

BENTON COUNTY DITCH AUTHORITY
TUESDAY, AUGUST 2, 2022
BENTON COUNTY BOARDROOM

The Benton County Ditch Authority met in regular session on August 2, 2022 in the County Boardroom in Foley, MN with Board members Beth Schlangen, Scott Johnson, Steve Heinen, Jared Gapinski and Ed Popp present. Also present was Chris Byrd, County Engineer; Montgomery Headley, County Administrator; Michelle Meyer, Senior Assistant County Attorney (virtual); Garrett Monson of Houston Engineering (virtual), and Beth Stay, Executive Assistant.

Chair Heinen called the meeting to order at 10:02 AM.

Johnson/Gapinski to approve the agenda as written. Motion carried unanimously.

Johnson/Heinen to approve the Meeting Minutes of June 21, 2022 as written. Motion carried unanimously.

County Engineer Chris Byrd requested to conduct a Public Hearing on County Ditch (CD) 3. Byrd stated that the purpose of today's Public Hearing is to hear the Repair Petition on CD 3. The initial Repair Petition was dated February 10, 2020 and filed with the County on February 12, 2020. The date of Order appointing an engineer and ordering a Repair Report was on February 18, 2020. The process was stayed pending a Redetermination of Benefits and Damages. The last Redetermination of Benefits and Damages was on May 3, 2022 and the current benefits are \$295,240.00. There were no Reestablishment of Records on CD 3. The Repair Report on CD 3 was completed and filed on May 4, 2021.

Garrett Monson of Houston Engineering (virtual) provided a presentation of the Repair Report for CD 3. There was a valid Repair Report that was received on CD 3 pursuant to Minnesota Statutes, section 103E.715, and an engineer's report was prepared. It was found the CD 3 is in disrepair and in need of repair. To restore the function of CD 3, Houston Engineering recommends the County to complete a full repair of the CD 3 open channel to restore the full function of the drainage system and meet future stormwater management needs. The proposed repairs are in the best interest of benefitted property owners. The total cost of the repairs for CD 3 will be \$182,000, with \$135,500 for construction costs, \$26,500 engineering costs, and \$20,000 in administrative fees.

The Public Hearing for CD 3 opened at 10:21 AM. No one was present in-person or virtually to speak for CD 3. The Public Hearing for CD 3 closed at 10:22 AM.

Gapinski addressed the cleaning of the ditch in Sauk Rapids and the City of Sauk Rapids may be responsible for the remaining cleaning of the ditch. Heinen stated that he has also been in contact with the City of Sauk Rapids regarding this same matter and they should be "well aware". Gapinski also addressed that Clarence Tadych will do a petition with Byrd after today's meeting.

Byrd read the Findings of the Petition to Repair County Ditch No. 3 and they were read as follows:

Findings:

1. A Petition dated February 10, 2020, was received by the Benton County Auditor/Treasurer on February 12, 2020 requesting to repair County Ditch No. 3 pursuant to Minn. Stat. § 103E.715.
2. The drainage authority met on February 18, 2020 at the Benton County Board Room in Foley, MN, accepted a petition for the repair of County Ditch No. 3, and appointed Christopher Byrd to prepare an engineer's report pursuant to Minn. Stat. § 103E.715, subd. 2.

3. The repair report was filed with the drainage authority on May 4, 2021 as a part of the petition proceeding. The drainage authority, in consultation with the auditor, ordered a public hearing on the repair report.
4. Notice of the hearing on the repair report to be held on August 2, 2022 was provided by mail to the petitioners, owners of property, and political subdivisions likely to be affected by the repair in the repair report in accordance with Minn. Stat. § 103E.715, subd. 3.
5. As required under Minn. Stat. § 103E.741, notice was also given to property owners determined by the engineer to be draining into the drainage system or benefiting from the drainage system but for which no assessment of benefits was made for the construction of the drainage system.
6. On June 1, 2021, the Board determined that there were omitted properties that were benefitted by County Ditch No. 3 but were not being assessed benefits, and that the benefits and damages determined in the original proceedings, as well as the benefitted and damaged areas determined in the original proceedings did not reflect current, existing, actual benefits and damages and benefitted areas. The Board stayed the petition for repair proceeding and ordered a viewer's repair report/redetermination of benefits and appointed viewers in compliance with Minn. Stat. § 103E.741, § 103E.305 and § 103E.315.
7. On May 3, 2022, the Board adopted the viewers' report and the benefits and damages statement and ordered the redetermined benefits replace the existing benefits for County Ditch No. 3. The total benefits were determined to be \$295,240.00.
8. The engineer's report for County Ditch No. 3 estimated the cost of the repairs to be \$182,000.00.
9. At the May 17, 2022, public meeting, the Board directed the Nadean Inman, Auditor Treasurer, and Chris Byrd, Public Works Director, to set a hearing for petition for repair of County Ditch No. 3.
10. Pursuant to Minn. Stat. § 103E.705, subd. 6 and Minn. Stat. § 103E.715, a public hearing before the drainage authority was held on August 2, 2022, at 10:00 a.m. at Benton County Board Room, Foley, MN.
11. At the public hearing, Engineer Chris Byrd along with Garrett Monson, PE, with Houston Engineering, presented the engineer's report. The System is a 4,100-ft. open channel system that consists solely of a Main Trunk. The ditch flows south to north and discharges in the storm water sewer system south of US Highway 10.

The original length of the drainage system has been reduced and hydrology of the surrounding area has been altered via industrialization, so the amount of land has been benefitting from the ditch has been reduced. It is in southeast City of Sauk Rapids and Section 25 of Minden Township. The ditch drains approximately 6.5 square miles of land in Minden Township, Sauk Rapids Township, City of Sauk Rapids and City of St. Cloud. The watershed is primarily commercial and services.

The Engineer recommended a repair of the entire drainage system of County Ditch No. 3. The channel is poorly defined in several areas with significant sedimentation and heavy vegetation in the channel. There were sediment depths of up to approximately 2-feet observed in parts of the ditch. There was standing water up to 2-feet deep in areas.

There are other issues such as a barb wired fence that need to be removed for access to the ditch. There are also spoil piles likely from the original construction of the ditch that should be spread. County Ditch No. 3 does not intersect with any state-listed Public Waters or Public Water Wetlands. Ditch 3 does intersect with wetlands identified in the MnDNR National Wetland Inventory. The wetlands identified within proximity to CD 3 are Type 1, 2 and 6; therefore, the repair will meet the exemption criteria.

Based on MnDNR's Natural Heritage Information System there is one state-listed threatened or endangered species identified within County Ditch No. 3. It is the Blanding's Turtle. The County must use impact avoidance strategies when repairing the ditch.

There is also a special concern for one moth series, Whitney's underwing. The proposed repair will not impact this moth species habitat.

Repair will reduce flooding depth on adjacent parcels and reduce stagnant water. It will improve management of the ditch system. The repairs are necessary and will restore the use of the ditch.

12. The engineer's report contains all of the details, plans, and specifications necessary to prepare and award a contract for the repairs.
13. During the public hearing portion of the proceedings, the following persons appeared and provided comment (the Board's response is indicated in italics following each comment):

No Public Comment

14. The drainage authority finds, consistent with the engineer's report, the public comments received at the public hearing on the engineer's report, and the entire record of proceedings, that entirety of County Ditch No. 3 is out of repair; that the condition of County Ditch No. 3 impedes the flow of water and reduces the hydraulic efficiency of the drainage system below that established by the original construction and/or subsequent improvement of the drainage system.

Motion by Gapinski to order:

- A. That the Petition to repair Benton County Ditch No. 3 in the location specified in these findings and recommended in the engineer's report is GRANTED consistent with the engineer's recommendations.
- B. The Auditor/Treasurer Nadean Inman, and the Board Chair shall proceed and prepare and award a contract for the repair of the drainage system consistent with the procedures required by Minn. Stat. Ch. 103E and under Minnesota law. The contract must be for the repair described in the repair report and as determined necessary by the Drainage Authority in these findings and order, and be prepared in the manner provided in Minn. Stat. Ch. 103E for the original drainage system construction.
- C. The cost of the repair shall be paid from the funds in the maintenance account for County Ditch No. 3 and/or by assessments made to the properties benefited by the drainage system in the drainage system records.
- D. The Auditor-Treasurer shall pay the damages as reported in the viewer's report and in conformance with these proceedings. The damages paid shall be a cost of the repair ordered herein. The Auditor/Treasurer shall also add the benefits as reported in the viewers' report and in conformance with these proceedings to the benefits determined as the basis for the pro rata assessment for the repair of the drainage system.
- E. The repair includes open channel excavation, clearing of trees and brush, reestablishment of vegetation. The repair will be consistent with the findings in the repair report.
- F. In all future proceedings, relating to repairing, cleaning, improving, or altering the drainage system, the property benefited in the viewer's report hearing is part of the property benefited by the drainage system and must be assessed in the same manner provided for the assessment of property originally assessed for and included in the drainage system.

The motion was seconded by Popp. The motion carried unanimously per roll call vote.

The Ditch Authority Meeting was recessed at 10:35 AM to reconvene Regular Board Meeting.

The Ditch Authority Meeting reconvened at 11:19 AM.

Next, Byrd Requested to conduct a Public Hearing for CD 9. Byrd stated that the purpose of this Public Hearing is to reestablish the records for CD 9. The date of Order appointing an engineer and ordering a Reestablishment of Records was on June 7, 2022. The date of Report for Reestablishment was on April 19, 2022 and was discovered because of a Repair Petition. The date of Acceptance of report to reestablish the Public Drainage System Record for the drainage system was on June 21, 2022. Byrd stated that he spoke with a landowner of CD 9 today and they said that they received notices that said Repair Report instead of Reestablishment Report. Byrd stated we can still hear the presentation from Houston Engineering, but the presentation will be on the Reestablishment of Drainage records.

Monson stated the purpose of the reestablishment report is to provide Benton County with the results of the investigation and analysis of the Benton County Ditch 9 (CD 9) public drainage system. CD 9 is an open channel ditch, which serves predominantly agricultural land, located in Maywood Township and Glendorado Township. The reestablishment report contains the necessary description of the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system to reestablish records as requested by the Board of Commissioners. Minnesota Statute 103E.101 subd.4a allows for the drainage authority to reestablish records if, after an investigation of drainage system records, it is found that the records establishing the alignment, cross-section, profile, or right-of-way of a drainage system are lost, destroyed or otherwise incomplete. The drainage authority may, by order, reestablish records defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system which define the "As Constructed and Subsequently Improved Condition" or ACSIC. The reestablishment report documents the investigation of drainage system records and physical investigation of the drainage system used by the engineer to recommend reestablished records to define the alignment, grade and geometry as necessary to maintain the historic function of the drainage system. No other historical reviews or reviews of the reviews of the as-constructed profile of this system are known to exist. Byrd added that the Reestablishment Report has been added to the County website for all to view.

The Public Hearing for CD 9 opened at 11:40 AM.

David Beehler of 16819 55th St NE Foley, MN 56329 was present to speak. Mr. Beehler shared his concerns that there was not a valid notice sent, therefore there is no authority to move forward; said that Byrd stated there was a Repair Report on CD 9 online and there was not; feels that this was based on to shift the cost of those who want to expand their farming imprint to a landowners who don't see that as a benefit, much less an increase in their value. Mr. Beehler stated that his property was always a wetland and never intended for farming purposes. Mr. Beehler referenced a memo which speaks of repairing the ditches to what they originally were in 1905 or 1916, and that Benton County does not have an "as-built" condition, so there is speculation as to putting it back to what it originally was. Mr. Beehler feels that the farmland owners should be responsible for the cost of cleaning the ditch, since this will not increase the value of his land at all. Assistant County Attorney Michelle Meyer (virtual) stated that she and Byrd learned of the improper notice immediately before the hearing and had a discussion to remedy the notice issue. Meyer recommends to continue the Public Hearing to the next Regular Board Meeting of the Ditch Authority so that the correct notices can be sent.

Next, Todd Braucks of 6656 175th Ave NE, Foley, MN 56357 shared his concern regarding a culvert on County Road 4 which is in a wetland. Mr. Braucks stated that he has 820 feet of frontage and received an estimated bill of about \$3,600 for his feet of frontage and noted that would cost him \$4.39 per foot, or \$104.34 per acre, divided by his 34.5 acres. Mr. Braucks shared that the letter that he received stated he would gain an additional 2 acres, however the wetlands on his acreage will always remain wetlands and the water from his property would not reach CD 9. Mr. Braucks does not see how this will benefit him.

The Public Hearing for CD 9 closed at 11:50 AM.

Byrd recommends continuing the Public Hearing until the next Regular Board Meeting of the Ditch Authority. Byrd added that he will accept any written comments that are received by the next meeting to be read into the record. Byrd also addressed the wetlands issue which was discussed at a previous work session, and there may be additional work to look at the wetlands on this ditch.

Johnson asked Mr. Beehler if he has talked to Byrd about his concerns and Mr. Beehler stated he had, and has additional concerns about not seeing the scope of the ditch, and that there was a road that was put in that may have contributed to additional sediment.

Gapinski added that we are held to certain standards of what we are allowed by law to do (as a Ditch Authority). Byrd stated we did receive a valid repair request before we determined if a repair was necessary or unnecessary, but we also need to establish where the ditch originally was, which is why the Record Reestablishment was needed.

Motion by Johnson and seconded by Popp to table the Record Reestablishment Public Hearing to the August 16, 2022 meeting of the Ditch Authority to allow enough time for the proper notices to be mailed out. Motion carried unanimously.

Motion by Johnson and seconded by Popp to adjourn at 11:57 AM. Motion carried unanimously.

Steven J. Heinen, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator