

BENTON COUNTY DITCH AUTHORITY
Tuesday, July 19, 2016
Benton County Board Room

The Benton County Ditch Authority met in special session on July 19, 2016 in the Benton County Board Room in Foley, MN with Board members Jake Bauerly, Warren Peschl, Jim McMahon, Spencer Buerkle and Ed Popp present. Also present was Chris Byrd, County Engineer; Karri Thorsten, Auditor-Treasurer; Monty Headley, County Administrator; and Vicki Feuling, Administrative Assistant.

Call to order by Chair Spencer Buerkle was at 10:07 AM.

Peschl/Popp unanimous to approve the agenda as written.

McMahon/Bauerly unanimous to approve the minutes of July 5, 2016 as written.

Chris Byrd, County Engineer, explained that the official viewers' report for Ditch 13 and 15 were received by the Ditch Authority on July 12th; a public hearing must now be set to allow for public testimony and this must occur prior to August 31st. Byrd referenced the Property Owners Report which will be mailed out by the Auditor-Treasurer's Office prior to the public hearing; the date/time/place of both the informational meeting and the public hearing on the viewers' report will be included in this mailing. He suggested August 16th as a possible public hearing date. Bauerly inquired when the ditches would actually get cleaned/repared. Byrd explained that once the public hearing is held, the Ditch Authority could approve the final viewers' report or, if new information is received during the public testimony, the Ditch Authority could call for a re-examination (the viewers return to the property) and, possibly, a new/revised viewers' report would need to be prepared to correct any inaccuracies. Byrd clarified that an informational meeting would be scheduled about a week prior to the public hearing; this would be the time for property owners to ask specific questions about their personal Property Owners Report.

Bauerly noted phone calls he has received, inquiring when the ditch is going to be cleaned; he would like to have a plan/vision in this regard. Popp cautioned against making any statements that the ditches will be cleaned by a certain date. Byrd agreed, noting that, at this time, the Ditch Authority has not even approved moving forward with the cleaning project.

Byrd pointed out that the viewers' report assumes \$100,000 of repair costs (for easier calculation purposes); the estimated assessment for each benefitted property was calculated based on that dollar amount. He stated his belief that the repair costs will, in actuality, be much less than that. Bauerly commented "...by overstating the costs, you are creating a lot of anxiety that maybe you don't have to create...so I think we should try to have an accurate number..."

Headley inquired if the viewer will actually physically go out to the property upon receiving new information from an individual(s) at a meeting. Byrd stated his understanding that the viewer(s) cannot physically re-examine the property without authorization from the Ditch Authority to do so. Bauerly referenced a conversation with a constituent whereby the constituent suggested that a subgroup be formed that would work out all the details/issues related to the ditch and, ultimately, come to the Ditch Authority with a final proposal (delegate this task to the lowest responsible authority). McMahon stated that he would like to devise a funding mechanism, i.e. ongoing assessment, for the ditch system, allowing for regular inspections of the ditches and needed ditch repairs. Byrd stated his vision that

ongoing assessments would create a ditch fund balance which the Ditch Engineer (himself) would manage; that he would only approach the Ditch Authority for those actions which, by statute, require Ditch Authority approval.

In the discussion that followed, the public hearing on the viewers' report was scheduled for Tuesday, August 16th, at 10:00 AM (following the Regular Board Meeting). (The informational meeting was subsequently scheduled for Wednesday, August 10th, at 9:00 AM in the County Board Room.)

Bauerly asked if these ditches should continue to be linked together or separated. Byrd noted that the original request for ditch cleaning was for both ditches (Ditch 13 and Ditch 15); there is also the issue with the private ditch (the current viewers' report contemplates Ditch 13 draining into Ditch 15). Bauerly referenced new information that this private ditch has been plugged, thereby changing the drainage (rendering the viewers' report inaccurate). Byrd stated that this new information will be considered as part of the testimony received at the public hearing. Bauerly suggested that the Ditch Authority give the order now for the viewers to return to the property and re-examine the issue of the private ditch--verifying that Ditch 13 is no longer draining into 15 (rather than wait for the public hearing to give that order). Byrd summarized the events leading to today's meeting--the Ditch Authority received a petition to clean Ditch 13 and Ditch 15; the Engineer's Report noted that there are additional lands draining into the ditches which triggered the redetermination process. He indicated that there are still three public hearings needed: 1) public hearing to receive public comment on possible enforcement to the outlet private drainage into County Ditch 15 which was "pulled" from the July 12th Ditch Authority agenda (issue of a connection fee), 2) public hearing on the viewers' report; and 3) final public hearing on the petition to clean the ditch. Bauerly asked how the process can be shortened. Byrd stated one option would be for the Ditch Authority to agree to not enforce the connection fee (even though the connection has now been reported as closed, the Board could still choose to enforce the connection fee for all those years that the property owners had the use of the private ditch). McMahan referred to a statement made by the viewers that there is tile draining from Ditch 13 into Ditch 15. Bauerly commented that "the viewers should figure it out and give us a final report". He stated his belief that the public hearing on the viewers' report may be a "waste of time" in that the viewers' report may be inaccurate if it is confirmed that there is no longer any drainage flowing from Ditch 13 to Ditch 15; he suggested sending the viewer back to the site to confirm whether or not any drainage from Ditch 13 to Ditch 15 is yet occurring. Byrd stated his understanding that the legal process requires that a public hearing be held on the viewers' report, and the re-examination must occur after that (if directed by the Ditch Authority).

Motion by Bauerly that the Ditch Authority will not pursue damages for the (private ditch) connection (will eliminate one public hearing). Second by Popp. Motion carried unanimously.

Several Board members inquired if a re-examination of the private ditch outlet area can be done prior to the informational meeting/public hearing. Byrd stated he would seek legal counsel on whether the re-examination can take place prior to the public hearing on the viewers' report/receiving public testimony. Bauerly stated the logic of correcting the viewers' report before the Board acts on it. Headley inquired if it would be appropriate for the Ditch Authority today to authorize the ditch viewer to go into the field and to prepare a corrected report so that corrected report can be considered at the next public hearing (if it's legally possible). Motion by Bauerly to authorize the ditch viewers to re-examine the area in question (private ditch outlet) and to potentially correct the report prior to the public hearing, if legally possible. Second by McMahan. Motion carried unanimously.

Board members briefly discussed the process for creating a ditch fund balance through ongoing assessments. Thorsten stated her belief that benefits would need to be determined first in order to calculate the assessments. Bauerly suggested a process whereby the viewers would determine benefits on two ditches each year. Byrd noted that every ditch has an original viewers' report which may, or may not, be appropriate as of today. He clarified that the cost of the viewers' report is assessed to the benefitted properties of that ditch.

Chair Buerkle adjourned the meeting at 10:42 AM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator