will cost the cities many more millions of dollars to follow up. Mr. Oliver said the City of Golden Valley wants a commitment from the MPCA that it will be measured solely on the efforts for the source load rather than the internal load and that the MPCA cannot put restrictions on permits because of internal loading. Mr. Oliver said he thinks the cities, the MS4s, and the Commission should do anything it can to get assurances from the MPCA.

Mr. LeFevere suggested that the Commission could acknowledge that the plan is based on a premise that is untested and probably false and that it is seeking assurance that the cities wouldn't be pushed to achieve goals that aren't realistic. Chair Welch reminded the Commission that it isn't an MS4 and the Commission's comments shouldn't preclude the cities from submitting their own comments even though as a Joint Powers organization the cities and the Commission can coordinate its comments.

Chair Welch said the Commission may consider developing a cost share program that would offer residents money for implementing best management practices. He said he thinks the Commission will need a steering committee that meets four to six times a year as a way for the Commission to manage the TMDL implementation activities.

Chair Welch said the clear direction is for staff to work with him and the TAC to generate comments on the draft TMDL for Commission review and he will contact the MPCA to find out when the Commission can expect to receive the draft and if an MPCA representative would be available to attend the Commission's January meeting to provide an update.

[Mr. Elder and Ms. Sundberg depart meeting.]

- D. **Mississippi River E. coli Study.** Chair Welch said that Ms. Loomis brought up at a previous BCWMC meeting the option of asking the MPCA to include Bassett Creek in the Mississippi River E. coli TMDL. He said he spoke with the MPCA and said the Commission would want to see the plan clearly defined regarding how it would work between the Commission and the MPCA and that the Commission would want it to be a collaborative process. Chair Welch said then he heard that Barb Peichel of the MPCA reported that Bassett Creek has been added to the Mississippi River E. coli TMDL study.

Ms. Chandler reported that the additional E. coli monitoring doesn't fit the grant opportunity because there is enough data already collected for the stream to be listed as impaired even though

the TMDL is not underway.

Chair Welch directed staff to contact Ms. Peichel and let her know that the Commission would like the MPCA to provide for the Commission's December meeting packet a memo describing how the Commission's E. coli TMDL would fit in with the Mississippi River TMDL.

- E. **Grants Update.** Ms. Chandler reported that at the last month's BCWMC meeting, the Commission discussed applying for the MN Board of Water and Soil Resources (BWSR) Clean Water Fund Grants for three projects including a Plymouth pond project upstream of Northwood Lake. She said that after talking with the City of Plymouth staff about the project, she and the City staff agreed the project would have a better chance of being awarded grant funding next year when the feasibility study would be complete. She said she is going ahead with the assumption that the Commission wants to move forward with the grant application for the two channel restoration projects and just needs to know how much the Commission would like to apply for in its grant application. Ms. Chandler said she recommends asking for \$200,000 to \$300,000 per project.

Chair Welch moved for staff to apply for \$300,000 of grant funding for the Plymouth Creek restoration project and for \$200,000 for the Main Stem restoration project. Ms. Black seconded the motion. The motion carried unanimously with six votes in favor [Cities of Minnetonka, New Hope, and Robbinsdale absent from the vote].

- F. **TAC Recommendations.** The Commission agreed that if the TAC decides it needs a February meeting that it should be able to schedule one. Chair Welch stated that the TAC should consider outlining a strategy of how to assess the CIP project maintenance costs and how to consider the maintenance issues as part of the CIP project assessment. Ms. Black recommended the TAC also consider what costs the Commission would need to add into its operating budget.
- G. **Education and Public Outreach Committee: Amending Contract with Writer.** Chair Welch moved to approve amending the BCWMC's contract with Judy Arginteanu to increase the amount by \$300. Mr. deLambert seconded the motion. The motion carried unanimously [Cities of Minnetonka, New Hope, and Robbinsdale absent from the vote].

7. Communications

A. **Chair:**

- i. Chair Welch reported that the Commission participated in a project in St. Louis Park and the project was completed for less than the amount the Commission had budgeted for the project. He said the Westwood Hills Nature Center asked the Commission to contribute \$3,000 towards educational signage about the project and the Commission approved the contribution. Chair Welch said that the signage project had not been pursued until this month when a contact from the nature center asked if the Commission's \$3,000 is still available for the project. Chair Welch said that Mr. LeFevere has looked at it to make sure there were no timing issues regarding when the funds needed to be spent and it looks like there are no issues. He said Ms. Herbert will make sure the BCWMC still has access to those funds.
- ii. Chair Welch announced that the Met Council has contacted the BCWMC to ask it to conduct FLUX modeling on the WOMP station data. Chair Welch asked Ms. Chandler if the issue could wait until the December BCWMC meeting. She said it could. Chair Welch directed staff to prepare a memo on the item. Ms. Black asked that staff include in the memo information regarding whether it would be a one-time expense or recurring and also why the BCWMC is being asked for this now when it hasn't been asked to participate previously.

B. **Commissioners: No communications.**

