

Jackson County Judicial Ditch (JD) 30 Final Acceptance Hearing
Heron Lake Watershed District (HLWD)
December 6, 2017

1. Call to Order

Managers present: Bruce Leinen, Harvey Kruger, Wayne Rasche, and Jim Buschena

Managers absent: Gary Ewert

Staff: Jan Voit

Others: Chuck Brandel and Kyle Sammons, I+S Group; Mike Tow, Tow Law Firm, Ltd.; Dave Macek and Kevin Nordquist, Jackson County; Armond and Nancy Dorschner, Wade Salzwedel, Larry Salzwedel, Joel Burmeister, Ted Bretzman, Jerry Daberkow, and Geoff Johnson

Bruce Leinen called the meeting to order at 9 am.

Jan Voit reported that the Board of Managers of the HLWD approved the public hearing notice for the Final Acceptance Hearing on November 21, 2017. The notice was mailed to affected landowners on November 22, 2017. The notice was published in the *Tri County News* on November 29, 2017.

2. Presentation of construction report

Chuck Brandel and Kyle Sammons gave a construction report. Chuck Brandel explained that Jackson County JD 30, Branch A-1, and Lateral to Branch A-1 were constructed as one project, even though they were petitioned separately. Chuck Brandel explained photos from construction were shown in a PowerPoint presentation. A copy of the presentation will be included with the hearing minutes.

Chuck Brandel stated that JD 30 has two outlets. There was an improvement to the north piece of Ditch 2, Branch A-1, Lateral A-1, and Branch F. An abandonment map was included in the packet. As part of the acceptance, portions will be abandoned and become private tile because the improvement replaces those. Kyle Sammons explained photos from construction were shown in a PowerPoint presentation. The finished product is very good.

Hutton Drainage was the contractor for the project. A cost breakdown was shown in the PowerPoint presentation. The construction estimates from the final engineer's report were as follows: Mainline: \$878,900; Branch A-1: \$127,500; and Lateral A-1: \$7,100. The final contract amounts were as follows: Mainline: \$680,199.76; Branch A-1: \$72,123.80; and Lateral A-1: \$6,743.20. These figures are all under budget.

The biggest change order was changing the pond outlet. It was supposed to be a weir wall. It was changed to a crossable outlet so the landowner had access to pastureland.

All of the damages have been surveyed. There were temporary and crop damages for construction. A summary was created. A final payment for damages can be made to the landowners. Damage areas were verified with handheld GPS on the ground and with a drone.

Geoff Johnson asked if temporary damages were figured in feet or in acres. Chuck Brandel replied in acres. Kyle Sammons explained that there is a column in the report that shows

square feet. When they bring that information into CAD or GIS, it is converted into square feet. That column should be hidden so as not to cause confusion.

The full acceptance report was submitted. It includes pay requests for finalizing the project. The project was televised. There were some areas that need to be fixed. Kyle Sammons explained that there was one ten-foot section on Branch A-1 where they must not have compacted the sand adequately. The section must have shifted when it was backfilled. It was fixed in the spring of 2017.

Wayne Rasche asked if it had been televised after it was fixed. Kyle Sammons said that it had not been re-televised. He said that it certainly could be done.

Chuck Brandel stated that if the project construction is accepted, it does not mean that if there is an issue that pops up it cannot be corrected. The contractor has a bond. By state law, tile projects have a three-year warranty. The warranty starts the day the project is accepted. If a tile was partially crushed during backfilling or parts need to be televised again, that is still covered under warranty. There is some warranty work that will need to be completed.

Kyle Sammons explained that Dave Macek informed him Open Ditch 2 has silted in along the east-west road. That will be cleaned to get the water moving.

Chuck Brandel stated that once the project is completed, the as-built drawings will be submitted. He showed a picture of the Daberkow property on the as-built plans on the screen as he explained the differences between the old system and the new. Everything in red is labeled from the new construction. There will be a final copy of the as-built that will be put on record. It will be the new legal alignment for the system. It will be in GIS for both HLWD and Jackson County so their records can be updated.

Geoff Johnson asked if the information would be available at the county. Chuck responded at both the HLWD and the county. The county has a website where you can go online and zoom on specific parcels. That website was brought up to show the existing alignment. Dave Macek stated that the old line will be taken off and the new one will be shown on the map. Chuck Brandel said that the profiles will be adjusted as well.

Joel Burmeister asked if where the tile comes under the road if it is county tile. The location was brought up on the screen. Chuck Brandel replied that it is. That is now lateral A-1.

Jerry Daberkow mentioned that when the system was televised, there was a section on Branch A-1 where they could not get across the road. He said there was a curve and the camera could not make the corner. The area in question was shown on the screen. Kyle Sammons said there is no reason they cannot get across. Jerry Daberkow said he was there when they were televising and they could not get across the road. Chuck Brandel stated that Kyle should double check that.

Kyle Sammons stated that there is an intake in the field – unplanned drop intake 18". You can get from there all the way up to the corner. There is an intake in the road ditch – dia 1 / 2 that can go both ways. There is no reason that they cannot make the corner. The televising documentation is at the ISG office. The information will be reviewed.

Chuck Brandel explained that part of the reason for holding the public comment period is to get input from the landowners about the project.

Geoff Johnson said that he is looking at the unplanned drop intake. Kyle Sammons said that the intake was added infield. Geoff Johnson asked what it is. Kyle Sammons replied that it is an intake that was installed in the field. Chuck Brandel said that it was installed so the system could be televised.

Chuck Brandel presented three pay requests. ISG has been holding some retainage on the project. On Branch A-1, they are recommending payment of \$3,606.19. For the mainline and Branch F, they are recommending payment of \$26,309.49. For Lateral A-1, they are recommending payment of \$337.16. That would finalize the contract, accept the construction, and start the warranty. Then the final assessments can be made.

Joel Burmeister said that he had his pasture locked off all summer. He bought hay. He asked if he could be paid for that bill. Chuck Brandel stated that he thought that could be included in the damages. Joel Burmeister said that the viewers had the value as nothing. Kyle Sammons replied that the viewers' report shows \$100 per acre for temporary damages and \$250 per acre for the pond. Chuck Brandel said that damages for 2.35 acres of property are included.

Kyle Sammons stated that the only bill he had for that property was for the work to seed the pasture. That seeding was done by Mr. Burmeister. Hutton Drainage sent the bill to ISG. Kyle Sammons asked if payment for that had been made. Joel Burmeister replied that he had not been paid. Kyle Sammons stated that the contractor must be waiting to receive the final acceptance before making that payment. Joel Burmeister said that he took the bill for the hay to the county. Dave Macek said that he sent it to ISG. Chuck Brandel said that he has the bill. But, the viewers said pay temporary damages. We will make sure that is included.

Geoff Johnson asked if damages would be paid or if the bill would be paid. Chuck Brandel replied that the viewers say pay damages for the land or crop. Geoff Johnson said that Mr. Burmeister's statement is that he lost use of his pasture. Chuck Brandel replied that he wanted to review what that damage per acre should be based on the bill. One hundred dollars per acre may not be adequate. That would be \$230. Joel Burmeister said the bill was about \$800.

At this point, we want to accept the construction so we can finalize the contract to get the assessments and payments rolling. The assessments will be based upon the ROB.

Dave Macek asked about the intakes that were installed for televising. If the landowners do not want them in, is it up to the county or landowner to remove and cap them? Chuck Brandel stated that typically we have the contractor do it. We just need to know which ones the landowners want capped. Dave Macek said that he did not know if anyone wanted them capped. Chuck Brandel described how they are capped. They dig down about two feet and put a cap over the top. We have seen issues where people have tried to cover them, rather than cap them. Caps work better.

Dave Macek asked that if the contractor does cap the intakes that the bill would be sent to the county. He wanted to know if that would be warranty work. Chuck Brandel stated that it would be necessary to pay extra for the caps.

Bruce Leinen asked if Chuck Brandel had anything else to present. He did not. Bruce Leinen introduced the managers present. He asked if there were any further questions for the engineer. Hearing none, Wayne Rasche made a motion to close discussion on the engineer's report. Harvey Kruger seconded this. Motion carried unanimously.

3. Findings

- a. Bruce Leinen moved that the board finds that the notice required by Minn.Stat. § 103E.555, Subd. 1, has been given to the owners of the property affected. Wayne Rasche seconded this. Motion carried unanimously.
- b. Bruce Leinen moved that based upon the evidence, the board finds that the Engineer's Final Report satisfies the requirements of Minnesota Statutes, Chapter 103E.555. Jim Buschena seconded this. Motion carried unanimously.
- c. Bruce Leinen moved that based upon the evidence, the board determines that the contract has been completed in accordance with the plans and specifications. Harvey Kruger seconded this. Wayne Rasche said that he had a question about this. He asked that if there are issues that have not been done, should they be noted in the motion. Mike Tow stated that based upon what the board has heard from the engineer, he is indicating that the contract has been done to the current specifications. These other items that you heard about may be issues relate to things that are already completed. He is indicating that they are still going to have to be completed. Capping intakes is beyond the contract. That is a new expense. Wayne Rasche asked about the portion where they couldn't camera the one part. Mike Tow replied that the engineer has stated that he will check into that. That is why you can accept the contract subject to the engineer. You can accept the contract for the contractor as recommended by your engineer. The engineer clearly has more duties to perform, so you are not going to discharge the engineer today. Chuck Brandel said that the remaining items are warranty work. Mike Tow stated that the system is covered for three years from this date for warranty work. Bruce Leinen called the question. Motion carried unanimously.
- d. Bruce Leinen moved that based upon the evidence, the board approves the Engineer's Final Construction Report. Wayne Rasche seconded this. Motion carried unanimously.

4. Order

- a. Bruce Leinen moved that based upon the findings, the board issues its order: (i) containing the drainage authority's findings; and (ii) adopting and approving the Engineer's Final Construction Report as made at the hearing; and, (iii) directing that the Contractor be paid the remaining balance due under the contract in accordance with the Engineer's Final Construction Report; and (iv) directing that the Contractor be discharged. Harvey Kruger seconded this. Motion carried unanimously.

- b. Bruce Leinen moved that the board's order shall be duly filed with the County Auditor for issuance of a warrant to be served on the County Treasurer for the balance due the contractor on the contract. Jim Buschena seconded this. Motion carried unanimously.

5. Motion to close hearing

Bruce Leinen made a motion to close the hearing at 9:33 a.m. Jim Buschena seconded this. Motion carried unanimously.

Harvey Kruger
Secretary