

MINUTES
May 30, 2019

A meeting of the Technical Advisory Committee (TAC) of the Shingle Creek and West Mississippi Watershed Management Commissions was called to order by Chairman Richard McCoy at 8:34 a.m., Thursday, May 30, 2019, at Crystal City Hall, 4141 Douglas Drive North, Crystal, MN.

Present were: Andrew Hogg, Brooklyn Center; Mitchell Robinson, Brooklyn Park; Derek Asche, Maple Grove; Megan Hedstrom, New Hope; Ben Scharenbroich, Plymouth; Richard McCoy, Robbinsdale; Ed Matthiesen and Diane Spector, Wenck Associates, Inc.; and Judie Anderson, JASS.

Also present: Bernie Weber, New Hope; Tyler Johnson, Stantec, New Hope; Alex Larson, Plymouth; and Marta Roser, Robbinsdale.

Not represented: Champlin, Crystal, Minneapolis, and Osseo.

I. Motion by Asche, second by Scharenbroich to **approve the agenda*** as revised. *Motion carried unanimously.*

II. Motion by Asche, second by Scharenbroich to **approve the minutes*** of the April 25, 2019 meeting. *Motion carried unanimously.*

III. 2020 Operating Budgets.*

Staff queried how the Commissioners might explain future budgets to their cities as the Commissions seek to fund activities that were not in their purview when the member assessment cap was instituted in 2004. The increased activities of the Commissions, such as the Twin Lake Carp Project, will effectively put the member assessments above the self-imposed cap. In past years, the Commissions' success in securing grant funding for many of such projects has helped them to maintain member assessments at or below the cap. This scenario is not likely to continue as more projects are identified in addition to the "routine" activities of the Commissions.

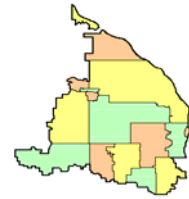
Staff was directed to prepare a draft 2021 budget that would include these innovative projects and activities.

IV. Wetland Buffer Flexibility.*

At the last TAC meeting there was some discussion about providing flexibility for wetland buffer widths where technical considerations make it difficult to meet the 20-foot wide minimum. The language below is from Rule I Buffer Strips, Provision 6.

6. ALTERNATE BUFFER STRIPS.

- (a) Because of unique physical characteristics of a specific parcel, narrower buffer strips may be necessary to allow a reasonable use of the parcel, based on an assessment of:
 - (1) The size of the parcel.
 - (2) Existing roads and utilities on the parcel.
 - (3) The percentage of the parcel covered by watercourses or wetlands.
 - (4) The configuration of the watercourses or wetlands on the parcel.



- (5) The quality of the affected watercourses and wetlands.
- (6) Any undue hardship that would arise from not allowing the alternative buffer strip.

The use of alternative buffer strips will be evaluated as part of the review of a stormwater management plan under these Rules. Where alternative buffer strip standards are approved, the width of the buffer strips shall be established by the Commission based on a minimum width of 10 feet. Alternative buffer strips must be in keeping with the spirit and intent of this Rule.

This language satisfies the concerns raised by the members.

V. CIP Capital Equipment Language.*

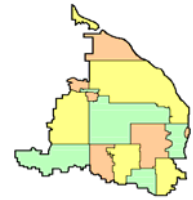
A. Staff's May 29, 2019 memo provides background information regarding CIPs (capital projects and programs). In recent years, volume and pollutant-loading BMPs have expanded to include nonstructural practices such as street sweeping, soil amendment, reforestation, native plantings, and - for reducing chloride from road salt - pre-wetting and brining. Nonstructural practices also include certain internal load reducing actions such as alum treatments, management of excessive rough fish populations, and control of invasive aquatic vegetation that is negatively influencing water quality and biotic integrity. These nonstructural practices may be as effective at reducing pollutant loading, mitigating runoff volumes, and enhancing biotic integrity as structural BMPs. However, it is unclear whether those nonstructural practices fit the meaning of "capital project" as defined in Minnesota Rules 8410, whereby BWSR establishes the rules by which it will interpret and enforce the statutes set forth in Chapter 103B governing Water Planning and Project Implementation.

While 103B.231 of the Statutes does not define "capital improvement," Rule 8410.0020 Subp. 3. states that "'Capital improvement'" means a **physical improvement** that has an extended useful life. A capital improvement is **not** directed toward **maintenance** of an in-place system during its life expectancy. (*Emphasis added.*)

This seems to be in conflict with Rule 8410.0105 Subp. 2. which states that "Each plan must consider the feasibility of implementing structural solutions for attaining the goals defined under part 8410.0080 that cannot be resolved by nonstructural, preventative actions. Each plan must include a table for a **capital improvement program that identifies structural and nonstructural alternatives** that would lessen capital expenditures and sets forth, by year, details of each contemplated capital improvement that includes the need, schedule, estimated cost, and funding source." (*Emphasis added.*)

The conflict is that a "capital improvement" is defined as a physical improvement - a structural solution - whereas a "capital improvement program" is defined as both structural and nonstructural solutions. At issue is whether the authority under §103B.251 to "...certify for payment by the county as provided in this section all or any part of the cost of a capital improvement contained in the capital improvement program of the plan" extends to nonstructural solutions.

B. The Shingle Creek Commission received a request from the City of Plymouth to add the purchase of a regenerative air sweeper to the CIP as a phosphorus and sediment load reduction BMP, and to share 25% of the cost of its purchase. The City commits to funding the remaining 75% from other sources and to staff and maintain the equipment. The sweeper would be used to perform more intensive street sweeping of the city, especially in the directly-connected untreated areas discharging directly to lakes, streams, and wetlands. Weekly sweeping with a regenerative air sweeper has been shown by the Center for Watershed Protection to reduce TSS loading by up to 31% and TP loading by up to 8%. The annual load of nutrient and sediment removal through street sweeping can often exceed the annual load removed by structural practices such as rain gardens or biofiltration basins.



Staff has been in discussions with the Commissions' attorney who has, in turn, consulted with the Hennepin County Attorney's office, Hennepin County Environment and Energy staff, and the Board of Water and Soil Resources (BWSR). Staff has also consulted with the Commissions' independent auditor. At issue:

1. Are there certain types of nonstructural practices that [members] can agree are clearly similar in nature to structural BMPs in that they are primarily load or volume-reducing practices and not ongoing maintenance?

2. Can [members] agree that these nonstructural practices may be included in capital improvement programs and could be considered for cost-share funding using the authority under §103B.251 for payment using the county's levy authority?

The TAC had previously discussed question 1 and agreed that, with certain qualifications and stipulations, some nonstructural practices could be so considered. Hennepin County and BWSR agree, and BWSR notes that the "capital improvement" definition in 8410 hasn't kept up with the advances in various technologies and practices. The auditor notes that there is no GASB standard that would limit how the Commissions define "capital improvement." BWSR, Hennepin County staff, and Hennepin County Attorney's office also agree that nonstructural practices that meet the conditions in #1 would be eligible for levy certification under §103B.251.

C. Neither the Commissions' Cost Share Policy for Capital Improvement Projects adopted in 2007 nor the subsequent Third Generation Plan defines "capital improvement" for the purposes of cost sharing by levy. It is clear in the guidance developed in implementing the policy that 1) funds may not be used for BMPs to meet Commission requirements; 2) funds may be used to "upsized" a BMP above and beyond those requirements; 3) maintenance projects are not eligible.

If the TAC desires to move forward with amending the Management Plan to revise the Cost Share Policy, some explicit definitions should be established, either in the Plan itself or in the guidance document. The following are some potential requirements for discussion:

1. Capital improvements must be for water quality or ecological integrity improvement, and must be for improvement above and beyond what would be required to meet Commission rules or common practice. Only the cost of "upsizing" a BMP above and beyond is eligible.

2. Routine maintenance activities are not eligible.

3. The effectiveness of the proposed nonstructural improvement must be supported by literature or academic/practitioner experience and documentation.

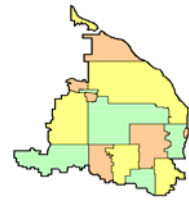
4. The applicant must agree to document the effectiveness of the BMP and report those results to the Commissions for at least five years.

5. The standard Commission/Member Cooperative Agreement will be executed prior to BMP implementation.

Members directed Staff to begin developing a cost share policy relating to nonstructural practices along with a concomitant Minor Plan Amendment.

VI. New Hope Cost Share Application.*

The Shingle Creek Commission has received a Cost-Share Program application for an Underground Storm Water System for the New Hope Civic Center Park. The City is proposing an underground stormwater retention and treatment tank for the west portion of the site, adjacent to the proposed theater and skate



park. The inline tank will treat runoff from a 7.4-acre area comprised of Zealand Avenue and surrounding residential areas that drain to the project site. The project cost is estimated to be \$108,000; the City is requesting \$50,000 cost-share from the Commission. It is Staff's recommendation that \$25,000 of that amount be taken from the Cost-Share Program and the other \$25,000 be taken from the BWSR Watershed-based Funding Grant.

Motion by Scharenbroich, second by Hogg to recommend to the Commission approval of this project based on Staff's recommendation. *Motion carried unanimously.*

VII. Magda and Meadow Lakes TMDL 5-Year Review.*

A. Staff have completed a draft of the Meadow and Magda Lakes TMDL 5-Year Review. Both of these lakes are small, shallow "neighborhood" lakes with small lakesheds. Both were designated Impaired Waters for excess nutrients in 2002 and TMDLs were completed in 2010. Lake Magda outlets to Eagle Creek through storm sewer, while Meadow Lake outlets to Bass Creek through storm sewer. Since 2010 Staff have collected additional water quality, aquatic vegetation, fish, and sediment core data, and have updated the P8 and lake response models to include BMPs completed since that time. Staff's May 23, 2019 memo provides an overview of that report and recommendations for the coming ten years.

B. Lake Management Plan, Meadow Lake.* The Shingle Creek Commission has received a request from the City of New Hope to develop a lake management plan for Meadow Lake and to apply for a Clean Water Fund grant to assist in the funding of a potential drawdown and alum treatment for the lake. Estimated cost to develop the management plan is \$150,000 - \$200,000.

Motion by Hedstrom, second by Scharenbroich to recommend to the Commission approval of this request. *Motion carried unanimously.* The project would be added to the CIP to make it eligible for grant funding.

VIII. Cedar Island Lake Subwatershed Assessment.*

The City of Plymouth has made a request to the Shingle Creek Commission to perform a subwatershed assessment (SWA) for Cedar Island Lake. Data compiled from the 5-year TMDL review, which was completed in 2018, should facilitate development of the SWA.

Motion by Scharenbroich, second by Hedstrom to recommend to the Commission approval of this request up to \$15,000. *Motion carried unanimously.*

IX. Other Business.

A. Matthiesen provided an update of the **Becker Park** and **Twin Lake Carp** projects.

B. McCoy reported that Robbinsdale has received a DNR permit to **pump water out of Crystal Lake** into the Twin Lake chain to alleviate flooding conditions.

C. The **next meeting** of the Technical Advisory Committee is scheduled for 8:30 a.m., Friday, June 21, 2019, Crystal City Hall.

D. The meeting was adjourned at 9:53 a.m.

Respectfully submitted,

Judie A. Anderson/Recording Secretary