

Jackson County Judicial Ditch (JD) #30

Final Hearing

November 5, 2015

1. Call to order

Managers: Jim Buschena, Dale Bartosh, and Bruce Leinen

Staff: Jan Voit

Others: Chuck Brandel, I & S Group; Brian ; Bruce Sellers, Wendland, Sellers, and Bromeland; Kevin Nordquist, Jackson County; Dave Macek, Jackson County; Mike Tow, Tow Law Firm, Ltd.; Dave Henkels, Jackson County; Ron Ringquist, Tom Mahoney, Geoff Johnson, Jerry Daberkow, Mike Schulz, Marianne Burmeister, Dennis Daberkow, Jean Kocak, Florence Peterson, Armond Dorschner, Nancy Dorschner, Doug Hansen, Dave Hansen, Jer Burmeister, Lori Nesseth, Steve Cook, Mike Boyenga, and Nichole Kruse

The Board of Managers of the Heron Lake Watershed District (HLWD), acting as a drainage authority under Minnesota Statutes, Chapter 103E, held a final hearing on the petition to improve Jackson County JD #30, review the petition, the Engineer's Final Report, the Viewers' Report, the Department of Natural Resources (DNR) Commissioner's Final Advisory Report, and take testimony from all interested parties to determine whether to establish the proposed project or dismiss the petition. The board of managers was introduced. A quorum being present, Jim Buschena declared the meeting to be open at 7:00 p.m.

The petitioner's attorney, Bruce Sellers, was called upon to review the history of the project and proceedings to date.

2. Determine sufficiency of petition and bond

The first item of business was to determine the sufficiency of the petition. The petition was previously determined to be sufficient and the board has received no new information which would change that determination. The current bond on file with the petition has a balance of \$66,047.80, which is deemed adequate at this time.

3. Read DNR Commissioner's report

The next item of business was to permit the Commissioner of Natural Resources to give his final advisory report regarding the proposed drainage project. Whereas the Commissioner was not present, Jan Voit read the Commissioner's Final Advisory Report, dated September 14, 2015, into the record. The engineer was asked to specifically address the recommendations/comments contained in paragraphs 3, 4, and 5 of the DNR's letter on JD 30 relating to exploration of rate control options at the South Heron Lake outlet to reduce sediment and nutrients, the option of a two-stage ditch, and coordination with the Board of Water and Soil Resources regarding work in Reinvest In Minnesota Easements.

Chuck Brandel sent a response letter to the DNR on October 22, 2015. The letter specifically addressed the recommendations/comments contained above. He read the letter into the record. Kevin Mixon sent an email expressing thanks for receiving the response letter.

4. Engineer's Report

The next item of business was to receive, review, and discuss the engineer's final report.

Chuck Brandel gave a PowerPoint presentation that summarized the final engineer's report including an overview of the project, history of the ditch, separable maintenance, adequacy of outlet, and estimated costs. His recommendations were that the existing system is inadequate, the project is practical and necessary, and that the outlet is adequate. The engineer recommended ordering the improvement.

Discussion was held regarding the wood chip bioreactor, grant application, and funding mechanism.

Chuck Brandel asked that if the projects are approved, they could be bid as one package rather than three separate projects.

Discussion was held regarding the open ditch and number of acres taken out of production, reimbursement for damages, ditch alignment, flow through the system, the potential for erosion, separable maintenance, and ditch depth.

5. Viewers' Report

The next item of business was to receive, review, and discuss the viewers' reports. Ron Ringquist, one of the viewers, presented a summary of the reports, and specifically reviewed: the method used to calculate benefits, the method used to calculate damages, and the net benefits of the project.

Ron Ringquist explained the redetermination and determination of benefits process, how the viewers work as a team, benefit classifications, income approach to value, and the benefits and damages statement.

Discussion was held regarding the difference between a repair and an improvement, separable maintenance, and project costs. The benefits exceed the costs, even though a lot of the costs are for maintenance.

Jim Buschena made a motion to close discussion on the viewers' report. Bruce Leinen seconded this. Motion carried unanimously.

6. Taking and consideration of testimony by interested persons

The next item of business was to receive, review, and discuss testimony from any interested person relating to the project which has not been previously covered. Jim Buschena asked if anyone had any questions or concerns. No questions or comments were received.

7. Action by the Board

Jim Buschena stated that since all reports and comment have been received and considered, the next item of business was for the board to make findings relative to establishment of the proposed project.

PROPOSED FINDINGS TO ESTABLISH THE DRAINAGE PROJECT

Jim Buschena made a motion that based upon the evidence, the board find that the detailed

survey report and viewers' report have been made and other proceedings have been completed under Minnesota Statutes, Chapter 103E. Dale Bartosh seconded this. Motion carried unanimously.

Dale Bartosh made a motion that based upon the evidence, the board find that the reports made or amended are complete and correct. Bruce Leinen seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the board find that the damages and benefits have been properly determined. Jim Buschena seconded this. Motion carried unanimously.

Jim Buschena made a motion that based upon the evidence, the board find that the estimated benefits are greater than the total estimated cost, including damages. Dale Bartosh seconded this. Motion carried unanimously.

Dale Bartosh made a motion that based upon the evidence, the board find that the proposed drainage project will be of public utility and benefit, and will promote the public health. Bruce Leinen seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the board find that the proposed drainage project is practicable. Jim Buschena seconded this. Motion carried unanimously.

Jim Buschena made a motion that based upon the findings, the board issue its order: containing the drainage authority's findings; adopting and confirming the viewers' report as made or amended; and establishing the proposed drainage project as reported and amended. Dale Bartosh seconded this. Motion carried unanimously.

Dale Bartosh made a motion that the Jackson County Auditor be contacted by petitioner's attorney to confirm the length of time and number of annual statements in which the assessments for the project shall be paid and the interest rate to be borne by the drainage lien, and whether drainage bonds are to be issued to finance the construction, including the rate of interest for such bonds; and that this information be included in the final resolution and order. Bruce Leinen seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the board find that only a separable portion of the existing drainage system will be improved and that this portion also needs repair. Jim Buschena seconded this. Motion carried unanimously.

Jim Buschena made a motion that based on the evidence, the board determine and assess, by order, that the amount of \$707,300.00 be allocated as repairs and assessed against all property benefited by the entire drainage system, and that the balance of the cost of the improvement be assessed in addition to the repair assessment against the property benefited by the improvement. Dale Bartosh seconded this. Motion carried unanimously.

Dale Bartosh made a motion that the attorney for petitioners shall draft the resolution and order establishing the drainage project and forward the draft order to the watershed's attorney for review. Upon review and approval as to form and content by the watershed

attorney, the resolution and order will be considered and adopted at the next open meeting of the board of managers, and duly issued forthwith. Bruce Leinen seconded this. Motion carried unanimously.

Bruce Leinen made a motion that the hearing be adjourned. Jim Buschena seconded this. Motion carried unanimously.

Dale Bartosh
Secretary