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2 **Minutes of the Regular Meeting of the Brown's Creek Watershed District Board of**
3 **Managers, August 13, 2007.**

4
5 **WCD Offices, 1380 W. Frontage Road, Hwy. 36**
6 **Stillwater, MN**

APPROVED

7
8 **ROLL CALL**

Present:	Others Present:
Craig Leiser, President	Karen Kill, Administrator
Rick Vanzwol, Vice President	Paula Guetter, Recording Secretary
Connie Taillon, Treasurer	Camilla Correll, EOR
Gerald Johnson, Secretary	Louis Smith, Smith Partners
	Pat Conrad, EOR
Absent: Gail Pundsack, Manager	Dan Fabian, EOR

9
10 **1. Call Regular Meeting to order @ 3:10 PM**

11 President Leiser called the Regular Meeting to order at 3:10 PM.

12
13 **2. Approve Regular Meeting Agenda and Discussion Agenda**

14 Manager Vanzwol asked that comments from Louis Smith, Smith Partners, be added
15 under New Business as item 8d. Administrator Kill requested the Annual Report be
16 added as item e under New Business. In addition, Administrator Kill requested the
17 McKusick Lake Management Plan be added as item f under Old Business.

18
19 **Manager Vanzwol, seconded by Manager Johnson, moved to approve the meeting**
20 **agenda and discussion agenda as amended. Vote 4/0.**

21
22 **3. Public Comments**

23 Administrator Kill noted she had received a few comments from Jerry Daniels on the
24 land conservation program with regards to the property the St. Croix Academy is looking
25 at for their location.

26
27 **Manager Vanzwol, seconded by Manager Johnson, moved to table public comment**
28 **until later in the meeting. Vote 4/0.**
29

1 4. Approve Minutes – Board Action

2 a.) **July 9, 2007 Regular Board Meeting**

3 **Manager Vanzwol, seconded by Manager Taillon, moved to table the minutes of the**
4 **July 9, 2007 Regular Board Meeting until the September 2007 Regular Board**
5 **Meeting. Vote 4/0.**

6
7 b.) **July 23, 2007 Budget Work Shop**

8 **Manager Vanzwol, seconded by Manager Johnson, moved to approve the minutes of**
9 **the July 23, 2007 Budget Workshop as presented. Vote 3/0/1. Manager Taillon**
10 **abstained due to her absence at that meeting.**

11
12 5. **Treasurer’s Report**

13 a.) **Review Authorized Funds Spreadsheet**

14 Administrator Kill gave an update of the Authorized Funds Spreadsheet.

15
16 b.) **Current Items Payable – Board Action**

17 Administrator Kill noted the wetland function and value assessment came in 5% over-
18 budget because of boundary confusion.

19 **Manager Vanzwol, seconded by Manager Johnson, moved to allocate \$606 to**
20 **account 915-4000 to cover the additional costs for the wetland function and value**
21 **assessment. Vote 4/0.**

22
23 Manager Taillon reported that the amount payable was \$125,858.45 and the total balance
24 was \$199,600.39.

25 **Manager Taillon, seconded by Manager Johnson, moved to pay bills as presented.**
26 **Roll call vote 4/0.**

27
28 c.) **Depository Services Resolution for Government Entities – Board Action**

29 Administrator Kill noted the savings account was switched to a checking account. The
30 Board now has a better interest rate; however, the account can no longer be accessed
31 online.

32 **Manager Vanzwol, seconded by Manager Johnson, moved to approve Resolution**
33 **“Depository Services for Government Entities”. Vote 4/0.**

34
35 d.) **Permit Fee Statements Review**

36 The Board requested a plan of action for the Parkwood Development outstanding fee of
37 \$10,710.62 for the next meeting, including legal courses of action.

38
39 o. **#06-30 WATE Permit Fees**

40 Administrator Kill reported that some of the fees were spent working with the City of
41 Oak Park Heights to determine if adequate storage existed in the Kern Center Pond.
42 Administrator Kill asked if the Board believed the permit holder should be billed for time
43 spent on policy issues. The Board recommended Administrator Kill make an proposal
44 for Board consideration on how much the applicant should be responsible for and how
45 much the Board should absorb.

46
47
48

1 **6. Projects and Programs**

2 **a.) Brown's Creek TMDL Monitoring: Continue Until MPCA Funding**
3 **Granted – Board Action**

4 Administrator Kill reported the MPCA believed the Phase II Brown's Creek TMDL
5 would be starting October 1, 2007. In order to continue monitoring, the Board is being
6 requested to fund the additional monitoring efforts from July through the end of October
7 2007. **Manager Vanzwol, seconded by Manager Taillon, moved to approve up to**
8 **\$4732.62 from the contingency reserve until the MPCA grant is effective or through**
9 **the end of October 2007. Vote 4/0.**

10
11 **b.) Long Lake Management Plan Implementation – North Marketplace Change**
12 **Order – Board Action**

13 Administrator Kill reported an additional \$480 was needed to place a bond for the
14 project. Administrator Kill noted she and Pat Conrad, EOR, would include the bond in
15 the bidding documents in the future.

16 **Manager Vanzwol, seconded by Manager Johnson, moved to move \$480 from**
17 **account 929-0004 to account 929-0000 to cover the additional costs of the project.**
18 **Vote 4/0.**

19
20 **c.) Long Lake Management Plan Implementation – Herberger's/Tower Drive**
21 **Pond's**

22 **o. Public Hearing**

23 Manager Leiser opened the public hearing at 3:48 p.m. Manager Leiser asked for public
24 comment three times. Hearing no public comment, Manager Leiser closed the public
25 hearing at 3:50 p.m.

26 **o. Order Project – Resolution #07-06**

27 Administrator Kill noted the reference to Tower Drive Pond could be removed because
28 the City of Stillwater had already completed the request from BCWD.

29 **Manager Vanzwol, seconded by Manager Taillon, moved to pass the amended**
30 **Resolution for #07-06 for the Herberger's Pond. Vote 4/0.**

31
32 Pat Conrad, EOR, updated the Board on the project. Mr. Conrad said he had a discussion
33 with the City of Stillwater and near by property owners to try to receive the needed
34 easements. It appears as though the easements will go through on the condition that the
35 trees are removed. Mr. Conrad noted the Board has asked him to look into alternative
36 filtering devices; the other devices he found were too expensive or would not fit in the
37 location. Manager Vanzwol asked about monitoring. Dan Fabian, EOR, said the City
38 was not willing to take on the filter replacement even after 10 years but they were willing
39 to do the cleaning and maintenance. The City noted it was easier for them to budget
40 labor than actual dollars. Mr. Fabian noted the manufacturer was willing to offer a
41 performance warranty for 5 years not to exceed \$15,000 and they want an opportunity to
42 reconsider the project. Administrator Kill noted the Board would need to budget \$3,000
43 a year to plan for the filter replacement. Manager Leiser asked Administrator Kill to
44 bring up the filter cost at the next budget meeting. Mr. Fabian noted the main concern
45 right now is algae growth in the pond, which could clog the filter but the problem could
46 potentially be solved with an additional filter. The total construction cost is around
47 \$50,000. The bid process takes 2-3 weeks. Administrator Kill reminded the Board to
48 remember that the 2006-07 BWSR Challenge Grant funding expires December 31, 2007.

1 **Manager Vanzwol, seconded by Manager Johnson, moved to authorize EOR to seek**
2 **formal bids for the Herberger's project. Vote 4/0.**
3

4 d.) **BMP Cost-Share Projects**

- 5 ○ **White Raingarden – Legend's – Board Action**

6 **Manager Leiser, seconded by Manager Vanzwol, moved to approve up to**
7 **\$793.75 for the White Raingarden. Vote 4/0.**
8

- 9 ○ **Rinker Raingarden – Legend's – Board Action**

10 **Manager Leiser, seconded by Manager Vanzwol, moved to approve up to**
11 **\$2043.10 for the Rinker Raingarden. Vote 4/0.**
12

- 13 ○ **Bogel Raingarden – Legend's – Board Action**

14 **Manager Vanzwol, seconded by Manager Taillon, moved to approve up to**
15 **\$1117.25 for the Bogel Raingarden. Vote 4/0.**
16

- 17 ○ **Prestangen Raingarden – Legend's – Board Action**

18 **Manager Johnson, seconded by Manager Leiser, moved to approve up to**
19 **\$840.00 for the Prestangen Raingarden. Vote 4/0.**
20

- 21 ○ **Sutton Raingarden – Legend's – Board Action**

22 **Manager Vanzwol, seconded by Manager Taillon, moved to approve up to**
23 **\$577.95 for the Sutton Raingarden. Vote 4/0.**
24

- 25 ○ **Bartkey Raingarden – Legend's – Board Action**

26 **Manager Johnson, seconded by Manager Vanzwol, moved to approve up to**
27 **\$733.50 for the Bartkey Raingarden. Vote 4/0.**
28

- 29 ○ **Milker Raingarden – Legend's – Board Action**

30 **Manager Johnson, seconded by Manager Vanzwol, moved to approve up to**
31 **\$316.45 for the Milker Raingarden. Vote 4/0.**
32

- 33 ○ **Walsh Raingarden – Croixwood – Board Action**

34 **Manager Vanzwol, seconded by Manager Taillon, moved to approve up to**
35 **\$1004.45 for the Walsh Raingarden. Vote 4/0.**
36

- 37 ○ **Filandros Raingarden – Legend's – Board Action**

38 **Manager Johnson, seconded by Manager Taillon, moved to approve up to**
39 **\$660.25 for the Filandros Raingarden. Vote 4/0.**
40

41 The total for the rain gardens was \$8,086.80; the funds will come from the account 914-0000
42 Homeowner BMP. Each site requires an additional \$750 for the design.

43 **Manager Leiser, Manager Vanzwol, moved to approve \$8,086.80 plus \$750 for each site for**
44 **the final design to come from account number 914-0000. Vote 4/0.**
45
46
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1 **7. Old Business**

2 **a.) Infiltration Monitoring Results at Kern Center Pond and Bradshaw**

3 The Board noted purple loosestrife has been identified at the Kern Center Pond; it is a
4 prohibited plant under state statute. The Board recommended the City of Oak Park
5 Heights be contacted since they are in charge of the maintenance of the pond.

6 **Manager Vanzwol, seconded by Manager Leiser, moved to approve the report as**
7 **presented. Vote 4/0.**

8
9 Manager Leiser suggested a copy of the Kern Center Pond report be given to Oak Park
10 Heights so they could distribute it as they see fit. Manager Leiser volunteered to visit Mr.
11 Bradshaw because he felt it was important Mr. Bradshaw see the report. Manager Leiser
12 noted there was possibly purple loosestrife in “Body Parts Pond” on the north side of
13 Highway 96 west of Lansing Avenue.

14
15 **b.) District-wide Buffer Map – Board Action**

16 Manager Vanzwol questioned the annual fee for web hosting. Camilla Correll, EOR, said
17 she believed the cost to web host for the District would cost \$750. The map could be put
18 on a disk and/or it could be a GIS layer. Administrator Kill’s would prefer the end
19 product as a GIS layer.

20 **Manager Vanzwol, seconded by Manager Taillon moved to assemble option 2 not to**
21 **exceed \$7030 to come from account 926-0000 and to table the out-put option until**
22 **the September Board Meeting. Vote 4/0.**

23
24 Manager Johnson expressed concern about encroaching on the contingency fund.
25 Manager Leiser said he believed \$15,000 remained in the fund.

26
27 **c.) Resolution #07-07 Financial Statement Preparation – Board Action**

28 **Manager Vanzwol, seconded by Manager Johnson moved to approve Resolution**
29 **#07-07. Roll call 4/0.**

30
31 **d.) Resolution #07-08 Documentation of the Components of Internal Control –**
32 **Board Action**

33 **Manager Vanzwol, seconded by Manager Johnson moved to approve Resolution**
34 **#07-08. Roll call 4/0.**

35
36 **e.) Resolution #07-09 Financial Statement Adjustments – Board Action**

37 **Manager Vanzwol, seconded by Manager Johnson moved to approve Resolution**
38 **#07-09. Roll call 4/0.**

39
40 **f.) McKusick Lake**

41 Administrator Kill noted the Wenck Memorandum, which indicated more time and
42 money would be needed to figure out the XPSWMM and P8 Model Discrepancy.

43
44 **8. New Business**

45 **a.) Stillwater Local Water Management Plan**

46 Administrator Kill reported the District was in the process of reviewing the Stillwater
47 Local Water Management Plan.

48

1 **b.) Beaver Control/Dam Removal on Brown's Creek – Board Action**

2 Administrator Kill reported a beaver dam upstream of the McKusick Road monitoring
3 station causing problems for the monitoring station. Administrator Kill agreed she would
4 talk to the golf course and report back to the Board at the next budget meeting.
5

6 **c.) Groundwater Dependent Natural Resource Comp Management Plan**

7 Administrator Kill informed the Board that Washington County had offered to support
8 the GWDNR Comp Management Plan development with \$10,000. The details will be
9 worked out and presented to the Board for approval at a future meeting.
10

11 **d.) Financial Disclosure**

12 Administrator Kill noted the state legislature had decided to consider Watershed
13 Managers to be Public Officials, requiring financial disclosure forms to be completed.
14 The Board discussed the change with legal counsel.
15

16 **e.) Annual Report**

17 **Manager Leiser, seconded by Manager Vanzwol, moved to accept the 2006 Annual**
18 **Report for distribution and circulation among the LGUs, County Commissioners**
19 **and BWSR. Vote 4/0.**
20

21 **9. Permit/Rules (Part 1)**

22 **a.) Permit #06-04 Brown's Creek Reserve – Request for Conditional Approval**
23 **Extension – Board Action**

24 **Manager Leiser, seconded by Manger Johnson, moved to approve a 120-day**
25 **extension at the applicant's request to December 11, 2007. Vote 4/0.**

26 The Board discussed the fees due.
27

28 **b.) Permit #06-08 Legacy on Long Lake – Board Action**

29 **Manager Leiser, seconded by Manger Johnson, moved to approve an extension to**
30 **October 10, 2007 at the applicant's request. Vote 4/0.**
31

32 **c.) August 2007 BCWD Board Agenda**
33

34 **Manager Leiser, seconded by Manager Johnson, moved to recess at 5:03 p.m. until 6:30**
35 **p.m. Vote 4/0.**

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Present:	Others Present:
Craig Leiser, President	Karen Kill, Administrator
Rick Vanzwol, Vice-President	Paula Guetter, Recording Secretary
Connie Taillon, Treasurer	Camilla Correll, EOR
Gerald Johnson, Secretary	Louis Smith, Smith Partners
Gail Pundsack, Manager	Pat Conrad, EOR
	Cecilio Olivier, EOR
	Ryan Fleming, EOR
	Bruce Malkerson
	Roger Humphrey
	David Engebretson
	Jeanne Stevenson
	Mike Lynskey, Sr.
	Mick Lynskey
	Dan Thurmes
	Debbie Sinclair
	Mary Harycki
	Ken Harycki
	Christine Clark
	Barbara Lynskey
	MaryAnn Sandeen
	Michael Wentz
	Bob Clark
	Troy Nemmers
	Tracey Galowitz
	Brian Larson
	Dick Paukert

2

3 **10. Call Regular Board Meeting back to order @6:30 p.m.**
 4 Manager Leiser called the August 13, 2007 Regular Board Meeting back to order at 6:35 p.m.

5

6 **3. Public Comment**
 7 Manager Leiser asked for public comment. There was no public comment.

8

9 **11. Permit/Rules (Part 2)**
 10 **c.) Permit #07-18 St. Croix Prep Academy Review Extension – Board Action**
 11 **Manager Vanzwol, seconded by Manager Johnson, moved to extend for 60-days to**
 12 **October 23, 2007 for review of the St. Croix Prep Academy because revisions are**
 13 **needed. Vote 5/0.**

14

15 **d.) Permit #07-07 Fairway Villas Board Action**
 16 Manager Leiser noted the terms and conditions of the permit review and permit action required
 17 tonight. The meeting is a recorded session, not a public hearing; however, it is a meeting open to
 18 the public. Anyone that wished to address the Board should first note their name and
 19 relationship to the permit. Time constraints would be put on portions of the presentation. The
 20 order of the presentations would be as follows: First, 10 minutes would be dedicated to

1 Administrator Kill's summary of activities taken by Lynskey and Clark, the Board, and the
2 Board's resource personnel (engineers and lawyers), since the last meeting. Second, 10 minutes
3 would be dedicated to Ms. Correll's, EOR (the District engineer), update on anything specifically
4 presented, analyzed, and/or discussed between EOR and the engineering company for Lynskey
5 and Clark since the last meeting. Third, 10 minutes would be dedicated to Mr. Smith, the
6 District Legal Counsel, to present a summary of the Review of Findings. Fourth, 20 minutes
7 would be dedicated to the applicant, to divide how they wish, for a general discussion and 10
8 minutes for a concluding presentation. Manager Leiser noted the applicant would receive a total
9 of 30 minutes just as the District staff will have received 30 minutes. After both the applicant
10 and the District staff have presented there would be a brief allotment of time for general public
11 comments; each person will be given a maximum of 3 minutes. All questions shall be directed to
12 the Board. The Board may ask for responses by the applicant, the applicant's staff and/or the
13 District staff to ensure clarity of the presented information. Once all of the before mentioned
14 discussions and presentations have taken place the Board will then enter deliberation and will
15 come to a conclusion either accepting or denying the permit. Manager Leiser asked if there were
16 any questions.

17
18 Administrator Kill said the July 9, 2007 Regular Board Meeting was ended with some questions
19 regarding whether the steep slope extended into the drainage area of the eastern most culvert
20 (culvert number 1). A meeting was held July 18th with Lynskey & Clark and Brown's Creek
21 Watershed District staff including Administrator Kill, Ms. Correll, Mr. Holtman (the Board's
22 legal counsel), and Manager Vanzwol, Mr. Clark, Mr. Lynskey, Mr. Humphrey and Mr.
23 Nemmers to discuss the methodology proposed at the July 9th Board meeting. Manager
24 Vanzwol attended based on the request of the applicant that one Board member be present at the
25 meeting; Manager Vanzwol listened to the meeting but did not actively participate in the meeting.
26 Administrator Kill said she would allow Ms. Correll to go into the specific engineering in her
27 part of the presentation. The applicant requested EOR send them the XP SWMM model, the
28 hydraulic model of the Watershed District, for the area the permit covers, which was supplied to
29 the applicant in a timely manner. Administrator Kill said in addition to the discussion revolving
30 around the drainage to the eastern most culvert (culvert number 1), two questions came up
31 regarding the modeling at the July 18, 2007 meeting. One was remodeling the culverts to
32 determine the velocities going through the culverts to determine if the culvert sufficiently acted
33 as a break in the steep slope. The second issue brought up by the applicant was that the applicant
34 recently realized the eastern most culvert has a cobble, natural bottom. Administrator Kill noted
35 EOR and the Board were aware of the cobble, natural bottom previous to the discovery by the
36 applicant. The District staff conducted a field visit of all three applicable culverts prior to the
37 Board tour in May 2007. All District reviews presented to the Board to date, including the
38 modeling that has been done for the area by the District, assumed a natural bottom for culvert 1.
39 The applicant also questioned how the Fairway Villas permit has been treated compared to
40 Millbrook, the only other permit where the steep slope has applied to a buffer. Administrator
41 Kill noted the same tools were utilized but additional steps were taken to field verify at Fairway
42 Villas because of the questions brought up by the Board and by the applicant. These questions
43 did not arise during the Millbrook discussions and field verification was not conducted.
44 Additionally, there are differences in the landform between Millbrook and Fairway Villas.
45 Fairway Villas has some higher risk areas than Millbrook including steeper slopes, sandier soils,
46 more shady areas, more wooded vegetation, and more leaf-litter type cover. Millbrook is a
47 sunnier, more stable site with more rooted grassy vegetation. Administrator Kill pointed out a
48 detailed memo was in the Board packet regarding the differences.

1
2 Ms. Correll, EOR, said she would be going through the memo from EOR. Ms. Correll noted Mr.
3 Olivier and Mr. Fleming might be asked to explain more on the XP-SWMM modeling. At the
4 July 9th meeting the permit applicant submitted a figure that shows areas within the middle zone
5 that were equal or greater to 50 feet and less than 12% in slope to determine if the areas
6 constituted a break in slope. Steep slopes are measured perpendicular to the contour or the flow
7 path. If the slopes are viewed along the centerline of the tributary that goes into Brown's Creek,
8 the Board can see there are steep slopes that originate well within the middle zone; therefore, the
9 buffer is extended to the top of the slopes. The fact that there are areas within the middle zone
10 that are shallower than 12% or longer than 50 feet does not mean the steep slope rule would not
11 apply because there are slopes that are greater than 12% and longer than 50 feet originating in
12 the middle zone. Since the July 9th Board meeting, the permit applicant submitted additional
13 pieces of information that EOR reviewed. A figure titled "What is the steep slope?" was
14 presented to staff prior to the meeting on July 18th. Ms. Correll reiterated in the modeling done
15 by EOR it was their assumption that the bottom of culvert one was cobble in nature. Ms. Correll
16 noted the last piece of information was regarding the XP-SWMM model that the applicant had
17 requested and had tested by Barr Engineering. Barr Engineering made a few modifications to the
18 model noted in the memo, which showed that the velocities upstream of the crossing or the
19 culvert for the 1.5, 10 and 100 year event are decreased as it moves through the culvert and then
20 increased on the downstream end of the culvert. EOR reviewed the modifications to the model.
21 EOR could agree on removing the obstruction upstream of culvert one in the model. EOR also
22 agrees with using the field surveyed data for the ravine upstream of culvert one that is quite steep
23 in the model. However, the cross-section that Barr put in their model was not consistent with
24 the surveyed data that they provided EOR. EOR felt that the cross-section at the station where
25 Barr said the cross-section was from was a little wider and had side slopes a little shallower.
26 EOR ran the model with the revisions and determined that the upstream velocities and the
27 velocities through the culvert are the same. The flows are not slowed down by the culvert. The
28 applicant has included the channel downstream in a more accurate model but that does not have
29 impact on the flows through the culvert. In order to determine the buffer location, only existing
30 conditions are considered. The District Engineer recommends the buffer that was presented to
31 the Board at the July 9th meeting Board meeting, which still results in a majority of two of the
32 twin-homes and portions of two other twin-homes are impacted by the buffer.

33
34 Louis Smith, Smith Partners, said he will be referring to the document titled "Draft Findings for
35 Board Consideration", which is intended to organize the Board's information in order for the
36 Board to make a decision. The Board should scrutinize the document and make sure it is correct
37 in their opinions and reflects the findings and decision the Board makes. Smith Partners traced
38 the rules that apply to this project and the engineer's reports that have been developed analyzing
39 the application of the rules. The District engineer found on July 9th that with respect to all
40 matters other than the stream buffer the permit may be approved with the conditions listed under
41 the list of recommended conditions. Mr. Smith noted the conditions are not being contested by
42 the applicant. There are a variety of water resource and natural resource protection purposes for
43 the buffer requirement. The steep slope is defined in the rule as land with an average slope
44 exceeding 12% over a distance of 50 feet or more, or land defined as steep slope in the
45 Washington County Soil Survey. The purpose of the steep slope consideration is due to the
46 potential undermining of the down gradient buffer by increasing the volume and velocity of
47 surface runoff and delivering increased sediments, nutrients, and other pollutants. The process
48 utilized by engineers and staff in delineating the buffer and the mapping process is described in

1 the documentation. The District's Rules are clear as to how the buffer is calculated when a steep
2 slope is involved. The rules apply to whatever land is encountered within that steep slope,
3 whether it's been improved or altered, or it contains a berm or other artificial structure or
4 building. The question has been raised by the applicant that by virtue of the placement of the
5 berm within the steep slope area that the Board should modify or reduce the steep slope
6 application of the buffer. The letter Administrator Kill sent to the applicant in October 2006
7 acknowledged that the Board has some discretion to apply a reasonable application of the Rule to
8 these circumstances consistent with the Rule intent and purposes. The letter notes that it would
9 be reasonable to analyze the effect of the berm on relevant hydrologic considerations such as
10 run-off velocity, pollutant loading, temperature and residence time in the buffer. The conclusions
11 presented are just the staff recommendation for how to address the permit application before you
12 based on the record that has been developed thus far. The findings are that the project proposes
13 building within the buffer as it is defined within the rules and as applied here and for that reason
14 the permit application should be denied because it encroaches on the buffer and would seek to
15 undertake activities that are prohibited in the rules. With respect to all matters other than the
16 stream buffer the permit application as presented may be approved with conditions listed under
17 the heading of recommended conditions in the July 9, 2007 memorandum. Staff also
18 recommend that the District consider a resubmitted application that conforms to the specified
19 buffer requirements or that presents grounds for a variance pursuant to BCWD Rule 10 and
20 within the buffer rule there is a specific section for exceptions and variance. The applicant has
21 submitted a request for variance this evening under both of the sections. Mr. Smith believes the
22 order of business is to hear all the information and deal with the permit application as it has been
23 presented, come to a conclusion and if the case is that the Board decides not to approve the
24 permit then the Board may entertain the idea of the variance request. As the document was
25 drafted it would provide for a variance request or otherwise modified permit application to be
26 submitted to the Board for consideration at a future meeting; however, if it seems appropriate the
27 Board may entertain the variance request this evening. Smith Partners has stipulated in their
28 recommended findings and conclusions that if there is a new application put forward based on
29 this approach they would still fall under the rules as adopted in 2000. Mr. Malkerson, presented
30 on behalf of the applicant. Mr. Malkerson said he wanted to focus the Board's attention on a
31 couple items that the applicant has asked the Board to consider carefully and he hopes that when
32 the Board does that, that they will find that indeed the buffer shouldn't be as the District staff are
33 proposing. The buffer shouldn't reach up to their property so there should not be a need for a
34 variance. There is an agreement about a lot of things as the District's engineer pointed out. Mr.
35 Malkerson said he has had problems with a functional analysis because there is nothing in the
36 District Rules that calls for functional analysis and it remains undefined. Mr. Malkerson believes
37 as a matter of law that you can't do the buffer as noted. Mr. Malkerson stated that obviously the
38 Board is not going to find the functional analysis irrelevant because the Board's staff has come
39 up with the Board's findings. However, if the functional analysis is tweaked a bit, the Board can
40 find that the buffer shouldn't be extended accordingly. Mr. Malkerson clarified the applicant
41 actually submitted a variance request on June 8th, 2007. The letter there went through all the law
42 that the applicant saw as relevant and gave the Board some of the facts they believed supported
43 the variance based upon the facts as they knew them then. The applicant did not even know if a
44 variance was needed because a buffer area had not been determined yet, but if indeed a buffer
45 area is determined in such a way that would require a variance, they hereby apply for it last June
46 and since then staff has been great working with them helping them to work through some of the
47 areas so they have learned some more things. The June 8th letter was updated with the new facts
48 that support other reasons they believe the buffer doesn't extend as high as the District engineer

1 is proposing and in the event that the Board finds that the buffer does extend that high, they set
2 forth why they believe a variance should be granted in this situation. Mr. Malkerson said in
3 closing the functional analysis is something the new rules address, but the current permit is under
4 the old rules and never to be repeated again.

5
6 Mick Lynskey, Lynskey and Clark, stated he wanted to have a discussion from a real lay
7 perspective. Mr. Lynskey provided a history of the project and read the last two paragraphs of
8 the October 2006 letter from Administrator Kill. The determination of the buffer, whether the
9 berm is a break or not, is part of the determination of the buffer. However, Lynskey & Clark
10 have since been told very clearly, by District staff and counsel, I am sorry you misinterpreted
11 that letter. Mr. Lynskey insisted that he does not see the misinterpretation. A lot of time, effort
12 and money was spent to get preliminary plat approval. Lynskey and Clark instructed their
13 engineer's at that time to design the best possible neighborhood to have the most impact to
14 control the water on the site, so hopefully to have an opportunity to review the design in the
15 determination of the District buffer. It took a long time to get through the City. But after
16 submitting to District staff, Lynskey & Clark were told the buffer determination was changing
17 now and it would be determined on pre-existing conditions and that their design had no effect on
18 the determination of the buffer. Mr. Lynskey asked that the Board understand their frustration.
19 Secondly, if it comes down to a variance, Mr. Lynskey said he'd talk about all the great things
20 they are doing and the extraordinary costs they are undertaking. They have looked at changing
21 culvert number one to make a weir-type situation in the culvert to help control flows more but it
22 is not their property. Mr. Lynskey has met with Dave Paradeau, owner of the Zephyr. Mr.
23 Paradeau was unwilling to allow the changes to the culvert while negotiating a sale of the
24 property with the DNR for a state trail. Mr. Lynskey said they have tried everything they can
25 to meet the Board's standards. They do not agree about the berm. They believe the culverts in
26 conjunction with the berm do have a definite effect on slowing down the steep slopes. They
27 started looking at how Millbrook's buffer was determined. It appeared that if the Millbrook TIN
28 did not touch the middle zone, the buffer was not extended. Mr. Lynskey said they never asked
29 for field verification for Fairway Villas. Mr. Lynskey handed out a map of Millbrook site and
30 emphasized that the same methodology was not used in Millbrook of extending the middle zone
31 for any 50-foot span greater than 12% that originates in the middle zone. Mr. Lynskey said he
32 went down and took a shovel and dug down to see if there is a bottom on the eastern most culvert
33 and there is no bottom. It is a complete, natural ravine where they built an arch over it; it is land,
34 not a culvert. He would like the Board would consider that as well. Mr. Lynskey said they
35 believe the break in steep slopes would stop there because in the case of an arch the District
36 clearly has steep slope rules that apply to land.

37
38 Roger Humphrey, engineer for Lynskey & Clark, presented an attachment showing that they
39 have 52 feet of 11.6% that straddles the middle zone; however EOR's attachment two says if you
40 tip the rod up just a little bit they are over 12%. There are two methods, the top of rod method
41 and the bottom of rod method, identified by where are they measuring where a break occurs. All
42 that needs to be done is to find a place that is not steep, to find a break. It is their opinion that all
43 they need to do is find one spot that is 50 feet long and less than 12% and that becomes a break.
44 They struggled with trying to figure out what the answer is since an object can't be two things at
45 the same time. It can't be steep and not steep, then it's neither; it's a break and that is what they
46 tried to illustrate. Their point on cross-section 10+55 is that they feel that if the Board would
47 look upstream at the cross-section, the right hand side of the cross-section is actually the railroad
48 break. The 10+30 cross-section is within 10 degrees of the extension of the pre-existing channel.

1 The channel at 10+55 is a 55-degree deviation from that projection; it is turning toward a drop
2 structure that exists right at the culvert. If they look at the drop culvert, the upstream sides sits
3 on natural bedrock of sandstone and the two sides paralleling the railroad tracks, east and west
4 sides is about 5 or 6 feet of stone built up to create a flatter area that exists at this location and
5 then on the north side is culvert that goes out that way as well. Mr. Humphrey said if they move
6 this closer they would get less velocities because it is flatter and widens out more, as they move
7 upstream he believes the channel gets narrower. There is a lot of engineering judgment that goes
8 into determining the velocity of a channel and what's happening there and the reality is that the
9 flows are low coming on the site. When talking about functionality, what is meant? Analyzing
10 the effect of the railroad grade versus the upstream and the downstream channel or how does the
11 railroad grade affect the flow as the water comes into it, which is station 10+55? Or is there a
12 comparison that is out there that compares land at 12%, in 6 inches of grass or 12 inches of grass
13 or forest litter? There are three things that affect the velocity: geometry of the channel, the
14 roughness co-efficient of the bed of the channel and the slope. The roughness coefficient of the
15 cobble culvert bottom is three times rougher than what it is downstream because in the spring the
16 culvert washes the forest litter out. Their struggle with the functionality is none of these items
17 have been defined.

18

19 Manager Leiser opened the meeting to public comments.

20

21 Debby Sinclair, property owner of 25 acres that border the north edge of the railroad tracks,
22 some of the run off will run through her property. Ms. Sinclair said she has seen the culverts
23 looking like a waterfall during spring thaw and heavy rains. Anything that would remove the
24 buffer zone up there would have a negative impact on the creek. If it's taking run off with lawn
25 chemicals and road salt it will have a negative impact on the trout; it's a very delicate trout
26 habitat and the buffer is necessary to protect the creek.

27

28 Manager Vanzwol wanted to point out for the audience and the record that they have heard in
29 writing from seven individuals representing five properties and uniformly they said follow your
30 own rules. They suggested that the Board protect Brown's Creek at all costs. One of the seven
31 individuals just spoke to the Board but there are six others represented in writing.

32

33 Mr. Smith, District legal counsel, noted for the record that there are several documents that Mr.
34 Lyskey and Mr. Humphrey presented. Mr. Smith wanted to make sure BCWD Board members
35 and staff know what they are and have a copy of them for the record.

36

37 Manager Leiser said it has been an extraordinarily challenging process; it is very complex. It has
38 been made even more challenging with such a body of information and detailed calculations
39 having been presented to the Board an hour or two before the meeting. It is impossible in that
40 time frame to give the body of information full and due consideration and that makes the Board's
41 job all that much more difficult. There might have been questions the Board could have asked
42 and didn't. The Board is faced with making a decision based on its best interpretation of the
43 material presented, staff analysis, the applicant's explanations and the time they've had to deal
44 with the material. For example the Board received one letter tonight from the applicant ; it is an
45 11-page memo the Board received at the 11th hour. The Board is challenged by state law to
46 protect and preserve the best they can the water resources of the Brown's Creek Watershed
47 District, which has an impact on the water resources of the region – Washington County, the
48 state – Minnesota, and the watershed of the St. Croix River. Brown's Creek is a naturally

1 reproducing trout stream. There are seven or eight trout streams that are still viable in the
2 metropolitan area, in any case it is a small number. To have a natural reproducing trout stream,
3 you have to manage the temperature and the quality of the water, which is oxygen content, silt
4 content, heavy metals loading and a variety of other things. The Board is very concerned at this
5 point about siltation. First, siltation over a trout hatching bed will kill the eggs before they hatch.
6 Second, excessive siltation will cover over the areas on the bottom of the stream where the
7 macroinvertebrate population resides, grows and serves as food for the trout. If you kill the
8 macroinvertebrates the trout have nothing to eat. . In addition, the gentleman that owns Wolfe
9 Marina at the mouth of Brown's Creek has been before the Board three times in the last 10 years,
10 concerned about the level of silt coming out of Brown's Creek and filling in his harbor causing
11 him to have to undergo dredging operations. The Board understands there has been a significant
12 effort and a significant cost borne by the City of Stillwater and the residents of Stillwater,
13 residents of Brown's Creek Watershed District, and of the state of Minnesota to identify, protect
14 and preserve the quality of water in Brown's Creek. Manager Leiser noted he is the only
15 member of the Board that was a part of the January 2000 rule development. The Board had felt
16 the buffer should be determined by the slope, the vegetative cover and the resource value. The
17 higher the resource value the greater extent they wanted to have a larger buffer.

18
19 Manager Pundsack requested further clarification on the difference between the measuring
20 methods, either at the bottom of the rod or the top of the rod. Ms. Correll clarified, you start at
21 the resource you are trying to protect with a 50-foot rod and follow the ground. If at any point
22 the rod exceeds 12% and the downstream part of the rod is within the middle zone then the
23 buffer extends to the top of the steep slopes. You start at the resource and work your way
24 through the middle zone. When you are moving you are moving downstream or upstream if
25 your slopes are changing as it gets towards the creek, your buffer changes lengths to follow that.
26 Ms. Correll asked Manager Pundsack if she understood the applicant's point of view. Mr.
27 Humphrey said their contention is all they need is one spot that's less than 12% and the steep
28 slope doesn't exist, even though you could slide that scale up and down and get it so it's not a
29 break in some other areas.

30
31 Ms. Correll asked to clarify because she believes they are discussing two issues. If there is a
32 portion of bed adjacent to the creek that's less than 12% and greater than 50 feet and it is in the
33 middle zone, it's irrelevant. It's when you have a slope that's 50 feet long and that's greater than
34 12% starting upstream of an area that's flatter you have a slope that is more steep and that is
35 originating in the middle zone so as the rule is written then the buffer extends to the top of the
36 steep slopes, that's one point. If you want to say you take that up to the culvert and the culvert is
37 shallow; then that's the point they are arguing that the culvert itself is shallow and they want to
38 call it land then that would be a break. However, the District engineers do not agree because it
39 is an arch culvert; it does transport water more efficiently as demonstrated with the modeling so
40 it is not a break. If you went farther upstream than the culvert like one of the modifications they
41 recently sought, for example culvert 2, if you then come to land that is outside of the middle zone
42 farther upstream and that's 50 feet, less than 12% the District engineers agree that it would be a
43 break in slope.

44
45 Mr. Humphrey said attachment one shows they have 52 feet that spans across the middle zone at
46 11.6% slope. The culvert has 70 feet at approximately 4 percent, the average slope up there,
47 with 95 feet at an average slope of 12%.

48

1 Manager Pundsack said that they are consistent because they used the TIN method at Millbrook
2 and the TIN method with Fairway Villas. Mr. Lynskey said the TIN method is very clear and
3 there is no TIN in that location. Ms. Correll clarified on their map the TIN does actually hit the
4 middle zone, they intersect. Mr. Clark said what they brought is that the TINs do not touch;
5 they never asked for field verified information.
6

7 Administrator Kill said she did not address it earlier because she did not want to get back and
8 forth with a lot of he said, she said; however, it was brought up a number of times here that the
9 applicant did not ask for a field verification. Literally they didn't ask for a field verification;
10 Administrator Kill said she did. The summary of the conversation with Bob Clark was not a
11 voicemail nor an email, it was a conversation so there is no formal record of it other than both of
12 their discussions. BCWD did receive an email from Humphrey Engineering on June 19, 2007
13 with four proposed buffer modifications. Administrator Kill asked the Board to recall the July 9,
14 2007 memo from EOR and going through those points; the first three were accepted by
15 Engineering and modifications were made, the fourth modification that was brought up was the
16 zoomed in view of the middle zone boundary. There was a small area within feet of the red line
17 of the actual middle zone line and there is error within the TIN method, which staff has
18 acknowledged right from the beginning. Administrator Kill said this is a very contentious point
19 there is a huge drainage area that is coming down through that area and to rely on the difference
20 of one or two feet on the TIN, they started talking about calculating what they think the
21 resolution is on the TIN plus or minus "x" amount of feet. Administrator Kill said she did not
22 think it was appropriate, they are going to waste a lot of time and money trying to figure out
23 what they think the resolution is exactly for this TIN method because they did not know of a
24 resource that told us that specifically figuring that out versus just doing some onsite surveying
25 and with that method they then had at their disposal the rod method which is much more accurate.
26 If they had ultimate unlimited financial resources Administrator Kill said it would be her
27 recommendation to the Board to do the rod method on the entire resource. Administrator Kill
28 stated at this time the Board does not have a GIS or an electronic method that does that for the
29 Board specifically, they have the TIN method. Administrator Kill said she had requested that
30 EOR go out and survey this area specifically. Administrator Kill specifically told Bob Clark was
31 that if the area is considered buffer then staff's recommendation is going to be buffer and if it's
32 not then Administrator Kill's recommendation would be that it's not buffer. Administrator Kill
33 said they are not going to make up the facts, the information will be specifically based on that
34 field survey information. Perhaps timing was a bit delayed, Administrator Kill said she had
35 hoped that they would be able to get the survey out approximately a week before they actually
36 got out there, due to the 4th of July holiday and just getting into the surveying schedules.
37 Administrator Kill said she believes through the course of things staff has been very much in
38 contact with the applicant as you can tell from the chronology since April 2007.
39

40 Ms. Correll said Millbrook was the first application of the steep slope rule and they used the TIN
41 method and there were no questions so they did not apply the rod method in that case.
42

43 Manager Johnson said his thought is that he doesn't know if there is more information that can
44 be shared going back and forth. The Board is charged with either accepting the buffer
45 boundaries as recommended by their engineers or not. Manager Johnson said he is prepared to
46 make a decision on that.
47

1 Manager Taillon said as a first stab at it the TIN method is good planning tool but in light of the
2 fact that they do have more information, better information, for the specific site, she feels that
3 that needs to be used in the analysis.
4

5 Manager Vanzwol said there is a lot of material to consider. Manager Vanzwol said he sat down
6 10 days ago and made some notes. Mr. Malkerson, attorney, wrote a letter to the District on the
7 14th of September 2006 saying the District agrees the railroad right of way constitutes a sufficient
8 break in the steep slope, Manager Vanzwol said he doesn't know where that came from because
9 the District had never considered it and Administrator Kill responded to that by saying that she
10 didn't understand the statement and goes on to say as noted above only the Board can speak for
11 the District on this question. Manager Vanzwol said Mick Lynskey's point was that the
12 Administrator gave you bad information. It seems to me she told you that the Board is
13 responsible for this information not the Administrator. There is no question that there is a steep
14 slope and there is no question that the railroad grade is built along side of the steep slope.
15 Manager Vanzwol said he was out and walked the whole thing and he is convinced in his own
16 mind from looking at the site that the water flows down and around and across the berm, in fact
17 Mr. Malkerson in his letter from September 14th says if one physically examines both the area
18 upstream of each pipe inlet and downstream of each pipe inlet one finds there are no erosion
19 problems, but that was not Manager Vanzwol's impression when he viewed the site. There are
20 clearly erosion problems all the way along not just at the culverts but across the top of the
21 railroad grade and there are erosion rills on the down slope side of the railroad grade clearly
22 caused by water running across. He believes that EOR's engineer's analysis of the buffer is the
23 correct analysis. He has looked at the data and read the rules and looked at the data again and
24 it's clear that, in spite of what Mr. Humphrey is saying, the 50-foot stick when it reaches 12%
25 the downstream end is still in the middle zone and their rule is very clear on that point that then
26 means that the steep slope continues on and that is his interpretation. Manager Vanzwol said it
27 seems to him that the Board has two main questions. They need to decide the limit of the buffer
28 and that determines the rest of it. If they should decide if some variance is appropriate then they
29 have to decide what that is. In the memo the Board received tonight from the applicant it says
30 the applicant does not think they need a variance and yet their analysis of the buffer northwest
31 corner shows buildings inside the buffer and they haven't even discussed that part of the buffer
32 tonight. They have spent all this time tonight talking about the northeast ravine, but there has
33 been essentially no discussion of the northwest part but the modifications suggested by the
34 applicant that were agreed to by BCWD's engineers still include buildings in the northwest part
35 of the development that are in the buffer area.
36

37 Mr. Clark replied that they respect what Manager Vanzwol is saying there but that the focus has
38 been on the area where there are steep slopes and where they contend that there is a break in the
39 railroad. They still do not agree with the ability to come up steep slopes through a pipe that is
40 under 5% slope and extend that through the pipe. They have never agreed with that, so when
41 they designed the neighborhood and they heard that if they changed the flow, then they thought
42 that it wouldn't matter. They were building outside of the mapped natural communities. They
43 don't want to cause harm to the creek. In fact, if today's existing land just stays there they way it
44 is versus the way that they propose their neighborhood, they are taking 57% of the land area
45 away from the drainage to the creek. They did not ignore that area; there is just a lot more focus
46 on sub watershed number one with the pipe and where the TINs did not touch the middle zone.
47

1 Manager Vanzwol said he understands what Mr. Clark is saying. Manager Vanzwol said that
2 might be reason to offer a variance; however, that remains to be seen because they haven't heard
3 any discussion about that part of that question yet. Manager Vanzwol said that he is stating that
4 his opinion of where the buffer falls is based on BCWD's engineer's analysis.
5

6 Manager Leiser asked for any additional issues from all the other Board members by name, all
7 said no.
8

9 Mr. Smith said he would recommend the Board first consider the application as it has been
10 submitted and obviously the main outstanding issue they have is the location of the buffer. It
11 would be helpful to refer to the proposed findings and modify them as the Board sees appropriate.
12 Once they have come to a conclusion on that issue, then the Board will be in a position to decide
13 depending on how they rule to deal with the variance question after that.
14

15 **Manager Vanzwol, seconded by Manager Johnson, moved to deny the application for**
16 **BCWD Permit 07-07 Fairway Villas as presented because at least some of the buildings are**
17 **within the buffer as determined by the BCWD rules. Roll Call Vote 5/0.**
18

19 **Manager Leiser, seconded by Manager Johnson, moved that the Board accept the draft**
20 **findings for Board consideration dated August 13, 2007 as amended during Mr. Smith's**
21 **summary and including the conclusions items 41 and 42. Roll call vote 5/0.**
22

23 All of the Managers agreed individually that they were willing to consider a variance to some
24 degree.
25

26 Mr. Malkerson said the applicant's letter says assuming the Board adopts the staff'
27 recommended buffer, then clearly the applicant needs a variance so they have to accept that.
28 They are not here now at this point to debate what you have just done in regards to the buffer.
29 For the reasons set forth in the two letters and based upon other information submitted to the
30 Board, they believe the property should be granted a variance to the extent that they asked for it
31 as spelled out in both the letters.
32

33 Manager Leiser asked Mr. Smith go to through the findings and read once again the conditions
34 under which the Board may grant a variance.
35

36 Mr. Smith said variances are discussed in two applicable locations in the District rules, Rule 10.0
37 Variances and Rule 4.8.3 within the buffer rule. Both of these are cited in the letter submitted by
38 the permit applicant. Section 4.8.3 provides the District may grant a variance from any
39 requirement of 4.0 pursuant to Rule 10 of these rules. In determining the appropriateness of the
40 variance the District shall consider among other factors the parcel or lot of record as of the date
41 Rule 4.0 was adopted, the common ownership of the property in question and the adjacent
42 property and the availability of clustering, density compensation, variances and other means
43 under applicable land use law that would allow desired use to be located on portions of the parcel
44 or lot not within buffer zones. An exception shall be limited to the extent necessary to put the
45 property to a reasonable or economically viable use. And then Rule 10 authorizes variances,
46 10.1 says the Board of Managers may hear requests for variance from the literal provisions of
47 these Rules where their strict enforcement would cause undo hardship because of circumstances
48 unique to the property under consideration. The Board of Managers may grant variances where

1 it is demonstrated in that such action will be keeping with the spirit and intent of these rules. A
2 variance shall contain conditions to prevent or mitigate adverse impacts from the activity. In
3 order to grant a variance, the Board of Managers shall determine that the special conditions that
4 apply to the land in question due to do not apply generally to other land or structures in the
5 district, that the granting of a variance will not merely serve as a convenience to the applicant
6 and that the variance will not impair or be contrary to the intent of these rules. A hardship can
7 not be created by the landowner, the landowner's agent or representative or contractor and must
8 be unique to the property, economic hardship alone is not grounds for issuing a variance.
9

10 Mr. Malkerson said the Board has great flexibility in deciding whether or not they want to grant
11 the variance. If the Board wants to grant the variance it is very rare that the court ever says that
12 you did not grant the variance correctly. Mr. Malkerson believes it is also important to be
13 mindful that courts also say that if you grant a variance in one matter, it is virtually impossible
14 for anyone else to ever say that since you granted it to them that you have to grant it to us
15 because there is almost no precedence set by granting one variance when it comes to looking at
16 another because all the facts are so different.
17

18 Mr. Smith stated that he generally agreed with Mr. Malkerson; the courts will afford the Board of
19 Managers broad discretion in deciding whether and the extent to which to afford variance just as
20 the courts would apply a broad discretion and defer to the Board in denying the permit
21 application.
22

23 *Recess 9:00-9:10 PM*
24

25 Manager Vanzwol said the design for the development has a serious mitigation opportunity.
26 Essentially all the water from the developed part of the project will drain to the south away from
27 the creek, which could allow for some level of variance. On the other hand there are two
28 buildings that are at least half within the buffer, if not more. And so his thought was a variance
29 would apply to all except those two buildings.
30

31 Mr. Lynskey said he gave the Board the drawing of the weir, inside the culvert. Mr. Lynskey
32 said if they had control over the property they would try to do anything they could in their mind
33 to help benefit the resource. They are willing to put up \$5,000 per culvert in an escrow for 10
34 years so the Board has the money available to install the weirs they have designed as an
35 opportunity to help mitigate further in the future.
36

37 Manager Leiser said we appreciate their offer and it will be a matter of record and it will be
38 considered as a further mitigating factor in the Board's discussion.

39 Manager Pundsack said she appreciates the spirit with which the applicant has worked hard to try
40 to mitigate issues and admires the efforts the applicant has made to understand and recognize the
41 importance of Brown's Creek. Perhaps the retaining wall could be designed in such a way that it
42 would mitigate actually any flow down into the buffer toward the creek so that the flow would
43 go the other direction.
44

45 Manager Taillon said she wanted to know about the thought regarding modifying the culverts
46 and what the timing should be on something like that and maybe that should be done prior.

47 Manager Taillon said she does not believe potential culvert modification in the future addresses
48 the current issue.

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Manager Leiser said it's a further modification in the mitigation to provide a higher quality of water to the stream or reduce the bad quality of water to the stream.

Manager Taillon said she knows in the variance it said that it defines a hardship, Manager Taillon said she would need some justification. Economic hardship alone is not grounds for issuing a variance so she would like to see some documentation to that point.

Manager Pundsack said that she understand the argument for variance was that they were taking mitigating issues not actually basing it on economic hardship.

Manager Vanzwol agreed with Manager Pundsack in that that was what he believed as well. If economics is the only issue then the Board does not have to offer a variance.

Mr. Olivier said the biggest concern they have is that this area is fairly steep with fairly sandy soils in a very fragile equilibrium. Mr. Olivier said he is more concerned about the physical implications of the alteration of a very fragile equilibrium. It does not mean it can not be done, but if you are going to be putting any provisions in the variance, the Board should make sure that in the future the residents downstream are not going to come to you and say you allowed this thing and the water found a way, a very small way and then it got into an erosive area because of the disruption of land that happened. Mr. Olivier said there are methodologies and processes that they can put in place to make sure that that doesn't happen that will follow the project. However, Mr. Olivier said he would be cautious accepting some kind of money to modify the culverts in the future.

Manager Johnson said he believes the applicant is certainly working in the spirit of protecting the resource. His greatest concern is in the northeast corner that would be building 9. Manager Johnson said that is certainly an area that they are going to find solutions for. Manager Johnson sees that as a very critical area that they as a Board have expressed in that they have to find ways of dealing with working around that and he doesn't know what that is but he thinks creative minds have to work together.

Mr. Olivier said the Board is talking about the retaining wall especially in the northwest area that is about 10 feet. There is definitely a way to design and engineer it very carefully. Experience reminds us that there are developments that were built with all the engineering in place but nature found a way to erode.

Mr. Malkerson said the applicant is open to additional conditions, such as a condition that no construction will start down on that end until the engineering department has signed off on them.

Manager Leiser said they've talked about environmental sensitivity and talked about their great concerns. They talked about some things that could be done to make sure that whatever construction took place was done in such a safe manner that water shouldn't get down to the creek. Manager Leiser said he is extremely impressed with the quality of the engineering and the design that's gone into this property. The significant use of rain gardens, water flow, management techniques and the attention to that detail is commendable. Manager Leiser said it's still in his charge as a watershed manager to look at how he is best preserving the resource. Manager Leiser said he wants to look at the letter that the applicant handed the Board today, on page 5 under the definition of rule 4.8.3, the last clause; in the availability of clustering, density

1 compensation, variances and other means under applicable land use law that would allow desired
2 use to be located on portions of the parcel or lot not within buffer zones. An exception shall be
3 limited to the extent necessary to put the property to a reasonable or economically viable use.
4 Manager Leiser said they have attempted to contact the City and he is sure the applicant has too.
5 The city gave a permit effectively which involved a variance on their zoning; the City has
6 basically said that if the watershed district “require any physical relocation of the structures” the
7 applicant will have to go back to square one, back to the City for a new permit; Manager Leiser
8 believes that is not a very viable solution. Manager Leiser said they are stuck with the houses,
9 lot dimensions, lot sizes are where they are and they are in part or in total at least 5 corners or
10 otherwise that are in the buffer. Those lots and those houses, which are only minor corners, less
11 than 10% to 15% of the house in the buffer, Manager Leiser could very easily accept as a
12 variance. But building number 7 is his greatest concern. The construction process on that
13 physical location scares him because it’s right at the crest of the steepest portion of the existing
14 ravine, especially during the construction process. Building 9 is wholly within, or at least mostly
15 within the buffer, but he is less concerned than he is with building 7. The other buildings,
16 building 8, and 10 have pieces within the buffer. He is sure that the applicant has qualified and
17 skilled engineers but to be facetious he said they were also qualified and skilled engineers that
18 designed the I35W bridge. Manager Leiser said things happen, things wear out, things fail
19 unless maintained. Manager Leiser said he knows the applicant talked about placing a
20 conveyance in the deeds that would go with the land so someone is required to maintain them but
21 the problem with that is invariably that they do not know the need for maintenance until after the
22 bridge has fallen or the basement has started leaking or the retaining wall has failed. Manager
23 Leiser said he would have no problem at all issuing or living with a variance if it only involved
24 buildings 8 and 10. Manager Leiser said he could probably be convinced to include building 9,
25 but he cannot accept a variance that would include building 7.

26
27 Administrator Kill asked for clarification on how much of the drainage area of building 9 is now
28 being proposed to drain away from culvert 1. Mr. Clark said all of the drainage area of building
29 9 will drain away from culvert 1, everything from the retaining wall back.

30
31 Ms. Correll said EOR has not received any detailed plans for the retaining wall. What they have
32 received is just a standard for constructing retaining walls. Some of the questions are what will
33 the construction limits of that activity be and what would be the restoration plan be if the
34 retaining wall isn’t constructed as the design might show. These are listed as conditions of the
35 August 9th and the previous June memo.

36
37 Mr. Lynskey stated that language could be provided in the home owner association
38 documentation that an annual inspection would be done by the District’s engineering firm to
39 monitor even before a problem would happen because erosion doesn’t happen over night
40 typically.

41
42 Ms. Correll corrected that during construction in a rainfall event such as was going on outside
43 right now (during the Board meeting) erosion does happen over night.

44
45 Mr. Malkerson said they would add a part to specifically include the retaining wall so that every
46 property owner will be responsible for maintaining all the water management systems and the
47 retaining walls.
48

1 Mary Harycki, adjacent landowner, is concerned that even if the drainage from building 9 is
2 rerouted away from the ravine, the removal of the trees and the building of the retaining wall is
3 significant enough to erode their land as well as the ravine. They have an existing house that
4 they would like to stay where it is too. Mrs. Harycki said she sees a few other solutions to the
5 builder that would fit within the rules of the buffer zone and some of the suggestions would be to
6 pare down some of the sizes of the structures so they would fit within the buffer zone. She
7 believes that should be something that should be considered.

8
9 Administrator Kill said she agrees that the developer is limited of options for redesign if one
10 were to try to get 22 town homes on this property. But if there is discussion with the Board
11 about not allowing some of the town homes, then the Board also needs to keep into consideration
12 that some of the stormwater ponding on the site can also be reduced due to reduced driveways,
13 homes/roof tops which might allow for a little bit more wiggle room to remove for example
14 building 10 from the buffer entirely. Administrator Kill clarified her discussions with the City.
15 The City has stated that if the developer would request any additional variances or additional
16 buildings, the City would start the process over. However, if there were lots removed that would
17 not automatically start the process over.

18
19 Manager Taillon said reconfiguring the site does take time to do, but what are the implications if
20 you don't take the time look at the best solution. If something fails, this is destroyed forever,
21 slopes are eroding. Manager Taillon said she thinks taking a little extra time to reconfigure this a
22 little bit is a small price to pay.

23
24 Mr. Humphrey said they did a storm sewer design on the gutters of the buildings and analyzed
25 those aspects of it and they are taking 100% of that water from their construction limit back that
26 way.

27
28 Mr. Clark said in light of the discussion and understanding from the applicant's perspective that
29 part of the ability to offer to go above and beyond and do extraordinary measures to get the water
30 away from the resource, the buildings in essence help pay for that. They've had a long time in
31 this with the City and now with The BCWD Board in a formal application for four months. Mr.
32 Clark said if he understands what the Board is saying correctly they have about a half a building
33 7 in the buffer; they would be willing to give up that half of building if they would be willing to
34 look at the other side knowing that every part of that other side is integral in getting all of the
35 drainage to get it away from the property but limiting their disturbance in the buffer in area
36 number 2, location number 2, building number 7, leave that space if they will as an outlot so that
37 if the District were to allow them to build a single unit not a double unit building. Mr. Clark said
38 he makes that offer in earnest to the Board to try to resolve it this evening. Mr. Clark said this
39 has been going on for them for over a year.

40
41 Manager Leiser said he believes he's heard enough and he is prepared to offer a motion.

42
43 The Board discussed the elimination of building 7, but allowing a variance for buildings 8, 9, and
44 10. The Board expressed concern about rushing to determine the variance conditions.

45
46 Mr. Clark said their purchase agreement is coming up and requested the Board consider the
47 conditions of variance at an upcoming budget meeting.

48

1 The next budget meeting is Wednesday, August 15, 2007. The meeting would not be able to be
2 posted but could be a continuation of the regular August 13, 2007 Board meeting.

3
4 **Manager Leiser, seconded by Manager Pundsack, moved to issue a permit under variance**
5 **to Lyskey and Clark for Fairway Villas with the exclusion of the half of the building**
6 **number 7 which is on the northeast corner, northeast corner of the building and the**
7 **building that lies in the northwest corner of the project, the part of the building which is**
8 **totally within the buffer and with a mutually accepted list of conditions which will be**
9 **presented for discussion and agreement at the budget meeting on Wednesday night as a**
10 **continuation of the meeting tonight.**

11 **Manager Leiser withdraws his motion. Manager Pundsack withdrew her second.**

12
13 Administrator Kill she believes what Mr. Clark is saying is the applicant would like to leave the
14 option of having an outlot that is entirely outside of the buffer, which would allow for potential
15 site reconfiguration if the City would allow them to build a single unit in the future.

16
17 Mr. Clark said he would ask that they not have to come back with a new permit application.
18 Administrator Kill said it would be a revised permit and it would be treated the same way they
19 have treated every other revised permit, requiring Board approval.

20
21 Manager Vanzwol said he would like to make the same motion as Manager Leiser did except
22 that he would say that any part of building 7 must be outside the buffer area. Manager Vanzwol
23 withdrew his amended motion.

24
25 **Manager Leiser, seconded by Manager Pundsack, moved to approve under variance the**
26 **application 07-07 for Fairway Villas excluding building 7. Board is directing staff to**
27 **prepare the written rationale and conditions of the variance for the continuation of the**
28 **regular meeting on Wednesday, August 15, 2007 at 6:30 PM. Vote 5/0.**

29
30 Manager Leiser said everyone is to have their draft of variance conditions to Administrator Kill
31 by noon tomorrow. Manager Vanzwol requested the Board members receive a draft list of
32 conditions by noon on Wednesday.

33
34 **12. Discussion Agenda – No Action Required**

35 **a.) Permit Review – Current Inspection Update**

36 **o Permit #04-16 Millbrook Amendment re: Pond 1C**

37 Administrator Kill noted the District has been notified that Millbrook pond 1C
38 does not have adequate soils for infiltration. Ryan Fleming has reviewed the
39 information and has determined that if pond 1C does not infiltrate, the permit is
40 still in compliance with BCWD Rules. The Board discussed the situation.

41 **Manager Vanzwol, seconded by Manager Johnson moved to approve the**
42 **#04-16 Millbrook Amendment regarding the lack of infiltration in Pond 1C.**
43 **Vote 5/0**

44 **o Permit #04-16 Millbrook Amendment re: Infiltration Basin**

45 Administrator Kill noted there had been an update and plans had been received.

46 **o Permit #07-27 Bremer Bank – erosion control only**

47 Administrator Kill noted they were not ready yet.

48 **b.) Project Review and Updates**

1 **c.) Long Lake Sediment Delta – tabled from July 9, 2007 Board Meeting –**
2 **Discussion**

3 The Board discussed if there was a benefit from doing anything now or waiting until later.
4 Administrator Kill noted the drawn down would need to take the level down until it was
5 dry and the excavation at that point would be less expensive. Manager Vanzwol said
6 before he could not walk out very far but now it is very dry. Manager Leiser asked Mr.
7 Conrad to take a look at the situation.

8 **d.) Subcommittee updates**

9 **e.) Communications & Reports**

10 ○ **Lake St. Croix TMDL Listing**

11 Administrator Kill noted the lake will potentially be added to the TMDL list for
12 excessive nutrients.

13 **f.) Board Managers Email on Website**

14 Manager Leiser said he prefers the emails go first to Administrator Kill because it ensures
15 everything recorded. Manager Johnson noted the District could get an email address.

16 **g.) September 2007 BCWD Board Agenda**

17 Manager Leiser noted a list of variance conditions needed to be in Administrator Kill's
18 hands by noon Tuesday. Administrator Kill noted she would get everyone the material
19 by email for Wednesday.

20
21 **Manager Leiser, seconded by Manager Johnson, moved to recess the meeting at 10:30 p.m.**
22 **until 6:30 p.m. on August 15, 2007. Vote 5/0.**
23

1

Present:	Others Present:
Craig Leiser, President	Karen Kill, Administrator
Rick Vanzwol, Vice-President	Paula Guetter, Recording Secretary
Gail Pundsack, Manager	Camilla Correll, EOR
Gerald Johnson, Secretary	Chuck Holtman, Smith Partners
	Ken HaryckiHarycki
Absent: Connie Taillon, Treasurer	Tim Sinclair
	Chris Clark
	Mary Harycki
	Ken Harycki
	Jim Purcell
	Mick Lynskey
	Bob Clark
	Patrick Steinloft
	Roger Humphrey

2

3 **1. Reconvene August 13, 2007 Regular Board meeting**

4 Manager Leiser called the recessed meeting of August 13, 2007 Regular Board Meeting back to
5 order at 6:40 p.m. on August 15, 2007.

6

7 **2. Approve Agenda**

8 **Manager Vanzwol, seconded by Manager Johnson, moved to approve the revised**
9 **continuation agenda for the reconvened August 13, 2007 Regular Board Meeting on August**
10 **15, 2007. Vote 4/0.**

11

12 **3. Permit 07-07 Fairway Villas – Variance Conditions – Board Action**

13 Manager Leiser asked Administrator Kill to present a discussion of the information she has
14 received. Next Ms. Correll will be allowed to point out her engineering findings and finally Mr.
15 Holtman will make legal findings under the revised legal findings as a matter of public record.
16 At that point Manager Leiser will allow comment, opinion, and response from the applicant.
17 After the applicant has had their chance to comment then members of the public will be allowed
18 to make comments.

19

20 Mr. Holtman noted for public record that they do have written findings from the August 13, 2007
21 Regular Board Meeting that the Board adopted and a copy has been provided for the applicant
22 who is in attendance.

23

24 Administrator Kill said by noon on Tuesday she received comments from Manager Leiser, the
25 applicant, three comments from the general public in regards to the variance request (one from
26 Debby Sinclair, one from Ken Harycki, and one from Mary Harycki) all expressing some
27 concerns with the 100-year rainfall event and erosion concerns in the ravine. Photographs were
28 included with the public comments from Ken Harycki of areas that are approximately 100-yards
29 east of Fairway Villas. The District Inspector also submitted a written comment regarding
30 concerns with potential erosion control failures and the issues seen out at the Millbrook site to
31 date. In addition, the most current invoicing information has been compiled.

32 Ms. Correll reviewed the proposed variance conditions in detail since the memorandum was
33 distributed at the Board meeting. At the August 13th Board Meeting, the Board of Managers

1 directed staff to develop conditions that in the view of the engineer would be feasible and
2 appropriate to minimize risks to Brown's Creek accompanying a variance to the District's buffer
3 requirement permitting the construction of Buildings 8, 9 and 10. Due to the steep nature of the
4 buffer in this area and the sensitivity of what is currently a stable, well-vegetated ravine on sandy
5 soils, the risks associated with any construction activity taking place in or adjacent to steep
6 slopes are

7 as follows:

- 8 • Site designed to re-direct all stormwater runoff up to the 100-year 24-hour rainfall event.
9 There are other rainfall events that will exceed the capacity of the stormwater
10 management system resulting in discharges to the ravines
- 11 • Accelerated rates of ravine erosion due to more concentrated discharges to the ravine
12 for events greater than the 100-year
- 13 • Increased levels of non-point source pollutants entering Brown's Creek
- 14 • Ravine head-cutting
- 15 • Challenges to preventing and responding to erosion and sedimentation during site
16 disturbance and to reestablishing vegetation or stabilizing the ravine
- 17 • Difficulties associated with the development and implementation of a mitigation/ravine
18 stabilization plan for this type of setting
- 19 • Potential loss of infiltration to the resource in the event of a ravine stabilization project,
20 temporary loss, not permanent

21 The conditions set forth in this memorandum will reduce the risk associated with these activities;
22 however, they will not eliminate these risks.

23
24 Ms. Correll reviewed the proposed conditions and stated that the Permit Applicant will be
25 required to re-submit a full set of construction documents that address **ALL** of the conditions
26 identified in this Memorandum. These construction documents will require review and approval
27 by the District Engineer prior to issuance of the Permit. The Permit Applicant will be required to
28 meet the outstanding conditions in the July 9, 2007 Engineers Report, prior to issuance of the
29 Permit, except as confirmed by the District Administrator in writing to have been modified or
30 rendered non-applicable by the Board's August 15, 2007 decision. Given the fact that the
31 stormwater management plan is designed to re-direct stormwater runoff for all events up to the
32 100-year 24-hour event and that larger rainfall events will discharge to the ravine system, the
33 criteria for the part of the stormwater management system that would overflow to the ravines
34 should be the probable maximum precipitation event or the 500-year 24-hour rainfall event, or
35 similar event as determined with the District Engineer. The final design for the retaining walls
36 shall include specifications addressing the timing of construction, limits of construction, methods
37 of construction, erosion control adequate for the protection of the downstream resource and a
38 mitigation plan in the event that erosion and sediment control becomes an issue prior to
39 stabilization of the disturbed areas. A number of additional erosion control items shall be
40 incorporated in the Permit Applicant's revised erosion and sediment control plan for the revised
41 development Plans. Note that in the July 9th Engineers Report under the discussion of Rule 2.0
42 Stormwater Management it states that "the Permit Applicant will have to make the maintenance
43 and replacement of the gutters (all gutters) a provision in the covenants so that it will be legally
44 binding and run with the property". A copy of these covenants should also be provided to the
45 District for review and approval prior to issuance of the Permit. All property owners will be
46 required to record an instrument approved by the District accepting responsibility for gutter
47 maintenance and allowing the Homeowners' Association to perform the obligations it assumes in
48 the covenants. The Permit Applicant will be required to reimburse the District for any and all

1 inspections under Rule 8.0 as they currently are. The Permit Applicant shall submit a Mitigation
2 Plan (Ravine Stabilization Plan) for erosion and sediment control issues related to the long-term
3 performance of the retaining walls assuming that worst-case scenario would be the failure of one
4 of the retaining walls. This mitigation plan shall address the following components at a
5 minimum :

- 6 o Installation of grade control
- 7 o Soil replacement measures
- 8 o Soil restabilization using turf reinforcement mat
- 9 o Re-establishment of native vegetation, may be complicated by, reflecting proper
10 considerations of slope, sunlight, soils and other relevant characteristics of the site
- 11 o Other temporary erosion control
- 12 o Site mobilization
- 13 o Methods of construction (most of the work will have to be performed by hand due to
14 the nature of the slopes and on-site soils)

15 The Permit Applicant shall also submit for District approval and record an instrument
16 establishing the obligation of the Homeowners Association to inspect and maintain the
17 retaining walls and to carry out responsibilities under the Ravine Stabilization Plan. The
18 permit applicant will be required to replenish Permit Deposit Fee of as updated
19 \$52,647.25 (BCWD Rule 8.0). Provide a revised grading or alteration surety (BCWD
20 Rule 9.0) to include the anticipated cost for any mitigation activities that would be
21 required in the ravine, increasing the surety from \$12,000 to \$378,000.

22 The revised grading or alteration surety was derived from the Middle St. Croix Watershed
23 Management Organization's request for proposals to construct a similar ravine stabilization
24 project in the Afton-Lakeland Gully. SEH developed the preliminary report for the study with
25 an estimated cost for performing that work of \$163,000 to \$203,000. Ms. Correll said she took
26 an average of \$183,000 per ravine, multiplied by the two ravines and added the \$12,000 that was
27 originally in the engineer's report. The applicant represents that it cannot implement
28 improvements to mitigate the movement of stormwater and related pollutants through the
29 railroad berm due to lack of an ownership interest. However, in the future the right-of-way may
30 be acquired by a public agency or other entity with the intent to establish it trail or otherwise that
31 presents the possibility for implementing such improvements. The applicant has offered to
32 provide a cash escrow of \$10,000, to be held by the District for up to ten years and applied to any
33 such improvements as the District may find beneficial to Brown's Creek. The engineer
34 recommends that this escrow be required to be submitted or, alternatively, that the funds be held
35 in escrow to be applied to District inspections and site monitoring after construction is completed.
36

37 Mr. Holtman said there is a document of supplemental findings. Mr. Holtman said he believes
38 the document was emailed to the applicant late this afternoon. The findings that the Board
39 adopts are their own and they are at liberty and have the responsibility to carefully consider any
40 proposed findings, to make any changes or adopt other findings so that the findings that they do
41 adopt reflect their reasoning and decision. Fundamentally these findings do not supersede the
42 findings the Board adopted two days ago; they supplement those findings. What they reflect is
43 that the Board did deny the permit as proposed based on the intrusion in the buffer, that the
44 applicant did in affect resubmit the application with a request for variance, and that the request
45 was in writing dated August 13, 1007 and was discussed by the Board at the meeting. The
46 findings enumerate the facts and circumstances that the applicant has sited in support of the
47 variance. The Board made its determination on Monday night that the grounds for a variance
48 were met provided that conditions are adopted that minimize the impact of granting a variance

1 and risk to the resource as a result of the variance. The variance meets the spirit and intent of the
2 District's Rule, which practically speaking means that all feasible steps have been taken to
3 minimize the extent of deviation from the Rule and to minimize the risk to the resource, that was
4 the Board's charge to the engineer to come back and advise the Board on what those conditions
5 might be. The findings reiterate that the Board does find that a variance to allow buildings 8, 9
6 and 10 pursuant to the proposed footprint but not with respect to building 7. The buffer
7 approved is the buffer line as delineated on this particular document that is produced tonight. Mr.
8 Holtman said sections 7 and 8 may now also be rendered moot by the graphic. The permit
9 deposit fund be replenished. This supplements the prior findings and also incorporates into the
10 record all of the documents in the discussion the Board has tonight.

11
12 Manager Pundsack requested clarification on the letter the Board received from Mr. Harycki.
13 Ms. Correll stated that the storm sewer takes most of the runoff down to the ravine that is located
14 further to the east. There is an overflow once the capacity at this site is exceeded, which would
15 go into the ravine. When the City of Stillwater constructed the project, it was designed for that
16 capacity. Ms. Correll said she did not know if the City did any re-enforcement in the ravine to
17 account for any overflow that might be coming down but they did restore the ravine and put a
18 detention basin in there. Mr. Harycki pointed out for the Managers on a map where the
19 photographs he submitted were taken. He said basically what is happening is water is being
20 moved from one ravine to another ravine and that is where the washout is. Significant silting is
21 happening. The culvert is jammed full of leaves and debris and it was promised by the City that
22 this was going to be an emergency overflow obviously the rain on Monday caused an overflow
23 because you can see the grass is bent down from water flowing across it. Ms. Correll noted it
24 was designed to be an emergency overflow as designed to discharge during a 25-year event.
25 There may be other catch basins that are connecting that are discharging local drainage or there
26 could be issues with maintenance of the system. Mrs. Harycki said the City came through and
27 cleaned out all of the storm sewers about a month ago, the entire area was cleaned out. Mr.
28 Harycki said all they are trying to point out is that you are moving water from one point and
29 remove the buffer zone potentially but it is going right back in; you are going from one ravine to
30 the next and silting in another ravine which ends up right back in Brown's Creek. Ms. Correll
31 said she believes it definitely warrants looking into because that's very concerning if the City did
32 just clean that out and it's not operating as designed.

33
34 Ms. Correll answered that the water from Fairway Villas will be collected in a series of rain
35 gardens that are connected to a water quality pond or an infiltration basin and once the water
36 quality pond and infiltration basin discharge into the street into the storm sewer system. As it
37 was designed it was supposed to discharge farther downstream into another ravine that has an
38 infiltration basin to slow the flow rates down before any water is discharged to the creek. The
39 applicant is proposing to meet the requirement for the 1.5, 10 and 100-year and their matching
40 existing rates and volumes for the 1.5-year storm event.

41
42 Manager Leiser said he accepts the fact that there is a problem with stormwater runoff coming
43 down Hazel Street; however, that is not the responsibility of the applicant to fix. It is the
44 responsibility of the Watershed District and the City of Stillwater to determine why it's
45 ineffective and what the City can do to reconstruct/redesign/reequip it.

46

1 Ms. Correll said the City of Stillwater did submit a letter to the applicant stating that there was
2 capacity in the system for those additional flows so it would be worth talking to the City to find
3 out if that is true.

4
5 Mrs. Harycki said she is still concerned with erosion problems after watching the runoff on
6 Willow from a Brown's Creek permitted site, where approved silt fencing was installed, plug an
7 inlet with sediment and flood the basement of a downhill property owner.

8
9 Manager Leiser said he hears what Mrs. Harycki is saying but they have not given the applicant a
10 chance to respond to the set of conditions. The District will deal with the specific issue on
11 Willow, but not until further documentation is provided by staff.

12
13 Manager Vanzwol said he personally walked the railroad track and saw some of the problems
14 there. He did not know those problems were there with the ravines and how they cross the tracks.
15 At some point in the future, the watershed needs to see how they might address those problem
16 areas.

17
18 Mr. Harycki requested the Board err on the side of caution. They went through four months to
19 establish the buffer zone. The residents are asking that buildings 7 and 9 be kept out of the
20 buffer zones.

21
22 Manager Leiser said he apologizes that they split the discussion because he was planning to
23 allow the applicant to respond to Administrator Kill, Ms. Correll and Mr. Holtman's comments
24 prior to public comment.

25
26 Mr. Lynskey requested a short recess to review the conditions.

27
28 *Recess 7:35- 7:45 PM.*

29
30 Mr. Humphrey said he wanted some clarification on some of the conditions. Number three said
31 for a point of clarity they can look and see what it does and evaluate the significance of that. Mr.
32 Humphrey said he feels that they can design for the 500-year event, but would like to work with
33 the District Engineer to determine the appropriate standard. Mr. Humphrey said generally that
34 same comment he just said applies to all the issues. He said what he's looking at is empowering
35 the District engineer and himself to work out certain minor details that seem to make the most
36 sense for the site. Ms. Correll said she agrees with Mr. Humphrey. Mr. Humphrey said 5a falls
37 along the same line, the perimeter control, he wants to say they have high willingness to conform
38 to a lot of the issues sometimes what it comes to is if they have to build a berm plus they have to
39 do silt fence and then they have 4 feet of silt fence from that that all of sudden that berm takes
40 space and if they evaluate the site conditions for what's going on there or when that berm at
41 some point needs to go away, those he sees as timing issues and they certainly want to make sure
42 that they are doing the greatest protection that they can.

43
44 Manager Leiser said, where ever it says "as determined with or by the district engineer," sit
45 down with our district engineer and go through it.

46
47 Manager Vanzwol said beyond that, if there is an amendment necessary the Board can deal with
48 that. Manager Vanzwol said they've done that for other applicants in the past.

1
2 Mr. Humphrey said that brings clarity to what they are saying and he said he trusts that won't be
3 an issue. Condition 5c the permit applicant shall submit at a construction timeline that walks the
4 construction manager, all contractors, etc. through ALL phases of the construction project. Mr.
5 Humphrey asked if that is a timeline indicating when that is, walking through is that physically
6 walking through or is the timeline showing what is happening. Mr. Humphrey asked if it was a
7 document saying what it is.

8
9 Ms. Correll stated they are looking for more detail than what is typically provided in a SWPPP.
10 Mr. Humphrey said they will put it in the contract with the contractor and will address those
11 more when the sit down in the pre-con. Ms. Correll said what she is requesting here is that they
12 work that out before hand not after the select the contractor. Mr. Humphrey said okay.

13
14 Mr. Humphrey said on 5h the 4 foot of silt fence between that he's just seeing somewhat of a
15 thing with 4 feet then a berm and everything else. Ms. Correll said there is some repetition in the
16 conditions to give the applicant an idea of the expectation staff is looking for. Mr. Humphrey
17 said and maybe in that one could be as per district engineer.

18
19 Manager Leiser said that's fine.

20
21 Mr. Humphrey had a question regarding the gutters. Ms. Correll noted if you are directing all of
22 the impervious surfaces to the raingardens, there needs to be a provision, to make sure that water
23 gets to the raingardens. When Mr. Nemmers and herself were talking, he explained to her that
24 all of the backs of the buildings would have these gutters designed for the 100-year event so that
25 the water would in fact get into the stormwater management system. Mr. Humphrey said he
26 believes some of them are automatically going there. Ms. Correll said, if the water is going there
27 automatically, they would prefer to see it go over land than by infrastructure. Mr. Humphrey
28 said that only some of the ones going along the buffer area are probably the only ones that really
29 have that effect. Mr. Holtman asked if the Board can specify which ones at this time or the
30 alternative is when they review the recording that the correct gutters are named. Ms. Correll said
31 they could call it out on the plans.

32
33 Mr. Humphrey requested an example mitigation plan. Ms. Correll said could provide an
34 example. The objective of the plan is to be prepared in the event that there is a blow out during
35 construction, post-construction, or even 20-years after construction. The plan would anticipate a
36 worse-case scenario, so they can act on it immediately.

37
38 Manager Vanzwol asked if it would be more appropriate to call it a restoration plan rather than a
39 mitigation plan. Both Ms. Correll and Mr. Humphrey indicated that that would be fine. Mr.
40 Holtman said he would suggest mitigation and restoration. Mitigation suggests that if a failure
41 occurs there may be a need for immediate action to stop the effects of that failure and then
42 restoration.

43
44 Mr. Humphrey asked whether for condition 12 a performance bond with the contractor suffice
45 for the grading and alteration surety.

46
47 Mr. Holtman said the form of a performance bond is fine, it's something that needs to be for the
48 benefit of the District, the District can draft on it if necessary as opposed to something the

1 applicant maintains to ensure their contractor is staying within the terms of the contract. Mr.
2 Holtman said it wouldn't just suffice to name the watershed district. The typical performance
3 bond isn't just focused on erosion control and it isn't something that authorizes the permitting
4 agency to go in and draft on that bond and use those proceeds, they are two separate instruments.
5 If you are not complying with the erosion control, sediment control permit, then the Board can
6 draft on the bond to bring the site into compliance and to address any impacts that have occurred
7 as a result of non-compliance.

8
9 Mr. Humphrey said well that's where they are looking at having it with the contractor
10 specifically because that bears more weight than the applicant holding a small retainage fund
11 from them in terms of their construction.

12
13 Mr. Holtman said that the applicant can require in their contract that they obtain it and pay for it
14 as long as it is to the benefit of the District. There was some discussion of the notion of retaining
15 this beyond construction for an initial period to ensure the retaining walls are functioning.

16
17 Mr. Lynskey said he thought this pertained to during construction until stabilization was in place.
18 He is concerned with the inspection criteria, as well as the applicability of the MSCWMO gully
19 project if it is a problem that has happened over a course of years and years.

20
21 Ms. Correll said they do not know if it has been happening over a period of time. Once you open
22 that site and you have a rainfall event like on Monday, it could very quickly look like a disaster
23 and it will be very expensive to fix, that's just the nature of that ravine. The District is willing to
24 look at other examples the applicant provides. However, the proposal is very current and, based
25 on the District Engineer's experience of doing similar types of projects, she feels that is a very
26 accurate number.

27
28 Manager Vanzwol said this is also one of those things that as you go forward and you find that it
29 is excessive it could be amended. Mr. Lynskey asked if language could be added similar to that
30 in the conditions. Manager Vanzwol said any of the conditions can be amended if it's
31 appropriate.

32
33 Manager Leiser agreed that it would be fine to allow the applicant to provide additional
34 examples and the Board could consider amending the surety amount, but that would have to wait
35 until another meeting. If you want the Board to pass this tonight, then this is where the Board is.

36
37 Mr. Lynskey asked that language be added to allow staff to approve the amended surety amount.
38 The Board denied the request and stated that the Board would need to consider approval of any
39 permit amendments regarding the surety.

40
41 Mr. Humphrey said 5d talks about silt fence downstream near the culvert ravine he believes there
42 is high willingness on their part to do something down there but sometimes silt fence in channel
43 flow isn't the best but if there are other methods there they would certainly happy to look at
44 maybe proposing something as well.

45
46 Mr. Lynskey continued to express his concern regarding the surety amount and schedule for
47 release. Ms. Correll said the engineer's recommendation was that the District hold the surety for
48 3 years after permit closure. The District Engineer's are concerned that the homeowner's

1 association will not be immediately prepared to handle the responsibility for on going
2 maintenance, repair and mitigation plan. Manager Vanzwol asked whether typically the amount
3 would be substantially reduced by that point. Ms. Correll said typically yes, but this is not a
4 typical site.

5
6 Mr. Lynskey asked if the watershed has assessing authority and whether that could be an option
7 for funding. Manager Leiser responded regarding the timing limitations to a special taxing
8 district.

9
10 Manager Vanzwol said that tonight the surety and timing for release is not a negotiable item.
11 He is happy to put a clause in the conditions that says the Board will consider amending it based
12 on further information, but that is as far as he's willing to go.

13
14 The applicant suggested alternative schedules for the surety release.

15
16 Manager Johnson said would need more time and data to consider alternatives. Manager
17 Vanzwol agreed. Manager Leiser suggested an additional alternative of a sinking fund, but was
18 not willing to consider a reduction in the surety or schedule at this time. Manager Johnson said
19 that Manager Leiser's suggestion of a sinking fund does not mean that that is what is going to
20 happen, it's just one suggestion of one member of the Board.

21
22 Mr. Steinloft was identified as the legal counsel present for the applicant.

23
24 Mr. Holtman said from this discussion all he has for a specific change to these proposed
25 conditions is in item 5d, to expand the parenthetical to say silt fence or other appropriate method.
26 In condition 9 to be revised to read mitigation and restoration plan. For condition 12 if the
27 applicant would like language indicating that the district can consider reduction of the amount
28 through an amendment process; however, that is always an option whether it is written or not.

29
30 Manager Leiser said, if the applicant feels more comfortable putting it in writing, he does not
31 have a problem putting it in writing. All Board members agreed. Manager Leiser asked that it
32 be put in writing.

33
34 Mr. Holtman said there are a handful of the provisions that the word "should" is used. The
35 Board should consider changing to the word "shall" and those would be in 5a, 5g, 5h, 5i, 5j, 5r,
36 and 6. If the Board wanted language regarding the extension of the grading surety after permit
37 closure he has some language that he could suggest. The language is the grading surety will be
38 held for 3 years from the date of permit closure and will be available for District implementation
39 of the ravine stabilization plan on notice to applicants if the primary responsible party does not
40 fulfill the duty under the plan within 30 days of written district request.

41
42 Mr. Clark said they only have one builder, LeGrande Homes.

43
44 Manager Vanzwol said he would like to stay with Mr. Holtman's language, for the 3 years but
45 add the same language as added in condition 12 saying the board will consider amending as it
46 deems appropriate. Manager Pundsack said she believes that's fair.

47

1 Mr. Humphrey asked to go back to an earlier comment about 5a, 5g, 5h, 5i, and 5j. He requested
2 language to clarify that they are willing to work them out with the District's engineer. Mr.
3 Holtman said he would suggest a more comfortable framework to say here are the requirements
4 but then perhaps under condition 5 in the initial sentence to say these requirements will be
5 implemented through the District engineer who shall have the authority to make appropriate
6 refinements. Manager Vanzwol said that is fine with him because he believes that to be the
7 Board's intent.

8
9 **Manager Leiser, seconded by Manager Vanzwol, moved to accept the supplemental**
10 **findings as amended and discussed at this time.**

11 Mr. Holtman said for the record he asked to explicitly go through what he understands the changes to the draft supplemental findings to be.
12 One is in paragraph 6 to add to the end of that "the Board adopts the conditions as a condition of
13 the variance with the following changes"; which would then reflect the changes Mr. Holtman
14 enumerated for the engineer's report. Paragraph 7 and 8 would be deleted and replaced with a
15 finding that the final buffer is pursuant to the August 13th findings and the approved variance as
16 depicted on this document provided tonight by Emmons and Olivier Resources with the title of
17 the document that was handed out. In paragraph 9 to list the documents submitted which he
18 understands to the Emmons and Olivier Memo, Paula Guetter's memo, the 3 submissions from
19 the citizens as well as photographs, and the graphic of the final buffer. Manager Vanzwol said
20 there is an updated financial report, dated August 15, 2007.

21
22 Tim Sinclair said he was wondering if there was time for response from the public.

23
24 Manager Leiser said there is a motion on the floor that he will hold until there is further public
25 comment and should that further public comment cause them to amend the motion they have that
26 option.

27
28 Mr. Sinclair said before they all vote yes, he would like to give them a little history. This has
29 been a tough 4.5 months. He is going to give them all a public scolding. He has lived in his
30 present home for the last 23 years. Since then he has been fighting for Brown's Creek and
31 against development pressures on it. The District was formed what 10 years ago. Mr. Sinclair
32 said he was originally asked to be on this Board for the concerns of the resource. The Brown's
33 Creek Watershed District has put rules in place over many years to protect this resource; the
34 buffer zone is one of them. He has a very bad feeling that if you grant a variance here, which
35 you say doesn't set precedence, he is very concerned and very upset and very disappointed that
36 none of this would have happened when in the last 4.5 months if they would maintain the buffer.
37 Please enforce what's on the books. A few months ago during an inch and a quarter rainfall in
38 about 25 to 30 minutes, those culverts were flowing about a foot and a half and 6 feet wide down
39 in there for quite a few hours.

40
41 Manager Vanzwol said there's a motion on the floor to adopt the findings as amended, he said he
42 should point out in number 6 it says it adopts the recommended conditions of the engineer's
43 report and he believes it should say the recommended conditions as amended because they have
44 made several amendments to those conditions tonight. Manager Leiser said that would be an
45 amendment to the motion.

46
47 **Manager Vanzwol, Manager Johnson seconded, moved to amend the motion to add**
48 **the words "as amended with the following changes" in finding number 6. Vote 4/0.**

1
2 The motion on the floor is to approve the supplemental findings as delineated on August 15,
3 2007 as amended. The findings as amended reference all the documents they have received plus
4 the engineering report which they have received plus the documents that Administrator Kill has
5 received including the emails from the respective citizens and the photographs submitted by Mr.
6 Harycki. **Vote 4/0.**

7
8 Mr. Holtman asked if the Administrator has the authority to prepare the EOR memorandum and
9 findings in accordance with their motion and distribute those. Manager Leiser yes, but he would
10 like the Administrator to have them reviewed by legal counsel.

11
12 *Manager Leiser called a recess at 8:48 p.m. to 9:15 p.m.*

13
14 **4. Beaver Removal – Board Action**

15 **Manager Leiser, seconded by Manager Vanzwol, moved to allocate \$225 to trap the beaver**
16 **to come from the miscellaneous fund. Vote 4/0.**

17
18 **5. Adjourn Regular Meeting**

19 **Manager Johnson, seconded by Manager Vanzwol, moved to adjourn the August 13, 2007**
20 **Regular Board meeting (meeting recesses August 13, 2007 until August 15, 2007) at 9:17**
21 **p.m. Vote 4/0.**

22
23 Respectfully Submitted by
24 Paula Guetter, Recording Secretary

25
26