

Bassett Creek Watershed Management Commission

Minutes of the Meeting of September 17, 2009

1. Call to Order

The Bassett Creek Watershed Management Commission (BCWMC) was called to order at 11:35 a.m., Thursday, September 17, 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>	Len Kremer
<i>Medicine Lake</i>	Commissioner Cheri Templeman	<i>Recorder</i>	Amy Herbert
<i>Minneapolis</i>	Commissioner Michael Welch, Chair		
<i>Minnetonka</i>	<i>Not represented</i>		
<i>New Hope</i>	Commissioner Daniel Stauner		
<i>Plymouth</i>	Alternate Commissioner Liz Thornton		
<i>Robbinsdale</i>	<i>Not represented</i>		
<i>St. Louis Park</i>	Commissioner Jim deLambert		

Also present: Laura Adler, BCWMC Technical Advisory Committee, City of St. Louis Park
Derek Asche, BCWMC Technical Advisory Committee, City of Plymouth
Jack Frost, Metropolitan Council
Dave Hanson, Alternate Commissioner, City of Golden Valley
Jeff Lee, Barr Engineering Company
Randy Lehr, Three Rivers Park District
Tom Mathisen, BCWMC Technical Advisory Committee, City of Crystal
Jeff Oliver, BCWMC Technical Advisory Committee, City of Golden Valley
Justin Riss, Alternate Commissioner, City of St. Louis Park
Stu Stockhaus, Alternate Commissioner, City of Crystal
Liz Stout, BCWMC Technical Advisory Committee, City of Minnetonka

2. Approval of Agenda and Consent Agenda

Chair Welch announced that item 7A – Tax Levy Request to Hennepin County does not require a resolution as indicated on the agenda and requested that agenda be amended to instead include the certification of the levy request. Ms. Loomis moved to approve the agenda as amended. Ms. Thornton seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote]. Chair Welch requested the removal of the August 20, 2009, BCWMC meeting minutes from the Consent Agenda. Ms. Loomis moved to approve the Consent Agenda as amended. Mr. Stauner seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].

3. Citizen Input on Non-Agenda Items

Mr. Asche, City of Plymouth, announced that the City of Plymouth will be holding a pre-construction meeting for West Medicine Lake Park Pond at 10:00 a.m. on September 30, 2009, in the Medicine Lake Room at Plymouth City Hall.

4. Administration

A. Presentation of the August 20, 2009, BCWMC meeting minutes. Chair Welch asked Mr. Hanson

to clarify his statement from last month, on page 4 of the minutes, regarding algae. Mr. Hanson clarified that the word “weeds” could be added to his statement reflected in the minutes. Chair Welch clarified his statement on page 6 of the minutes regarding distribution of links to the Commission via e-mail and stated that the Commission should e-mail links to the BCWMC recording administrator for distribution to the Commission. Ms. Loomis requested that item B on page 3 be corrected to read “See 6A – Feasibility Report for Plymouth Creek Restoration Project.” Chair Welch moved to approve the minutes as amended. Ms. Loomis seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].

B. Presentation of the Financial Statement. The September financial report was received and approved as part of the Consent Agenda.

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

<u>Checking Account Balance</u>	<u>560,764.78</u>
<i>TOTAL GENERAL FUND BALANCE</i>	<i>560,764.78</i>
<u>Construction Account Cash Balance</u>	<u>2,623,486.52</u>
<u>Investment due 10/18/2010</u>	<u>533,957.50</u>
<i>TOTAL CONSTRUCTION ACCOUNT BALANCE</i>	<i>3,668,479.60</i>
<u>-Less: Reserved for CIP projects</u>	<u>3,668,479.60</u>
<i>Construction cash/ investments available for projects</i>	<i>(511,035.58)</i>

C. Presentation of Invoices for Payment Approval.

Invoices:

- i. Kennedy & Graven – Legal Services through July 31, 2009 - invoice for the amount of \$1,624.80.
- ii. Barr Engineering Company – August Engineering Services - invoice for the amount of \$25,911.55.
- iii. Amy Herbert – August Recording Administrator Services - invoice for the amount of \$1,957.15.
- iv. Finance & Commerce – Public Hearing Notice Publication - invoice for the amount of \$166.00.
- v. Shingle Creek Watershed – BCWMC’s portion of the cost of “10Things” brochure printing - invoice for the amount of \$666.09.

Ms. Loomis moved to approve payment of all invoices. Ms. Thornton seconded the motion. By call of roll, the motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].

5. Public Hearing

Chair Welch remarked that he had hoped to see members of the public attend this hearing and asked if there was any interest by the Commission to delay the hearing. Since there were following agenda items being based on the public hearing being conducted, the Commission decided it would not delay the public hearing. Chair Welch suggested the Commission look at additional efforts to publicize its public hearings beyond the legal requirements that the Commission currently follows.

Ms. Thornton moved to open the public hearing. Ms. Loomis seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].

Chair Welch announced that the purpose of the public hearing was to hear public testimony and comments of the member cities regarding two of the proposed improvements contained in the BCWMC's Resolution 09-04 , adopted July 16, 2009, approving a minor plan amendment to the BCWMC's *Watershed Management Plan*. He stated that the minor plan amendment includes the consideration of construction of the following two projects in the Plan's Table 12-2, Water Quality Management and Flood Control 10-Year Capital Improvement Program (CIP):

- Plymouth Creek One (PC-1), which is proposed to restore the channel of Plymouth Creek from West Medicine Lake Road to 26th Avenue North in the City of Plymouth.
- Bassett Creek Main Stem, Reach 2, which is proposed to restore the channel from the City of Crystal-City of Golden Valley boundary to Regent Avenue in the City of Golden Valley.

Mr. Jeff Lee of Barr Engineering provided a brief PowerPoint presentation describing the projects.

Chair Welch reported that Barr Engineering has found out that an Environmental Assessment Worksheet likely will not be required for the Bassett Creek Main Stem project. He added that the Bassett Creek Main Stem project is included in the BCWMC's Resource Management Plan (RMP). He stated that the Plymouth Creek Restoration project will require an Environmental Assessment Worksheet and said the project still has some uncertainties since some easements still are not secured due to the project taking place on public and private land and since wetland mitigation will be necessary. Chair Welch asked Mr. Asche when the City of Plymouth will begin the EAW process. Mr. Asche replied that the City plans to begin the process in the end of October. Chair Welch said that because the project is included in the RMP, the EAW process will be easier since some of the groundwork has been completed through the RMP.

Chair Welch said he encourages the Commission staff to work with the cities regarding the language in the contracts regarding the terms of the guarantees of the plants used in the restoration projects. Chair Welch said he has no problem considering as a project cost the cost of the follow-up work with the plantings because ensuring the success of the plantings is part of the implementation of the project.

Mr. Mathisen asked if the City of Plymouth would need to continually respond to public calls regarding maintenance of the project on private property. Chair Welch said it is up to the City whether it decides to enter into agreements with the property owners. Mr. Lee asked if the BCWMC would want to involve the property owners in the design process because that could be accommodated. Mr. Stauner said the BCWMC should look at the type of easements that would be needed in order to ensure the success of the project.

Chair Welch said the BCWMC would be overstepping its bounds if it specified what kind of agreements the cities could enter into with its residents but that the BCWMC could offer encouragement to the cities regarding the agreements the cities enter into. Mr. Stauner disagreed with the comment that the BCWMC would be overstepping its bounds and said the issue is worth looking into by the Commission.

Chair Welch asked if the Commission wanted a more structured discussion regarding maintenance of CIP projects. Mr. Mathisen suggested it would be a good issue for the BCWMC's Technical Advisory Committee (TAC) to discuss. Chair Welch said he would work with staff to develop some type of discussion item on the issue and that the Commission should define the issue better before sending it to the TAC. Chair Welch said the Administrative Services Committee should look at the task of sending letters to property owners affected by the project. Mr. LeFevere recommended that the BCWMC

check with their member cities regarding their public engagement processes. Ms. Loomis commented that she didn't think it is fair to target one population over another especially since the property owners aren't the ones paying the bulk of the cost of the projects. She stated that it is the citizens who don't live on the creek who are paying for the majority of cost the projects. Ms. Loomis added that the citizens who are directly impacted by the project have been notified by the cities.

Chair Welch asked if the Commission should consider including a function and values assessment of wetlands as part of feasibility studies in order to get a better sense of what the mitigation issues might be. Chair Welch also recommended that the feasibility studies' Executive Summary should include highlights of important issues in a half-paragraph of bullet points.

Chair Welch called for additional comments and testimony. Upon hearing none, Chair Welch ordered the public hearing closed.

6. New Business

- A. **Hennepin County Stream Bank Stabilization Grants.** Chair Welch announced that Hennepin County has been granted \$500,000 from the state for streambank stabilization projects and that the deadline for applications is October 16th. He announced that the Minnesota Board of Water and Soil Resources also has money available through a grant program.

Mr. Kremer recommended that the Commission should not only ask for assistance from Hennepin County on the Bassett Creek Main Stem project but should also make the County aware of a need for assistance on the future projects including: the Main Stem restoration project slated for 2012, the North Branch project slated for 2013, and the Plymouth Creek project slated for 2015. He stated that he thought that Hennepin County is very effective in getting the attention of the legislature and that there is interest in by the County in getting Clean Water Legacy funds directed toward the many projects that are needed in the metro area.

Mr. Asche and Mr. Oliver stated that their cities plan to apply for the Hennepin County grant funds. Chair Welch stated that it seems to make sense to make the applications come jointly from the BCWMC and the cities instead of submitting competing applications. Chair Welch asked how the Commission would handle the costs offset by the grant funds. Mr. LeFevere said the BCWMC agrees with the cities to reimburse the cities up to a certain amount. He said that if the costs to the city are less than the amount the Commission agreed it would reimburse to the cities, then the Commission would have money left over in its CIP closed projects account fund.

Mr. Kremer said if the cities of Plymouth and Golden Valley are preparing applications, then the Commission could draft a letter indicating the projects are part of the CIP of the Commission and the cities could include the letter as part of their applications. Chair Welch directed staff to draft the letter for his signature.

Mr. Kremer reported that the applications for the Clean Water Fund grants are due by December 1, 2009. Chair Welch directed Barr to prepare a discussion of all the potential projects the BCWMC should consider for its application of the grant funds and that the Commission will include the discussion at its October meeting. Ms. Lansgdorf stated that education money is supposed to be available as part of the grant funds and asked if there is any information on it yet. Mr. Kremer said not yet but maybe by the Commission's October meeting.

- B. **Resolution 09-05 Ordering Projects and Executing Cooperative Agreements for Main Stem and Plymouth Creek Projects.** Mr. LeFevere summarized the resolution and stated that the Cooperative Agreement for the Bassett Creek Main Stem would need to be revised and would be

brought back in front of the Commission at the October BCWMC meeting.

Ms. Loomis asked why the cost of the Bassett Creek Main Stem project is being divided into two levy years whereas the full cost of the Plymouth Creek project is included in this year's tax levy request. Mr. Kremer responded that the Bassett Creek Main Stem project was scheduled on the CIP for completion one year after the completion of the Plymouth Creek project.

Chair Welch asked if the Commission is precluded from paying for a CIP project that has been ordered and completed from its CIP funds even if it hasn't specifically levied that project to the county. Mr. LeFevere said the Commission could use the funds that it has in its closed project fund or it could pay in advance of the project as long as the Commission has enough funds to honor its obligations for reimbursement to the cities. Mr. LeFevere said that after the Commission certifies its levy request to the County by October 1st, the BCWMC could let the County know its request is lower than the original request.

Mr. Stauner moved to approve Resolution 09-05 "A Resolution Ordering 2010 Improvements, Designating Members Responsible for Construction, and Making Findings, Pursuant to Minnesota Statutes, Section 103B.251" with the deletion of the last sentence per Mr. LeFevere. Ms. Thornton seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].

Chair Welch asked Mr. LeFevere to spend no more than five hours to make sure he is comfortable with how the Commission has proceeded on this issue and if he is not comfortable then to contact him in the next four or five days.

7. Old Business

- A. **Tax Levy Request to Hennepin County and Certification of Levy Request.** Under New Business item B, the Commission approved Resolution 09-05, which included the Commission's requested 2010 tax levy request that it will certify to Hennepin County by October 1st.
- B. **Resolution 09-06 Approving the Local Water Management Plan Prepared by St. Louis Park.** Ms. Loomis moved to approve Resolution 09-06. Mr. Stauner seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote.]
- C. **Individual vs. Categorical Approach to TMDL Waste Load Allocations and TAC Recommendation.** Chair Welch gave an overview of Total Maximum Daily Load studies and gave the background on how the Minnesota Pollution Control Agency (MPCA) asked the BCWMC if it wants to serve as a manager of the process whereby the implementation plan takes place. He said it would be a significant responsibility for the Commission and would show significant trust by the member cities. Chair Welch reported that the MPCA responded via letter to the Commission's questions of the MPCA regarding the categorical wasteload allocation and the manager role of the categorical wasteload allocation.

Mr. Kremer said the TAC reviewed the MPCA's letter and discussed the categorical vs. individual wasteload allocation approach. He said the TAC decided that the categorical approach provides flexibility to the cities to negotiate amongst themselves how to achieve the load reductions. Mr. Kremer said the TAC decided that the cities should be included in the categorical wasteload allocation and that in the absence of an agreement with Hennepin County that Hennepin County should get an individual wasteload allocation and that per Mn/DOT's request, it should get an individual wasteload allocation. He said the TAC recommends that the wasteload allocation be made based on impervious surface within the watershed. He said the TAC also had a considerable discussion regarding the annual reporting of reductions to the MPCA and the TAC recommends

that the cities and the Commission jointly prepare a single annual report containing the load reductions for all TMDLs.

Chair Welch commented that if the Commission thinks the categorical approach is a good idea and if Hennepin County wants to be a part of it, the Commission should consider letting the County be a part of it if the Commission thinks it can work collaboratively with the County. Mr. Stauner said his interpretation of the TAC's discussion and recommendation is that Hennepin County wouldn't be included in the categorical wasteload allocation because the County wasn't clear on what it would be contributing. He said there is no agreement in place with the County at this time and until that is resolved, the best approach by the Commission is to give the County an individual allocation.

Chair Welch said the reasoning makes sense but there isn't an agreement in place with the member cities either. He said that the action of not including Hennepin County defers the difficult decision of how the parties should share the wasteload reduction burden. Ms. Loomis said the member cities do have the Joint Powers Agreement, which Hennepin County isn't a part of and perhaps when the Commission looks at revising its JPA it should look at it in light of the TMDL load allocations.

Mr. Kremer recommended that the Commission approve the preparation of a draft letter to the MPCA informing them that the BCWMC is willing to serve as a the categorical wasteload implementer for the Wirth Lake, Medicine Lake, and Sweeney Lake TMDLs. Ms. Loomis moved the recommendation from Mr. Kremer. Mr. Stauner seconded the motion. The motion carried with five votes in favor [Cities of Crystal, Golden Valley, Medicine Lake, New Hope, and Plymouth] and one vote against [City of Minneapolis]. One commissioner abstained from the vote [City of St. Louis Park]. Cities of Minnetonka and Robbinsdale were absent from the vote. Chair Welch directed staff to prepare that letter to the MPCA.

- D. **Sweeney Lake TMDL Report.** Chair Welch announced that a meeting that was scheduled between Alternate Commissioner Dave Hanson and Ron Leaf of SEH would be rescheduled so that it will be open to the public. Ms. Loomis moved to approve the draft Sweeney Lake TMDL report and to submit it to the MPCA. Ms. Thornton seconded the motion. Chair Welch said he sent to Ms. Herbert for distribution to the Commission comments that he had on the report that he wanted to put on the table for the Commission's consideration of possible inclusion in the report. Ms. Langsdorf asked if he had a recommendation that the Commission hadn't considered since the Commission has not discussed his comments. Chair Welch responded that he had some points that he wanted the Commission to consider asking Ron Leaf to include in the report. Chair Welch said he would not vote in favor of the motion on the table. The motion carried with five votes in favor [Cities of Crystal, Golden Valley, Medicine Lake, New Hope, and Plymouth] and one vote against [City of Minneapolis]. One commissioner abstained from the vote [City of St. Louis Park]. Cities of Minnetonka and Robbinsdale were absent from the vote. Chair Welch directed staff to prepare that letter to the MPCA.
- E. **Medicine Lake TMDL Update and TAC Recommendation.** Chair Welch passed around LimnoTech's PowerPoint presentation that was shared at the last Medicine Lake steering committee meeting. He said that the parties worked together to rectify a lot of the concerns of the Commission regarding the model. Mr. Kremer said that significant modifications were made to the model and that the focus of the presentation was on the modifications made and how it affected the predictions of the loading. He said the newly calibrated model shows that there needs to be a 1,250 pound reduction in phosphorus from the watershed tributary to Medicine Lake and that the load reduction from West Medicine Lake Park pond would be around 400 pounds, which is close to the amount the Commission had estimated. Chair Welch said that no Commission action is needed.

- F. **Administrative Services Committee Update.** Chair Welch announced that the Administrative Services Committee met a couple of weeks ago and would meet again to develop specific tasks that will meet the priorities identified by the Commission. Ms. Loomis said the Commission ranked as an important priority the revision of the Joint Powers Agreement. She said the Committee would like to know what revisions the commissioners want to see. She said commissioners should e-mail their comments to Ms. Herbert for distribution to the Administrative Services Committee. Mr. LeFevere reminded the Commission that the Joint Powers Agreement can only be amended by approval of all of the member city councils. Chair Welch moved that counsel spend a couple of hours reviewing the JPA for housecleaning revisions and to prepare a memo for the Commission's review at the October meeting.

Chair Welch said the Administrative Services Committee recommends that the Commission contract with Springsted, Inc., to draft a position description for a position to provide administrative services to the Commission beyond the services of the Recorder and the staff. Mr. Stauner asked what it would cost. Ms. Loomis recommended putting a cap on the expense. Chair Welch recommended a motion that would authorize the Administrative Services Committee to contract with Springsted, Inc. to draft an administrative services request for proposals at a cost of no more than \$1,500. Ms. Loomis moved Chair Welch's recommendation. Ms. Thornton seconded the motion. The motion carried unanimously [Cities of Robbinsdale and Minnetonka absent from the vote].

- G. **Discuss Revisions to the BCWMC's Joint Powers Agreement.** Deferred to October BCWMC meeting.

8. Communications

A. **Chair:**

- i. Chair Welch reported that he couldn't get the BCWMC a fall tour of the Minnesota Twins Stadium.
- ii. Chair Welch announced that the BCWMC anticipates receiving the City of Crystal's Local Surface Water Management Plan prior to the October meeting and that the Commission Engineer would like authorization to review the plan. Ms. Loomis moved to approve the authorization of the Commission Engineer to review the plan upon receipt. Ms. Langsdorf seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].
- iii. Chair Welch stated that the Resource Management Plan was noticed by the U.S. Army Corps of Engineers as of September 3rd and the public comment process continues through October 3rd.

B. **Commissioners:**

- i. Ms. Loomis reminded the Commission that the November meeting is on Wednesday, November 18th instead of Thursday, November 19th.
- ii. Mr. Stauner announced that at 7:00 p.m. on October 7th he will be facilitating a Town Hall meeting for the residents around Northwood Lake.

C. **Committees:**

Education Committee

