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**Minutes of the Regular Meeting of the Brown's Creek Watershed District Board of Managers, March 12, 2007.**

**WCD Offices, 1380 W. Frontage Road, Hwy. 36  
Stillwater, MN**

**APPROVED**

**ROLL CALL**

<b>Present:</b>	<b>Others Present:</b>
Craig Leiser, President	Karen Kill, Administrator
Rick Vanzwol	Camilla Correll, EOR
Connie Taillon, Treasurer	Pat Conrad, EOR
Gerald Johnson	Chuck Holtman, Smith Partners
	Michael Welch, Smith Partners
	Shawn Sanders, City of Stillwater
	Wally & Cheryl Raleigh, 12480 McKusick Rd, Stillwater
	Neil & Kathy Hemen, 8233 Marylane Ave N, Stillwater
	Fred & Ruth Bruns, 8790 Neal Ave N, Stillwater
	Paul Nord, 8335 Manning Ave N, Stillwater
	Dan Schmidt, applicant engineer
Absent: Gail Pundsack	Jack Welch, Lennar, applicant

- 1. Call Regular Meeting to order @ 6:35 PM**  
President Leiser called the Regular Meeting to order at 6:35 PM.
- 2. Approve Regular Meeting Agenda and Discussion Agenda**  
Manager Vanzwol requested the addition of the Boundary Resolution under old business. Camilla Correll, EOR, requested the addition of "Wisconsin AWRA" under new business. Administrator Kill requested to table the February 12, 2007 minutes. **Manager Vanzwol, seconded by Manager Johnson, moved to approved the meeting agenda and discussion agenda as amended. Vote 4/0.**
- 3. Approve Minutes – Board Action**
  - a.) **February 12, 2007 Regular Board Meeting** – tabled to April Board meeting

1 **4. Treasurer's Report**

2 a.) **Review Authorized Funds Spreadsheet** – Administrator reviewed changes

3  
4 **b.) Current Items Payable – Board Action**

5 Manager Taillon reported that the amount payable was \$47,879.95 and the total balance  
6 was \$179,875.95.

7 **Manager Taillon, seconded by Manager Vanzwol, moved to pay bills as presented.**  
8 **Roll call vote 4/0, Manager Pundsack was absent.**  
9

10 **5. Public Hearing – Receive Comments on the BCWD Rules and Statement of Need**  
11 **and Reasonableness**

12 **Manager Vanzwol, seconded by Manager Johnson, moved to open the public**  
13 **hearing on BCWD's Rules and Statement of Need and Reasonableness. Vote 4/0.**  
14

15 Camilla Correll, EOR, presented a summary of the rule revision process and some of the  
16 proposed rule revisions. The proposed revisions encompass the following:

- 17 • Revision of standards for peak runoff and runoff volume management relating to land  
18 disturbances, with a greater emphasis on use of natural site infiltration capacity.
- 19 • Changing the water quality standard for phosphorus control from a receiving water  
20 concentration basis to an annual loading basis.
- 21 • Adopting requirements to limit thermal impacts of runoff on groundwater-dependent  
22 natural resources (GDNR's).
- 23 • Clarifying the application of the stormwater management rule to redevelopment.
- 24 • Refining erosion and sedimentation control standards and prescribing site  
25 management standards for winter work and reduced winter inspection frequency.
- 26 • Expanding the application of the vegetated buffer requirement to include all wetlands  
27 one acre or larger and all GDNR's.
- 28 • Clarifying the expansion of buffer width when steep slopes or mapped natural  
29 communities are encountered.
- 30 • Creating an obligation to establish buffer vegetation in cases where preexisting cover  
31 is inadequate.
- 32 • Limit stormwater management basins within buffers.
- 33 • Introducing a more comprehensive standard to permit buffer averaging.
- 34 • Clarifying submittal requirements for shoreline and streambank installation permits.
- 35 • Requiring that culverts and other surface water conveyance structures be subject to a  
36 permanent maintenance commitment.
- 37 • Establishing more stringent volume control and freeboard requirements within  
38 landlocked basins.
- 39 • Expanding freeboard requirements to apply to artificial basins.
- 40 • Clarifying District approval requirement for changes to surface drainage patterns.
- 41 • Revising existing definitions and adding new terms.

42 The District invites all interested parties to submit written comment on the proposed  
43 changes before March 30, 2007. The District will consider carefully all comments and  
44 make appropriate changes to the proposed revisions before adoption.  
45

1 Shawn Sanders, City of Stillwater, requested clarification regarding whether the pre-  
2 settlement standard applied to new development or re-development. Camilla Correll  
3 responded that the pre-settlement would apply to both new development and re-  
4 development.

5  
6 Manager Leiser requested any further comments from the public. Hearing none,  
7 **Manager Vanzwol, seconded by Manager Johnson, moved to close the public**  
8 **hearing with the understanding that written comments on the proposed rules and**  
9 **statement of need and reasonableness will be accepted until March 30, 2007. Vote**  
10 **4/0.**  
11

12 **6. Permit/Rules**

13 a) **Permit #07-06 Stillwater Phase 3 Utilities II – Board Action**

14 Camilla Correll, EOR, presented that the City of Stillwater proposes a new water main  
15 along Marylane Avenue, McKusick Road, Manning Avenue (County Road 15) and TH  
16 96. The watermain will cross Brown's Creek at TH96. The project will use trenching,  
17 jacking and directional boring methods along the project. Overall, 2.5 acres of land will  
18 be disturbed. The District Engineers recommend approval with the following conditions:

- 19 1) Revise the erosion control plan: temporary and final stabilization of disturbed areas,  
20 biorolls for ditch checks instead of bales, stock pile erosion control, location of temp  
21 spoil piles and final spoil disposal, specific erosion control and revegetation plans for  
22 the banks and adjacent portions of the roadside ditch, ditch check near the streambank  
23 on the east side of the creek.
- 24 2) Revise site plans to specifically indicate that the ditch will be restored to the existing  
25 profile and that culverts will be reinstalled to their existing elevations.
- 26 3) Revise site plans to indicate that the floodplain will be restored to the existing  
27 elevation to maintain flood flow capacity and flood storage volume. Alternatively,  
28 the project could demonstrate no net floodplain fill through an analysis quantifying  
29 floodplain volume before and after the project.

30  
31 Shawn Sanders, City of Stillwater, clarified that the DNR tributary to Brown's Creek is  
32 more than 1000 feet east of Marylane Avenue. Mr. Sanders also requested clarification  
33 on the level of tolerance in the reinstallation of the existing culverts.

34  
35 Several residents questioned Mr. Sanders regarding the proposed project and why this  
36 specific location was determined. Mr. Sanders stated that the project would take 2-3  
37 months and that the starting date would be dependent on the Millbrook project.  
38 Residents expressed concern with closing the road due to access needs at various times of  
39 the day. A specific resident evidenced concern due to a medical response issue and the  
40 need for prompt access/egress to their property at all times. Mr. Sanders stated the City  
41 was willing to work with residents to address access concerns now that he was aware of  
42 them. Residents expressed concerns with the existing culvert under Maryland nearly  
43 overflowing and were directed to contact Stillwater Township.  
44

1 **Manager Vanzwol, seconded by Manager Johnson, moved to approve permit #07-06**  
2 **for Stillwater Phase 3 Utilities II with the recommended conditions presented in the**  
3 **District Engineer's memo dated February 28, 2007. Vote 4/0.**  
4

5 b) **Permit #04-16 Millbrook – Amendment and Variance Request – Board**  
6 **Action**

7 Camilla Correll, EOR, presented the requested changes to the Millbrook development  
8 proposal. Two issues are being raised.  
9

10 Ms Correll stated the first issue is that additional data has been collected to determine that  
11 one of the meanders of Brown's Creek has been cut off from the mainstream channel  
12 under bank full conditions, creating a natural oxbow. Since this area is not considered a  
13 DNR protected stream, then the stream buffer would not apply. The developer is now  
14 requesting that the buffer averaging policy be applied to this area, reducing the buffer  
15 width to the minimum 50 feet (half of the required 100 foot buffer). During a site visit  
16 with the developer in Jan 2007, staff witnessed a hillside seep contributing flow to the  
17 meander in question. Grading near this area is highly discouraged without having studied  
18 the recharge area to the seep. Buffer averaging along this stretch of the creek is not  
19 recommended since it does not fulfill the conditions and spirit of the buffer averaging  
20 policy, which states that the Brown's Creek Watershed District will consider wetland  
21 buffer averaging in cases where the applicant can clearly demonstrate the need to vary  
22 from the District's rule or when there is a potential to provide benefits to the resources of  
23 the District.  
24

25 Ms. Correll stated that the second issue is that the developer is requesting a variance from  
26 the buffer rule for grading in the buffer zone. The developer is proposing four areas of  
27 grading in the buffer. The first is where additional buffer is being provided (for buffer  
28 averaging mitigation) along lots 155 thru 166. The area of grading along these lots is  
29 approximately 0.9 acres. This grading is being proposed to create a large swale to pick  
30 up drainage from the backyards of these lots and direct it into Infiltration Basin #1. This  
31 swale will provide added protection from surface water runoff to Brown's Creek both  
32 during and post-construction. Grading is also proposed on the south side of Infiltration  
33 Basin #1 and near lot 6, both of these are small areas and could be considered  
34 insignificant in size if grading limits are abided by. The fourth area of proposed grading  
35 in the buffer is for a road stub near highway 96; this crossing is a part of a future phase of  
36 the project. It is recommended that the stub road be graded in association with the road  
37 crossing such that the buffer is only disturbed once. If the variance request is granted, the  
38 District engineers have recommended several conditions.  
39

40 The Board determined to discuss the buffer averaging request before discussing the  
41 variance request. Dan Schmidt, the applicant's engineer, presented a diagram of how the  
42 applicant envisions the groundwater recharge to function. However, the District  
43 Engineer stated that there is a lack of adequate soil borings to determine how the recharge  
44 for the system actually functions. Questions were raised on how you can avoid  
45 compacting the soils and still have a stable slope and trail on the slope. Mr. Schmidt  
46 stated that if buffer averaging is not allowed in this area, the developer will lose 2-3 lots.

1 The Board raised questions on whether the design could be reconfigured to get additional  
2 buffer, such as moving the road and/or reconfiguring the pond. Mr. Schmidt replied that  
3 he could maybe get an additional 20 feet of buffer.  
4

5 Legal Counsel assisted the Board with their options for allowing buffer averaging. It is  
6 allowed if it benefits the resource or the applicant shows need. The functions of the  
7 buffer are to protect groundwater flows (recharge) to the creek; provide water quality  
8 treatment (erosion control; stormwater pollutant removal; thermal protection) for surface  
9 water contributions to the creek; preserve the structural integrity of the slope; and/or  
10 preserve ecological (aquatic and wildlife habitat) functions. Ms. Correll recommends  
11 that buffer averaging would not benefit the resource; therefore, if not a benefit, the  
12 applicant has to clearly demonstrate need. The policy goes no further to define “clearly  
13 demonstrated need” but gives some burden to the applicant to prove.  
14

15 Manager Vanzwol presented what he recognized as the three options for Board action  
16 regarding the request for buffer averaging:

- 17 1) Deny Averaging, reduce 2-3 lots and move the trail to the top of the slope
- 18 2) Approve as presented
- 19 3) Modify to get additional buffer area and add BMPs

20 Manager Vanzwol stated that he was ready to deny the buffer averaging but willing to  
21 table the Board review if the applicant feels they can revise the application. The Board  
22 agreed that they would like to see the applicant develop some alternatives for  
23 consideration. Administrator Kill stated that the Board would be within the 60-day  
24 review period as of the April 9, 2007 regular Board meeting.  
25

26 **Manager Johnson, seconded by Manager Vanzwol, moved to not take action at this**  
27 **time to allow time for the applicant to submit an alternative plan and have the**  
28 **District Engineer review that alternative plan. Vote 4/0.**  
29

30 *Recess 8:42 – 8:50 pm*  
31

32 **c) Permit #05-12 Sanctuary Surety Reduction Request – Board Action**

33 Camilla Correll, EOR, presented a memo from Todd Erickson, FEE, and a memo dated  
34 March 2, 2007 from Ryan Fleming and John Barry at EOR in response to a request for a  
35 surety reduction from BCWD Permit #05-12 Sanctuary in Lake Elmo. **Manager Leiser,**  
36 **seconded by Manager Johnson moved to hold the surety of \$82,525 until**  
37 **confirmation that the City of Lake Elmo has accepted the ponds and until the**  
38 **recommendation of the District Engineers. Vote 4/0.**  
39

40 **d) Resolution #07-03 Surety Waiver – Board Action**

41 **Manager Vanzwol, seconded by Manager Taillon, moved to table Resolution #07-03**  
42 **Surety Waiver until the April regular Board meeting. Vote 4/0.**  
43

44 **e) Fee Schedule – Board Action**

45 The Board discussed the need for a resolution that states the fee schedule will reflect the  
46 rates approved in contracts for services. The Board requested that the Administrator and

1 legal counsel bring a resolution to the April regular Board meeting that reflects this idea,  
2 as well as that the Administrator shall keep the current rates posted on the website.  
3

4 **f) Permit Inspector Position – Board Action**

5 Administrator Kill explained the potential permit inspection workload for 2007,  
6 estimating that 780 hours will be needed for the 2007 season (April thru September).  
7 EOR put together a proposal on the Administrator's request to hire a seasonal permit  
8 inspector. EOR proposes to hire a ¾ time seasonal permit inspector for a rate that covers  
9 costs only, approximately \$30-\$38 per hour. They are providing this service to the  
10 District at cost as a support service to the District. **Manager Vanzwol, seconded by**  
11 **Manager Johnson moved to approve EOR's proposal to hire a seasonal permit**  
12 **inspector position. Vote 4/0.**  
13

14 **7. Projects/Programs**

15 **a.) Brown's Creek TMDL – Board Action**

16 Administrator Kill informed the Board that the Washington Conservation District (WCD)  
17 was granted funding by the MPCA to conduct the first phase of a biological TMDL,  
18 which is the Stressor Identification Process. The analysis will be done to find out why  
19 fish biota and macro-invertebrate biota are stressed. The WCD is interested in partnering  
20 with the BCWD to complete the data analysis and modeling for the stressor identification.  
21 EOR has indicated that they are able and willing to conduct this analysis and has  
22 submitted to the Board a scope of services consistent with the work plan and proposed  
23 project budget.  
24

25 **Manager Vanzwol, seconded by Manager Johnson, moved to approve the 2007**  
26 **Service Agreement between the Washington Conservation District and BCWD for**  
27 **the Brown's Creek Impaired Biota TMDL Phase I: Stressor Identification Project**  
28 **with the amendments suggested by District legal counsel and authorize Manager**  
29 **Leiser to sign. Vote 4/0.**  
30

31 **Manager Vanzwol, seconded by Manager Johnson, moved to approve EOR's scope**  
32 **of services for the Brown's Creek Impaired Biota TMDL. Vote 4/0.**  
33

34 **b.) BCWD Monitoring – Equipment Replacement/Purchase – Board Action**

35 **Manager Leiser, seconded by Manager Taillon, authorized the purchase of two (2)**  
36 **YSI sondes for collecting dissolved oxygen, temperature and conductivity data at**  
37 **two Brown's Creek sites for the amount of \$9,120 plus tax, shipping and handling;**  
38 **and the purchase of two new data loggers for the infiltration monitoring sites for the**  
39 **amount of \$500. The equipment replacements/purchases are to come from account**  
40 **300-4640. Vote 4/0.**  
41

42 **7. Old Business**

43 **a.) Engineering Services Contract – Board Action**

44 **Manager Vanzwol, seconded by Manager Johnson, moved to approve the contract**  
45 **with Emmons and Olivier Resources, Inc. as presented. Vote 4/0.**  
46

1           **b.)     Legal Services Contract – Board Action**  
2           Manager Vanzwol, seconded by Manager Johnson, moved to approve the contract  
3           with Smith Partners with the amendment that the mileage reimbursement rate be  
4           changed to the “IRS rate”. Vote 4/0.  
5

6           **c.)     Revised Boundary Petition Resolution – Board Action**  
7           Manager Vanzwol, seconded by Manager Leiser, moved to table Revised Boundary  
8           Petition Resolution. Vote 4/0.  
9

10   **9.     New Business**

11           **a.)     BCWD Website Redesign – Board Action**

12           Barb Wohlferd has volunteered to redesign the District’s website for free. A sample  
13           website layout and site map were discussed and commented upon.

14           Manager Leiser, seconded by Manager Taillon, moved to approve the update to the  
15           BCWD website design and put the new website design online when ready. Vote 4/0.  
16

17           **b.)     April 2007 BCWD Board Agenda**

18                 o   **2006 Financial Overview**

19           **c.)     Wisconsin American Water resources Association**

20           Camilla Correll, EOR, presented information gathered at a WI AWRA conference  
21           as it may be of interest to the Board given recent discussions on groundwater  
22           dependent natural resource protection. In general, others are also struggling with  
23           groundwater dependent natural resource protection regulation. There are others  
24           working to identify groundwater recharge areas. The state of WI approved  
25           groundwater rule 310, which requires groundwater management areas to be  
26           identified. A study is being conducted on prairie potholes on how development  
27           impacts groundwater dependent natural resources.  
28

29   **10.    Discussion Agenda – No Action Required**

30           a.)     Permit Review – Current Inspection Update

31           b.)     Project Review and Updates

32                 o   Long Lake Implementation

33                 o   McKusick Lake Management Plan

34                         Administrator Kill informed the Board that Wenck & Associates notified  
35                         the District that the entire study area is comprised of 3,300 acres. The Lily  
36                         Lake subwatershed area comprises 580-acres of the study area or 18%.

37                 o   Millbrook Update/Petroleum Mitigation

38                 o   Stormwater U – Update

39                 o   Minnesota Erosion Control Association – Update

40                 o   Rotary Presentation

41           c.)     Subcommittee updates

42                 o   BMP Update

43           d.)     Communications & Reports

44                 o   I-94 Rest Stop BMP Demonstration Site

45                 o   BWSR 2007-08 Challenge Grant

46                 o   MAWD 2006 Annual Report

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11. Adjournment

**Manager Johnson, seconded by Manager Vanzwol, moved to adjourn the meeting at 10:00**

**PM. Vote 4/0.**

Respectfully submitted by  
Karen Kill, BCWD Administrator