

# elm creek Watershed Management Commission

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## Technical Advisory Committee Meeting Minutes June 14, 2023

I. A meeting of the **Technical Advisory Committee (TAC)** of the Elm Creek Watershed Management Commission was called to order at 10:31 a.m., Wednesday, June 14, 2023, in the Plymouth Community Center, 14800 34th Avenue North, Plymouth, MN, by Chair Derek Asche.

Present: Kent Torve, Stantec, Corcoran; Nico Cantarero, Stantec, Dayton; Derek Asche, Maple Grove; Rebecca Haug, WSB, Medina; Ben Scharenbroich, Plymouth; Diane Spector and Erik Megow, Stantec; Kris Guentzel and Kevin Ellis, Hennepin County Environment and Energy (HCEE); and Judie Anderson, JASS.

Not represented: Champlin and Rogers

Also present: Ken Guenthner, Corcoran; Joshua Accola and Doug Baines, Dayton; and Owen Mischio, Plymouth.

II. Motion by Scharenbroich, second by Cantarero to approve the **Agenda** as presented. *Motion carried unanimously.*

III. Motion by Scharenbroich, second by Cantarero to approve the **Minutes** of the May 10, 2023, meeting. *Motion carried unanimously.*

IV. **2023 CIPS.** The preliminary CIP was considered by the Commissioners at their April meeting, after which it was circulated to the cities, who proposed revisions and requested one addition.

A. The City of Maple Grove has requested that one new project be added to the CIP for 2024: **Rush Creek Stabilization-Rush Hollow**. This is a proposed restoration of about 4,000 LF of Rush Creek between Orchid Lane and Fernbrook Lane, just upstream of the Elm Creek Park Reserve. Asche presented the project to the members and stated that the estimated cost of this project has been revised downward from \$1,600,000 to \$1,000,000, with the Commission's share being \$250,000. Exhibit A\* was included in the meeting packet and describes the project in more detail. Construction is anticipated in 2023-2024.

Motion by Scharenbroich, second by Cantarero to recommend to the Commission the addition of this project to the 2024 CIP at a project cost of \$1,000,000. *Motion carried unanimously.*

B. Megow presented the **Downtown Rogers Pond Expansion and Reuse project** on behalf of the City of Rogers. Exhibit A\* describes this project which has an estimated cost of \$406,000, with the Commission's share being \$101,500. Members expressed concern that the description did not address a number of issues, specifically rate and volume control and water quality "above and beyond" the Commission's requirements. Information was also requested regarding ownership and future maintenance of the facility, impacts to the wetland, and drought mitigation.

Motion by Scharenbroich second by Haug to request that the City of Rogers provide the missing information to the members at the July 12 TAC meeting, prior to a recommendation to the Commission.

**V. 2022 Year-End Fund Balances.\***

The 2022 Audit Report is being presented to the Commissioners at their meeting today. While there may be a few adjustments as the 2022 audit is finalized, the 2022 preliminary year-end balances for non-operating accounts are the following:

**A. Restricted for Capital Projects.** These are funds levied for specific capital projects. The Commission holds these funds until such time as the member cities have completed the work. They then request reimbursement for the costs incurred. Eight capital projects, levied in 2016 – 2021, remain outstanding. The total fund balance is \$624,293, including 2022 administrative costs for the 2023 levy.

**B. Cost Share Projects.** The Commission operates two cost share projects, one for city projects and one for partnership projects on private property. City cost share projects are funded on a one-to-one basis through the capital levy and city cost share. Partnership projects are funded through the capital levy and do not require a match. Both categories are comprised of projects with an estimated cost of less than \$100,000. There are two outstanding city cost share projects for which member cities have not yet requested reimbursement, and no outstanding partnership cost projects.

**C. Closed Projects Account.** The Commission’s Closed Projects Account houses levy funds that exceed final project costs. In addition, on occasion a project is cancelled, and the levy funds are then transferred to this fund. These funds are intended to be used for other capital improvement projects, including the cost of undertaking feasibility studies to preliminarily scope a future project. These funds may also be used to limit future capital levies for new projects. The account balance at YE2022 equals \$174,334.

**D. Unassigned Funds Balances.** The Commission has also in past years acted to segregate or assign some of its unrestricted reserves to be held for a specific purpose, for example to fund the 4th Generation Plan. These unassigned funds may continue to be set aside to be used for these purposes or the Commission may elect to unassign the funds and transfer them to Unrestricted Reserves.

From time to time the Commission has budgeted funds for projects or special studies and set that money aside in an Assigned for Projects and Studies Account. It has rarely been used, but in 2023 the Commission encumbered just under \$10,000 to provide matching funds for the Watershed-Based Implementation Fund (WBIF) grant supporting the Rush Creek SWA and the North Fork Rush Creek remeandering study. The YE2022 balance is \$181,817. \$9,468 encumbered for the 2023 WBIF brings that total down to \$172,349.

**E. Unrestricted Reserve.** The last category of funds is the Commission’s Unrestricted Reserves, which is cash on hand that has not been designated for a particular use. This helps with monthly cash flow and is a “rainy day reserve” in the event something unusual occurs, or one of the member cities withdraws from the JPA and no longer is contributing its share of expected revenues. The newly adopted policy is to maintain a cash

**Unrestricted reserve desirable balance calculation using 2022 year-end amounts.**

Component	Operating Expenses	Operating Revenues
2022 Budget	\$496,371	\$472,371
Less project reviews	188,032	190,442
Net Amount	308,339	285,929
5/12ths of yearly expenses	\$128,475	
50% of yearly revenues		\$141,464
<b>YE 2022 Unrestricted Balance</b>	<b>\$141,927</b>	<b>\$141,927</b>

reserve equal to either 50% of annual operating revenues or five months of operating expenses. Using the 2022 year-end figures, that minimum reserve balance would be the greater of the amounts in the table above.

The nearly finalized year-end 2022 Unrestricted Balance of \$141,927 is much less than the 2021 year-end balance of \$279,332. A very significant factor in that drop is the increase in the liability for project review fees from \$11,739 in 2021 to \$78,161 in 2022. Those are expenses the Commission has already incurred but for which additional review fee has not yet been collected. That escrow balance will vary from year to year. (See the separate discussion regarding the project review fees found in item VII. below.)

**VI. Opportunity Grant.\*** Included in the meeting packet is an email from Hennepin County announcing that applications for this year's round of Opportunity Grants are being accepted through July 20, 2023. Grant applications may be for up to \$50,000, with no specific match requirement, however, greater weight is given to applications that leverage other funds. Also included in the packet is Staff's June 7, 2023, memo\* recommending preparation of a grant application for the proposed **Dayton River Road Ravine Stabilization Project**. An Exhibit A\* describing the project in more detail was included in the meeting packet.

Last fall the city of Dayton and Commission staff investigated a concern posed by residents of adjacent homes on Dayton River Road regarding ongoing erosion in a channel from a culvert under CSAH 12/Dayton River Road to the Mississippi River. Their concern was that this culvert was proposed to be modified as part of the ongoing CSAH 12 county road project, and that the modifications would exacerbate that erosion, with no improvement proposed by the County as part of that larger project. The estimated project cost is \$75,000, and the Commission had previously approved an application from Dayton for \$50,000 from Partnership Cost Funds.

City and Commission staff agreed that this was potentially the case and recommended that the city of Dayton apply for a Hennepin County Good Steward grant to fund stabilization, to be supplemented from the Commission's Partnership Cost Share Program for projects on private property. The City applied for the grant in November 2022, but it was not selected for funding.

Staff recommends preparing an Opportunity Grant application in the amount of \$37,500, to be matched by \$37,500 from the Partnership Cost Share Program. Much of the application text that was prepared for the Good Steward grant can be reused in this application. If preparation of the application is approved, Staff will provide a draft for review at the July 13, 2023, Commission meeting prior to submittal by the July 20 deadline.

Motion by Scharenbroich, second by Haug to recommend to the Commission that Staff prepare the application as described above. *Motion carried unanimously.*

**VII. Project Review Fees.\***

Technical and administrative staff have spent considerable time over the past few months reviewing the adequacy of the existing project review fee structure at recovering the costs of performing those reviews. The review fees will not recover all the costs of operating a project review program; there will always be costs such as working with developers on projects that never come to fruition or doing non-fee project review-like work such as reviewing environmental review documents (i.e., EAWs). However, both engineering and administrative staff do track their time and expenses for numbered projects, so we can review those costs against the fees that were charged for them. Asche suggested that admin staff would not need to charge against individual projects, just overall project reviews.

For a number of years, the Commission charged a review fee per project that was a flat fee based on the size of the project. It was assumed that larger projects with more residential units would be more complicated and require more effort to review than smaller projects. This was true to an extent. There were always large projects that were very straightforward and required a basic level of effort to review, and the actual cost of performing that review was less than the review fee. There were also smaller projects that were more complicated or where the applicant went through several iterations of plans that had to be reviewed each time.

Those actual costs exceeded the review fees.

Setting the review fee structure was an attempt to balance those projects so the bottom-line net effect was close to zero. In practice, that was very hard to do. In 2021, the Commission adopted a project review fee policy that required the applicant to pay the actual cost of performing the review, so that those that were done more efficiently were no longer subsidizing the more complicated projects.

The current review fee structure (see attached) consists of four components: a flat amount based on which rules are being triggered; a 10% contingency on that total; a 10% non-refundable administrative fee; and a 15% nonrefundable technical fee. The flat fee plus contingency are, in essence, an escrow. If the actual cost of reviewing the project is less than that amount, the applicant is refunded the balance. If the cost exceeds that amount, the applicant is invoiced the balance, which must be paid prior to final approval and release of the project review. The non-refundable fees are intended to recover the cost prior to an application being submitted and accepted, and any costs that might come up after, such as a file closeout, or review of documents for issues that may come up later.

The new fee structure was ramped up in 2021, so 2021 and 2022 are the first full years of experience. The following are staff's observations:

**A.** Administering the fee structure is very staff intensive. The costs and fees for each individual project review are tracked monthly, as are outstanding invoices for increases in the review escrow. Administrative costs associated with an active project are tracked and are billed to that project, but all other tasks are not. In addition, there are administrative costs for inquiries and correspondence with applicants before and after the project review that are not recorded against a specific project but are tracked as a category. These generalized costs are what the Non-Refundable Administrative Fee is supposed to recoup. Table 1 shows the nonrefundable administrative fees collected in 2021 and 2022 compared to the cost of administering the project review program. The fees collected did not fully fund the program. *This suggests that the current admin fees should be adjusted.*

**Table 1. Non-billable administrative review fees in 2021 and 2022.**

	2021	2022
Non-refundable Admin Fee collected	\$13,800	\$13,150
Total non-billed admin costs	\$15,076	\$16,918
<b>Unrecovered admin costs</b>	<b>-\$1,276</b>	<b>-\$3,768</b>

**B.** In 2021 and 2022 *more than half* of the project reviews (32 of 56 in 2021 and 25 of 49 in 2022) required additional fees to be collected. These additional fees were an estimated \$83,600 compared to an estimated \$63,400 that was refunded. The average additional fee required was \$2,280 in 2021 and \$1,900 in 2022, while the amount to be refunded was about \$1,400 and \$1,300 respectively. *This suggests that the current fees should be adjusted.*

**C.** It can take several months between project review submittal and review by the Commission and when the applicant is reimbursed for any excess funds, or more importantly, when the Commission is able to invoice for the final costs and collect that additional fee. This lag between submittal of a project review and fee and collection of the final fee owed is impacting the Commission's balance sheet. On the 2022 financial audit, the Commission carried a liability of \$78,161 in outstanding project review fees compared to \$11,739 at the end of 2021. In other words, the Commission had expended \$78,161 in project review costs it had paid for but had not yet collected the additional fee. This directly reduces the Unrestricted Fund Balance. *This argues for increasing the base rates in the fee schedule to collect additional fees up front.*

**D.** The Commission made a policy choice with the adoption of the new schedule to charge the

actual cost rather than a flat amount intended to, on average, recover the actual cost. Neither the previous fee schedule nor the current fee schedule work perfectly to accomplish the Commission's and TAC's goals that the fees adequately reimburse the Commission for the costs of performing project reviews.

1. The schedule can be tweaked to be sure the admin costs are fully-covered, or the Commission can accept the admin time spent as the cost of running a project review program.

2. Staff can review the 2021 and 2022 projects to see if there are commonalities in the projects for which the review cost exceeded the initial fee to see if there might be modifications to the fee schedule, for example, a tiered base fee based on project size. The proposed 2024 budget does assume some increase in fees.

Staff are seeking guidance and input from both the TAC and the Commission.

Asche noted that the fee structure is not intended to be staff intensive and that fees collected should cover nearly 100% of applications. Asche suggested doubling fees and reducing the administrative non-refundable percentage from 10% to 8%. He also noted that the current fees are based on 2020 numbers and that the fees should be modified annually to ensure there are no shortfalls during the project review process.

Due to time constraints, the members briefly discussed the fee structure and asked Staff to draft a revised schedule for the July TAC meeting. It was agreed that the fee structure should be reviewed annually. This item will also be discussed at the Commission meeting.

**VIII.** The **next meeting** of the Technical Advisory Committee is scheduled for 10:00 a.m., Wednesday, July 12, 2023, preceding the Commission's regular meeting.

There being no further business, the meeting was adjourned at 11:37 a.m.

Respectfully submitted,



Judie A. Anderson  
Recording Secretary  
JAA:tim

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