

BENTON COUNTY DITCH AUTHORITY

Tuesday, March 15, 2016

Benton County Board Room

The Benton County Ditch Authority met in special session on March 15, 2016 in the Benton County Board Room in Foley, MN with Board members Spencer Buerkle, Ed Popp, Jake Bauerly and Warren Peschl present and Jim McMahon absent (excused). Also present was Chris Byrd, County Engineer; Michelle Meyer, Assistant County Attorney; Monty Headley, County Administrator; and Vicki Feuling, Administrative Assistant.

Call to order by Chair Spencer Buerkle was at 11:41 AM.

Popp/Bauerly unanimous to approve the agenda as written.

Peschl/Popp unanimous to approve the minutes of February 2, 2016 as written.

Chris Byrd, County Engineer, was present to provide an update on the redetermination process for County Ditch 13 and County Ditch 15. He stated that the viewers, who were appointed last fall, have essentially completed their work; however, they are waiting for direction from the Ditch Authority regarding the private ditch which connects Ditch 13 to Ditch 15. Byrd stated that the viewers need to know whether the property remains as a benefitted property of Ditch 13 or a benefitted property of Ditch 15 (since Ditch 13 is draining into Ditch 15).

Byrd stated the need for a record of a petition for a connection or outlet fee from the Ditch Authority--the land owner needs to request permission from the Ditch Authority to connect his private ditch to Ditch 15; there is an established fee for such. If approved, the viewers can complete their work and a hearing on the report can be scheduled. Byrd stated that he has sent two letters to the property owner, following up with a phone call, and has not received any word back from the owners. Byrd noted that Robert Anderson, who originally sent in the petition, claims he now has ownership interest in these parcels and has asked that Byrd refrain from contacting the owner of record. Byrd stated his belief that, from discussion with Anderson, Anderson is not interested in requesting a connection to Ditch 15 and would prefer to "close it off" than pay a connection fee. Byrd indicated that the Ditch Authority can order the private ditch to be blocked. He reiterated that the viewers' report cannot be completed until direction is given from the Ditch Authority relative to this private ditch.

Bauerly asked the question—if no change is requested, does it default back to the way it was (a benefitted property of Ditch 13)? Byrd stated that if no response is received, his "next step" would be to ask the County Attorney's Office to send a letter, citing specific statutes and the reasoning for the request; he stated the opinion of the viewers that "it makes sense" to include this property as a benefitted property of Ditch 15. Bauerly inquired if both ditches are planned to be cleaned. Byrd stated that would be the Ditch Authority's decision after going through the process.

Byrd clarified that, upon checking with the Recorder's Office, there is no indication that Mr. Anderson has ownership interest in that land. Michelle Meyer, Assistant County Attorney, confirmed that she will be sending the letter to Kothman Farms, the owner of record; it will be their responsibility to provide proof that someone else owns that property to come into compliance. Board members were in agreement with moving ahead with the County Attorney's letter to the owner of record.

Chair Buerkle announced that the County Attorney's Office and County Engineer's Office have requested a closed meeting to discuss possible litigation. Peschl/Bauerly unanimous to close the meeting pursuant to MN Statutes §13D.05, Subdivision 3(b), to discuss possible litigation (at 11:47 AM).

The meeting returned to open session at 12:05 PM.

Byrd explained that the next step would be to pursue a connection fee, finalize the viewers' report and bring back to a public hearing. He indicated that there would be a subsequent assessment hearing (assessing the repair costs), at which time the Engineer's Report would be finalized (which would include construction plans); an estimate of costs would be known and the repair could proceed if directed by the Ditch Authority. Meyer clarified that, if the Ditch Authority chooses to proceed with the repair of Ditch 13 and Ditch 15, this process would need to be followed; however, once the assessment hearing is held, if the Ditch Authority chooses to set up an assessment fund for these particular ditches, public hearings would not necessarily be needed in the future in order to make those repairs (would be a routine maintenance issue). Popp and Bauerly spoke in support of holding one assessment hearing to cover all the county ditches in the county (instead of 17 individual hearings). Byrd offered that if county ditches are routinely inspected each year, the County Engineer could approach the Ditch Authority for needed repairs (would not need to wait for someone to complain). He pointed out that a redetermination of benefits is a good process to determine everyone's fair share of the assessment.

Headley asked for clarification if this would be a permanent assessment on all benefitted property owners to create a fund to periodically maintain county ditches. Bauerly pointed out that the amount of the assessment may vary each year depending on the condition of the ditch at the time. Byrd raised another question—if we do a repair, do we assess all benefitted properties in one year or over multiple years? Headley pointed out that, in the past, when a ditch cleaning occurs, the general revenue fund loans the money to the ditch fund to pay for the cleaning; as the assessments come in, the ditch fund repays the revenue fund.

Bauerly pointed out that the issue of the ditch outlet (into Sherburne County) has not yet been resolved. He stated "we can't clean the ditch until we resolve the outlet issue". Byrd noted that his inspection of the property showed that it is all contained within one parcel; a lot of the property is low, marshy land where it dumps into the St. Francis River, although there are tillable acres. Bauerly asked if the area can be cleaned without "flooding out" that homeowner. Byrd confirmed that no homes would be flooded out as a result of the cleaning; he was unsure if there would be damage to cropland. Headley inquired if it is a known fact that that section of the ditch is retarding flow. Bauerly reported that the landowner has told him that cleaning the ditch would "flood him out"; Bauerly suggested that the area be surveyed to ensure this would not occur. Byrd suggested that, perhaps, the Ditch Authority, as a whole, view the site in question. Headley suggested that this could be done as part of the spring road tour. Meyer stated her concern with the fact that it is a public waterway (regulatory agencies such as MPCA, BWSR, Army Corps of Engineers may need to be involved). Meyer stated that, upon her inspection, the area looks like a backwater; it looks like it's meant to hold water. There was consensus of the Ditch Authority to inspect the site as part of the spring road tour.

Chair Buerkle adjourned the meeting at 12:13 PM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator

