

Heron Lake Watershed District (HLWD)
Hearing – Nobles County Ditch (CD) 12
March 30, 2017

1. Call to Order

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

Staff: Jan Voit

Others: Mike Tow, Tow Law Firm, Ltd.; Dwayne Haffield, City of Worthington; and Justin Klabo, Advanced Engineering and Environmental Services, Inc.

The Board of Managers of the HLWD, acting as a drainage authority under Minnesota Statutes, Chapter 103E, held a hearing on the petition to impound drainage system waters on Nobles CD 12. Bruce Leinen called the meeting to order at 12:54 p.m.

On February 27, 2017 a petition for Impounding Drainage System Waters on Nobles County Ditch 12. The petition was reviewed by HLWD Legal Counsel, Mike Tow and approved by the board of managers on March 20, 2017. Justin Klabo, Advanced Engineering and Environmental Services, Inc., was appointed as engineer for the project.

The preliminary report was submitted to the board of managers on March 20, 2017. An Order and Notice of Hearing for Preliminary Hearing was issued on March 20, 2017.

The purpose of today's meeting was to review the engineer's reports and take testimony from all parties to determine whether to proceed with the project or dismiss the petition.

2. Determine the Sufficiency of the Petition

The attorney for the HLWD has reviewed the petition. All legal requirements have been met. The petition has been deemed adequate.

3. Determine Sufficiency of Bond

According to Minnesota Statutes 103E.227 Subd. 2 (b), a bond is not required if the petition is submitted by the state, a state agency or department, the commissioner of natural resources, the United States or any of its agencies, a soil and water conservation district, a watershed district, or a municipality. The petition was submitted by the City of Worthington and no bond was required.

4. Department of Natural Resources (DNR) Commissioner's and Board of Water and Soil Resources (BWSR) Advisory Reports

Per 103E.227, Subd. 3(b), the only notice requirements are those contained in 103E.261. That statute does not require notice to DNR or BWSR, but a courtesy copy of the petition and engineering report were provided to DNR and BWSR. Whereas the Commissioner was not present, Jan Voit read the Commissioner's Advisory Report into the record. A copy of the report is included with the hearing minutes.

5. Take and Consideration of the Evidence

Justin Klabo and Dwayne Haffield gave a PowerPoint presentation explaining the engineer's report. A copy of the presentation is included with the minutes.

Bruce Leinen asked about the private and public benefits and costs of the proposed drainage project. The flood reduction and flood insurance reduction are benefits. The insurance costs were not allowed to be considered for benefits and damages in the funding application. The project is reducing the amount of damage that could happen because the flood threat has been reduced.

Bruce Leinen asked about the present and anticipated agricultural land acreage availability and use in the drainage project or system. The engineers are not aware of any upstream or downstream impacts on agricultural land.

Bruce Leinen asked about the present and anticipated land use within the drainage project or system. The project will be paying for commercial land and damages for acquiring it for retention. The location is undeveloped and in the area needed for flood retention. The project is very compatible with the City of Worthington's comprehensive plan. The location has limited development potential.

Bruce Leinen asked about the flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events. The engineers stated there are no impacts.

Bruce Leinen asked about the waters to be drained and alternative measures to conserve, allocate, and use the waters including storage and retention of drainage waters. In the process of considering alternatives for retention area, this area was considered rather than pushing flood waters downstream. This retention pond cannot be turned into a wet pond. Because of the proximity to the airport, development that could attract waterfowl is not permitted. The wet pond that is located near the strip mall will be replaced with a filtration basin. Gary Ewert asked about an option of routing flood waters north of Interstate 90 toward Highway 266. Dwayne Haffield explained that this option was initially proposed but would have required a bigger downstream pond. It would also have required a bridge structure on Highway 59. The current proposal provides incremental storage, which is more cost-effective and uses strategic placement. It provided direct savings for the Minnesota Department of Transportation and they agreed to participate in the 2013 project which provided the initial storage.

Bruce Leinen asked about the effect on water quality of constructing the proposed drainage project. The engineers explained that Minnesota Pollution Control Agency's regulations for construction best management practices will be followed. This is not specifically a water quality project, but there should be improved water quality. When the flooding probability is reduced, there will not be basement backups and whatever else comes through flood conditions, which will not be sent downstream. The project will cut peak flows. So, the water quality effects should be neutral, but should help during flooding conditions by having the ability for sediments to drop out, as well as for filtration.

Bruce Leinen asked about fish and wildlife resources affected by the proposed drainage project. There are no affects.

Bruce Leinen asked about shallow groundwater availability, distribution, and use in the drainage project or system. The project area is not a groundwater source and has no effect.

Bruce Leinen asked about the overall environmental impact of all the above criteria. There are no impacts.

Bruce Leinen asked whether there are any Clean Water Act jurisdictional issues; whether there are wetland replacement requirements; whether public waters permits may be required; whether the project will require preparation of an environmental impact statement. Funding for the project is going through the Federal Emergency Management Agency. It meets their criteria. There are no wetlands affected.

Mike Tow asked if there are repairs needed to the system and if the use of separable maintenance could be used to offset project costs. There will be no assessments to landowners as a result of the project.

Wayne Rasche made a motion to close discussion on the engineer's report. Harvey Kruger seconded this. Motion carried unanimously.

6. Action by the Board

Bruce Leinen made a motion that based upon the evidence, the Board finds that the private and public benefits will exceed the costs of the proposed drainage project. Harvey Kruger seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that anticipated agricultural land acreage availability and use in the drainage project or system will be unaffected from the present availability and use of the land. Wayne Rasche seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that anticipated land use within the drainage project or system will be unchanged from the present use of the land. Jim Buschena seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that the flooding characteristics of property in the drainage project or system and downstream for 5-, 10-, 25-, and 50-year flood events will be insignificantly affected. Wayne Rasche seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that there are no viable alternative measures to drain the waters in the project area, nor that there are feasible alternative measures to conserve, allocate, and use the waters in the project area, including storage and retention of drainage waters. Jim Buschena seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that there is a positive or insignificant effect on water quality of constructing the proposed drainage project. Wayne Rasche seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that there is an insignificant effect upon fish and wildlife resources affected by the proposed drainage project. Harvey Kruger seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that the shallow groundwater availability, distribution, and use in the drainage project or system will be unaffected. Jim Buschena seconded this. Motion carried unanimously.

Bruce Leinen made a motion that based upon the evidence, the Board finds that the overall environmental impact of the above criteria relating to the proposed drainage project is insignificant. Wayne Rasche seconded this. Motion carried unanimously.

Determination of public utility, benefit, or welfare

Bruce Leinen made a motion that based upon the evidence, the Board finds pursuant to M.S. 103E.227, Subd. 3(c) that the project will be of a public or private benefit and that it will not impair the utility of the drainage system or deprive affected landowners of its benefit; and pursuant to M.S. 103E.261, Subd. 4, that the proposed drainage project is feasible: that the adverse environmental impact is not greater than the public benefit and utility after considering the environmental, land use, and multipurpose water management criteria in section 103E.015, subdivision 1; that the proposed drainage project is of public benefit or utility; and that the outlet is adequate. Harvey Kruger seconded this. Motion carried unanimously.

Proposed Finding for Authorization of the Project

Bruce Leinen made a motion that based upon the evidence, the Board finds that no drainage system funds shall be utilized for the project and that an Order authorizing the modification of the drainage system as set forth in the petition and engineer's report are warranted. Therefore, subject to the requirement that the petitioner shall obtain all required permits and all necessary rights-of-way and flowage easements from owners of land affected by the project, the Board authorizes the project and shall issue its Order in accordance with M.S. 103E.227, Subd. 5, forthwith. Jim Buschena seconded this. Motion carried unanimously.

Wayne Rasche made a motion to adjourn the meeting at 1:37 p.m. Gary Ewert seconded this. Motion carried unanimously.

Harvey Kruger
Secretary