



TOW LAW FIRM, LTD.

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October 10, 2013

The Board of Managers
The Heron Lake Watershed District
c/o Jan Voit, District Administrator
P.O. Box 345
Heron Lake, Minnesota 56137
(507) 793-2462, FAX 793-2462

*RE: Petition for Improvement of J.D. #3, Jackson County
Our File No. 1127*

Dear Managers:

I do hereby certify that on behalf of the Heron Lake Watershed District, I have examined the "Petition for an Improvement of Jackson County Judicial Ditch No. 3", which was forwarded for legal review by correspondence from the watershed district administrator dated September 10, 2014, and augmented by further correspondence dated September 12, 2014, to determine whether said petition and bond are legally sufficient. From said petition and the information therein contained, the undersigned is of the opinion that said petition is legally sufficient pursuant to Minnesota Statutes, Chapters 103D and Chapter 103E:

1. The format and contents of the petition demonstrates that it was drafted in conformity with Minn.Stat. § 103E.215 "Improvement of drainage system". Minn.Stat. § 103D.625, Subd. 4 requires that all improvements of existing drainage systems located in a watershed district must be initiated by a petition filed with the managers of the watershed district, and requires that all proceedings for an improvement of a drainage system in the watershed district conform to Chapter 103E. Pursuant to the map prepared by I&S Group which is attached to the petition, Jackson County JD 3 appears to be wholly located within the boundaries of the Heron Lake Watershed District; hence, the watershed district is the drainage authority possessing jurisdiction over the proposed improvement and the petition is properly before the managers, acting as a drainage authority under the cited statute.
2. Said petition alleges compliance with the statutory jurisdictional signature requirements of 103E.215, Subd. 4(a) pertaining to the required signatures of land owners by asserting that the petition is signed by " . . . at least 26% of the owners of the property that the proposed

improvement passes over; . . . “the owners of at least 26% of the property area affected by the proposed improvement”; and . . . “the owners of at least 26% of the property area that the proposed improvement; passes over”. The petition specifically asserts that it is supported by sufficient signatures to qualify under two of the four possible statutory bases; and, the signature pages attached to the petition conform with the allegations contained in the petition.

3. Said petition satisfies Minn.Stat. § 103E.215 Subd. 4(c)(1) in that it designates the drainage system by number as “Jackson County Judicial Ditch No. 3”.
4. Said petition satisfies Minn.Stat. § 103E.215, Subd. 4(c)(2) in that it states that drainage system has “insufficient capacity” and/or “requires enlarging to furnish sufficient capacity or a better outlet”.
5. Minn.Stat. § 103E.215, Subd. 4(c)(3) does not apply as the petition does not propose any extensions of the drainage system.
6. Said petition satisfies Minn.Stat. § 103E.215, Subd. 4(c)(4) in that it describes the improvement, including the names and addresses of owners of the 40 acre tracts or government lots and property that the proposed improvement passes over by attachment of Exhibit A, which depicts multiple proposed tile lines to be constructed or improved within the existing drainage system which is overlaid with the boundaries of the Heron Lake Watershed District.
7. Said petition satisfies Minn.Stat. § 103E.215, Subd. 4(c)(5) in that it states that proposed improvement “will benefit and be useful to the public and will promote the public health”.
8. Said petition satisfies Minn.Stat. § 103E.215, Subd. 4(c)(6) in that it contains an agreement that the petitioners “will pay the costs incurred if the proceedings are dismissed or a contract is not awarded”.
9. Said petition satisfies Minn.Stat. § 103E.202, Subd. 5 in that the petition includes a Surety Bond by Auto-Owners Insurance (Bond #66180444) in the face amount of \$40,000 which is payable to the “Drainage Authority of Jackson County” if the petition is dismissed for any reason, and also contains an agreement by petitioners to augment said bond if the costs exceed the amount of the bond. The bond is augmented by a Bond Rider which clarifies that the obligee is “the

Board of Managers as Drainage Authority of Heron Lake Watershed”. The petition itself misstates the amount of the bond to be \$50,000, and this scrivener’s error should be corrected by the petitioner’s attorney prior to submission of the petition to the managers for action. The Surety Bond also erroneously states that the petition is being addressed by the “Board of Commissioners” rather than the Board of Managers; however, it is my opinion that this error does not affect the validity of the bond in light of the fact that the obligee is identified as the Board of Managers of the Heron Lake Watershed District.

Based upon the foregoing, this Examiner recommends that the Board of Managers, at the next scheduled meeting of the managers, (i) review the petition and determine that a legally sufficient and proper petition has been filed with the watershed district in this matter; and (ii) formally accept the petition and, by appropriate order, appoint an Engineer and request preparation of a preliminary engineering survey and report pursuant to Minn.Stat. § 103E.241, Subd. 1. Additionally, upon acceptance of the petition, a copy of the petition should be forwarded to the County Auditor of Jackson County, pursuant to Minn.Stat. § 103D.211, for certification that the petitioners are the resident owners of the properties as alleged in the petition as corroborated by the county’s tax records; and to Robert O’Connor, the Jackson County Attorney, for informational purposes.

It should be acknowledged that the petitioners retained the firm of I&S Group to prepare a preliminary review/feasibility study for the proposed project, and the petitioners have requested that I&S Group be appointed as the project engineer. As utilization of I&S Group will result in cost-savings to the project versus appointment of a different engineer, the managers should take this into consideration in appointing the project engineer. Additionally, the petition requests that the cost of separable maintenance on the proposed improvement project be calculated pursuant to Minn.Stat. §103E.215 and this requirement should be included in the order requiring preparation of a preliminary engineering survey and report.

This opinion as to legal sufficiency is based on the petition alone and does not take into consideration the following about which it is recommended that you make inquiry:

- A. **Proposed Project located within Watershed Boundary** This opinion is subject to verification that Judicial Ditch #3, Jackson County, Minnesota, is physically located entirely within the Heron Lake Watershed District.
- B. **Identity of Landowners** This opinion is subject to verification that the landowners listed in the petition are the landowners of the property affected by the proposed project per the records of the County Auditor of appropriate county. Pursuant to Minn.Stat. §103E.202,

Subd. 1(b): *"Each separate parcel of property counts as one signature but the petition must be signed by **all owners of the parcel** to count as a signature. The signature of each entity regardless of the number of parcels of property owned counts as one signature on the petition."* [emphasis added]

- C. **Public Waters Permit** This opinion is subject to a determination as to whether or not the proposed project will affect public waters requiring a permit from the Department of Natural Resources pursuant to Minn.Stat. § 103E.011, Subd. 11.
- D. **Parties in Possession** This opinion is subject to the rights or claims of any persons or party who may be in possession of any portion of the property affected by the proposed project and not identified in said petition.
- E. **Limitation of Representations:** This Legal Opinion is addressed to the Board of Managers of the Heron Lake Watershed District alone, and no representations are made to third parties who may obtain a copy of this opinion.

If you have any questions regarding this matter, please contact this office.

Sincerely yours;
TOW LAW FIRM, LTD.,



by: Michael V. Tow
for the firm

cc: file
Bruce Sellers