

**BOARD OF WATER AND SOIL RESOURCES
520 LAFAYETTE ROAD NORTH
LOWER LEVEL BOARD ROOM
ST. PAUL, MN 55155
WEDNESDAY, JANUARY 26, 2022**

BOARD MEMBERS PRESENT:

Joe Collins, Jill Crafton, Jayne Hager Dee, Kathryn Kelly, Rich Sve, Gerald Van Amburg, Ted Winter, LeRoy Ose, Eunice Biel, Todd Holman, Ronald Staples, Mark Zabel, Katrina Kessler, MPCA; Joel Larson, University of Minnesota Extension; Jeff Berg, MDA; Steve Robertson, MDH; Sarah Strommen, DNR

BOARD MEMBERS ABSENT: Kelly Kirkpatrick, Neil Peterson

STAFF PRESENT:

John Jaschke, Angie Becker Kudelka, Rachel Mueller, Tom Gile, Travis Germundson, Lucy Dahl, Marcey Westrick, Michelle Jordan, Annie Felix-Gerth, Tom Gile, Kristin Brennan, Jeremy Maul, Mark Hiles, Ed Lenz, Henry Van Offelen, Pete Waller, Rita Weaver, Jenny Gieseke, Brett Arne, Les Lemm , Jenny Mocol-Johnson, Sharon Doucette, Dave Weirens, Ryan Hughes, Julie Westerlund, Suzanne Rhees, Ken Powell, John Voz, Dave Copeland

OTHERS PRESENT:

Jason Garms, DNR; Brian Martinson, AMC; Emily Javens, MAWD; LeAnn Buck, MASWCD; Troy Danielle, NRCS; Kaytlin Bemis, Farm Bureau; Eric Van Dyken, Ryan Malterud, Jan Voit, Zach Bothun, JoAnn Blomme

Chair Gerald VanAmburg called the meeting to order at 9:03 AM

PLEDGE OF ALLEGIANCE

22-01 **ADOPTION OF AGENDA** - Moved by LeRoy Ose, seconded by Ted Winter, to adopt the agenda as presented. ***Motion passed on a voice vote.***

22-02 **MINUTES OF DECEMBER 16, 2021 BOARD MEETING** – Moved by Rich Sve, seconded by Mark Zabel, to approve the minutes of December 16, 2021, as amended. ***Motion passed on a voice vote.***

PUBLIC ACCESS FORUM

No members of the public provided comments to the board.

INTRODUCTION OF NEW STAFF

Board Members welcomed new staff. Sharon Doucette introduced Lucy Dahl, Easement Supervisor; Marcey Westrick introduced Michelle Jordan, Board Conservationist and Annie Felix-Gerth, Clean Water Coordinator; and Tom Gile introduced Kristin Brennan, Southern Region Training Conservationist.

CONFLICT OF INTEREST DECLARATION

Chair Van Amburg read the statement:

“A conflict of interest, whether actual, potential, or perceived, occurs when someone in a position of trust has competing professional or personal interests, and these competing interests make it difficult to fulfill professional duties impartially. At this time, members are requested to declare conflicts of interest they may have regarding today’s business. Any member who declares an actual conflict of interest must not vote on that agenda item. All actual, potential, and perceived conflicts of interest will be announced to the board by staff before any vote.”

REPORTS

Chair & Administrative Advisory Committee – Chair Gerald Van Amburg reported the committee has not met. He attended the Red River Basin Conference virtually and stated Executive Director John Jaschke updated the group on program and priorities at BWSR and the priorities, challenges, and accomplishments of the Minnesota Climate Change Subcabinet. Another presentation was given by Steven Rosenzweig with General Mills, he reported on the workings of the ecosystem services market consortium. Chair Van Amburg also attended the EQB meeting on January 19 where they were given an update on the needs and expense to assume the Section 404 Permitting Program of the Federal Clean Water Act. Stated the Environmental Review Implementation Subcommittee also met and they continue to gather information on the pilot program for integrating climate change into environmental review. The Department of Transportation Committee Commissioner Margaret Anderson Kelliher who has chaired EQB has resigned from the commissioner position to take a position as Director of Public Works with Minneapolis.

Chair Van Amburg stated the BWSR Board will conduct an annual performance review of the Executive Director. Jenny Gieseke, Organizational Effectiveness Manager, will be sending an evaluation to each Board Member. Chair Van Amburg will then consult with the Vice Chair and report back at the March meeting with the results. Jenny Gieseke stated she will send an email to Board Members to complete the survey through Survey Monkey. Jill Crafton asked if there is a deadline to get it in by. Jenny stated there will be a deadline and the information will be in the email that’s sent out.

Chair Van Amburg congratulated LeRoy Ose for being reappointed to the board as a Watershed District representative.

Chair Van Amburg recognized Darby Nelson who was an environmental advocate. He served three terms in the Minnesota House of Representatives, where one of his most significant accomplishments was legislation creating the Minnesota Board of Water and Soil Resources.

Executive Director's Report - John Jaschke reported the Governor's supplemental and bonding proposals are being released. Legislative session begins the last week of January. Stated hearings in the House will be held virtual and the Senate will have a hybrid version. Stated the Statewide River Watch Program was put into bill last year and was due in January. It has been accomplished and report will be sent to Board Members.

John stated there was a note sent to Board Members by Jenny Gieseke about work we'll be doing on Diversity, Equity, and Inclusion with the Board. We will be using the Administrative Advisory Committee for this work.

John reviewed the day of packet that included agenda, minutes, Snapshots, org chart, and the expense form.

Chair VanAmburg stated the Snapshots were done very well.

Audit and Oversight Committee – Joe Collins reported they met on January 20 to review the 2021 PRAP Report that is an action item on the agenda.

Dispute Resolution and Compliance Report – Rich Sve reported they have not met. Travis Germundson reported there are presently six appeals pending. All the appeals involve the Wetland Conservation Act (WCA). There have been three new appeals filed since the last board meeting and four decisions that have been issued.

File 22-1(1-7-2022) This is an appeal of a WCA Restoration Order in Steele County. The appeal regards the alleged placement of agricultural drain tile through multiple wetlands. No decision has been made on the appeal.

File 21-9 (12-17-2021) This is an appeal of a WCA notice of decision involving a no-loss determination in Pope County. This appeal has been combined with File 21-7 because they involve the same notice of decision and placed in abeyance to allow the Technical Evaluation Panel to develop written finding of fact following the submission of additional technical analyses.

File 21-8 This is an appeal of a WCA Restoration Order in Rock County. The appeal was placed in abeyance and the restoration order stayed for further investigation and submittal of an after-the-fact wetland application.

File 21-1 (8-16-2021) This is an appeal of a WCA Notice of Decision involving a no-loss determination in Kittson County. A decision was made on November 3, 2021, to grant and hear the appeal. Several delays and extensions have been issued since then. Received official record from the local unit government they are in the process of scheduling a pre-conference hearing.

Jill Crafton asked about Roseau County on the map being a color of no action taken. Travis stated its due to a pending hearing on a ditch proceeding.

Grants Program & Policy Committee – Todd Holman reported the committee met January 10 and have an item on the agenda today. Next meeting scheduled for February 14.

RIM Reserve Committee – Jayne Hager Dee reported the committee has not met. They are scheduled to meet next week.

Water Management & Strategic Planning Committee – Joe Collins reported the committee has not met.

Wetland Conservation Committee – Jill Crafton reported the committee has not met. Did have a workshop and will have an information item later in the agenda.

Buffers, Soils & Drainage Committee – Mark Zabel reported the committee has not met.

Drainage Work Group (DWG) – Tom Gile reported they met in January and received update from MCEA staff on Waters of the U.S. and discussed future activities going into the next year. Tom stated the Drainage Manual is now up on the BWSR website. Next meeting is scheduled for June or July.

Chair VanAmburg thanked board members that helped fill positions in committees.

AGENCY REPORTS

Minnesota Department of Agriculture – Jeff Berg reported former Assistant Commissioner Whitney Place is now Minnesota's USDA Farm Service Agency Executive Director and Peder Kjeseth has been appointed as MDA's new Assistant Commissioner.

The Minnesota Agricultural Water Quality Certification program has a goal of 1 million acres to reach by end of this year. As of this week the program has 810,000 acres towards that goal.

The Groundwater Protection Rule updated their map for areas in the state that are vulnerable to nitrate in groundwater, this map can be found on their website. Jeff stated there are 13 local advisory teams throughout the state that have been meeting with farmers to talk about nitrate in groundwater.

Minnesota Department of Health – Steve Robertson reported they developed a white paper on stormwater reuse with public health perspectives and stated it's posted on their website.

Steve stated there are going to be a variety of changes to help address lead issues, in particular drinking water supplies. Stated the EPA released a national revision to the Lead and Copper Rule that will dictate how those changes take place over the next few years. Jill Crafton stated she would like to see watershed districts involved. Joe Collins suggested when they go forward in the next stage to look at golf courses and ice skating rinks as both use a lot of water and includes the public. Jeff stated he will forward those recommendations to the group.

Minnesota Department of Natural Resources – Sarah Strommen thanked Chair Van Amburg for recognizing Darby Nelson. Stated the bonding package was released last week, DNR has a role in managing part of the state's outdoor assets for natural resources.

Jill Crafton asked if they are looking at more diversity within forest species. Sarah stated the focus is on climate appropriate species for now and in the future.

Minnesota Extension – Joel Larson reported the Minnesota Climate Adaptation Award ceremony will be held virtually on January 31. There will be a presentation and conversation with Dr. Kathryn Hayhoe, a climate scientist involved with climate work across the country.

Joel stated they will be hiring a new extension educator to work on building climate resilience in agriculture and natural resource communities.

Stated they have been talking with the Lower St. Croix Watershed Partnership and as part of their Comprehensive Plan, they identified a need for an education and agronomy assistant in the watershed to help implement some their goals. They hired Jennifer Hahn from the Redwood Soil and Water Conservation District to start in November.

Nutrient Management Conference is on February 8 in Mankato and February 15 in St. Cloud, both have virtual options.

Minnesota Pollution Control Agency – Katrina Kessler thanked BWSR for highlighting the investment of the Clean Water Fund. Stated they have added numbers to the impaired water list but have taken more off the list than any other year. They have added more water for PFAS and the addition of water outside of metro area highlights that this is not a metro challenge but is a statewide challenge.

Katrina thanked Commissioner Strommen and others who participated in the Climate Change Awareness event in December talking about lake ice impacts from climate change. Stated we are averaging 14 fewer days of lake ice than we did 50 years ago across the state.

Katrina stated they joined BWSR and other partners in the third annual Ag Urban Forum where attendees continued their progress in addressing challenges related to protecting water quality in Minnesota.

Katrina stated state agencies are preparing to release a draft climate action framework in the next couple weeks. Stated the federal infrastructure money the Bipartisan Infrastructure Law passed included an additional \$1 million to Minnesota for each of the next five years to work on the nutrient reduction strategy effort. The Bipartisan Infrastructure Law also included \$1 billion for the Great Lakes Restoration Initiative where a portion will come to Minnesota. Stated an influx of money is coming through the Public Facility Authority into the State Revolving Fund to address aging infrastructure.

Dana Vanderbosch has been named MPCA's Assistant Commissioner for Water Policy and Agriculture. MPCA also hired new CFO and Government Relations Director.

Jill Crafton stated she talked to Glenn Skuta about the electro fishing they've been doing and asked if it's feasible for the fish that are being caught be tested for mercury and if there was anything they could be doing to test for PFAS. Katrina stated they are looking to advance their PFAS work across the state. As a Watershed District, Katrina stated she could connect Jill with someone from the MPCA or DNR to find out what it entails and what labs are available. Commissioner Strommen stated she also could connect Jill with DNR staff who are doing fish tissue sampling.

Chair Van Amburg mentioned the problem of lead and trying to do something about it. Stated there are a lot of the lead pipes on private property and that it can be costly. He asked if there is anything being looked at to help homeowners. Katrina stated money coming through the State Revolving Funds to the state from the Bipartisan Infrastructure Law is not just thinking about where there are city owned or

municipal owned lead pipes, but how to make sure they're comprehensively mapping where lead pipe connections may be. They are also thinking about opportunities to support homeowners in that work. Steve Robertson stated the other concern is for renters that don't own, the landlord might not have incentive to make the investment.

ADVISORY COMMENTS

Association of Minnesota Counties – Brian Martinson reported AMC has been engaged with public and private sector partners, including meetings with leaders from state agencies and associations discussing plans for 2020 session and beyond. AMC has been active on several workgroups that were created by the legislature, one is an advisory group to identify sources of PFAS entering solid waste in wastewater systems.

Brian stated one of their session priorities is the natural resources block grants. Funding for these services include WACA and shoreland protection. Stated AMC supports the administration bonding and general fund recommendations for the local road wetlands replacement program.

Brian thanked BWSR, EQB, MPCA, DNR and others for their work on the 404 Permitting Assumption. The state investment in obtaining this report was a priority for AMC two years ago and look forward to hearing the conversation on the topic later in the agenda. Stated AMC is likely to continue support for additional state funding to continue assembling 404 application materials.

Minnesota Association of Conservation District Employees – No report was provided.

Minnesota Association of Soil & Water Conservation Districts – LeAnn Buck thanked those that participated in their annual meeting. At the meeting a grassroots policy deliberations took place, LeAnn stated it enhances SWCD foundational areas of financial and technical assistance that they provide to private landowners and private lands. One of the biggest trends they had several resolutions on was forestry support. Thanked Commissioner Strommen and stated their members received a lot of seedling resources from the DNR State Nursery. LeAnn thanked BWSR for providing forest support. Stated they are looking at a request for enhancing or establishing a BWSR Forest Conservation Program that would complement DNR's Cooperative Forestry Management.

LeAnn stated another request is for BWSR to work with MDA and MnDOT on accelerating work associated with right of way and BMPs. Members are seeing a lot of private landowners that have land adjacent to the right of ways and continue to think about the removal and the control of invasives. They are also seeing a need to increase the pollinator species.

LeAnn stated for Wright SWCD they're trying to see if there is cost share availability for the removal of tile intakes and providing technical standards for alternative practices that would still be eligible for the state cost share program. Stated they will be looking into and will work with NRCS and other agencies.

Minnesota Association of Townships – Eunice Biel reported they are planning in person trainings in outstate Minnesota for clerks and treasurers. They will be holding Township Tuesday calls on the first and third Tuesday of the month from 10:00 – 11:00 a.m. Stated Supervisors will be attending a board of equalization training to provide fair and objective forums for property owners to appeal their valuation or classification, which is the first formal step in the appeals process.

Township elections are being held on March 8 for a clerk and supervisor position.

Minnesota Association of Watershed Districts –Emily Javens reported they received a response to their petition on whether rulemaking was required in a previous decision and that they are working on a rebuttal. Stated the Governor included \$20 million of flood hazard mitigation funds to work on projects. Emily stated they have an author committed to increase the general fund levy to allow districts to keep up with the rate of inflation. Emily also stated they presented to the House and Senate Members on the Minnesota Subcommittee on the Water Policy.

Natural Resources Conservation Service – No report was provided.

Chair Van Amburg recessed the meeting at 10:57 a.m. and called the meeting back to order at 11:05 a.m.

COMMITTEE RECOMMENDATIONS

Southern Region Committee

Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan – Jeremy Maul, Mark Hiles, and Ed Lenz presented Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan.

The BWSR Area 53 was selected by BWSR for a One Watershed, One Plan Planning Grant in August of 2018. A Memorandum of Agreement was established on April 1, 2019, between the planning partners for the purposes of writing a Comprehensive Watershed Management Plan, which was initiated on May 17, 2019. The watershed partnership members have attended regularly scheduled meetings and submitted the Hawk Creek - Middle Minnesota Comprehensive Watershed Management Plan (Plan) to BWSR on November 11, 2021, for review and approval. The Southern Regional Committee (Committee) met on December 20, 2021, to review the content of the Plan, State agency comments on the Plan, and to make a recommendation for approval. The Committee recommends approval by the full Board.

Joe Collins stated he read the plan and thought it was very pragmatic.

Chair Van Amburg stated he thought it was a good plan.

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22-03 Moved by Todd Holman, seconded by Rich Sve, to approve the Hawk Creek – Middle Minnesota Comprehensive Watershed Management Plan. ***Motion passed on a roll call vote.***

Northern Region Committee

Red River Basin Commission Grant – Henry Van Offelen presented Red River Basin Commission Grant

In 2021 the Legislature appropriated funds to the Board for grants to the Red River Basin Commission (RRBC) for water quality and floodplain management, including administration of programs. The RRBC has submitted an updated report of 2021 activities related to their Natural Resources Framework plan and has developed a work plan and budget for 2022 and 2023. The RRBC has secured the required matching funds from the State of North Dakota and Province of Manitoba. BWSR staff have reviewed these materials and found that they are consistent with previous materials submitted to secure these funds.

The Northern Regional Committee (Committee) met January 5, 2021, to review and discuss the RRBC 2021 Annual Report, the RRBC 2022/23 Workplan, the current status of the RRBC, and to make a recommendation of the Order authorizing the FY2022/223 grant to the Red River Basin Commission to the full Board. The Committee recommends approval by the full Board.

Jill Crafton stated she thought this is really valuable.

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22-04 Moved by Jill Crafton, seconded by Ted Winter approve the Red River Basin Commission Grant. ***Motion passed on a roll call vote.***

Boundary Change Petition for Bois de Sioux Watershed District and Upper Minnesota River Watershed District – Pete Waller presented Boundary Change Petition for Bois de Sioux Watershed District and Upper Minnesota River Watershed District.

The public hearing for the petition was held November 22, 2021, in Graceville and no written or verbal comments were received during the public comment period of the meeting. The record remained open two weeks after the hearing until 4:30pm on December 6, 2021. No written comments were received while the record was open.

The petition, record of comments and the draft Board Order were reviewed by the Northern Region Committee (Committee) at their January 5, 2022, meeting. After discussion the Committee recommended approval of the petition as submitted by the full Board.

Jayne Hager Dee stated it's because of hydrology and the advances that were made and asked if there were any local politics, conflicts, etc. Pete stated it's based on hydrology and the way the water flows. Stated it will be better customer service for the landowners and watershed districts perspective because they will know who can grant them a permit and based on which way the water flows.

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22-05 Moved by Jayne Hager Dee, seconded by LeRoy Ose approve the Boundary Change Petition for Bois de Sioux Watershed District and Upper Minnesota River Watershed District. ***Motion passed on a roll call vote.***

Grants Program and Policy Committee

Water Quality and Storage Pilot Grant Program – Rita Weaver presented Water Quality and Storage Pilot Grant Program.

In 2021 the MN Legislature passed a law requiring BWSR to develop a Water Quality and Storage Program. BWSR staff have completed outreach to interested parties and will be recommending program details to the board. Additional background is included in the attached board memo. The program policy and RFP have been reviewed by the SMT and internal Grants Team, and also have a recommended approval by the GP&P committee.

Jill Crafton stated this aligns with legislation and suggested to remove the statement “if applicable” from the Prioritization section of page 9 in the FY2022 Water Quality and Storage Pilot Program Questions document. Rita stated the “if applicable” does not cause a lot of rework in plans. If they were getting inundated with applications and needed to narrow it down it could be a place to start, that this has to be tied directly to your plan. At this point Rita is recommending we keep it a little broader. Mark Zabel stated he agrees with Jill and in order to hit this target we should be addressing volume and need to separate volume from rate. Stated he would like to look at the project selection and try to focus on these issues.

Ron Staples stated he was disappointed they aren't allowing the 103E proceedings as part of the pilot project. John Jaschke stated there is a Drainage Water Management Grant Program that comes from the Clean Water Fund and will have Rita follow-up with Ron.

Van Amburg asked Rita if scoring could help drive projects towards those that are more mitigation rather than adaptation. Rita reviewed the criteria and stated they wanted to see what other measures or actions are being taken in the watershed to reduce peak flooding or improve water quality, such as soil health practices or other structural practices and the variety of funding sources being used to implement these practices.

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22-06 Moved by Todd Holman, seconded by Kathryn Kelly, to approve the Water Quality and Storage Pilot Grant Program. ***Motion passed on a roll call vote.***

Audit and Oversight Committee

2021 Performance Review and Assistance Program Legislative Report – Jenny Gieseke and Brett Arne presented 2021 Performance Review and Assistance Program Legislative Report.

BWSR is required to provide a report annually to the legislature on Performance Review and Assistance Program activities as prescribed by Minnesota Statutes Chapter 103B.102, Subdivision 3, effective February 1, 2008. BWSR staff have prepared a report that describes the program activities for 2021, including summaries of the activities of BWSR's local government partners, and goals and objectives for future PRAP activities. The report was presented to and has recommendation from the BWSR Audit and Oversight Committee for BWSR Board approval.

Joe Collins thanked Brett and other BWSR staff for their work and stated it's a valuable report.

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22-07 Moved by Joe Collins, seconded by Kathryn Kelly, to approve the 2021 Performance Review and Assistance Program Legislative Report. ***Motion passed on a roll call vote.***

NEW BUSINESS

Clean Water Act Section 404 Assumption – Report on Funding Estimates – Les Lemm presented Clean Water Act Section 404 Assumption – Report on Funding Estimates

Laws of Minnesota 2021, 1st Special Session, Chapter 6, Article 2, Section 108, Subd. 9(a) required the Minnesota Environmental Quality Board (EQB) to begin to develop and assemble the material required to assume the section 404 permitting program of the Federal Clean Water Act (404 assumption), and to submit a report on the additional funding required to apply for and secure 404 assumption and to fully implement the state-assumed program. EQB entered into an agreement with the Board of Water and Soil Resources, who then entered into subsequent agreements with the Department of Natural Resources and the Pollution Control Agency, to coordinate the work and complete the report. Staff will summarize the results of that work and the cost estimates contained in the report.

Mark Zabel asked if the state went ahead with Assumption of 404 would we receive any grant funding under Clean Water Act permitting activities since we would be relieving the federal government of permitting. Les stated there are no specific funds the federal government would provide for 404 Assumption. Mark asked if 404 Assumption would take the Army Corp out of the wetland banking process or if are they going to still be in it? Les stated they'll retain their permitting authority on the larger water bodies.

Jill Crafton thanked Les for all his work putting this together and asked if an appeal process needs to be part of this. Les stated that the existing appeal mechanisms would not go away and reviewed the appeal process.

Ron Staples stated in the Permitting Authority and Implementation Structure section it states only state agencies can be permitting authorities for 404 and asked if that means the WACA Technical Evaluation Panel will no longer exist? Les stated the Technical Evaluation Panel would continue to exist as it does now and continue to review the projects.

LeRoy Ose commented if the goal is to get more wetlands, there is more potential to get more outside of metro than in a valuable real estate area. Ron Staples stated removing a wetland in one watershed and replacing it in another defeats some of the purpose of the Wetland Conservation Act.

Vice Chair Nomination – John Jaschke presented Vice Chair Nomination.

According to bylaws, the Vice Chair will be elected to a two-year term by the members of the Board. Nominations will be made at the meeting. After the vote to close nominations, voting ballots will be mailed to board members along with a prepaid envelope to return their ballot by March 1, 2022. The Vice Chair will then be announced by the March board meeting.

Kathryn Kelly nominated Joe Collins to continue as vice chair.

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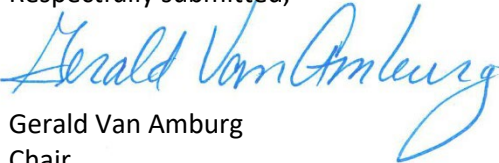
22-08 Van Amburg closed the Vice Chair nominations. ***Vice Chair Collins elected on a voice vote.***

UPCOMING MEETINGS

- RIM Committee meeting is scheduled for Friday, February 4, 2022, at 9:00 a.m. in the BWSR Conference Room at 520 Lafayette Road North, St. Paul by Teams.
- Grants Program and Policy Committee is scheduled for Monday, February 14 at 9:00 a.m. in the BWSR Conference Room at 520 Lafayette Road North, St. Paul by WebEx.
- BWSR Board meeting is scheduled for Wednesday, March 23, 2022, at 9:00 a.m. in the Lower Level Conference Rooms at 520 Lafayette Road North, St. Paul and by WebEx.

Chair VanAmburg adjourned the meeting at 1:04 PM

Respectfully submitted,


Gerald Van Amburg
Chair