

**Conduct and Order for Correction of the
Final Order for Project 6 to
Abandon Tile Replaced by the Improvement Project
July 20, 2016**

ATTENDANCE

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

Manager absent: Bruce Leinen

Staff: Jan Voit

Others: Mike Tow, Tow Law Firm, Ltd.; Dave Macek, Jackson County Highway Department; Dave Henkels, Jackson County; Paul Pietz, Mark Pietz, Dan Cranston, Seth Rossow, Linda Johnson, and Jon Johnson

1. Call to Order

The meeting was called to order at 5:10 p.m.

Project #6 was originally constructed in 1912 as Judicial Ditch 17, which was an all tile system. An improvement to create a shallow open ditch for surface water was done in 1953 and 1954. In 1980, an improvement was done through the Middle Des Moines Watershed District (currently the HLWD) to deepen the open ditch. At this time, the name was changed to Project #6.

The purpose of this afternoon's meeting is to hear how the original final order failed to include specific language abandoning the tile and identify specifically the tile involved. Although the fact that the majority of the tile was replaced by an open ditch system implicitly caused the tile lines in Project 6 to have no continuing useful purpose for the ditch system, this fact was not clearly stated in the original final order.

2. Take and Consideration of the Evidence

Dave Macek explained that like all other projects, once the improvement has been done, the old tile lines serve no useful purpose to the judicial ditch system and should be abandoned. Once abandoned, they become private tile. This was not clearly stated in the original order.

The branches and stations to be abandoned are Stations 29 to 81 and 94+50 to 140 on the main tile line, Branch B Stations 0 to 2, and Branch B Stations 0 to 4+50. Jackson County will confirm that Branches E and G outlet directly into the open ditch. The county will outlet the main county tile at Station 61 into the open ditch to provide an outlet before crossing County Road #20. The county also confirmed that the main tile line at Station 77 was outletted at the time of the 1980 improvement.

Jim Buschena opened the hearing to public comment.

Mark Pietz asked if the abandonment would have any impact on current tile lines. Dave Macek said that all main tile should still outlet into the ditch. It was built correctly at the time.

Dan Cranston expressed concern about a large hole in the road ditch. He asked who would be responsible for repairing that if the abandonment is done. The tile has broken two out of the last three years and the county has fixed it. Dave Macek said that anything in the right of way would be the county's responsibility.

Dan Cranston said that between Stations 55 and 64 there is a 24 inch tile that has a lot of water coming through it. He wanted to know if it was his responsibility to maintain the tile, since he has virtually no tile on the line and it is being used by Mike Rossow.

Dave Macek stated that the main tiles are private headers and wherever the ditch crosses, it is the individual landowner's responsibility to maintain. The tile could be made smaller, but it cannot be plugged. It should have been and will be turned over to the landowners for their use.

Jon Johnson said that is a lot of burden on the landowners. There are a lot of problems with tile now.

Dave Macek asked if it was the intent of the landowners in 1980 to maintain both systems. He said that it made no sense to want the improvement and still maintain the old tile.

Dan Cranston stated that he thought the abandonment should be tabled until the hole in the county road ditch fixed and other landowner questions are answered. The old tile is still carrying a lot of water. Dave Macek said that all of the landowners on the system have the option to tile into the open ditch.

Wayne Rasche asked if it is fair to the property owners to take the responsibility of someone else's water. Dave Macek said that a request could be made for the landowner to outlet the tile directly into the ditch. On the improvements now this cannot be done for every private tile. Private headers do bleed into a new system, but not for every property owner.

Dan Cranston said that Station 63 does not have an outlet. Dave Macek explained that it does have an outlet. The tile collapsed where it goes under the road, but there is water getting through to the other side of the road.

Seth Rossow asked about Station 22 on the main ditch and whether the county would be maintaining it. Dave Macek explained that the county will continue to maintain the mainline.

Harvey Kruger stated that the county will make sure that Branch E and Branch G will have outlets. He said the tile we are talking about abandoning outlets into the ditch at some point. It should have been capped when it was constructed.

Seth Rossow asked what happens if tree roots get into the tile where it outlets into the lake in the county park. Dave Macek said that if there is water going through the lines, there would need to be an easement to maintain it to through the county park.

Dave Henkels said that the old tile line should have been abandoned. The open ditch was supposed to take care of the drainage. Those tile lines are the responsibility of the individual landowners. You fix them as an individual. The open ditch replaced the tile.

Wayne Rasche stated that he still questioned whether it should be abandoned if there are hazards. Dave Henkels asked if he meant from the timeframe of 1980 to 2016 or just 2016. He thought it should be worth something to the landowners that it has been maintained by the county for the last 36 years.

Jim Buschena said that there are three and possibly four washouts in the system. If we abandon it now, the landowners will have to pay to repair them. If the board says otherwise,

then the cost will be spread over the entire system. He asked what the timeframe would be to repair the washouts. Dave Macek said he would want a deadline of May of 2017. Harvey Kruger asked if a motion could be made to abandon the tile after the repairs are done. Mike Tow said that such an order was in the board's discretion.

Seth Rossow asked if the ditch was going to be cleaned. Dave Macek stated that when the affected landowners agree and the lake level drops, the ditch will be cleaned. It will be done when the weather permits. The county wants the clean out to be done and the buffer reestablished before the new law takes effect in 2018.

Dave Henkels said that there have been washouts in the system. The county has been taking care of them. Dave Macek asked why the county should continue to maintain something that was replaced by an open ditch. It is not the responsibility of the people on the system to maintain what was supposed to be abandoned.

Wayne Rasche stated that today it is still the ditch system's tile. Dave Macek said that the tile was abandoned, but it wasn't clearly stated. Mike Tow explained that the petition showed it was to replace the tile, but there was never an actual finding made that said the open ditch would replace the tile.

Jon Johnson said that it was not fair to wait until the tile is worn out before it is turned over to the landowners. Dave Macek stated that if the landowners want the ditch system to replace the tile that should have been abandoned, then they will need to go through another improvement process.

The public comment period was closed.

3. **Action by the Board**

Proposed Findings

- Jim Buschena made a motion stating that an error was made in the final order for Project 6, in that said order failed to abandon tile lines which were replaced by the improvement; and the final order needs to be amended to correct the error. Gary Ewert seconded this. Motion carried unanimously.
- Gary Ewert made a motion that after the improvement was completed the tile in question no longer serves any substantial useful purpose as part of the drainage system to any property remaining in the system. Jim Buschena seconded this. Motion carried unanimously.
- Harvey Kruger made a motion that the tile in question are not a substantial public benefit or utility. Gary Ewert seconded this. Motion carried unanimously.

Harvey Kruger made a motion that the proposed abandonment should go through after the repairs are made at Stations 61, 75, 113, and 114. Wayne Rasche seconded this. Motion carried unanimously.

Jim Buschena made a motion stating the original final order be amended to correct the error, by directing that the tile in question be abandoned. Wayne Rasche seconded this. Motion carried unanimously.

Jim Buschena made a motion that other than the four repairs authorized at Stations 61, 75, 113, and 114, no further repair petition may be accepted for the tile subject to the abandonment order, and that the responsibility of the drainage authority for the abandoned tile is ended. Gary Ewert seconded this. Motion carried unanimously.

4. **Adjournment**

The meeting adjourned at 5:55 p.m.

Harvey Kruger
Secretary