

PROCEEDINGS OF THE
MARTIN COUNTY BOARD OF COMMISSIONERS
TUESDAY, APRIL 15, 2014
@ 9:00 A.M.

The regular meeting of the Martin County Board of Commissioners was called to order at 9:00 a.m. by Chairman Dan Schmidtke.

Commissioners present were Elliot Belgard, Steve Pierce, Steve Donnelly, Steve Flohrs, and Dan Schmidtke. Also present were Scott Higgins, Martin County Coordinator, James Forshee, Martin County Auditor/Treasurer, Kevin Peyman, Martin County Highway Engineer, Terry Viesselman, Martin County Attorney, Rod Halvorsen, KSUM/KFMC Radio, Jennifer Brookens, Sentinel Newspaper, Julie Walters, Administrative Assistant, and members of staff and public.

Motion by Commissioner Donnelly, seconded by Commissioner Pierce, Be It Resolved that the Martin County Board of Commissioners, hereby approve the agenda for the April 15, 2014 regular Board of Commissioners meeting with the following: Delete 8.1 Consider Request for County Donation to proposed Fairmont Area Dog Park – Joe Potter. Carried unanimously.

Motion by Commissioner Belgard, seconded by Commissioner Flohrs, Be It Resolved that the Martin County Board of Commissioners, hereby approve the minutes of the April 1, 2014 regular Board of Commissioners meeting. Carried unanimously.

The following new hires were introduced: Erin Busta, Emergency Management Director – Martin County Sheriff’s Office; Michelle Duncan – Account Technician 1 – Recorder’s Office; Katie Benck – Circulation Technician, Martin County Library; Shaun Bulfer – Highway Technician, Martin County Highway Department; Brady Hanevik – Maintenance Worker 1, Martin County Highway Department; and Chris Mielke – Shop Mechanic, Martin County Highway Department.

Terry Viesselman, Martin County Attorney, reviewed information received from the State of Minnesota Office of the State Auditor regarding Public Expenditures: Donations and Dues. Viesselman noted public entities are often asked to give funds to support various groups and activities; and that while the causes may be worthwhile, public entities need to be cautious when making any financial commitments involving public funds. Viesselman went on to note in most circumstances, public entities have no authority to give away public funds as donations; and that authority for an expenditure may be specifically stated in a statute and the expenditure must be for a “public purpose.”

James Forshee, Martin County Auditor/Treasurer, presented a resolution for an exempt gambling permit from the Southern MN Ducks Unlimited to hold a raffle at the Fox Lake Golf Club.

Motion by Commissioner Belgard, seconded by Commissioner Pierce,

R-#24/'14

GAMBLING PERMIT APPLICATION APPROVAL (EXEMPT PERMIT)
SOUTHERN MN DUCKS UNLIMITED

BE IT RESOLVED, the Martin County Board of Commissioners, hereby approve the Minnesota Lawful Gambling Exempt Permit Application – Form LG220 Application to Conduct Gambling/Raffle Activity for the Southern MN Ducks Unlimited per the requirements of Minnesota Statutes; and concurrent with the rest of their exempt permits, to include the following location at: Fox Lake Golf Club, 15 East Park Drive in Sherburn, MN.

Motion by Commissioner Belgard, seconded by Commissioner Pierce, and declared adopted upon a unanimous vote of all members present: Commissioners Donnelly, Flohrs, Pierce, Belgard, Schmidtke.

Duly passed and adopted this 15th day of April, 2014.

BOARD OF COMMISSIONERS
MARTIN COUNTY, MN

Dan Schmidtke, Board Chair

ATTEST: _____
Scott Higgins, County Coordinator

Roll Call AYES: Commissioners Donnelly, Flohrs, Pierce, Belgard, and Schmidtke. NAYS: None. Resolution duly passed and adopted this 15th day of April, 2014.

Calvin Saxton, representing the Martin County Fair Board, presented an update regarding the drainage issue at the Martin County Arena at the Martin County Fairgrounds. Saxton stated I was last here a year ago looking at drainage issues out at the Martin County Arena which some of you know we've fought water issues out there a long time ever since the parking lot was installed with water coming back into the arena basically because the parking lot is higher than the building. About a year ago we were having additional downspouts put on the building because one of the problems originally, the downspouts couldn't take the water coming off the roof so the water was coming over the eaves and directly in the building. Since last year we have installed new gutters, with additional downspouts (now there is thirteen), they're larger and can handle the water coming off the roof so they'll actually take a great amount of water. We were looking at an option last year to dump the water into the storm sewer to the west of the building. We talked with Troy (Nemmers) from the City of Fairmont, along with Kevin Peyman, it was determined that the storm sewer couldn't handle the water off the roof so it wouldn't actually solve our problem.

Saxton went on to state the Fair Board tried a less expensive option at the moment. We actually put sections of field tile on those downspouts to get the water further away from the building and then it would in a sense flush itself away from the building which has partially helped because there's two entrances into that building that mainly had the water issue...the double doors in the

center of the building that go directly into the hockey rink and then there's the door into our fair office that is the other issue. We had one rain event last fall where we did not get water through the double doors, but it still came in the fair office door. The other big rain event was here a couple weeks ago when we had the 2.4 inches in Fairmont, and the same thing happened again. We didn't get hardly any water in the double doors; but the fair office got pretty well flooded.

Saxton noted so our inexpensive solution helped but didn't solve the problem. We have come up with a solution that will handle the water; but of course we're right back at the same issue...it's kind of cost prohibitive. Tom Kelander from the Tom Kelander Farm Drainage in East Chain has put together a design of an 18" tile that will handle the water and go off the southeast corner of the building and take it all the way to the creek. Then we would do the same proposal with that last year we would lay a 12" tile along the south side of the building, tie all the downspouts into that tile, that will take it to the 18" tile and essentially our problem is solved. Kevin Peyman has helped us put together some estimates for costs in removing asphalt and replacing asphalt along the south side and then we'd have to go through the east end of the Martin County Arena because there's asphalt there also to lay that 18" tile in there.

Saxton went on to note bottom line is when you take the cost of all the tile and removing asphalt and replacing it, we're over \$50,000 which is a big item. And we know that the county has no ownership in the building; it's owned half by the Martin County Fair and half by the City of Fairmont. I've had discussions with Mike Humpal and Troy (Nemmers) and also Dr. Rodriguez who is the president or chairman of the Hockey Association. We all want to work together on this problem. We've been here before to inform you because we view the Martin County Fair as a pretty vital important community event. Some of you have expressed that the County might be able to help us in some way in the future, whether it is with some county equipment or county employees. So I really have nothing hard to present to you today and I'm not asking you for anything today other than to give you an update on the situation/problem out there.

Saxton stated right at the moment where we stand the City has an architect coming in to look at some other city buildings, and they're going to take him out to the fairgrounds to look at our facility as well to see if he has any other ideas or to give us an idea of what possibly or structurally we're doing to the building by having all this water come back into the building.

Commissioners inquired if an alternate route to the west end of the building (using the road ditch) could be taken instead of the east end of the building; if the Department of Natural Resources has been contacted regarding tile flow into the creek; and narrowing the parking lot away from the building with different landscaping.

Saxton answered the road ditch idea was talked about. The idea was about dumping water in the storm sewer and any excess flow would go down the road ditch. But we were concerned with how that would work and if the outlet would work properly to let the water flow over the top and not push backwards and create a bigger problem. It has also been suggested that we dig a retention pond directly south of the arena; however this area is important territory to vendors and is a high traffic area during the fair. The real solution is to rip the parking lot out and lower the parking lot.

Kevin Peyman, Martin County Highway Engineer, stated one comment Calvin (Saxton) talked about would be to prep and removal of bituminous in front of the building. We could donate some equipment and labor to get it ready for tiling where if you get into the restoration of the paving we don't have our own paving equipment so that would be money out of our pocket. But we could fairly easily work with them to do the removal items to get it ready and it would be easy for us to coordinate with Kelander's schedule to get in there and do removal before he wanted to tile it.

The board thanked Saxton for the building project update.

Kevin Peyman, Martin County Highway Engineer, stated that bid lettings for SAP 46-627-014, SAP 46-627-015, and SAP 46-639-014 for Milling, Bituminous Overlay and Aggregate Shouldering of CSAH 27 (from 1,358.6 feet south of the Jct. 132 to the Jct. of CSAH 38); and of CSAH 27 (from the Jct. of CSAH 38 to the Watonwan County line); and of CSAH 39 (from I-90 to the Jct. of CSAH 38); were held on Friday, April 11, 2014 at 10:00 a.m. at the Martin County Highway Department in Fairmont, MN. Peyman noted engineer's estimate for the project was \$4,279,378.59; and we had four bidders with Southern Minnesota Construction Company as low bidder at \$4,220,219.80. Peyman recommended award of the contract to Southern Minnesota Construction Co. Peyman noted construction costs for these three projects are paid from our state aid construction account which is funded by primarily gas tax revenue and some license tab fees.

Motion by Commissioner Pierce, seconded by Commissioner Donnelly, Be It Resolved that the Martin County Board of Commissioners, after the appropriate advertisement for bids and upon receiving bids for SAP 46-627-014, SAP 46-627-015, and SAP 46-639-014 for Milling, Bituminous Overlay and Aggregate Shouldering, and upon the recommendation of the County Engineer, hereby approve and award the low bid for Milling, Bituminous Overlay and Aggregate Shouldering of CSAH 27 (from 1,358.6 feet south of the Jct. 132 to the Jct. of CSAH 38; and from the Jct. of CSAH 38 to Watonwan County Line), and the low bid for Milling, Bituminous Overlay and Aggregate Shouldering of CSAH 39 (from I-90 to the Jct. of CSAH 38) to Southern Minnesota Construction Company in the combined total of \$4,220,912.80; and authorize the Chair and appropriate staff (County Engineer, County Auditor/Treasurer, County Attorney) to sign and execute the necessary documents for the listed projects. Carried unanimously.

Peyman stated that bid letting for C.P. 14:10 Supplying Bituminous Material for Sealcoating was also held on April 11, 2014 at 10:00 a.m. at the Martin County Highway Department in Fairmont, MN, and that three bids were received. Peyman noted with between 30 and 35 miles of sealcoating each year it is pretty expensive; but it really prolongs the life of our pavements. Peyman went on to note Flint Hills came in with the lowest bid at \$501.97 per ton and recommended the low bid award to Flint Hills Resources in the amount of \$316,241.10.

Motion by Commissioner Flohrs, seconded by Commissioner Belgard, Be It Resolved that the Martin County Board of Commissioners, after the appropriate advertisement for bids; and upon receiving bids for C.P. 14:10, and upon the recommendation of the County Engineer, hereby approve and award the low bid for Supplying Bituminous Material for Sealcoating to Flint Hills Resources LLC in the amount of \$316,241.10 ; and to authorize the Chair and appropriate staff

(County Engineer, County Auditor/Treasurer, County Attorney) to sign and execute the necessary documents for the listed project. Carried unanimously.

Peyman presented a resolution authorizing an advance from the County State Aid Construction Fund to supplement the available funds in their State Aid Regular/Municipal Construction Account for financing approved County State Aid Projects #46-627-014 (CSAH 27 from 1,358.6 feet south of the Jct. C.R. 132 to the Jct. of CSAH 38), #46-627-015 (CSAH 27 from the Jct. of CSAH 38 to Watonwan County Line), and #46-639-014 (CSAH 39 from I-90 to the Jct. of CSAH 38) for Milling, Bituminous Overlay and Aggregate Shouldering in an amount up to \$2,234,383.77; and to authorize repayments from subsequent accruals to the Regular/Municipal Construction Account from future year allocations until fully repaid.

Motion by Commissioner Pierce, seconded by Commissioner Donnelly,

Martin County Highway Department
Resolution No. 1 - 2014

RESOLUTION FOR COUNTY STATE AID HIGHWAY FUNDS ADVANCE

WHEREAS, the County of Martin is planning to implement County State Aid Street Project(s) in 2014 which will require State Aid funds in excess of those available in its State Aid Regular/Municipal Construction Account, and

WHEREAS, said County is prepared to proceed with the construction of said project(s) through the use of an advance from the County State Aid Construction Fund to supplement the available funds in their State Aid Regular/Municipal Construction Account, and

WHEREAS, the advance is based on the following determination of estimated expenditures:

| | |
|---|----------------|
| Account Balance as of date 4/09/2014 | \$1,986,529.03 |
| Less estimated disbursements: | |
| Project #046-627-014 | \$952,576.68 |
| Project #046-627-015 | \$2,309,421.59 |
| Project #046-639-014 | \$958,914.53 |
| Total Estimated Disbursements | \$4,220,912.80 |
| Advance Amount (amount in excess of acct balance) | \$2,234,383.77 |

WHEREAS, repayment of the funds so advanced will be made in accordance with the provisions of Minnesota Statutes 162.08, Subd. 5 & 7 and Minnesota Rules, Chapter 8820, and

WHEREAS, the County acknowledges advance funds are released on a first-come-first-serve basis and this resolution does not guarantee the availability of funds.

NOW, THEREFORE, Be It Resolved: That the Commissioner of Transportation be and is hereby requested to approve this advance for financing approved County State Aid Highway Project(s) of the County of Martin in an amount up to \$2,234,383.77 in accordance with Minnesota Rules 8820.1500, Subp. 9. I hereby authorize repayments from subsequent accruals to the Regular/Municipal Construction Account of said County from future year allocations until fully repaid.

Upon motion by Commissioner Pierce, seconded by Commissioner Donnelly, and carried said resolution was duly passed and adopted this 15th day of April, 2014

BOARD OF COMMISSIONERS
MARTIN COUNTY, MINNESOTA

By: _____
Chair; Martin County Board of Commissioners

Attest: _____
Scott Higgins
County Coordinator

CERTIFICATION

I hereby certify that the foregoing resolution is a true and correct copy of a resolution presented to and adopted by the County of Martin at a duly authorized meeting thereof held on the 15th day of April, 2014.

Scott Higgins,
County Coordinator

Roll Call AYES: Commissioners Flohrs, Belgard, Donnelly, Pierce, and Schmidtke. NAYS: None. Resolution duly passed and adopted this 15th day of April, 2014.

Peyman stated Highway Department crews are continuing with road maintenance including crack filling and pot hole filling; and that the county's gravel roads are in good shape.

Jeff Markquart, Martin County Sheriff, stated the Martin County Sheriff's Office is recommending step increases based on satisfactory performance evaluation and according to Union Contract(s) for the following individuals: Jake Ruppert, Deputy Sheriff, and Adam Wells, Corrections Officer.

Motion by Commissioner Belgard, seconded by Commissioner Donnelly, Be It Resolved that the Martin County Board of Commissioners, upon the recommendation of Sheriff Markquart, hereby approve and authorize step increases based on satisfactory performance evaluations and according to Union Contract(s) for the following Martin County Sheriff's Office personnel: Jake Ruppert, Deputy Sheriff (LELS #136), from 5 Year Step at \$25.06/hour to 6 Year Step at \$25.44/hour, effective May 5, 2014; and for Adam Wells, Corrections Officer (LELS #115),

from 3 Year Step at \$21.76/hour to 4 Year Step at \$22.24/hour, effective May 4, 2014. Carried unanimously.

Markquart stated conversations have been started with the Minnesota Department of Transportation regarding issuance of severe winter weather road closures.

Markquart updated the Board on current Martin County Jail population stating there are twenty in-house, six in Faribault County, one in Nobles County, and five on EHM.

James Forshee, Martin County Auditor/Treasurer, stated the All Season Wheelers Club – Elm Creek ATV Trail (on behalf of the County) has been approved to receive \$16,000.00 in grant funds for maintenance of the ATV trails for FY2014.

Motion by Commissioner Flohrs, seconded by Commissioner Pierce, Be It Resolved that the Martin County Board of Commissioners, hereby approve and authorize the Board Chair to sign the Minnesota Trails Assistance Program Off Highway Vehicles – FY2014 Traditional Grant Agreement in the amount of \$16,000.00 for All Season Wheelers Club – Elm Creek Trail; and to approve and authorize the Board Chair (or designee) and/or the Martin County Auditor/Treasurer to sign other required documents as necessary. Carried unanimously.

Higgins stated the Recorder's Office has hired Michelle Duncan as Account Technician 1 effective April 14, 2014 at Grade 10 Step 1 at \$16.28/hour, and asked the Board to ratify the hiring of Michelle Duncan.

Motion by Commissioner Pierce, seconded by Commissioner Belgard, Be It Resolved that the Martin County Board of Commissioners, hereby ratify the hire of Michelle Duncan as Account Technician 1 – Recorder's Office, effective April 14, 2014 at Grade 10 Step 1 at \$16.28/hour; and is eligible for full benefits per Martin County Personnel Policy, subject to serving a twelve (12) month probationary period. Carried unanimously.

Higgins stated the Coordinator's Office has received a resignation notice from Sue Lenort, Administrative Assistant II with the Probation Office, effective May 16, 2014.

Motion by Commissioner Donnelly, seconded by Commissioner Belgard, Be It Resolved that the Martin County Board of Commissioners, hereby accept with regrets the resignation of Sue Lenort, Administrative Assistant II – Probation Office, effective May 16, 2014. Carried unanimously.

Mike Forstner, Drainage Inspector, opened discussion to consider establishing procedures for the purpose of developing a policy pertaining to the mowing of new buffer strips until they become established (approximately two years).

After discussion,

Motion by Commissioner Flohrs, seconded by Commissioner Donnelly, Be It Resolved that the Martin County Board of Commissioners, hereby authorize the Martin County Drainage

Administration Office to advertise for bids for weed control on a per acre basis on new buffer strips in Martin County for weed control until the buffer strips become established. Carried unanimously.

Commissioners reviewed warrants and Highway and Drainage bills to be paid on April 15, 2014.

Motion by Commissioner Pierce, seconded by Commissioner Donnelly, Be It Resolved that the Martin County Board of Commissioners, hereby approve bills to be paid on April 15, 2014 as presented by the Martin County Auditor/Treasurer; and includes approval for the Martin County Highway Department and Drainage Administration bills as presented. Carried unanimously.

Warrants received and paid April 15, 2014 are registered on file in the Auditor/Treasurer's Office as follows:

| | |
|---|---------------------|
| Revenue Fund – Warrants Approved April 15, 2014 | \$126,394.05 |
| Enhanced 9-1-1 Fund | \$ 64.19 |
| Martin Co. Economic Development Authority | \$ 3,293.76 |
| Solid Waste Management Fund | \$ 26,927.07 |
| Law Library Fund | \$ 1,641.81 |
| Martin County Transit Fund | \$ 49,813.69 |
| Recorder's Technology | \$ 315.70 |
| Ind. Sewage Treatment Sys. Loan Fund (ISTS) | \$ 8,593.89 |
| Building – CIP – Fund | \$ 4,646.37 |
| Bank Building Fund | \$ 3,814.36 |
| Taxes and Penalties Even Years | \$ 6.00 |
| Miscellaneous Tax Fund | <u>\$ 34,881.03</u> |
| Total | \$260,391.92 |
| | |
| Road and Bridge Funds Totaled | \$107,332.02 |
| Martin County Ditch Funds Totaled | \$ 88,389.91 |

The Board reviewed the monthly financial statements for March, 2014; 2013 Annual Martin County Transit Report; and draft copy of new Martin County Transit Facility Maintenance Plan.

Commissioners presented their individual board member reports.

Commissioner Flohrs stated he attended the Boy/Girl County luncheon on April 1, 2014; Human Services Executive Committee meeting on April 2, 2014; Drainage Group meeting in Faribault County on April 3, 2014; Library Board meeting on April 8, 2014; Soil and Water Conservation District meeting on April 10, 2014; Prairieland meeting in Truman, MN, and Head Start Open House in Sherburn, MN (MVAC Project) on April 11, 2014.

Commissioner Belgard stated in addition to those already mentioned he attended the regular EDA meeting on April 7, 2014 and Region 9 meeting in Mankato on April 9, 2014.

Commissioner Pierce stated in addition to those already mentioned he attended a couple of meetings involving CEO's with Mayo Clinic in Fairmont; and the regular EDA meeting on April 7, 2014.

Commissioner Donnelly stated he had nothing new to add.

Commissioner Schmidtke stated he had nothing new to add.

Commissioners reviewed their calendars of upcoming meetings and activities: April 15, 2014 – CD #30 meeting at 11:00 a.m., Labor Management Committee meeting at 1:30 p.m., and Annual Martin County Association of Townships meeting at 6:30 p.m.; April 16, 2014 – Human Services meeting in Blue Earth, MN, and staff trainings presented by Minnesota Counties Intergovernmental Trust; April 17, 2014 – Insurance Committee meeting with Hanratty & Associates; April 18, 2014 – Drug Court Steering Committee meeting at noon (Steve Flohrs unable to attend), Region 9 Economic Development meeting in Mankato at 10:00 a.m.; April 22, 2014 – ITC Power line Public Hearings at 1 pm and 6 pm at the KC Hall in Fairmont, and Planning and Zoning meeting at 5:30 p.m.; April 23, 2014 – Park Board meeting at 4:30 p.m. at Cedar-Hanson Park in Trimont, MN; May 5, 2014 – regular EDA meeting at 5:15 p.m. in the Commissioners Board Room, and Beyond the Yellow Ribbon meeting; and May 6, 2014 – regular Board of Commissioners meeting at 9:00 a.m. in the Board Room.

The Board recessed at 10:06 a.m.

The Board reconvened at 11:00 a.m.

Chairman Schmidtke welcomed those present to the public hearing on Engineer's final report and Viewer's Report for the proposed improvement to Martin County Ditch #30. Those present were Martin County Commissioners Belgard, Pierce, Donnelly, Flohrs, and Schmidtke. Also present were Kurt Deter, Attorney for the Board, Chuck Brandel, Project Engineer with I&S Group, Ron Ringquist, Viewer, James Forshee, Auditor/Treasurer, Scott Higgins, County Coordinator, Deb Mosloski, Martin County Drainage Specialist, Mike Forstner, Martin County Ditch Inspector/Technician, landowners and other members of the public.

Deter stated as you'll see from the agenda this is called the final hearing and there are certain things that have to happen at the final hearing under the statute. Deb (Mosloski) will simply state that the notices were sent out; Mr. Brandel will give the final engineer's report; there has been a Department of Natural Resources (DNR) Advisory Report that I'm sure will lead to some discussion; and there has been another letter received from Rich Perrine, Technician-Water Plan/WCA Martin SWCD concerning the WCA issues that we'll discuss. Deter went on to state I tried to separate the two. So the first public comment will be any engineering questions: what you're designing or what the costs are, those types of things. Then the viewer's report will be given, and answer any questions on the viewer's report.

Deter stated then as you see under Roman Numeral No. IX to approve this improvement or establish it you have to make the following six findings:

1. The Engineer's Final Report and Viewer's Report have been made and other proceedings have been completed under Minnesota Statutes 103E.

2. The reports made or amended are complete and correct.
3. The damages and benefits have been properly determined.
4. The estimated benefits are greater than the total estimated cost including damages.
5. The proposed drainage project will be of public utility and benefit and will promote the public health.
6. The proposed drainage project is practicable.

Deter continued if you think one or more is missing or in this particular case there may be discussions about if and what permits may be necessary. So even if you did approve it, it would have to be contingent on either a no jurisdiction letter or a permit, if that is required. Deter noted I don't think we're in a position today to say absolutely. I think there is a difference of opinion on what may or may not be necessary. But until somebody at a higher level than us or a judge says that, I think we'll have some contingent decisions to make today.

Deb Mosloski, Drainage Specialist for Martin County, stated the public hearing notice in consideration of the final engineer's report for the proposed improvement to Martin County Ditch #30 was published for three weeks in the Truman Tribune (Martin County's 2014 Legal Newspaper), and the Fairmont Photo Press; and the public hearing notice in consideration of the final viewer's report for the proposed improvement to Martin County Ditch #30 was published for three weeks in the Truman Tribune; and all notices were mailed to landowners.

Chuck Brandel with I&S Group presented and reviewed the Engineer's Final Report in response to the final advisory report dated March 19, 2014 from the Minnesota Department of Natural Resources (DNR) to I&S Group and Martin County regarding Martin County Ditch #30 (CD #30).

Brandel stated CD #30 is a watershed that has had two improvements over the years. The original project was an 18" tile, 16" tile, 15" tile, that drained areas in Sections 7 and 18 in Rutland Township and Sections 12 and 13 of Fraser Township. Then in I believe the 1970's there was an improvement that constructed the shallow open ditch that supplemented the tile. That ditch followed the low areas and curved around as there were multiple branches on the tile system. The tile outlet is lower than the ditch outlet so you've got a small tile with a shallow open ditch.

Brandel stated the petitioners requested to close the open ditch and replace the tile with a larger tile. So the project has been petitioned and has been discussed at the preliminary hearing. To close the entire section of open ditch and then replace the 18" outlet with a 42" pipe and a 36" pipe coming up to County Road No. 39 and then a 30" tile and then a branch was added and petitioned to get into Section 11 which would be an 18" tile. The main line would be kept where it is intersected with the new Branch G and then Branch 1, Branch B, Branch D, Branch E, Branch F were to remain as is. So the project is closing the existing open ditch and replacing the tile with a larger tile.

Brandel stated a detailed hydraulic study was performed on the system and the changes at the outlet (the tile and the open ditch outlet into an area just before it reaches High Lake). There are some changes in flow throughout the system but overall outlet is actually a decrease at this

location. So you have a decrease in flow by an average of 17% at this point. There are two county road crossings that are included in the project. Those would be bored underneath the county road. There are some culverts that would be left in place at those locations. The ditch would be filled in throughout the entire section.

Brandel noted the cost of the project which includes the road crossings is \$1.1 million dollars. If the system were to be repaired which would be included in preparing the open ditch which is in need of cleaning and repairing the existing 100 year old tile those costs would be approximately \$740,000 so you'd have a net cost of \$365,000. The Viewer's will report later that they have approximate benefits of over \$400,000 thus the cost be less than the benefits should the Viewer's Report be accepted.

Brandel stated that's a brief review of the engineer's report. We do have an amendment to that based on the DNR Advisory letter.

Deter stated maybe we should read the advisory letter into the record and then maybe respond to it. We have to make a record of it so I'd certainly be willing to read it into the record or if somebody else wants to. Deter went on to state the DNR Advisory Report is so that people will know what the DNR comments are on this project. The statute allows the DNR to submit what is called an Advisory Report. The Advisory Report is the DNR's comment. It does not mean they have veto authority, although in this case their position is that a permit is required. In summary, the project as proposed does not effectively or adequately address the required environmental resource impacts and issues as provided in Minnesota Water Law. Due to this oversight, the department does not recommend approval of the Final Engineering Report for CD #30 dated February 19, 2014. The letter is directed to Deb Mosloski and is from Daniel Girolamo the Area Hydrologist.

Deter read the DNR Advisory Letter to be included in the record. Deter noted if a permit is needed nothing we do today changes that.

Brandel noted a response letter dated March 26, 2014 which was sent to the Drainage Authority and copied to Dan Giralomo and others.

Brandel stated the peak discharge rate at the outlet decreases by an average of 17.6% with the greatest decrease of 32.8% occurring during the 10-yr storm event. The existing outlet consists of the 16-inch tile discharging into a 48-inch drop structure with a 42-inch Corrugated Metal Pipe outlet into the waterway that leads to High Lake. The drop structure captures the overland flow from the open ditch waterway and outlets it through the same pipe as the subsurface flow. With the existing outlet to High Lake already being a 42-inch, effectively, the proposed outlet is the same size as the existing size. Similarly, the existing CD #30 watershed will not be expanded with the same amount of land will drain toward High Lake, and therefore, the cumulative discharge to High Lake will not increase.

Brandel stated there was discussion about water quality, erosion, and other issues related to erosion. Currently, the existing open ditch of CD #30 is experiencing sloughing, erosion along the banks, and sedimentation in the main channel due to overland flow. By installing larger tile

to and closing the existing open ditch, these erosion and sedimentation concerns will be drastically reduced. The CD #30 improvement project will also be constructing drop intakes along the new mainline tile for televising and maintenance purposes. These proposed intakes usually are placed along property lines and, therefore, act more as inspection tees instead of drop intakes. With an all tile system we looked at what kind of water quality features could we add to the system. The best one that we could find would be alternative drop intake and in that letter there's a section from the agricultural BMP handbook.

Brandel next addressed some of the engineering report comments as follows:

(5) the waters to be drained and alternative measures to conserve, allocate, and use the waters including storage and retention of drainage waters. CD #30 does not show an increase in peak flows and actually shows a decrease in peak flows at the outlet to High Lake. Thus storage wouldn't be necessary in our opinion because we are decreasing the peak flow; and then we would incorporate the BMP's listed in the Minnesota Ag BMP Handbook primarily the drop intakes.

(6) the effect on water quality of constructing the proposed drainage project. The proposed CD #30 Improvement Project plans to install larger tile and close the open ditch to reduce the erosion and sedimentation occurring within the open ditch. These improvements will reduce overland flow and direct more runoff through the buried tile instead of overland flow. Similarly, the project will incorporate BMP's listed in the Minnesota AG BMP Handbook.

(7) fish and wildlife resources affected by the proposed drainage project. The proposed CD #30 Improvement Project will not negatively affect the hydrology of High Lake and therefore fish and wildlife resources will not be affected.

(9) the overall environmental impact of all the above criteria. The proposed CD #30 Improvement Project does not show an increase in peak flow at the outlet of the system. As stated previously, the CD #30 landowners, Martin County, and I&S Group will incorporate practices that will not only benefit the producers, but also the ecology of High Lake.

There was one other comment that I can add that could be done to help with some pretreatment before High Lake I zoomed in at the outlet and there is a section of I believe CREP land at the outlet. Currently the existing tile on the open ditch, the tile comes through it, the open ditch outlets into a structure at that point. We were proposing to go through that area with the tile. We could end the tile slightly before that and modify the structure to have a little bit more retention time at the outlet. That would not be a significant increase in cost. By reducing 200 feet of 42" tile right at the outlet would probably be a wash and that could be another factor that could be put in and not negatively affect the petitioner's intent of the project. This is CREP so we might need approval to do that.

Brian Nyberg stated it was my understanding that would be no destruction of CREP.

DNR Representative stated I'm saying this is an alternative that could be reviewed. But at this point we are running tile through it.

Lonny Schwieger asked Mr. Brandel if that could be done further downstream. It's quite a ways to the lake. It goes through a wooded area.

Brandel stated no. Further downstream is the lake.

Brandel continued a couple of other notes from the DNR report about the work in public waters specifically subdivision 7:

(A) a public waters work permit may be issued only if the project will involve a minimum encroachment, change, or damage to the environment, particularly the ecology of the waterway. The proposed CD #30 Improvement Project does not plan to encroach any further toward High Lake, except for the construction of the settling basin. The project does not change or damage the environment especially the ecology of the lake.

(B) If a major change in the resource is justified, public waters work permits must include provisions to compensate for the detrimental aspects of the change. The proposed CD #30 Improvement Project does not plan to increase flows to High Lake. The project will also be installing alternative drop intakes as a BMP to help treat surface water before entering the tile.

Deter stated so back again just to clarify to the Board. Some things you have to consider...twice in the DNR letter that are neither black nor white that we either need a permit or don't...I can't give you the answer to that. I see in the second paragraph of the letter a permit needed and I believe that may be because if you're going to outlet into impaired water...so that's one spot. And then on the second page again where it talks about 103G.245 work in public waters it is mentioned again and I don't know if that's separate from the first one? One is impaired waters...there's no question if we were doing work in High Lake you would need it (a permit). The issue on that one seems to be what the work in the public waters is. Historically it means you're doing work in the public water. DNR may now be taking the position work that is upstream of the public water that it somehow affects it. So on both those issues, Mr. Sellers or somebody is going to have to address because as I'm listening more, I'm doubtful today the Board would be able to establish the project until we get a no jurisdiction letter which means they don't need a permit.

Deter stated you may have seen the letter also from Mr. Perrine that the DNR has jurisdiction over the inventoried public waters. You're the LGU for WCA and the SWCD is who you've delegated that to; and again some things are kind of changing that we're seeing as the bottom of the ditch. I think what they are alleging is the WCA jurisdiction, that the project may need to mitigate that which means to replace it with other wetlands or buy wetland credit. Again, I can't tell you; this is all kind of a change by all the agencies in the last six months. I think we need to go through the hearing today; but you do not want to start digging and then get cease and desist. I'm not saying who's right and who's wrong; but that's going to have to be flushed out by somebody...a judge or somebody to determine because this isn't the only project. You're going to see it in the future not only in this county so somebody is going to have to make a ruling on when are permits required. Initially the DNR letter...you don't need a permit it's an advisory report. You need to take it seriously but it's not a permit. Permit kicks it into a whole other issue of if you need a permit that's a different situation.

Deter advised what we should do today is unless there are questions from the audience about the engineering report we should hear the viewing report; but I'm telling you right now I'm going to be recommending that you are not in a position to make a final decision until somebody tells you whether you need permits or not.

Brandel followed up on Deters comment...six months ago a project that did not do any construction in public waters did not need a public waters permit and we were getting advisory reports that said that.

Chairman Schmidtke asked for input from the public.

Chairman Schmidtke asked if there was any other public input. No representatives from the public in attendance nor public input or comments submitted in writing were received concerning the Final Engineer's Report for proposed improvement for CD #30.

Deter stated the only thing that may be different and I can't answer this is an impaired water issue. I've always taken the position that 103G.245 says work in the public waters. But there's another section dealing with impaired water that may have come into effect. This is a two-step process...do these projects need a permit. There's no question if we were working in the public water we'd need a permit. The issue is going to be because this is a game changer if anything that affects public water needs a permit then I can't imagine a project that doesn't ultimately get to public water in some manner whether it's a stream, a lake, whatever it is.

Chair Schmidtke stated if there are no other comments we'll hear the Viewer's Report.

Ron Ringquist, Viewer, stated if you remember this particular project there was discussion a year ago we did a redetermination of benefits on this project. At that time there was discussion of the improvement but there hadn't been a final engineer's report and so we decided that we would present the redetermination which was adopted by the Board at that time. The benefits determined by that redetermination were \$1,623,362.00. With the proposal that Mr. Brandel has talked about with a project cost of \$1,079,000.00, \$690,000.00 of that would have been considered a separable maintenance. Separable maintenance is no different than Mike (Forstner) going out and fixing that tile from the beginning to where the improvement ends and the estimated cost is \$690,000.00. It is my understanding in the procedure is that part of this total project cost will be assessed against the benefits as redetermined. Also as a part of that redetermination if the open ditch continues to exist we did acquire the easement to establish the grass buffer strip. It has not yet been seeded because this is a pending improvement which would have closed the ditch...but that right of way was acquired as part of the redetermination. So the right of way has been purchased by the ditch system, the easement established that one rod of grass; but the grass has not been seeded at this point.

Ringquist stated so then what we did for the improvement; we asked ourselves, what does this improvement really do. Mr. Brandel talked about during larger storm frequencies it actually decreases the peak flows. During the storms which are most affected by agricultural drainage which are the one and the two year storms it does provide increased hydraulic capacity during those low frequency storms. Our valuation therefore, looked at the benefit-hydrologically isn't that great but it does affect the most frequent of the storms. The big change within this watershed is that as Mr. Brandel's map showed the ditch runs diagonally through a number of parcels and it severs much of the land in which it traverses. We had calculated as a part of the benefit, that those fields would no longer be severed. The individuals would recapture the use for agricultural purposes of the open channel and of the buffer strip area. So out of the total

benefit more than 50% of that benefit goes solely to the recapture and the removal of the open ditch. That value included both the land value of the buffer strip, the ditch, and a severance value restored because they no longer have to farm it as more than one parcel. So the benefits reflect a severance value for forty or an impacted area within a forty and the right of way areas of the ditch and the buffer strip.

Ringquist stated the benefit values used, although commodity prices have changed from a year ago, land values have not changed from what we were using at that time. We didn't chase the peak all the way up to the ten and eleven and twelve thousand dollar values. We had \$9,000.00 as our typical highest end sale. Those sales are still occurring today. The difference is with the lower income the return on investment isn't as great. Farm returns a year ago were astronomical through the producers; but they're now back into more historic levels of 2 ½ to 3% return on investment. Therefore, we felt that rather than doing a redetermination and trying to amend the values from just one year ago when they came out that close we would use that same value for the improvement as well. So the benefits to the "A" acres are the acres that during the low frequency storms now have some of the ponding issues that may be part of the question here...we have increased the benefit by 25% to the "A's", 15% of the "B" potential benefit, 10% of the "C's", and 5% on the "D" class lands. With the current tile capacity that should bring us up to 100% of the potential benefit received with the engineer's recommended capacities. Roads received no benefits because the roads were benefited by the original construction of the ditch. The improvement does not change the condition or the impact of the roads so there is no additional road benefit. The benefits to the land including the recaptured acres in the severance are \$407,652.00 and that's against the \$365,000 to \$385,000 estimated cost of the project. So it does have more benefit than cost. Not by a significant amount because it doesn't increase the capacity during the large frequency storm so you're just not going to get real significant additional benefits because of those ponding times that still will occur during the large frequency storms.

Chairman Schmidtke asked for input from the public.

Chairman Schmidtke asked if there was any other public input. No representatives from the public in attendance nor public input or comments submitted in writing were received concerning the Viewer's Report for proposed improvement for CD #30.

Deter stated in order to approve this project you'd have to make these six findings:

1. The Engineer's Final Report and Viewers' Report have been made and other proceedings have been completed under Minnesota Statutes 103E.
2. The reports made or amended are complete and correct.
3. The damages and benefits have been properly determined.
4. The estimated benefits are greater than the total estimated cost including damages.
5. The proposed drainage project will be of public utility and benefit and will promote the public health.
6. The proposed drainage project is practicable.

Deter stated at this point my recommendation is from some changes that were seen on the advisory report and allegations of permit both under WCA and Public Waters I couldn't

recommend to you that they are complete because we just don't know. So my recommendation would be that we would continue this hearing, direct the engineer and Mr. Sellers the attorney to come back with either evidence we don't need a permit, or a permit, or some decision by somebody that the permit isn't necessary. Historically we have usually set a time that we're going to meet again so that we don't have to re-notice. I would not recommend that in this case. It is my recommendation that there is a motion to continue this final hearing to a later date and so that there's a good record specifically requesting the engineer and engineers' counsel to provide either a permit or that there is no need for a permit...bring that to a resolution. I just don't think we have a choice.

Brandel stated I would ask that we request that we meet with the two groups that have replied immediately. I don't think we're too far off.

Motion by Commissioner Belgard, seconded by Commissioner Flohrs, Be It Resolved that the Martin County Board of Commissioners, acting as the Drainage Authority for Martin County, hereby approve a "No Date Certain" Continuation Hearing to hear the final Engineer's Report for the proposed improvement of County Ditch #30; that new notices will be mailed to affected landowners when the new public hearing date has been determined; and that the engineer and attorney for the petitioners meet with the Department of Natural Resources and Martin Soil and Water Conservation District for resolution to permit requirement questions. Carried unanimously.

With no further business to wit, Board Chair adjourned the meeting at 11:46 a.m.

BOARD OF COMMISSIONERS
MARTIN COUNTY, MN

Dan Schmidtke, Board Chair

ATTEST: _____
Scott Higgins, County Coordinator