

BENTON COUNTY DITCH AUTHORITY
Tuesday, January 19, 2021
Benton County Board Room

The Benton County Ditch Authority met in special session on January 19, 2021 in the Benton County Board Room in Foley, MN with Board members Ed Popp, Scott Johnson, Steve Heinen, Jared Gapinski and Beth Schlangen (virtual) present. Also present was Chris Byrd, County Engineer; Heather Bondhus, Senior Deputy Auditor; Monty Headley, County Administrator; and Vicki Feuling, Administrative Assistant.

County Board Chair, Ed Popp, called the meeting to order at 10:21 AM.

Johnson/Heinen to approve the agenda as amended: add item—Professional Services Contract to complete the Redetermination of Benefits. Motion carried unanimously per roll call vote.

Johnson nominated Popp for 2021 Ditch Authority Chair. Second by Heinen. Nominations were closed and a unanimous ballot was cast (per roll call vote) for Popp for Ditch Authority Chair for 2021. Chair Popp called for nominations for 2021 Ditch Authority Vice-Chair. Johnson nominated Heinen for 2021 Ditch Authority Vice-Chair. Second by Gapinski. Nominations were closed and a unanimous ballot was cast (per roll call vote) for Heinen for Ditch Authority Vice-Chair for 2021.

Heinen/Gapinski to approve the meeting minutes of December 14, 2020 as written. Motion carried unanimously per roll call vote.

Repair Petition on County Ditch 10

Chris Byrd, County Engineer, explained that, on December 19, 2020, he received a petition to repair County Ditch 10; the property and owners listed do own land that appears on the original viewer's report when the ditch was first ordered, which means they do have a vested interest in the county ditch. Byrd referenced MN Statute 103E.715, which states, in part, "...the auditor shall present the petition to the board at its next meeting or, for a joint county drainage system, to the drainage authority within ten days after the petition is filed..."

Heather Bondhus, Senior Deputy Auditor, read the following Findings from the Petition to Repair County Ditch No. 10 into the record:

1. Petitioners request repair of County Ditch No. 10 pursuant to Minn. Stat. § 103E.715.
2. County Ditch No. 10 provides beneficial drainage to tracts, government lots and properties, township, county, and state roads and highways located in Section(s) 20, 29, 30 and 31 in Mayhew Lake Township and Section(s) 6, 7 and 18 in Minden Township, Benton County, Minnesota.
3. County Ditch No. 10 is in need of repair. The greatest benefit will come from cleaning the ditch from County Road #4 south one (1) mile, and ¼ mile north. However, the entire waterway is in need of long overdue cleaning/maintenance.
4. Repair of County Ditch No. 10 is necessary in order to restore the drainage system as nearly as practicable to the same hydraulic capacity as originally constructed, and subsequently improved, and to maintain the efficiency of the drainage system.
5. The repair of County Ditch No. 10 is necessary for the best interests of the affected property owners; or the repair petition is signed by the owners of at least 26 percent of the property area affected by, and assessed for, the original construction of the drainage system. The repair of

County Ditch No. 10 is needed because the drainage system no longer serves its original purpose. Petitioners request that the drainage authority investigate whether the current benefits or damages determined, and on file for County Ditch No. 10, reflect reasonable present-day land values or that the benefitted or damaged areas have changed. If the drainage authority finds that the current benefits or damages determined and on file for County Ditch No. 10 do not reflect reasonable present-day land values, or that the benefitted or damaged areas have changed, the Petitioners request that the drainage authority order a redetermination of benefits for County Ditch No. 10 concurrent with the repair.

6. Petitioners request that the drainage authority appoint an engineer to examine the drainage system and make a repair report. The report must show the necessary repairs, the estimated cost of the repairs, and all details, plans, and specifications necessary to prepare and award a contract for the repairs.
7. This petition may be signed in counterparts.

Respectfully submitted this 22nd day of December, 2020 by:

Tracey Reinert-Adams, co-owner, 6540 Masada Dr., Chesterfield, VA 23838, Parcel 07.00364.04

Richard A. Adams, co-owner, 6540 Masada Dr., Chesterfield, VA 23838, Parcel 07.00364.04

Bondhus indicated that the Auditor-Treasurer's Office has found the petition to be acceptable by statute and the County Attorney's Office has also reviewed the petition.

Byrd explained "...County Ditch 10 is also known as Mayhew Creek...the creek comes out of Mayhew Lake and it does not become a county ditch until the beginning of this section...it travels through Mayhew Lake Township into Minden Township...and somewhere behind where the Sauk Rapids High School is...it ceases to be County Ditch 10 and actually becomes County Ditch 11...with this petition, we will be obligated to only look at County Ditch 10 at this point...I mention that it is also Mayhew Creek because Mayhew Creek is designated as a public water...we will have to coordinate with the DNR...by statute, they can't restrict us from repairing it, but they can keep us to only doing a repair...we can only go back to the way it was originally constructed...if the Ditch Authority so chooses, you may appoint me as the Ditch Engineer and order me to complete a repair report..."

Popp asked "...if we clean Ditch 10 down to Ditch 11, what's the impact on Ditch 11...are we going to flood somebody out...we can't go ahead and clean this ditch if we are not going to be able to have the water capacity in Ditch 11..." Byrd responded "...part of the processing in completing a repair report will have to consider the outlet and determine if the outlet is sufficient...that process may lead us to say that Ditch 11 is not going to take on the original flow...at that point, I'd have to come back and the Ditch Authority would have to do another action to order an engineer's report on Ditch 11...even if we consider looking at Ditch 11, there comes a point when Ditch 11 stops, but the creek continues..." Heinen commented "...I do know this ditch (Ditch 10) is flooded every spring...I also know they did drain tiling this fall...so it's going to be needed now for sure..."

Byrd pointed out "...we do have the benefit that we have already ordered the Redetermination of Benefits...I don't anticipate any repair or excavating happening until we complete that Redetermination of Benefits..." Heinen inquired if the other landowners involved have been notified of the petition. Byrd explained "...all those landowners had been notified of the hearing we had back in December...these landowners were present on the call...nobody has been additionally notified of the repair petition..." Johnson inquired if the Ditch Authority would have the authority to clean Ditch 11 (if it came to that) or if it would require a petition from a vested landowner. Byrd explained that a repair can be initiated by an interested landowner or the Ditch Authority may order

a repair, based on their own inspections and engineering (in either case, costs are assessed to those landowners receiving a benefit).

Byrd reported "...if approved today, we will do an engineer's report...go out and survey it...create construction drawings...we will actually have to have a public hearing on that report before we can even move forward with a repair..." Johnson/Heinen to adopt the Findings and Order to Appoint the Engineer to Examine Benton County Ditch No. 10 and Make a Repair Report, and authorize the Chair to sign. Motion carried unanimously per roll call vote.

Judicial Ditch 1A

Byrd explained that, at the November 11, 2020 Ditch Authority meeting, the Board was informed of the possibility of the creation of a Judicial Ditch; a Judicial Ditch is created when an open ditch, underground tile, or the watershed of a ditch crosses county boundaries. He stated that an open ditch in Mille Lacs County has been determined to have a watershed extending into Benton and into Sherburne Counties; in other words, there are landowners in Benton County that receive a benefit from the ditch in Mille Lacs County and, therefore, will be included in future assessments for the maintenance of this ditch.

Byrd pointed out that, before anyone can move forward in the process, a Judicial Ditch Authority needs to be created; this is accomplished through a joint powers agreement which specifies the roles and responsibilities of each of the three counties and establishes a Ditch 1A Joint Drainage Authority. He explained that the joint powers agreement establishes who will serve on the Joint Ditch Authority Board—three members from Mille Lacs County Ditch Authority, one member from the Sherburne County Ditch Authority and one member from the Benton County Ditch Authority. Noting that Commissioner Johnson is the member whose district the ditch lies in, Gapinski/Heinen to appoint Board member Johnson to serve on the Joint Ditch Authority Board. Motion carried unanimously per roll call vote. Heinen/Johnson to appoint Board member Popp to serve as alternate on the Joint Ditch Authority Board. Motion carried unanimously per roll call vote.

Byrd explained "...they got to this point in the Redetermination of Benefits where they discovered that benefitted properties cross the county line...that stopped the process until they establish this Joint Ditch Authority...once this is established, the next step would be to continue and complete the Redetermination of Benefits process...there will be landowner meetings...public hearing on the viewers' report...future hearings on the repair report...by establishing this Joint Ditch Authority, now those landowners will be notified...there will be costs, especially if they move forward with a repair... any costs that we have will be billed back to Mille Lacs County...they will be the fiscal agent for this... Mille Lacs County will prepare the assessment lists...we will give that to our County Auditor-Treasurer's Office to send with the tax statements..."

Johnson/Gapinski to approve the Amended Joint Powers Agreement between Benton, Mille Lacs, and Sherburne County Ditch Authorities, and authorize the Chair to sign. Motion carried unanimously per roll call vote.

Professional Services Contract to Complete the Redetermination of Benefits

Byrd reported that, on December 14, 2020, the Ditch Authority held a public hearing and subsequently ordered the Redetermination of Benefits for several county ditches within the county. He stated that a Redetermination of Benefits determines all the properties and landowners that received a benefit from a county ditch; at the end of the process, there will be landowner meetings,

a final report and a hearing on the report. Byrd pointed out that the information contained in the report, once approved, will be used to assess landowners when a county ditch is repaired or maintained.

Byrd explained that, while the Ditch Authority did order the Redetermination of Benefits and appointed viewers, a contract still needs to be executed to contractually bind the appointed viewers to the task they have been “ordered” to complete. He presented three different agreements— because Ditch #3 and Ditch #9 received repair petitions, these were kept separate because of a slightly different process; the remaining ditches (#4, #5, #6, #7, #10, #11, #12 and #14) are being included in one agreement.

Byrd stated “...if all three of these agreements are approved, all of our ditches in the county will have this Redetermination of Benefits process...we are able to get a discount in cost by combining all of these ditches...they are giving us a flat fee of \$4.00 per benefitted acre to do all of these ditches at once...they are going to complete this process over the next twelve months...the discount came to about 50 cents per acre...we are anticipating about 30,000 acres potentially receiving a benefit...we are passing on the savings to the benefitted landowners...” Johnson commented “...in this case the county is outlaying the money to do this...at some point in the future, based on the benefit, those assessments to the landowners will be made...” Gapinski commented “...I think our ditches need some work...I think the taxpayers are reaching out on that...I like the ability to...even though somebody’s land isn’t abutting up to a ditch, they are still having benefits from it...I think this redetermination is a good thing for the county...”

Popp commented “...there was some language in the agreement about different costs...” Byrd referenced the language, stating “...in addition to the foregoing acre charge (\$4.00 per acre), for the Hourly Services, the Drainage Authority shall pay the Company an amount calculated at the rate of \$75/hour for time spent by each of the Viewers and Company staff performing the Hourly Services...The Drainage Authority shall also pay the Company an additional amount calculated at the rate of \$120/hour for work performed for each Viewer’s time spent at any appearances required of any of the Viewers in court...or any work provided as part of an appeal...” Popp stated “...I had some trouble understanding how that got in there and why it is in there...” Heinen commented “...under what conditions do they start charging an hourly rate above and beyond...” Johnson stated that he was not sent the contract for review; he inquired about delaying approval to the next meeting. Johnson/Heinen to table this item (Professional Services Contract to complete the Redetermination of Benefits) to the first meeting in February. Motion carried unanimously per roll call vote. Heinen requested that Byrd be prepared to clarify all the extra costs that could be incurred.

Engineer Update

Byrd reported “...some of these ditches we’ve had in the pipeline...County Ditch 6...that was started last year...looking at it and determining it needed some attention...I do have a draft engineer’s repair report for that...I’m currently reviewing it...the next step in that ditch would be to bring that forward...and set a public hearing on that report...that public hearing would require us to notify all the landowners that that would affect that we were considering ordering a repair on County Ditch 6...County Ditch 14...we started looking at it because we knew it needed to be repaired...and then we stopped when we received the repair petition for Ditch 9 because we determined that Ditch 14 drains into Ditch 9...we’ve started the engineering work on Ditch 9...Ditch 13 and 15...those were repaired probably about four years ago...I’m not anticipating any work on those ditches, hopefully for a long time...I have a draft repair report for Ditch 3 also that I need to review...that would require

setting a public hearing for Ditch 3 before we move forward with doing any actions on that ditch...” Heinen commented “...Ditch 3...did you contact MNDOT and the City of Sauk Rapids about that... because it goes under Highway 10 and into the City of Sauk Rapids...” Byrd answered “...not yet...my initial review showed that...it looks like, in our ditch, there was a considerable amount of sediment...before we set a public hearing, I will reach out to those entities specifically and make them aware of it...”

Byrd added “...to recap what we did today with the agreement...essentially every ditch on this map, except for 13 and 15, will have that Redetermination of Benefits process completed over the next year...I don’t anticipate recommending ordering a repair until we have that benefits process completed...and we know all the landowners involved...” Gapinski stated “...I like that approach...I think you are going to run into that with that judicial ditch...especially if they start moving forward without notifying Benton County individuals...”

Popp commented “...the next process in drainage is going to be 3, 4 or 5 miles away from the ditch... people are now starting to put in pumping systems...and they are getting more benefitted acres because that water is being pumped into the county ditch...so pretty soon there is a lot more water going through that ditch...this ditching system seems like it’s really caught on across the state...more and more people want to get into drainage...I don’t think the Ditch Authority is ever going to be done...I think it’s an ongoing process...” Byrd explained “...in the ideal world, we would be maintaining these ditches as necessary...after we get our ditches in the condition of good repair, we should just be maintaining those as necessary...that’s usually accomplished by having a maintenance fund set up...some of these landowners will probably have a small assessment forevermore...over time, that will build up that maintenance fund...we have the responsibility to inspect our ditches at a minimum of once every five years or 20% of your ditch system every year...we need to do a better job with that...our inspections are a cost to that ditch system...Ditch Authorities can no longer ignore their ditches even if there is lack of support to assess it...once we complete this redetermination process and we know everybody who will be included in that ditch system...if a landowner is not on the list and they do want to drain into that ditch, they have to petition the drainage authority to connect...and pay a connection fee...improvements do need to be reviewed by DNR and BWSR...”

Adjourn

Johnson/Gapinski to adjourn at 11:11 AM. Motion carried unanimously per roll call vote.

Edward D. Popp, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator

