



## Bassett Creek Watershed Management Commission

### Minutes of Regular Meeting Thursday, December 15, 2022 8:30 a.m.

Golden Valley City Hall, 7800 Golden Valley Road

#### 1. CALL TO ORDER and ROLL CALL

On Thursday, December 15, 2022 at 8:32 a.m. Chair Cesnik brought the Bassett Creek Watershed Management Commission (Commission) to order.

#### Commissioners, city staff, and others present

City	Commissioner	Alternate Commissioner	Technical Advisory Committee Members (City Staff)
Crystal	Dave Anderson	Joan Hauer	Mark Ray
Golden Valley	Stacy Harwell	Paula Pentel	Eric Eckman
Medicine Lake	Clint Carlson	Shaun Kennedy	<i>Absent</i>
Minneapolis	Michael Welch	Jodi Polzin	<i>Absent</i>
Minnnetonka	Maryna Chowhan	<i>Vacant Position</i>	<i>Leslie Yetka</i>
New Hope	Jere Gwin-Lenth	Jen Leonardson	Nick Macklem
Plymouth	Catherine Cesnik	<i>Absent</i>	Ben Scharenbroich and Chris LaBounty
Robbinsdale	<i>Absent</i>	<i>Vacant Position</i>	Mike Sorenson
St. Louis Park	<i>Vacant Position</i>	<i>Absent</i>	Erick Francis
<b>Administrator</b>	Laura Jester, Keystone Waters		
<b>Engineers</b>	Karen Chandler, Barr Engineering		
<b>Recording Secretary</b>	<i>Absent</i>		
<b>Legal Counsel</b>	Dave Anderson, Kennedy & Graven		
<b>Presenters/ Guests/Public</b>	None		

#### 2. PUBLIC FORUM ON NON-AGENDA ITEMS

No comments from the public were made.

#### 3. APPROVAL OF AGENDA

Administrator Jester requested to add Item 5F. Consider Approval of Minor Revisions to New Watershed Boundary

**MOTION:** Commissioner Gwin-Lenth moved to approve the agenda as amended. Commissioner Harwell seconded the motion. Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

#### 4. CONSENT AGENDA

An error in the November minutes will be corrected indicating that the meeting was on a Wednesday.

**MOTION:** Commissioner Harwell moved to approve the consent agenda with the revision to the November minutes. Commissioner Carlson seconded the motion. Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

The following items were approved as part of the consent agenda.

- A. Approval of Minutes – November 16, 2022 Commission Meeting
- B. Acceptance of December 2022 Financial Report
- C. Approval of Payment of Invoices
  - i. Keystone Waters, LLC – November 2022 Administrative Services
  - ii. Keystone Waters, LLC – November 2022 Meeting Expenses
  - iii. Barr Engineering – November 2022 Engineering Services
  - iv. Kennedy & Graven – October 2022 Legal Services
  - v. Redpath – November 2022 Accounting Services
  - vi. Triple D Espresso – Meeting Catering
  - vii. MN Department of Administration – Legal Notice Publication
  - viii. Stantec – WOMP Services
- D. Conditional Approval of Courage Kenny Center Bridge Removal
- H. Approval of Stantec Proposal for 2023 Watershed Outlet Monitoring Program (WOMP) Tasks and Authorization to Execute Contract

#### 5. BUSINESS

##### **A. Four Seasons Mall Development and Water Quality Improvement Project Implementation (45 min)**

- i. **Review TAC and Staff Recommendations on a City of Plymouth Request Regarding Requirements for Four Seasons Mall Future Development**

Chair Cesnik and Administrator Jester provided some background on the Commission’s attempts to implement a CIP project in the Four Seasons Mall area to improve water quality in Northwood Lake and the North Branch of Bassett Creek, including entering agreements with two different redevelopment companies. Neither redevelopment project was built.

TAC member Chris LaBounty with the City of Plymouth reported that the city purchased the property in 2021, recently demolished the building and parking lot, and proposes to build the CIP project components ahead of the site’s redevelopment. He noted the 90% plans for the CIP project are on the agenda for approval today and will capture an estimated 118 pounds of total phosphorus (TP). He reminded the Commission that previous agreements with redevelopers required removal of 100 pounds of TP.

Mr. LaBounty reported that at the December 7<sup>th</sup> TAC meeting, the city requested that the TAC recommend that the Commission allow current BCWMC redevelopment standards to be applied to the future redevelopment of the site, with a sunset clause of 10 years. He noted that the TAC was hesitant to recommend that provision and, instead, recommended a sunset clause of 5 years.

Mr. LaBounty noted that after more discussion with Commission staff, the city revised its request to the Commission. The City would like approval of a construction plan for an oversized site treatment project (regional treatment ponding; CIP project components) for the masterplan of the site that includes the required treatment for the redevelopment project and an additional 100 pounds of TP removal. He reviewed the components of the oversized treatment (CIP project) including 2 new stormwater ponds and restoration of the wetland on the south end of the property. He noted these components are the same as previously approved with the most recent redevelopment project. He reported the city would own and maintain the CIP components into the future.

TAC Chair, Mark Ray, noted that the TAC agrees there is benefit to constructing the CIP components now rather than waiting for a redevelopment project. He said the TAC was presented with limited options and that Plymouth's current request evolved from initial TAC discussions.

When asked if there was a downside to the city constructing the CIP project now, Mr. LaBounty noted there is some risk to the city because the type and size of the redevelopment ultimately coming to the site is unknown. A potential developer may be deterred by the use of large areas of the site for the CIP project components.

There was confirmation that future development plans would be reviewed by the Commission for water quantity, rate control, floodplain impacts, and erosion and sediment control. There was also discussion about the impact to Northwood Lake; although there is no TMDL for the lake, it continues to have very poor water quality, despite other projects in its subwatershed. The Four Seasons Mall area was found to be a major contributor to pollution of the lake in an older subwatershed analysis. City monitoring will track changes to water flowing out of the CIP components. Commissioner Welch noted that this request is different because the original idea was to integrate the "above and beyond" pollutant removal with actual redevelopment. He noted there is a high amount of uncertainty that may be difficult to articulate in a legal agreement. Commissioner Welch also noted the agreement should indicate the restored wetland is not available for wetland banking.

Commissioner Harwell noted her support for constructing the project and indicated that large, regional treatment areas are easier to maintain than many small, scattered practices. Commissioner Gwin-Lenth agreed this is a good project and should be built sooner than later.

Administrator Jester reviewed Commission staff recommendations to allow the City to offer a future developer the ability to utilize a portion of the CIP project's TP removal above 100 pounds to meet BCWMC development standards in place at the time of development. She noted that because the City is likely to fund about 20% of the BCWMC CIP project, up to 20% of the TP removal should be available to offer a future developer.

Administrator Jester recommended the Commission take the following actions:

- Approve moving forward with city/staff recommendations that the city construct and maintain the oversized regional ponding project and that the City submit a masterplan to accompany the regional ponding plan.
- Approve 90% plans and direct the City to continue design to 100% plans, prepare bid documents, and bid project.
- Agree that general terms of an agreement between city and BCWMC that would include the typical BCWMC CIP implementation/reimbursement language + City's plan and use of TP removals of about 18 pounds for the site masterplan.

Administrator Jester noted the details of the agreement would be developed and hopefully a final agreement presented at the January Commission meeting.

Commission Attorney Anderson indicated that the agreement should have a narrow scope. He noted the only benefit to a future developer is that water quality improvements would already be provided and the agreement would clearly indicate that no BCWMC CIP funding would be spent on subsidizing private development. He noted that the requested arrangement is an outlier to the Commission's current process but there is a good record documenting how the Commission and city came to this point.

Alternate Commissioner Hauer indicated her support for the water quality project but disagreed with the idea of developing the parcel. She wondered if the parcel could remain undeveloped and she noted that actions in this part of the watershed affect everything downstream. Commissioner Harwell and Welch commented that land use decisions are not part of the Commission's authority.

**MOTION:** Commissioner Harwell moved to approve the Administrator's recommendations. Commissioner Chowhan seconded the motion.

Discussion: Commissioner Welch and Attorney Anderson voiced their concerns with the agreement, including the

approval of a “masterplan” for the site. They noted the Commission does not have a mechanism to review and approve a site masterplan. Mr. LaBounty reiterated the city’s desire to build an oversized BMP (best management practice) to remove 118 pounds of TP. He noted the city does not want to build the CIP project and “bank” TP removal credit for a future developer. He noted the need to create some level of certainty for a future developer.

[Commissioner Harwell departs the meeting.]

Attorney Anderson and Administrator Jester indicated there seems simply to be a discrepancy in semantics.

**MOTION:** Commissioner Welch moved to amend the original motion to “approve moving forward with city/staff recommendations that the city construct and maintain oversized regional ponding project.” Alternate Commissioner Pentel seconded the motion. Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

Upon a VOTE on the amended motion, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

The meeting adjourned for a 5-minute break.

**ii. Develop Terms for an Agreement with City of Plymouth to Implement Four Seasons Mall Water Quality Improvement Project (NL-2)**

Commission Attorney Anderson noted the agreement would be similar to a typical CIP cooperative agreement and would allow the city to offer total phosphorus removal of about 18 pounds/year (the amount above 100 pounds/year required for the BCWMC CIP project) to be utilized by a future developer of the mall site while ensuring that no Commission funding would be used to satisfy water quality requirements. He also listed additional provisions that would be included in the agreement such as no wetland banking, and development of a chloride management plan.

**MOTION:** Commissioner Welch moved to authorize the Commission Attorney to work with the city of Plymouth and Commission Administrator to draft an agreement for construction of the CIP project (NL-2) components with an allocation of 18 pounds of total phosphorus removal as a credit to the city commensurate with city funding, no allowance for wetland banking, and development of a chloride management plan for the site. Commissioner Gwin-Lenth seconded the motion. Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

**iii. Consider Approving 90% Design Plans for Four Seasons Mall Water Quality Improvement Project (NL-2)**

Commission Engineer Chandler reported that the Commission Engineers had reviewed the 90% project plans. She briefly reviewed the components of the project including the two new ponds, vegetated swales, and wetland restoration. There was some discussion about the project’s benefit between the time the mall and parking lot are demolished (and the site is vegetated) and new development is constructed. Mr. LaBounty noted that the wetland restoration will treat flows coming from west of Lancaster Lane and north of Rockford Rd, and the new pond on the north side of the project will treat stormwater from the residential area to the south. Engineer Chandler indicated her support for the project and recommendation to approve the 90% plans with no conditions.

**MOTION:** Commissioner Welch moved to approve the 90% plans for the Four Seasons Mall Water Quality Improvement Project (NL-2). Commissioner Gwin-Lenth seconded the motion. Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

**B. Consider Approving Minor Revisions to Requirements for Improvements and Development Proposals as Recommended by the Technical Advisory Committee**

TAC Chair Mark Ray reported the Commission Engineer suggests minor revisions to the Requirements Document to add clarity in some areas, provide updated information on Manufactured Treatment Devices (MTDs) in light of their

recent addition to the MN Stormwater Manual, and add detail on bridge replacement projects. He reported the TAC and staff recommend approval of the revisions.

**MOTION:** Commissioner Welch moved to approve the recommended revisions to the Requirements Document and for staff to change the word “shall” to “will, must, or may” in a future revision to the document. Commissioner Carlson seconded the motion. Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

**C. Consider Approving Policy and Participation Agreement for Compensating Community Members for Participation in Watershed Plan Focus Groups or Interviews**

Administrator Jester noted that at the meeting last month, the Commission approved the concept of financially compensating individuals for their time and contributions through participation in focus groups or interviews and the Commission requested the development of a policy and a form or agreement for participating. She indicated that the draft incentive policy and participation waiver were developed by her and Commission Attorney Anderson. She also reported meeting with some commissioners who provided comments on the documents and helped frame and refine the participation program.

Administrator Jester briefly reviewed her ideas for engaging with Native communities and environmental justice communities through interviews or focus group meetings. Attorney Anderson noted that a policy is needed to lay out the purpose for the expenditure of public funds. There was some discussion about whether and how residents could provide input to the Commission without signing a waiver and being financially compensated. Chair Cesnik said some people may be wary of signing a government document and she had some suggestions for language revisions. Commissioner Welch and Attorney Anderson indicated that participation in the focus group program should require signing the waiver, that Administrator Jester’s time should be managed and the program fairly administered.

**MOTION:** Commissioner Welch moved to approve the policy and participation waiver with minor revisions and to approve Administrator Jester’s approach to the program as outlined in her memo. Commissioner Gwin-Lenth seconded the motion.

Discussion: There was further discussion about the overall program having a targeted focus, and not being individual phone calls from residents, but a pre-planned program with compensation to willing individuals. It was noted that since there is a monetary exchange, there is a fine line in how the program is implemented.

**VOTE:** Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

**D. Review Results of Staff Evaluations**

Chair Cesnik reviewed the results of evaluations by commissioners and TAC members for Administrator Jester and Commission Engineer Chandler. She reported about 10 people submitted evaluations. She reported that, overall, Administrator Jester had “meets” or “exceeds” expectations in all categories and was asked to put more emphasis on education and outreach activities. She reported that Barr Engineering/Engineer Chandler also had “meets” or “exceeds” expectations in many categories. It was noted that engineering costs were a concern for some. Commissioner Welch noted that the Commission Engineer provides the appropriate amount and caliber of work for the cost.

Chair Cesnik also noted that the list of “future needs” was lengthy among responses.

Administrator Jester and Engineer Chandler thanked commissioners for the feedback and noted they were happy to take feedback anytime during the year.

**E. Receive Report on MN Association of Watershed Districts Annual Meeting – Item tabled until January**

[Commissioner Chowhan leaves the meeting.]

**F. Consider Approval of Minor Revisions to New Watershed Boundary**

Administrator Jester reported that although the Commission approved an updated watershed boundary with Shingle Creek WMC in November, there are a few minor edits in Robbinsdale recommended by the city and reviewed by the Commission Engineer. She showed the changes on a map and requested approval of the changes to the official boundary.

**MOTION:** Commissioner Welch moved to approved the changes to the BCWMC watershed boundary with Shingle Creek Watershed Management Commission. Commissioner Carlson seconded the motion. Upon a vote, the motion carried 7-0, with the cities of Robbinsdale and St. Louis Park absent from the vote.

[Alternate Commissioner Hauer leaves the meeting.]

**6. COMMUNICATIONS**

**A. Administrator's Report**

- i. MnDNR AIS Treatment Grant Application – A lottery-based grant application was submitted to the MnDNR for curly-leaf pondweed treatment in Medicine Lake.
- ii. Hennepin County AIS Prevention Grant Update – A \$10,000 grant awarded to the BCWMC in 2021 for developing and installing AIS prevention signage on fishing piers was not implemented for a variety of reasons, including the loss of the BCWMC Education Coordinator. Instead, the County will take the lead on developing the signage, with BCWMC input, and will fabricate the signs for installation by BCWMC or member cities in 2023.

Administrator Jester also relayed a recent conversation with Hennepin County Commissioner Fernando's office related to the Bassett Creek Valley (BCV). She indicated there is support to convene a group of stakeholders interested in exploring implementation of regional flood and stormwater management in the BCV, including working to access newly appropriated Federal funds for infrastructure and climate resiliency projects. There was general consensus that convening a stakeholder group was a good idea.

**B. Chair – No report**

**C. Commissioners**

Commissioner Welch asked that the January or February meeting include a review of commissioner/alternate commissioner vacancies and attendance expectations. Commissioner Welch noted that the TAC liaison should be provided with clarity on the level of engagement expected from the liaison at the TAC meeting.

**D. TAC Members**

For the January 4<sup>th</sup> TAC meeting, Alternate Commissioner Polzin will be the alternate liaison if Commissioner Harwell is not able to attend.

**E. Committees - No report.**

**F. Legal Counsel - No report.**

**G. Engineer**

Commission Engineer Chandler reported that the pre-construction meeting for the Lagoon Dredging Project was held November 28<sup>th</sup> and a new access route to Pond D is being developed. Regarding the Bryn Mawr Project, she reported that rough grading is underway and the ponds are being shaped. Piles are expected to be driven next week.

**7. INFORMATION ONLY (Information online only)**

- A. BCWMC Administrative Calendar
- B. CIP Project Updates [www.bassettcreekwmo.org/projects](http://www.bassettcreekwmo.org/projects)
- C. Grant Tracking Summary and Spreadsheet

8. **ADJOURNMENT** - The meeting adjourned at 11:18 a.m.