

**Heron Lake Watershed District
JD 3 Redetermination Hearing
June 21, 2021**

Board Present: Mark Bartosh, Cory Reith, Randy Lubben, Jason Freking, Wayne Rasche

Staff Present: Kelly Rasche-Jackson Co. Drainage Coordinator, Louis Smith – HLWD Attorney, Chuck Brandel and Jacob Rischmiller-ISG Engineers, Tim Stahl-Jackson Co. Engineer, Dave Macek-Jackson Co. Ditch Supervisor, James Eigenberg-Jackson Co. Commissioner, Bruce Seller-Petioners Attorney, DNR Staff Online – Todd Kolander, Brian Nyborg, Ann Hall, Tom Kresko, H2OverViewers Online – Bryan Murphy, Shantel Hecht

Public Present: Andrea Monson, Paul Pietz, Lloyd Kalfs, Rokney and Nitz Atz, David Post, Tom Glaser, Dean Zimmerli (Gislason & Hunter), Robert Lang, Paul Henning, James Kruger, Paul Rentschler, Phillip Kruger, Dwayne Milbrath, Chuck Dewanz, Matt Henning, Klay Walinga, Gregg Hussong, Albert Henning, Brent Pavelko, Brian Rossow, Dan Cranston, Gloria VanVoorst, Horace Thompson, Dick Amendt, Harvey Kruger, Nancy Ackermann, Jerry Ackermann, Justin Farmer, Vern Bass, Greg and Sylvia Hasara

The Board of Managers of the Heron Lake Watershed District (Board) acting as drainage authority under Minnesota Statutes, Chapter 103E, will hold a hearing on the updated Redetermination of Benefits for Jackson County Judicial Ditch 3 (JD 3). Wayne Rasche, President of HLWD called the hearing to order for JD 3 Redetermination at 8:00 a.m. June 21, 2021.

Chuck Brandel and staff at ISG thoroughly investigated JD 3 records and found the original benefited and damaged areas have changed and land values have changed significantly within the benefited area of JD 3 and do not reflect reasonable present-day land values. This information was presented to the board in February of 2019. On April 23, 2019, the Board adopted an order initiating the Redetermination of Benefits for JD 3. The purpose of the hearing is to give the effected property owners and opportunity to be heard.

Bryan Murphy of H2OverViewers shared an overview of the redetermination completed for JD 3 and an overview of the process of viewing. He noted 2 parcels were classified as agricultural and should have been classified as urban/residential in the City of Lakefield. These corrections can be easily completed and still allow the managers to approve the Redetermination with the caveat for correction of these classifications, if so desired.

Shantel Hecht of H2Over Viewers shared the process for establishing the land value in the watershed. They use sales information and the U of MN sales information as a check.

The value of the land is based on the value as if the system is operating as constructed. If the system is not operating as constructed, that is not a consideration.

Murphy also noted the JD 19 outlets into the JD 3 system. The JD 19 system will pay as a contributing system, outlet, fee to JD 3.

JD 3 Total Benefits - \$21,302,995.34

Buffer Damages - \$324,648.29

No questions were heard from the managers concerning the presentation

Chair Rasche then opened the floor to public comments

Harvey Kruger – shared a 2014 NRCS map of section 5 in Hunter Township. He feels the map shows non-converted wetland acres. The 2014 farm bill doesn't allow for land to be put back into production. The current viewing has the land as tillable. He asks the managers to have the viewers to reconsider the acres. Murphy shared that they have been

in conversation with Kruger, they have completed some adjustment. W. Rasche asked if the land has been in CRP in the past, Kruger stated “not that they are aware”. He feels only 20 acres have been farmed in the past. Kruger feels the land acts as a buffer for the JD 3 system. The area holds water during flooding situations. W. Rasche asked if these particular acres are in the JD 3 system. Brandel stated there is a private section of ditch between JD 3 and JD 19 that connects the 2 systems. The map show some of the private section. The private section runs thru the City of Lakefield and the Kruger property.

Phil Kruger – Section 5 of Hunter Township – When the outflow of JD 19 was evaluated how was the City of Lakefield benefited? Is the City of Lakefield benefit calculated in the same manner as a farmer that is dumping tile into the system? Murphy evaluated the city higher than a rural area. Urban/Residential is benefited at a higher rate because of more impervious surface in a city, water flows quicker than in a rural setting, value to the city is based on getting water away as quick as possible, storm systems drain faster, sump pumps have an outlet. The economic benefit is they can run commerce in the city. Municipal is not given a graded system, it has it’s own classification. Portions of the City of Lakefield drain into public tile.

Are a reduction of benefits to one landowner allocated to the other landowners in the system? Landowners can petition for a redetermination, there is no set redetermination timeline for system by the statute. Once the board approves the redetermination there is an appeal period. His concern is that property owners on JD 19 are going to assessed again for the JD 3 project. Murphy and Brandel shared that outlet fees are being charged to other systems throughout the state. The drainage authority is notified of the outlet fee. Murphy stated statute does not require notification of each landowner going to be assessed for the outlet fee to JD 19. Kruger asked the board to delay the decision so JD 19 landowners can be noticed of the outlet fee assessment that JD 3 will have, as a courtesy. Murphy stated the redetermination sets the parcel benefits. Landowners are sent separate information packets for determination of benefits and improvement.

Brian Rossow – Clerk for City of Lakefield – The packet(s) received June 10th and the new information of June 17th increased, why the increase? The benefits changed because of changes to the physical system, lands removed because of tile direction out of the system. Concern of being assessed for land not inside city limits on the western side of Lakefield. Question if the city is receiving \$16,000 in benefit why assessed \$60,000. Hecht stated the city receives \$146,076 in benefit, a typo on the presentation screen. The city is assessed for the benefit of the outlet. The city could petition for improvement for the tile within the city of limits. Rossow asked the board to consider a postponement of a decision so the city has time to review the information. W. Rasche asked where does the tile run to the City of Lakefield. Brandel stated that Branch R runs directly to the city, there is county tile within the city limits, whether is physically still there is unknown. The city has two outlets into JD 3, one thru Branch R and one into the private ditch that outlets into **JD 3**.

Mark Bartosh – stated other public entities (townships etc) are being charged for use of the JD 3 system also.

David Post – Some acres are in CD 3, why is he paying an assessment on JD 3 for those same acres? Viewers will confirm this adjustment has been made. Murphy stated those acres were removed in the updated report.

Klay Wolinga and Dean Zimmerli, attorney discussed the Thompson property 19.033.0100 – this property is all classified as 1 and 2 benefits. This property is caught in the process of a perpetual easement. The easement application has been in place before this redetermination. This property has been selected for a permanent conservation easement thru the Minnesota Land Trust and a possibility of a grant from BWSR. Requesting the board to consider 2 options for the property:

- A. If redetermination is approved put on a contingency to review this property for a change if the perpetual easement is approved as the land use will be change significantly.
- B. Or consider compensation to the landowners if the easement is approved later and benefit classification changes.

Give the land 2 benefits; one with the easements in place and one as presented if the easements are not approved. W. Rasche asked if the contingency is legal? Louis Smith stated the order must be made as facts are known today, cannot make an order for unknown facts. Smith stated if the contingency can be clearly defined to be drafted it can be done. W. Rasche concerned that this change would affect all the landowners financially. Murphy stated the reports can be rerun with the easements in place to show the net change. They can run the two scenarios with and without the easements. The easements could be a benefit to the system as a water holding area for the JD 3 system.

Mark Bartosh – the storage referenced in the above property is over and above the proposed storage in the improvement project. Also asked when the easement from MN Land Trust easement would be known. Wolinga stated the process is expected to take 6/9 months.

Brian Rossow – if property is removed from the city parcel 100, were those landowners properly noticed? Smith asked if this change is a significant change? W. Rasche—the residents were not notified; do they need to be notified. Murphy stated those landowners are contacted directly and the hearing was continued so notifications can be done.

Klay Walinga (Thompson property) an estimated \$150,000 would be assessed to other landowners, if the easement is approved.

Greg Hasara – is significant drain tile in section 6 of Hunter Township considered? The viewers do not consider private tile, they consider all property the same. What is the appeal process? Brandel stated landowners have 30 days to appeal to the board if they dispute the final findings of the board.

Phil Kruger – should the meeting be continued at least 3 weeks for landowner notification? The answer was yes. He also stated he wants a contingency because he as applied for the CREP program, which has not been approved because the redetermination of CRP benefits has delayed the process. How was his low land considered as it is not able to be sent to the ditch, it is lower than the low ditch. Brandel asked Kruger to share his application information with the viewers so it can be included with the easement recalculation for the Thompson property. Murphy asked Kruger to call and discuss his individual situation with H2Over Viewers. Kruger asked the board, again, to consider a continuance of this hearing.

Albert Henning – He is a property owner on the west side of Lakefield that was not notified, he isn't concerned with being noticed of the change. The tile going into the city limits needs repair.

Motion made at 10:05 a.m. to continue the hearing to a later date, to be determined, made by Bartosh with a second by Freking all yes, motion carried.

A break was taken to 10:20 a.m. After which the hearing for the JD 3 Improvement will be called to order.

Respectfully Submitted
Kelly Rasche
Drainage Coordinator
Jackson County