

Bassett Creek Watershed Management Commission

Minutes of the Meeting of November 19, 2008

1. Call to Order

The Bassett Creek Watershed Management Commission (BCWMC) was called to order at 11:40 a.m., on Wednesday, November 19, 2008, at Golden Valley City Hall by Chair Welch. Ms. Herbert conducted roll call.

Roll Call

<i>Crystal</i>	Commissioner Pauline Langsdorf	<i>Counsel</i>	Charlie LeFevere
<i>Golden Valley</i>	Commissioner Linda Loomis, Treasurer	<i>Engineer</i>	Len Kremer
<i>Medicine Lake</i>	<i>Not represented</i>	<i>Recorder</i>	Amy Herbert
<i>Minneapolis</i>	Commissioner Michael Welch, Chair		
<i>Minnetonka</i>	Commissioner Kris Sundberg		
<i>New Hope</i>	Alternate Commissioner Jason Quisberg		
<i>Plymouth</i>	Commissioner Ginny Black, Vice Chair		
<i>Robbinsdale</i>	Commissioner Karla Peterson		
<i>St. Louis Park</i>	Commissioner Manuel Jordan		

Note: Medicine Lake Commissioner Cheri Templeman arrived after roll call

Also present: Laura Adler, BCWMC Technical Advisory Committee, City of St. Louis Park
Derek Asche, BCWMC Technical Advisory Committee, City of Plymouth
Jack Frost, Metropolitan Council Environmental Services
Scott Fuhs, Dundee Nursery
Dave Hanson, Alternate Commissioner, City of Golden Valley
Ron Leaf, SEH, Inc.
Jeff Oliver, BCWMC Technical Advisory Committee, City of Golden Valley
Duane Russ, New Hope resident
Mary Jo Russ, New Hope resident
Stuart Stockhaus, Alternate Commissioner, City of Crystal
Liz Stout, BCWMC Technical Advisory Committee, City of Minnetonka
Elizabeth Thornton, Alternate Commissioner, City of Plymouth

2. Approval of Agenda and Consent Agenda

Chair Welch announced the addition of agenda item 6Ai - Medicine Lake TMDL Update. Ms. Black moved the agenda as amended. Ms. Loomis seconded the motion. The motion carried unanimously [City of Medicine Lake absent from the vote]. Chair Welch removed the financial statement from the Consent Agenda. Ms. Loomis moved to approve the Consent Agenda as amended. Ms. Black seconded the motion. The motion carried unanimously.

3. Citizen Input on Non-Agenda Items

No citizen input.

4. Administration

- A. Presentation of the October 16, 2008, BCWMC meeting minutes. October 16, 2008, BCWMC Meeting Minutes were approved as part of the Consent Agenda.
- B. Presentation of the Financial Statement. Chair Welch stated that he had pulled the financial report from the Consent Agenda for a brief review since the BCWMC is three-quarters of the way through its fiscal year. Chair Welch asked if anyone had any questions or concerns about the budget status. No one indicated any questions or concerns. Chair Welch commented that the BCWMC continues to not spend its Web site funds and stated that the BCWMC needs to untangle the issue of getting Web site updates completed. Chair Welch asked Ms. Herbert to check on whether there have been any public communications costs since none have been billed this year. Chair Welch asked Ms. Langsdorf to check on the watershed education partnerships to see that they get their invoices in before the end of the fiscal year. Ms. Black moved to receive and file the financial report. Ms. Peterson seconded the motion. The motion carried unanimously [City of Medicine Lake absent from the vote].

The general and construction account balances reported in the November 2008 Financial Report are as follows:

Checking Account Balance	438,635.06
<i>TOTAL GENERAL FUND BALANCE</i>	<i>438,635.06</i>
Construction Account Balance (cash)	2,506,793.64
Investment Balance	0.00
<i>TOTAL CONSTRUCTION ACCOUNT BALANCE</i>	<i>2,506,793.64</i>
-Less: Reserved for CIP projects	3,715,445.22
<i>Construction cash/ investments available for projects</i>	<i>(1,208,651.58)</i>

- C. Presentation of Invoices for Payment Approval.

Invoices:

- i. Kennedy & Graven – Legal Services through September 30, 2008 - invoice for the amount of \$1, 687.35.
- ii. Barr Engineering Company – Engineering Services through October 31, 2008 – invoice for the amount of \$25,108.27.
- iii. Barr Engineering Company – Sweeney Lake TMDL Services September 27 – October 31, 2008 - invoice for the amount of \$862.50.
- iv. Amy Herbert – October Recording Administrator Services - invoice for the amount of \$4,090.80.
- v. SEH, Inc. – Sweeney Lake TMDL Study Phase 2 Work September 1, 2008 – September 30, 2008 – invoice for the amount of \$2,550.00.

Ms. Loomis moved to approve payment of all invoices. Ms. Black seconded the motion. By call of roll, the motion carried unanimously [City of Medicine Lake absent from the vote].

- D. Reimbursement Request to MPCA for Sweeney Lake TMDL Phase 2 Work through September 30, 2008. Ms. Black moved to approve sending to the MPCA the request for reimbursement in the amount

of \$3,614.80. Ms. Langsdorf seconded the motion. The motion carried unanimously [City of Medicine Lake absent from vote].

5. New Business

- A. **9209 40 ½ Avenue North: New Hope.** Chair Welch asked New Hope alternate commissioner Jason Quisberg, representing New Hope at the meeting, to clarify his role in this project. Mr. Quisberg replied that in his capacity as the City of New Hope's consulting city engineer he was asked by the City to review the project mostly from a drainage aspect to ensure no issues would be caused to adjacent properties but not specifically as a watershed review. He said he did talk to Jim of the watershed [Jim Herbert, Bassett Creek Watershed Management Commission Engineering staff] and alerted him to the project and put him in direct contact with the project contractor to review the requirements of the watershed.

Mr. LeFevere said there is no personal financial interest that he knows of that would cause Mr. Quisberg to be legally disqualified from participating in the discussion of or vote on this project. Mr. LeFevere said Mr. Quisberg could abstain from participating because of his dual roles but there is no legal requirement for him to abstain.

Chair Welch said the issue in front of the Bassett Creek Watershed Commission (BCWMC/ Commission) is a variance request. Mr. LeFevere said this variance is not the same as a city variance, which is constrained by the Municipal Land Planning Act and its statutory requirements. The variance in front of the Commission requires the Commission look at its adopted requirements in its *Watershed Management Plan*. Mr. LeFevere said the Commission will consider the information provided by the variance applicant and then will decide to grant the variance, grant the variance with conditions, or deny the variance. He said it is a good idea to direct staff to prepare findings because the Commission is required to state reasons for its decision - especially important in the case of a denial. He said if the Commission approves the variance with conditions then a resolution should be prepared so the action and conditions are clearly stated. Mr. LeFevere said if the Commission grants the variance it is implicit that the applicant has met the Commission's *Watershed Management Plan* Requirements. He said the benefit of preparing a resolution in the case of granting the variance is that it could provide the Commission guidance in future variance decisions. Mr. LeFevere said the November 12, 2008, Engineer's Memo lists the Commission's five standards from the Commission's Requirements that need to be met in order for the Commission to grant a variance. Mr. LeFevere reminded the Commission that all five standards need to be met in order for a variance to be granted:

1. There are special circumstances or conditions affecting the property such that the strict application of the provisions of these standards and criteria would deprive the applicant of the reasonable use of its land.
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
3. The granting of the variance will not be detrimental to the public welfare or injurious to the other property in the territory in which the property is situated.
4. In applications relating to a use in the 100-year floodplain set for in Table 5-3 of the Bassett Creek Watershed Management Commission's *Watershed Management Plan*, the variance shall not allow a lower degree of flood protection than the existing flood protection.
5. The granting of the variance will not be contrary to the intent of taking all reasonable and practical steps to improve water quality within the watershed.

Mr. Kremer passed out a photo of the project and stated that the project received a permit from the City of New Hope [grading permit] and that the BCWMC received an after-the-fact application for a variance after the work had already taken place. He explained that the project is on the shoreline of Northwood Lake in New Hope. He said area in the backyard of the property has been filled and the existing wall has been raised to accommodate the fill. He said approximately 21 cubic yards of

material was placed below the floodplain elevation, which is 889.5. Mr. Kremer said the impact of this fill would be an increase in floodplain elevation of 0.0018 inches, which is very minimal; however, he said, floodplain requirements including the City of New Hope's ordinance state that the BCWMC needs to consider the flood impact if all properties on the lake's shoreline added the same amount of fill below the floodplain. Mr. Kremer said if each of the approximately 60 properties on the lake added 21 cubic yards of fill there would be a ½ inch increase in flood stage. He explained that there are already several properties around Northwood Lake that are flooded at the 100-year flood level and that whenever there are serious rain forecasts the City of New Hope provides sandbags for those homes. Mr. Kremer said there is the potential for an increase in flood damage as a result in any increase in flood stage, even though ½ inch is a minor increase in flood damage. He said that historically on projects like this where there is a loss of flood storage as a result of the project, the Commission requires that compensating storage volume be provided. Mr. Kremer said that for this project, the compensating storage volume could be anywhere around Northwood Lake below the 100-year flood level.

Ms. Black asked if the City of New Hope was aware that the project needed a permit from the watershed and asked if the City informed the applicant. Mr. Quisberg said he reviewed the project from a drainage aspect with the City's building official and recommended that there were no impacts as far as drainage was concerned and contacted Jim Herbert [Commission Engineering staff] of the watershed and put him in contact with the project contractor. Ms. Black asked if it is the City's standard operating procedure to issue a building permit without all the permits in hand for the other issues. Mr. Quisberg said it is his understanding that the building permit was issued by the City with the understanding that all permits would be required before the work was begun but that he did not see the building permit and does not know if there was any specific language regarding that issue. Chair Welch said he thought it was a grading permit that the City issued. Mr. Fuhs [project designer with Dundee Nursery] said a grading permit was issued.

Ms. Black asked about the slope on the property prior to the project. Mr. Fuhs said there was a considerable slope. He said Mr. Russ had a tough time walking across his back property prior to the project due to Mr. Russ's physical condition. Mr. Fuhs said he involved Mr. Quisberg and Roger Axel of the City of New Hope in the project prior to the start of the project. Mr. Fuhs said he wanted their opinion on the project. Mr. Fuhs said no construction was started until he received the grading permit. He said he thought that this type of problem could be avoided if cities in which projects are located know that the construction is being done in a watershed district and the cities contact the watershed district to make sure the paperwork is completed before the city permit is issued. Mr. Fuhs said he thought the City of New Hope had made that contact with the watershed [BCWMC]. He said the paperwork [BCWMC permit application] had been issued twice to the watershed [BCWMC]. He said he felt this project is a victim of a policy that has loopholes. He said construction would not have been started if the grading permit had not been granted.

Mr. Welch asked Mr. Quisberg if there are any pending City reviews or approvals and asked what the status of this project is per the City of New Hope. Mr. Quisberg said he had a very limited involvement in this project. He said his understanding is that the permit was issued (whether approval was verbal or written he is not sure) and as far as meeting all watershed requirements it was his understanding that the City felt that all the requirements would be met as before any work was done. Mr. Quisberg said the work was completed and is now subject to review from the City to close out the permit.

Ms. Sundberg clarified that Mr. Fuhs was the contractor on the project. Mr. Fuhs stated that he is the designer of the project for Dundee Landscaping and that he did the sales work and the elevations and everything required on any project. Ms. Sundberg asked if he received a written permit. Mr. Fuhs said it was a written permit from the City and it is hanging on the homeowners' door.

Mr. Fuhs commented that in regard to the ½ inch rise in flood stage throughout the watershed, he agreed that if everybody brought in 21 cubic yards of soil there would be cause for concern; however, in this case the homeowners' quality of life is directly affected. Chair Welch stated that according to the BCWMC's requirements and the City of New Hope's ordinance, the BCWMC must consider the impact of the project in terms of the impact if all the Northwood Lake lakeshore properties added 21 cubic yards of soil in the floodplain.

Mr. Fuhs stated that the reason the project was put in was because of the quality life for Mr. Russ [property owner]. Mr. Fuhs explained to the BCWMC that Mr. Russ had suffered a stroke and likes to get outside to do what he can do such as mow the lawn to contribute to the household maintenance without sustaining any injury and that the project was done in order to improve that.

Ms. Peterson asked if the project meets shoreland regulations. Mr. Kremer said the City of New Hope doesn't currently have such regulations and Northwood Lake is not subject to shoreland regulations set by the Department of Natural Resources.

Ms. Black said that from the photo presented of the project and from comparing the terrain of the Russ' yard to the neighboring property, she wouldn't view the project being justified as necessary due to hardship because the terrain appears fairly flat. She asked if anyone would speak to the grade of the property and the previously existing slope and why the fill and wall extension was the solution chosen.

Mr. Fuhs stated that the neighbors aren't handicapped. He also referred to the photo and pointed out the slope of the yard in comparison to a neighbor's fence. Mr. Fuhs said the Russ property had a steeper slope than the neighboring property to the west. He said he did not have any before photos of the property because they had accidentally been deleted by the work crew.

Mr. Jordan asked if the landscape design includes placing turf all the way to the edge of the retaining wall. Mr. Fuhs said yes. Chair Welch asked the status of erosion protection of the exposed soil. Mr. Fuhs said the soil level sits below the retaining wall and is stable from erosion problems until the turf can be placed in the growing season.

Ms. Sundberg said she is still not sure how this situation arose. She said it appears the permit from the City was given with the assumption that all of the other requirements were met. Ms. Sundberg asked if it was clearly stated what the requirements were? Mr. Quisberg said contact was definitely made between the contractor and the watershed staff because he had heard back from both of them stating that they had spoken to each other. He said it was his understanding that the requirements were made clear; however, he said he had no input on the issuing of the permit so he can't speak to what was behind the permitting.

Mr. Kremer reported that contact was made with Jim Herbert, Commission Engineering staff who does the project reviews for the watershed. He said Mr. Herbert outlined for the landscape designer the watershed requirements and the initial information the contractor needs to collect for the watershed for a permit application. Ms. Sundberg asked if part of Mr. Herbert's communication was that the project needed watershed approval. Mr. Kremer said yes, Mr. Herbert communicated that watershed approval was required if the project included filling below the flood level and that Mr. Herbert communicated the flood level at the property. Ms. Sundberg asked Mr. Fuhs why he thought he was ok to go forward with the project. Mr. Fuhs indicated that the project information was submitted to the watershed before he received the permit from the City of New Hope and when he received the permit he assumed that the City of New Hope had received the go ahead from the watershed. Chair Welch asked Mr. Fuhs to clarify what paperwork information he had submitted. Mr. Fuhs said he submitted an application to the city and design drawings and that he also submitted two copies of the Commission's watershed permit application – one before the City's permit was issued and one after. Chair Welch asked where he had submitted the watershed permit applications.

Mr. Fuhs said he believed he submitted the two watershed permit applications to Jim Herbert at the watershed address listed on the permit application.

Mr. Kremer said if an application was sent prior to construction, Mr. Jim Herbert never received it. Mr. Kremer explained that Mr. Herbert was contacted by the City of New Hope after the project's construction was done. Mr. Kremer said the City asked Mr. Herbert for a copy of the BCWMC's comments on the project; however, Mr. Herbert had not received a permit application and therefore had not reviewed the project. Mr. Kremer stated that following the City's inquiry post-construction, Mr. Herbert received the project submission and permit application around the end of September.

Ms. Sundberg asked if there is anything that can be done with the design to address water quantity issues, such as a construction of a rain garden.

Chair Welch said it is the homeowners' right to use their property and to have it be a comfortable and appropriate place. He said the BCWMC does not wish to restrict the homeowners' use of their property. Chair Welch said the BCWMC has no restrictions on what the Russ' have done to their property as long as compensatory storage is provided. He said the foundation of the compensatory storage regulation is the idea that whatever one does on his or her property doesn't hurt the neighbor's property. Chair Welch said the idea is not to have the Russ' property anything less than safe or not appropriate for Mr. Russ' use.

Chair Welch asked Mr. Kremer the status of the compensatory storage issue of the project. Mr. Kremer said the Commission Engineer has contacted the landscape designer about compensatory storage but has not received a response on the issue and instead the property owner decided to submit a variance request. Chair Welch said that if compensatory storage is provided then the need for a variance is eliminated. Mr. Kremer said the project could have been built without the need for Bassett Creek Watershed Management Commission (BCWMC) review if there was no fill in the floodplain.

Chair Welch asked if there is anything that can be done to the project design at this point. Mr. Kremer responded that the compensatory volume could be provided by moving the wall that is along the shoreline away from the shoreline. He said another solution is to see if there is someplace else where the City of New Hope owns property around the lake where 21 cubic feet of storage could be provided. Mr. Quisberg responded that there is City property along the lake.

Ms. Peterson asked if there are any upcoming projects along the lake. Mr. Quisberg said some have been proposed but none have been moved forward by the City Council. Ms. Peterson commented that she thinks the Commission needs more information on the communication that occurred about the project and also needs the perspective of the City of New Hope on what occurred. Mr. Jordan said the Commission needs to hear some alternatives for mitigation. Ms. Loomis said she doesn't think the Commission needs more information on the communication but that the Commission may need to delay making a variance decision. She said she is a little disappointed that other than Mr. Quisberg no one from the City of New Hope is at today's meeting and said she is also disappointed that the City allowed this type of project to come to the Commission for a permit. She said there is a designer designing projects on shoreland but he doesn't seem to be knowledgeable about shoreland BMPs and then the City allowed this project to be approved when the Commission's member-cities have been trying to educate its residents on how to treat shoreland.

Mr. LeFevere said whatever communication breakdown occurred, it will be useful to identify so it doesn't happen again but it isn't pertinent to the Commission's consideration of the variance request. He said even if the permit had been granted by the City in error and in violation to the Commission's standards, the staff who issued the permit don't have the authority to change the Commission's rules. Mr. LeFevere said any communication breakdown that occurred doesn't have a legal bearing on the hardship issue.

Ms. Black said that for her, reading the Commission's variance standards and the Engineer's comments in the November 12, 2008, Engineer's Memo on the project, she can't say she thinks the project meets the variance requirements. She said the only other way to solve the issue other than the variance is for the project to provide compensatory storage. Ms. Black suggested to table the issue of the variance request, send the project design back to the City of New Hope and have the City work to see if it can find compensatory storage even in an upcoming project, or for the variance request to come back to the Commission with details showing how the project meets the five variance requirements.

Ms. Sundberg asked if the City would have to provide the compensatory storage. Ms. Loomis said the City and the homeowners would need to work it out. Ms. Loomis said she hears Ms. Black saying that instead of denying the variance today, the Commission could give the property owners the opportunity to work with the City of New Hope on the issue of compensatory storage. She said then if the City and property owners come back saying no compensatory storage is available, the Commission would at that time proceed to grant or deny the variance request. Chair Welch said the Commission can make the Commission Engineer available to work on the issue with the City and the homeowners as a way to extend goodwill toward the homeowners in this situation. Mr. Kremer agreed.

[Commissioner Templeman arrives.]

Mr. LeFevere said the need for compensatory storage could also be reduced by changing the design. Chair Welch said the Commission Engineer could help the City and the landscape designer to come up with ideas. Mr. Quisberg clarified that the entire wall is not a new structure. He said the shoreline has not been altered it's just that the wall was raised. Mr. Fuhs commented that the middle of the wall was raised by two courses and an additional third course was added to either side.

Ms. Black moved to continue the variance request and to have staff put the issue back on the agenda when it is ready for Commission review and to allow Commission staff to work with the City and the property owner and landscape designer to explore opportunities to either eliminate the need for the variance or to figure out more appropriate reasons for the variance. Mr. Jordan seconded the motion with the friendly amendment of exploring opportunities off site [for providing compensatory storage]. Ms. Black approved the friendly amendment. The motion carried unanimously [City of Medicine Lake abstained from vote].

6. Old Business

- A. Sweeney Lake TMDL Update: Mr. Leaf passed out a handout entitled "BCWMC Project Progress Update – November 19, 2008." He said this update is to let the Commission know where the project is at in regard to the process, the next steps, the modeling results to date, and where SEH, Inc. is at with regard to the data analysis from the second year of collection. Mr. Leaf reported that the second year of data still is preliminary data and hasn't been validated by the Three Rivers Park District so the data hasn't been entered into the model yet. Mr. Leaf pointed out on a map the locations of the monitoring stations in and around the lake.

Mr. Leaf said that year-two monitoring has been completed and that it was a good year of monitoring data. He said that the Three Rivers Park District should be providing the finalized data to SEH, Inc. shortly. Mr. Leaf reported that the bathtub model has been calibrated to the 2007 data and hasn't been run with the preliminary 2008 data but that things are looking how SEH was expecting. Mr. Leaf showed a graph of data points from the north and south stations on Sweeney Lake from the sediment core sample from 2007. He said the graph shows a high concentration of internal loading of phosphorus - as was known going into the Sweeney Lake TMDL study. He said the load amount is about two to three times the internal load seen in general lakes throughout the area. Mr. Leaf said the goal through modeling and calibrating the second-

year data is to better quantify what portion of the load is internal versus external sources.

[Commissioner Peterson departs meeting]

Mr. Leaf said the data show that the release rate of phosphorus from the sediments is high and is higher in anoxic conditions (i.e., when there is not oxygen at the bottom of the lake). Mr. Leaf said it will become important to determine the difference in the phosphorus loading in the lake between when the aerators are operating and when they are not. He said the data from the last two years show that when the aerators are off there is a higher release rate into the lake at the bottom of the water column. Mr. Leaf stated that the data show that when the aerators were operating, the temperature was mixed throughout the water column. He said when the aerators weren't operating, the temperature stayed colder at the bottom and warmer at the surface. He said a thermocline developed that kept the cooler water at the bottom and the warmer water at the top. Mr. Leaf said the dissolved oxygen data in both 2007 and 2008 showed that when there was a thermocline, there was essentially no dissolved oxygen at the bottom of lake.

Mr. Leaf said water clarity in 2008 was slightly better than in 2007 based on observations by Brian Vlach and the Three Rivers Park District (TRPD), who did the lake sampling. He said according to Mr. Vlach, the data from the TRPD should be ready in early to mid-December. He said Mr. Dave Hanson and some of the other residents saw different weeds this year than in other years. Mr. Hanson said the weeds at the bottom were worse than usual.

Mr. Leaf reported on some of the study's preliminary findings. He said that with aeration, the lake remains mixed and bottom sediments contribute to phosphorus loading and there is a lower release rate of phosphorus from the bottom, although that rate is still high (about three times higher than other lakes in the area). Mr. Leaf stated that without aeration the lake stratifies and phosphorus is contained below the thermocline until the turnover in the fall at which time the phosphorus is released to the rest of the lake. He also explained that without aeration there are higher release rates of phosphorus from the bottom. Mr. Leaf reported that the preliminary findings show that internal phosphorus loading contributes approximately 45% to the lake's total phosphorus. He said SEH needs to run through the model and recalibrate but that the figure is probably a pretty good preliminary estimate.

Mr. Leaf said the next steps will be to validate the model after the validated data is received from the TRPD, to compare the 2007 and 2008 data, and to adjust the model as necessary to reach the final calibrated model. He said then the model will be used to base the external load models from Barr after which SEH will look at what loads are coming in from what sources. He said then SEH will begin to look at an implementation program on how to get the loads down to an acceptable level.

Mr. Leaf said it is time to get the three technical meetings and the public stakeholder meeting scheduled. He said he could talk with Mr. Kremer and Chair Welch to start identifying who should be contacted to be on the technical team and to identify a time for the technical team to meet as early as December and to plan for a second meeting in January. Mr. Leaf said he would like the meeting schedule to be set so there are two technical meetings before the public meeting and one technical meeting after the public meeting.

Mr. Hanson stated he would like to be part of the stakeholder group. Chair Welch mentioned he would likely be representing Sweeney Lake's lake association. Chair Welch said the city-MS4s for this TMDL study are Golden Valley and St. Louis Park and asked if any non-MS4 commissioner was interested in being the BCWMC representative on the stakeholder group. No commissioners indicated interest and Chair Welch said he would volunteer his time for the role the best he could. Ms. Black asked if the BCWMC needed to select a representative for the technical group. Chair Welch said it would be nice for the Commission to have Commission representation beyond staff

on the technical group because participating is a great way to really learn and understand the technical side of the TMDL but that it is up to the commissioners to decide whether they are interested in participating.

- A. 1. **Medicine Lake TMDL Update.** Chair Welch stated that he and Commissioner Peterson had discussed and agreed that they could switch their roles on the Medicine Lake Steering Committee. Chair Welch moved for Commissioner Peterson to be the BCWMC representative for the Medicine Lake TMDL study and for Chair Welch to serve as the alternate representative. Chair Loomis seconded the motion. The motion carried unanimously [City of Robbinsdale absent from the vote].

Chair Welch said the second Medicine Lake Steering Committee meeting took place last night. He said much of the material was background information on the data collection, the nature of the TMDL study process, and the ground rules for the Steering Committee. Chair Welch reported that the next meeting will be held in January 2009.

B. **TAC Recommendations:**

- i. **Resource Management Plan.** Mr. Kremer reported that the Technical Advisory Committee (TAC) reviewed all the information previously submitted to the BCWMC about the Resource Management Plan (RMP) concept. He reiterated that the theory behind the preparation of the RMP is to expedite the permitting process for future projects that are to be approved by the BCWMC. Mr. Kremer said there were problems encountered in late 2007 and early 2008 in regard to getting projects permitted. He said these problems were the impetus for preparing the RMP because the BCWMC asked the Army Corps of Engineers (Army Corps) how the permitting problems could be avoided in the future and the Army Corps responded by suggesting the RMP process.

Mr. Kremer said the proposal would be to permit the water quality improvement projects associated with lakes and streams in the watershed and the channel improvement projects that are part of the CIP for the next five years. He said the cost estimate prepared earlier this year by the Commission Engineer was that the RMP would cost \$45,000 to prepare. Mr. Kremer said the TAC asked what the savings would be by doing the RMP versus having the projects permitted individually. He stated that his estimate is the savings would be approximately 50% by going through the RMP process. Mr. Kremer explained that he estimates it would cost \$10,000 - \$15,000 a piece to go through the permitting process on a project by project basis. He said there would be some additional costs beyond the \$45,000 to get through the final permit authorization process through the Army Corps because the BCWMC would have to submit final plans, which would require some preparation and may entail answering final questions about the projects.

He said through the RMP process the BCWMC would receive conditional permits for the projects included in the RMP, conditioned on submitting the final plans for Army Corps review. Mr. Kremer said another advantage of the RMP is that the Army Corps is being encouraged by its administration to use a watershed management approach to its permitting. He said there would also be a considerable time savings in the permitting process by using the RMP approach. Mr. Kremer reminded the BCWMC that in the fall of 2007 when the BCWMC submitted the Golden Valley Sweeney Branch channel improvement project to the Army Corps for the permitting process, the Army Corps responded that it may be mid-2009 before the project could receive a permit even though it was desirable in terms of the project to start construction as soon as possible. Mr. Kremer said

another advantage to the RMP process is that the BCWMC would give public notice of the RMP and public notice of the permits that would be submitted as part of the RMP and then the BCWMC would not have to give public notice of the individual projects as they proceeded in the future.

Chair Welch said his big question is the degree to which the BCWMC is confident that the components of the projects, such as impacts to wetlands, are known well enough now for all the projects that designs of the project plans can be created and the BCWMC won't need to go through the permitting process again two years down the road because of changes in the design of the project. Chair Welch asked Mr. Kremer for his professional opinion on how well the BCWMC understands what it's going to do on the projects being recommended for inclusion in the RMP.

Mr. Kremer said there are several channel restoration projects that have gone forward and he feels the concept plans accurately reflect the projects. He said the proposed RMP projects other than the channel improvement projects are BMP (Best Management Practices) water quality improvement projects. Mr. Kremer said those concept plans passed through the BCWMC. He said when that process was being carried out, there were meetings with the cities and with the Department of Natural Resources to identify any potential issues with the projects. He said that the final concept plans reflected what was learned from that review process. Mr. Kremer said he is fairly confident there will not be significant changes to those plans. However, he said, rules can change in the future that could dictate that the projects go through another process. He mentioned that such a possibility of rule changes is a disadvantage of the RMP process.

[Commissioner Sundberg departs meeting]

Ms. Langsdorf asked if the BCWMC would need to go through the permitting process again if the BCWMC decided to delay a project included in the RMP. Mr. Kremer said it would depend on the extent of the modification the BCWMC makes. He said if it is a significant modification, one that the public would be concerned about or one that had a major impact, then the BCWMC may have to do supplemental permit applications and a public notice process. He said that as far as the CIP projects identified to be included in the RMP, he doesn't see that happening.

Mr. Kremer said the BCWMC also asked for information on conducting Environmental Assessment Worksheets (EAWs) in relation to the RMP process. Mr. Kremer said the TAC felt that an EAW for the overall project should not be done at this time and that EAWs for individual projects should only be done if needed. Chair Welch asked why the TAC recommended this. Mr. Kremer said the TAC discussed that if an EAW is needed then the RMP process should help identify the need for the EAW since the public and other agencies will be looking at the projects and will have the opportunity to raise issues and then the BCWMC can determine whether or not it needs to conduct an EAW. Ms. Sundberg said she doesn't consider the EAW perspective explained by Mr. Kremer as a disadvantage and asked if he saw it as a disadvantage. Mr. Kremer said he did not.

Ms. Black said in regard to the \$45,000 cost of the RMP, the cost would bring the projects within the RMP to a preliminary design stage and then as the project comes up the BCWMC would need to prepare the final project and would have to submit that to the Army Corps, which would require additional costs. She asked if the previous estimate that permitting the projects individually at a cost of \$10,000

to \$15,000 included the costs of the final project design and submittal to the Army Corps. Mr. Kremer said no, that cost included the concept plan, preliminary design, and permit application. Ms. Black clarified that there would be additional costs to the \$10,000 - \$15,000 as well. Mr. Kremer responded yes. He said it is not unusual for the final design to be 15% of the project cost.

Ms. Templeman asked if Mr. Kremer foresees additional expenses due to possible rule changes. Mr. Kremer said he can't predict rule changes but said that about ten years ago he was involved in a project that obtained a conditional permit through the Army Corps and then a subsequent rule change required the project to still go through jurisdictional review.

Mr. LeFevere remarked that as he understands the process, it will involve an earlier effort to define a project not to the point of final plans but to the point where the project can be evaluated. He said it seems to him that even if there is a rule change, a lot of the effort in defining those projects won't be wasted because that effort will need to be done sooner or later. Mr. LeFevere said rule changes may require further analysis or work on the part of the BCWMC, but the work that was completed won't be a wasted effort.

Ms. Black moved the staff's recommendation that the BCWMC complete the RMP for the BCWMC's CIP projects proposed for the next five years and that an EAW not be completed at this time and that the cost for completing the RMP is not to exceed \$45,000 without further consideration by the BCWMC. Ms. Loomis seconded the motion. The motion carried unanimously [City of Robbinsdale absent from the vote]. Mr. Kremer mentioned that the costs would have to be billed against the CIP projects.

- ii. Channel Maintenance Fund Requests. Chair Welch said the TAC's recommendations are listed in the November 12, 2008, TAC memo to the BCWMC.

Ms. Loomis moved approval of the TAC's recommendation in the memo to approve \$45,000 for the Plymouth Creek channel maintenance project, \$50,000 for Golden Valley's Main Stem Bassett Creek channel restoration project, and \$18,100 for the North Branch channel excavation project in New Hope to be funded from the channel maintenance funds available in 2009. Ms. Black seconded the motion.

Chair Welch said he is not ready to vote in favor of the New Hope project. He asked how the project provides Commission benefits versus City benefits and how the project qualifies per the BCWMC's channel maintenance policy. Mr. Kremer said he believes the TAC felt that item B of the BCWMC's Stream Restoration Policies [in the *Watershed Management Plan*] applies to the project [7.2.2 Stream Restoration Policies item B. The BCWMC will use the Creek and Streambank Trunk System Maintenance, Repair and Sediment Removal Fund to finance maintenance and repairs needed to restore a creek or streambank area to the designed flow rate].

Mr. Kremer said there is an area downstream of Northwood Lake where a large amount of sedimentation has occurred. He said it doesn't necessarily affect the capability of this channel in this area to convey flood flows, but it affects the ability of that area of channel to convey normal flows. Mr. Kremer explained that due to the sedimentation, the lake stays up at higher levels for longer periods of time. He said if the channel was excavated so it provides its normal capacity, then the lake

would drain down quicker, which is a benefit to the property owners around the lake. Mr. Kremer said this is the information the TAC discussed and is the aspect of the BCWMC's stream restoration policy it felt applied to this project. Mr. Kremer said this project restores channel capacity that was previously available.

Chair Welch asked if the City of New Hope has committed funds to this project. Mr. Quisberg said funds for the project's balance would come from the City's stormwater utility fund, unless the City seeks reimbursement from the BCWMC's channel maintenance funds in future years, but that to-date the City hasn't set those funds aside for that purpose.

The motion carried with six votes in favor [Cities of Crystal, Golden Valley, Medicine Lake, New Hope, Plymouth, and St. Louis Park] and one vote against [City of Minneapolis] [Cities of Medicine Lake and Robbinsdale absent from the vote].

- iii. **Parkers Lake Phosphorus Goal and Recommendations for Revisions to Water Quality Goals for Lakes and Waterbodies.** Mr. Kremer said the BCWMC originally adopted its goal for lakes in 1994 when the Minnesota Pollution Control Agency's (MPCA) requirements were 30 ppb (parts per billion) for phosphorous. He explained that in 2007 the MPCA changed its requirements for lakes to 40 ppb and that the City of Plymouth set its goal for Parker's Lake to be consistent with the MPCA's requirement. Mr. Kremer said that in 2004 when the next generation *Watershed Management Plan* was completed, the BCWMC decided it would look at all its goals for waterbodies at some point in the future.

Ms. Loomis moved to approve the TAC's recommendation that the BCWMC adopt the 38 ppb phosphorus goal for Parkers Lake. Ms. Black seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].

Chair Welch moved to have the TAC review the BCWMC's water quality goals for waterbodies. Ms. Loomis seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale absent from the vote].

- iv. **Recommendation for Preparation of TAC Review of CIP Projects.** Chair Welch said the TAC has requested that the Commission Engineer prepare some information that would help the TAC in its review of the CIP. Ms. Loomis asked how much the preparation of the materials would cost. Mr. Kremer said the bulk of the work would be performed by Ms. Herbert to pull together the previous information about the prioritization process the BCWMC used for the CIP and then it would also take up to two hours of his time. Chair Welch said it sounds like the cost would be up to \$1,000 and moved to approve staff preparing the information for the TAC's CIP review. Ms. Loomis seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale were absent from the vote].

- C. **City of Plymouth's Surface Water Management Plan and Resolution 08-09 approving the surface water management plan of the City of Plymouth.** Ms. Black moved the adoption of Resolution 08-09 approving the City of Plymouth's surface water management plan. Ms. Loomis seconded the motion. The motion carried unanimously [Cities of Minnetonka and Robbinsdale were absent from the vote].

- D. Discussion on BCWMC Organizational Analysis. Item deferred to December BCWMC meeting. Ms. Black said she would like the commissioners to review the memo from the Administrator Committee included in the packet and to give serious consideration to the issues raised in the memo for discussion at the next BCWMC meeting.

7. Communications

A. Chair:

- i. Chair Welch announced that the BCWMC received letters of interest proposals in response to the BCWMC's notice in the *State Register* for consultants. Ms. Loomis said she would check with Ms. Virnig to see if she can create PDF files of the submissions and suggested the Administrative Services Committee schedule a meeting to discuss the letters before the December BCWMC meeting.

B. Commissioners: No Commissioner Communications.

C. Committees:

- i. Education and Public Outreach Committee: Ms. Langsdorf announced that the Joint Education and Public Outreach meeting will be on Tuesday, December 9, 2008, at 8:30 a.m. in the Medicine Lake Room at Plymouth City Hall.

D. Counsel*

E. Engineer:

- i. Mr. Kremer reported that the Minnesota Board of Water and Soil Resources (BWSR) will hold a listening session on December 19, 2008, from 9:30 a.m. – noon at the Capital Region Watershed District [1410 Energy Park Drive, Suite 4, Saint Paul] to hear from watershed management organizations, watershed districts, soil and water conservation districts, metro local governments, and county water planners on their ideas of how to use the clean water portion of the money that will be available from the recently passed constitutional amendment.

8. Adjournment

Ms. Black moved to adjourn the meeting. Ms. Loomis seconded the motion. The meeting adjourned at 2:10 p.m.

Michael Welch, Chair

Date

Amy Herbert, Recorder

Date

Pauline Langsdorf, Secretary

Date