

Final Hearing Part 2
Polk County Ditch 80 Improvements; and Establishment of Lateral 1 and Lateral 2
Sand Hill River Watershed District Office
Fertile, MN
August 23, 2018
7 AM

1. **Attendance:** Staff members present were Daniel Wilkens – SHRWD Administrator, and April Swenby SHRWD Administrative Assistant. District Engineer, Zach Herrmann – Houston Engineering. Managers present were Stuart Christian, Clayton Bartz, Roger Hanson, Dan Vesledahl, and JJ Hamre. Others in attendance included the following: Larry Walters, Bruce VonHoldt, Alex Engelstad, Paul Engelstad, Eric Solheim, Brent Gullekson, Brian Gullekson, Kyle Stromstad, and Lawrence Ricard.
2. **Welcome:** Administrator Wilkens welcomed the group to the recessed hearing. Two items from the Final Hearing were discussed: Boundary changes and costs.

Boundary changes: Wilkens stated that at the final hearing Steve Ricard asked the board to review his land along the SE border of the proposed assessed area. Wilkens and Herrmann viewed the area and recommended Steve Ricard be removed from the benefit area as it was determined that water does not drain into this system but rather flows south. There was also a small portion in the upper NE corner of the boundary that was also recommended to be removed as well as it was determined that the water flows North in this area.

Costs: Preliminary estimated costs in the final report were reviewed by the board. Wilkens explained that there are many areas that the report may have estimated high (ROW acquisition, legal, traffic control, permitting, contingencies, etc.) Wilkens stated that a best guess estimate would be that the costs could drop from \$32 per year as per the final hearing costs to possibly \$25 per year depending on how the bids come in. The bonding payments will be spread over a 20-year period. Herrmann stated that the preliminary estimated costs were based off projects bid during the last three years and construction estimates have been on the trend of decreasing. When bids are received we will know the actual costs.

3. **Public Comment:** the board asked for any questions or comments from the landowners.

VonHoldt asked what brought this project to fruition. Wilkens stated that due to significant flooding in this area a petition for improvement was brought forth from the landowners (26% of the landowners over which the ditch passes) is the minimum for this kind of project. For this project, Wilkens estimates that 95% of the landowners signed this petition. VonHoldt stated that he was not initially contacted to sign the petition. VonHoldt also stated that this is the 2nd meeting he has been contacted and invited to attend. Wilkens stated that all landowners in the project and an additional one mile past the boundary were contacted and invited to attend all preliminary meetings. Meetings have been being held for several years regarding the improvement. VonHoldt mother is the owner and she was the one receiving notices on the mailing list. VonHoldt agreed that maybe his mother may have not realized what was in the letter and thrown them.

VonHoldt has a problem with seepage from the DNR land to the east. He asked if the ditch would be more effective if the water were re-routed along the west edge of the MN DNR land. Tiling was suggested for the area having seepage problems along the edge of the MN DNR land. VonHoldt disagreed that MN DNR land does not go South and the water is flowing right out of the side of the bank onto his property. Wilkens stated that these projects cannot fix everyone's problem, but it does give landowners an opportunity to access an outlet to allow water to drain from these flooded areas.

Engelstad asked if bids came back too high, can the board reject all bids. When bids are opened the board will need to decide at that time. If bids are over 30% of the engineers estimate, they must be rejected by

statute. VonHoldt felt that the statutes procedure to proceed forward without knowing an exact cost is improper. Engelstad would like to see the district solicit bids so we have an actual cost. The board would then have to make a decision to accept a bid to proceed with construction. VonHoldt asked that after bids are received, another landowner meeting be held for bid review. Wilkens stated that following the statute, once the final hearing has been completed and the project is ordered in, the engineer will advertise for bids. At that time the managers can accept or reject the bids. Landowner concerns can be heard at the bid opening but the final decision still rests with the board. .Herrmann stated he is hopeful for an October or November bid opening. It was later decided during the meeting that a bid opening was scheduled for October 2. It is unfeasible that dirt would be moved this fall.

Engelstad questions the NW quarter of Section 36 stated that at the last meeting a pipe was placed to deter the water North or West and was asking for clarification. Herrmann stated that some of the water could go west, but most of the water would go North. Some may go west during high rainfall events as this culvert and crossing is designed for overflow.

Engelstad asked if each lateral can be itemized out on the bids, and it was determined that it would be more cost effective for the landowners if a contractor could bid the whole project, as more competitive bids will be received. Herrmann stated that the engineers can figure out the cost per lateral after the bids are received.

VonHoldt asked how many managers have land affected by this project. Chairman Christian stated that he rents land in this project but does not own land in this project.

Gullekson asked how this process works if the costs come back sky high and the project does not move forward. Herrmann stated that he is waiting for legal counsel to determine the process of recouping the costs that have been incurred thus far. Hearing no more questions:

4. **Proceeding:** A **Motion** was made by Manager Vesledahl to amend the viewers report as recommended, **Seconded** by Manager Hamre, **Carried**.

The Sand Hill River Watershed District Board of Managers, sitting as the drainage authority for Polk County Ditch No. 80, having received a Petition to Improve and Establish Laterals to Polk County Ditch No. 80 pursuant to Minnesota Statutes, section 103E.341 by the petitioners, having noticed and conducted a public hearing on the detailed survey report, and based on the record and proceedings, Manager Hanson **moved**, **seconded** by Manager Bartz to adopt the following Findings and Order:

Findings:

1. A Petition and bond was received by the Secretary of the Sand Hill River Watershed District requesting to Improve and Establish Laterals to Polk County Ditch No. 80, located in Sections 25, 26, 27, and 36, Township 148N, Range 46W, Russia Township, Polk County, Minnesota, and Section 30, Township 148N, Range 45W, Onstad Township, Polk County, Minnesota, pursuant to Minn. Stat. § 103E.215 and Minn. Stat. § 103E.225. The Petition for the project was reviewed and determined to be legal in conformity with Minn. Stat. § 103E.215 and Minn. Stat. § 103E.225.
2. The drainage authority accepted the Petition. The drainage authority also appointed Zachary Herrmann of Houston Engineering, Inc. to make a preliminary survey pursuant to Minn. Stat. § 103E.245.

3. Engineer Zachary Herrmann filed a preliminary survey report with the drainage authority on March 22, 2018. A copy of the preliminary survey report was mailed to the Director of the Division of Ecological and Water Resources in the Department of Natural Resources on March 23, 2018.
4. The drainage authority, by order, set a public hearing for review of the engineer's preliminary survey report on April 3, 2018 and directed the Secretary to provide at least 10 days advance notice, by mail, of the time and location of the hearing to the petitioners, political subdivisions, and owners of property likely to be affected by the proposed project.
5. Notice of the public hearing was properly provided as required by law.
6. At the public hearing, the engineer presented the preliminary survey report. The details of the engineer's presentation are set forth in the minutes of the public hearing. The details are supported by a Power Point Presentation that was used at the public hearing and submitted to the Board.
7. The Minnesota Department of Natural Resources commissioner's advisory report on the preliminary plan was publicly read and included in the record of proceedings.
8. The Minnesota Board of Soil and Water Resources advisory report on the preliminary plan was publicly read and included in the record of proceedings.
9. Comments were received at the public hearing and incorporated into the preliminary order.
10. At to the conclusion of the preliminary hearing, the drainage authority adopted findings and an order accepting the preliminary survey report, ordering the engineer to proceed with the detailed survey, and appointing three viewers to determine benefits and damages.
11. On July 3, 2018, the engineer filed the detailed survey report with the secretary. A copy of the detailed survey report was mailed to the commissioner of natural resources and board of soil and water resources for review.
12. On July 3, 2018, the viewers filed the viewers' report with the secretary.
13. Within 30 days after the viewers' report was filed, the secretary made a property owners' report from the information in the viewers' report in conformance with the requirements of Minn. Stat. § 103E.323, subd. 1. A copy of the property owners' report was mailed to each owner of property affected by the proposed drainage project and an affidavit of mailing is on file with the drainage authority.
14. A commissioner's final advisory report was filed with the drainage authority on August 7, 2018.
15. The drainage authority, by order, set a final hearing for review of the engineer's detailed survey report and the viewers' report on July 3, 2018 and directed the Secretary to provide notice of the final hearing by publication, by posting, and by mail to the petitioners, political subdivisions, and owners of property likely to be affected by the proposed project.
16. Notice of the public hearing was properly provided as required by law.
17. At the final hearing, the engineer presented the detailed survey report. The details of the engineer's presentation are set forth in the minutes of the public hearing and are attached to this order. The

details are supported by a Power Point Presentation that was used at the public hearing and submitted to the Board.

18. The commissioner's final advisory report was publicly read and included in the record of proceedings.
19. During the public hearing portion of the proceedings, individuals appeared and provided comment as set forth in the minutes of the public hearing, a copy of which is attached to this Order.
20. The Sand Hill River Watershed District determined it necessary to investigate the boundary of the benefitted area. The hearing was recessed to allow staff and engineer sufficient time for review. The hearing was reconvened at 7:00am on August 23, 2018 at the office of the Sand Hill River Watershed District.
Staff and engineer reviewed the area and recommended the following changes to the Viewers Report:
 - a. Parcel Number 55.00153.01 is removed from the Benefitted Area
 - b. 14 Acres from Parcel Number 55.00152.00 are removed from the Benefitted Area
 - c. 7 Acres from Parcel Number 55.00149.00 are removed from the Benefitted Area
21. The detailed survey report and viewers' report have been made and other proceedings have been completed under this chapter.
22. The damages and benefits have been properly determined.
23. The viewers found that the benefits of the proposed drainage project are \$1,616,952.00. The engineer estimated that the cost of the proposed drainage project, including damages awarded is \$1,229,179.00. The benefits of the proposed drainage project exceed the total cost, including damages awarded.
24. The proposed drainage project will be of public utility and benefit and will promote the public health.
25. The proposed drainage project is practical.

Order:

Based on the foregoing Findings and the entire record of proceedings before the Board, the Board, acting as the drainage authority for Polk County Ditch 80, hereby orders as follows:

- A. The Sand Hill River Watershed District, as drainage authority for the Improvements and Establishment of Laterals 1 and 2 to Polk County Ditch 80, hereby establishes and orders said Improvements and Establishment of Laterals 1 and 2 to Polk County Ditch 80 according to the project as described in the final engineer's report.
- B. The Board directs the engineer to prepare the detailed plans and specifications and other necessary documents to allow for bidding on the project.
- C. The Board directs the secretary to take all necessary actions for the construction of said Improvements and Establishment of Laterals 1 and 2 to Polk County Ditch 80 and authorizes the

secretary to proceed as necessary, reserving to itself only those matters that the Board, by vote, must authorize.

- D. Upon completion of the project, the drainage system record shall be updated with the as-built alignment and conditions of the Improvements and Establishment of Laterals 1 and 2 to Polk County Ditch 80.
- E. The viewers' determination of Improvements and Establishment of Laterals 1 and 2 to Polk County Ditch 80 benefits and damages contained in the viewers' report dated July 3, 2018 and the benefits and damages statement are hereby confirmed and adopted by the drainage authority.
- F. The viewers, engineer, and attorneys are allowed payment of their accounts of work.
- G. The Auditor shall ensure that the benefits roll is updated to reflect the benefits confirmed in this order.

After discussion, the Board Chair called the question. The question was on the adoption of the foregoing findings and order, and there were 5 yeas, 0 nays, 0 absent, and 0 abstentions as follows:

	Yea	Nay	Absent	Abstain
Bartz	■	□	□	□
Hamre	■	□	□	□
Hanson	■	□	□	□
Vesledahl	■	□	□	□
Christian	■	□	□	□

Upon vote, the Chair declared the motion passed and the Findings and Order adopted.

- 5. **Adjournment:** The bid opening was set for October 2 at 8:30 AM. A **Motion** was made by Manager Vesledahl to adjourn, **Seconded** by Manager Hamre, **Carried**. The meeting was adjourned at 7:52 AM.