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STATE OF MINNESOTA
COUNTY OF JACKSON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT
Case Type: Other Civil
Court File No. _____

In re the Appeal from the Final Order
of the Heron Lake Watershed District, Acting as
Drainage Authority for County Ditch No. 3
Establishing Drainage Project, Adopting and Confirming
Viewers' Report of Improvement Benefits and Damages,
Authorizing the Application of Separable Maintenance,
and Directing Construction of the Project

NOTICE OF APPEAL

PLEASE TAKE NOTICE: the Appellant identified herein appeals from the April 17, 2018, Findings of Fact and Final Order Establishing Drainage Project, Adopting and Confirming Viewers' Report of Improvement Benefits and Damages, Authorizing the Application of Separable Maintenance, and Directing Construction of the Project (the "Final Order") of the Heron Lake Watershed District, acting as Drainage Authority for Jackson County Ditch No. 3 (the "Drainage Authority").

In support of the appeal, Appellant states and alleges as follows:

1. This appeal is brought by the party named below ("Appellant"), who is an interested party affected by the proceedings and the Final Order:
 - Alba Grain, Inc.
2. Authority for this appeal is granted by, but is not necessarily limited to, Minn. Stat. §§ 103E.095 and 103E.091. Appellant is appealing both the establishment of the project and Appellant's benefits and damages as determined by the project's viewers.

3. The principal place of business of the Drainage Authority is in Heron Lake, Jackson County, Minnesota. Therefore, this appeal is properly served and filed with the Auditor for Jackson County, Minnesota.

4. For applicable issues, Appellant requests a jury trial pursuant to Minn. Stat. § 103E.091, subd. 4(a).

5. For applicable issues, pursuant to Minn. Stat. §§ 103E.091, subd. 4(a), Appellant requests that the jury trial be held at the Jackson County District Court because the affected property is located in Jackson County.

6. Appellant appeals the Drainage Authority's Final Order, as authorized by Minn. Stat. §§ 103E.095 and 103E.091.

7. Appellant includes in this appeal the benefits and damages for the following property – as described in the viewers' report – owned by Appellant:

- a. All property owned by Appellant in: Section 13, Township 103, Range 38, Jackson County, Minnesota, identified in the viewers' report adopted by the Final Order as Parcel Number 010130100, consisting of 640 acres, more or less.

GENERAL BACKGROUND INFORMATION

8. CD 3 is a public drainage system located entirely in Jackson County, Minnesota. CD 3 provides drainage to approximately 10,094 acres in Ewington, Alba, West Heron Lake, and Rost Townships, all in Jackson County, Minnesota.

9. CD 3 was originally constructed in 1906 and has undergone several improvements and expansions since that time.

10. On or about August 28, 2014, a Petition for Improvement of CD 3 (the "Petition") was filed with the Drainage Authority's Administrator and requested the Drainage Authority

initiate proceedings to improve CD 3. The Petition requested that separable maintenance be included as part of the improvement.

11. The Petition sought to improve both the existing CD 3 tile system and the CD 3 open ditches. Specifically, the Petition sought to improve buried tile in Lateral 1 of the Main, Branch D of the Main, Lateral 1 of Branch 3, Branch 3 of Main, Branch B of Main, Lateral 3 of Main, Lateral 3A of Main, Lateral 2 of Main, Lateral 2A of Main, Branch A of Main, Branch AA of Main, Lateral 5 of Main, Lateral 6 of Main, Branch BB of Main, and Lateral 1 of Branch 2. The Petition also requested that the Branch 1 open ditch and Main open ditch be cleaned.

Authority directed the project engineer, I&S Group (“ISG”), to complete a detailed survey report of the improvement, and also appointed viewers to complete a determination of improvement benefits and damages to the property affected by the proposed improvement.

13. On December 19, 2016, the viewers completed and filed their Viewers’ Report along with a benefits and damages statement.

14. On December 20, 2016, ISG filed its Final Engineer’s Report.

15. After an informational meeting in January 2017, ISG amended its Final Engineer’s Report to reflect changes in the watershed around Branch 12, to alter the Branch 12 alignment, to remove Branch 9C from the project, to change the alignment of Branch 15A due to existing private tiles, to extend Branch 9D, and to change the open ditch storage option (“Amendment #1”).

16. After an informational meeting in March 2017, ISG amended its Final Engineer’s Report to include optional extension to proposed improved branches as well as new branches that

could be added to the system, including: Branch 12, Branch 12A Branch 7A, Branch 6B, and Branch 2A (“Amendment #2”).

17. On March 30, 2017, the Drainage Authority held a hearing to consider the Final Engineer’s Report, as amended. The viewers also presented their benefits and damages report, which included a discussion of how such benefits and damages were calculated. After the hearing concluded, the Drainage Authority directed ISG to complete and submit a revised final report that included the following: 1) including additional improvement options, with costs, to Branch 2A, Branch 7, Branch 7A, Branch 11, Branch 12, and Branch 12A; 2) removing Branch 6B; allocating ditch cleaning to improvement cost and not separable maintenance; 3) adding private tile outlet replacements as a separable maintenance cost; 4) removing buffer acquisition costs from separable maintenance; 5) removing redetermination of benefits costs from the improvement project costs; 6) reexamining the engineering to include combining multiple tile lines; and 7) directing ISG and the viewers to complete and submit new reports based on the Drainage Authority’s directions.

18. After the March 30, 2017, hearing, ISG amended its Final Engineer’s Report to include the extension of Branch 12, to extend Branch 12A to connect into Branch 12, and extending Branch 2A (“Amendment #3”).

19. The minutes from the March 30, 2017, hearing reflect that the Drainage Authority also accepted a redetermination of benefits for CD 3 that was previously completed by the Jackson County Board of Commissioners. This redetermination of benefits was the basis for the Drainage Authority ordering ISG to look at a separable maintenance repair option for the tile lines in the CD 3 system.

20. Two more amendments dated January 2018 (“Amendment #4”) and February 2018 (“Amendment #5”) were submitted by ISG that adjusted the costs of the project.

21. Prior to Amendment 4, on December 7, 2017, the Jackson County Board of Commissioners held a public hearing to discuss issues related to the redetermination of benefits of CD 3, which had been appealed. Specifically, the hearing discussed whether individual tile replacement was the appropriate repair method or whether a different method may be more cost-effective. The viewers noted that if a different method was used, the assessed values found in the redetermination would be inaccurate. Dave Macek, Drainage Supervisor for the Jackson County Public Works Department, testified that historically Jackson County’s method for repairing ditch tiles is to only repair or replace the area in need of immediate repair. Mr. Macek stated that the tile lines in a three parallel tile system would be repaired individually over time, and would not be repaired or improved by installing one larger tile to serve the same area as the three parallel tile system. Apparently this has been the repair process in Jackson County for decades. Based on this testimony, and because a potential change in repair processes was only “theoretical,” the Board of Commissioners ultimately concluded there was no evidence presented to support the assertion that the assessed values from the redetermination were inaccurate.

22. Prior to the adjourned Final Hearing, Appellant received an “Updated Property Owners Report” based on the cost estimate from Amendment #5. This report stated that Appellant’s Parcel No. 010130100 contained 531 acres benefitted by the project, had total benefits of \$968,911.50 based on the redetermination, had a separable maintenance cost of \$283,559.34, had total benefits of \$1,097.20 based on the improvement project, and had an improvement cost of \$27,177.77. The total estimated assessment cost to Appellant was \$320,737.11, with damages from the improvement totalling \$7,465.00. Conversely, the viewers’

report adopted by the Drainage Authority identifies \$27,415.00 in improvement benefits for Appellant's parcel with an improvement cost of \$21,487.58.

23. On March 29, 2018, the adjourned Final Hearing was continued. After presentations from ISG and the viewers, the Drainage Authority made the following findings:

- a. ISG and the viewers' reports were made and the proceedings were completed in accordance with Minn. Stat. Ch. 103E;
- b. All reports made or amended are complete and correct;
- c. The benefits and damages for the improvement have been properly determined;
- d. The portion of CD 3 to be improved is in need of repair. ISG has made the appropriate statement and showings for separable maintenance and notice of the final hearing was properly given;
- e. The improvement benefits of \$1,888,015.45, are greater than the total estimated costs, including damages, of \$1,370,966.00, after applying separable maintenance totalling \$5,759,471.00;
- f. The proposed improvement will be of public utility and benefit, and will promote the public health and welfare;
- g. The proposed improvement is practicable;
- h. Alternatives were considered, as were comments from the Jackson County Water Plan, the DNR, and BWSR, and the proposed improvement presents the best use of drainage waters while maintaining and protecting water quality;
- i. As part of the evaluation of alternatives, the Drainage Authority found external programs and funding was available, and directed ISG to implement such sources of funding if practicable;

- j. The proposed improvement is consistent with land use in the area and Jackson County land use ordinances;
- k. The proposed improvement will not increase flood potential and will provide relief from flooding in the project area;
- l. The outlet is adequate for the proposed improvement;
- m. The benefits of the proposed project were more than the total costs, including damages awarded, and the proposed improvement should be established and constructed as described in the detailed survey report;
- n. The viewers', engineer's, and attorneys' accounts of work have been filed; and
- o. Bruce E. Sellers was directed to draft findings and an order for the Drainage Authority that established the proposed improvement and adopted and confirmed the viewers' report.

24. The above-noted findings were included in the Drainage Authority's Final Order dated April 17, 2018.

25. Based on the Final Order, the following costs were assessed: \$5,759,471.00 as separable maintenance costs to all benefitted properties on CD 3 according to the recent redetermination of benefits; \$1,370,966.00 as costs of the improvement to all properties benefitted by the improvement according to the viewers' report; and \$25,051.00 assessed to road authorities, for a total cost of \$7,155,488.00. Again, the improvement benefits as found by the viewers were \$1,888,015.45. Conversely, Amendment #5 identifies \$5,757,553.00 as separable maintenance costs, \$1,360,736.00 as costs of the improvement, and \$25,051.00 as road authorities' costs, for a total of \$7,143,340.00.

GROUND FOR APPEAL

26. The Final Order must be dismissed because separable maintenance was applied incorrectly, resulting in an incorrect calculation of costs. If the costs were appropriately calculated, the benefits of the proposed improvement are less than the total cost, including damages, requiring dismissal according to Minn. Stat. § 103E.341, subd. 1(1).

27. The damages and benefits have not been properly determined, causing the reports made or amended to be incomplete and incorrect.

28. Repair costs inappropriately duplicate improvement costs, resulting in inflated repair costs that are then subtracted from the overall costs of the improvement project through separable maintenance.

29. Appellant's benefits and damages were incorrectly determined by the viewers.


30. Repair costs are based on inefficient and outdated engineering processes, resulting in inflated repair costs that are then subtracted from the overall costs of the improvement project through separable maintenance.

WHEREFORE, Appellant respectfully requests the following relief:

- a. A judgment dismissing the Final Order in its entirety;
- b. In the alternative, a reduction of Appellant's benefits and increase of Appellant's damages to an amount to be determined at trial; and
- c. An award of Appellant's costs and disbursements herein, including attorney's fees and expenses.

The undersigned hereby acknowledges that sanctions may be awarded pursuant to Minn. Stat. § 549.211.

Respectfully submitted this 14th day of May, 2018.



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