

BENTON COUNTY DITCH AUTHORITY
Tuesday, February 18, 2020
Benton County Board Room

The Benton County Ditch Authority met in special session on February 18, 2020 in the Benton County Board Room in Foley, MN with Board members Warren Peschl, Spencer Buerkle, Steve Heinen, Jake Bauerly and Ed Popp present. Also present was Chris Byrd, County Engineer; Michelle Meyer, Assistant County Attorney; Heather Bondhus, Senior Deputy Auditor; Monty Headley, County Administrator; Vicki Feuling, Administrative Assistant; Stephen Ertl; and Trevor McConnell.

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

Peschl/Heinen unanimous to approve the agenda as written.

Heinen/Bauerly unanimous to approve the minutes of February 4, 2020 as written.

Chris Byrd, County Engineer, provided an update on County Ditch 3, noting that two petitions were filed with the County Auditor-Treasurer on February 12, 2020 (a petition by Stephen Ertl and a petition by Douglas and Margaret McConnell).

Byrd stated that County Ditch 3 was established in 1904, and according to the original establishment records, it started at the railroad tracks, which was then known as the St. Cloud Hinckley Branch of the Great Northern Railway, and then it traveled northerly and easterly until it connected to what was then known as Potter's Creek; Potter's Creek eventually connected to the Mississippi River. Byrd stated that he is in receipt of the original profile, engineer's report and viewers' report. He pointed out that properties were assessed in 1904 according to the original viewers' report; there is documentation that the County Auditor released all property liens as of February of 1915 (the ditch was constructed and paid for by 1915). Byrd stated that there was really no action on the ditch until the 1970's "when the ditch started getting a lot of attention". He indicated that there were a couple hydraulic analysis studies done in hopes that this ditch could fall under the jurisdiction of the U.S. Army Corps of Engineers (potentially fall under a Federal project for improvements); however, the Corps determined at that time that it did not have enough flow to meet their jurisdiction. Byrd noted that, by that time, Sauk Rapids and St. Cloud were continuing to develop toward the east. He stated there was a proposed large detention area adjacent to County Ditch 3, but was determined to not be economically feasible. Byrd explained that there was an improvement project proposed in the mid-1980's, which was ultimately dismissed due to costs (costs outweighed benefits to benefitted parcels). He pointed out that a portion of the ditch was abandoned in the 1990's; currently, the ditch as on record begins at the abandoned railroad tracks and continues to Trunk Highway 10. Byrd stated that there has not been a repair project completed in "recent memory" on this ditch.

Bondhus reported that the Auditor-Treasurer's Office has received two petitions for cleaning of Ditch Number 3; the first was from Stephen Ertl (parcel 19.00048.04) and the second from Douglas and Margaret McConnell (five parcels in Minden Township).

In comparing the original viewers' reports, Byrd stated that Mr. Ertl's parcel does lie in one of the original quarter-quarter sections that were determined by the viewers to receive a benefit of the ditch; the McConnell parcels are quite a distance south of the original alignment of County Ditch 3 and were not included in the original ditch report.

Bauerly commented "...from the railroad tracks it's supposed to flow to the northwest...there's a break point right in there some place...if it doesn't flow there, then it flows to the south instead..." Byrd stated "...this point of beginning matches with the original engineer's report...originally the ditch extended much farther and connected into Potter's Creek...per the abandonment records, this is the current described alignment and location of the county ditch...there is a large culvert beneath Highway 10, but even today you can see open ditch and then there are portions of storm sewer through this location as well...here's the 1978 hydrology analysis report...this document from 1978 does a good job of depicting what the drainage area of this ditch is...they do note that part of this drainage area is heading south...and then here's the drainage area that's draining into County Ditch 3 going westerly..."

Bauerly commented "...so what the problem is I think is that because Ditch 3 hasn't been cleaned in a long time, there's inadequate flow...so then it flows south, causing flooding to the neighbors to the south...I think the common sense thing is to clean the ditch and get it back to where it's supposed to be..." Byrd stated "...we have these two petitions...the Drainage Authority needs to choose to accept the petitions and move on them...proceed with an Engineer's Report...we could also choose to have a hearing on the petitions...as the County Engineer, I would recommend a hearing, partly because the original viewers' report from 1904...that land...all those quarter-quarter sections was meadow and some farmland...we have a lot more parcels in that area that I think would be brought into this ditch system if we move forward... have a public hearing to put out there that we have received petitions and that we may be moving forward with some sort of repair project on the ditch...we don't have a viewers' report except from 1904...that viewers' report assessed benefits to those land owners...those original assessed benefits don't match what repair costs would be today...there is some statute language that we are kind of bound to the costs not exceeding the benefits...since 1904, we have seen a lot of development which I believe would bring in a lot more parcels into benefiting and, therefore, being assessed for any repairs on that ditch..." Bauerly stated his belief that all the development has created more impervious surfaces, thus more runoff.

Byrd noted that there is a findings and order from 1986 where there was a proposed improvement project at that point, but at an estimated cost of \$850,000 for such a relatively small area with so few assessable beneficiaries, the cost would far exceed the benefits. He added that, at that point, it was noted that the existing outlet was not adequate and would have to be extended; however, the proceedings were dismissed due to the cost and there was no redetermination found in the file.

Byrd stated his recommendation to hold a public hearing to receive a petition to repair County Ditch 3; notifications would be sent to all the parcel owners contained within the original viewers' report. He added that if the repair project moves forward, there would be assessments of those costs on these parcels.

Meyer clarified "...the hearing that Chris is proposing would just be on whether or not you want to go forward with the petitions...at that point, you would decide whether there is a need to appoint an engineer and order him to move forward with a repair report...or you can have a public hearing just to get public input on whether or not they even want to proceed with the repair petition...at that point, you would decide whether you need to move forward and appoint an engineer and repair report...so you are just adding an extra hearing in...if you order Chris to go forward with a repair report, at that point he will provide a map...if he believes there are extra parcels that need to be added in that are benefitting from this drainage system...at that point, then you would probably authorize a redetermination of benefits..."

Bauerly commented "...we are supposed to clean these ditches every ten years under statute...don't we have an obligation to maintain these ditches..." Meyer responded "...you have an obligation to maintain...the requirement is that every five years on open ditches you will inspect the ditch..." Bauerly asked "...if we are required to maintain them every ten years, what's the point of the public hearing..." Meyer stated "...it's whether or not you feel there is a need for the repair...the people who are benefitting currently may not think there is a need...other than the petitioners...so that would be the benefit of hearing from more individuals regarding that ditch system..." Byrd added "...we have a legal obligation to maintain the ditch even if there is not agreement by all parties...I felt it would be worth putting it out there...my preliminary assessment is that there is going to be a lot more parcels that are going to need to be assessed from what there originally were...if the Board chooses to appoint an engineer and move forward with a repair report...and we start incurring costs on the ditch...if a repair project did not move forward, there still would be some costs assessed to the benefitted parcels..." Meyer stated "...if the Board chooses to accept the petitions...if you would make a finding on those...I did review the petitions and they did have all the property owners signed...a bond is not required for a repair petition...the other piece would be whether or not they are interested or affected by the drainage system...there could be a question regarding the McConnell pieces...the Ertl piece is interested and affected...so you would have to accept those petitions...you would appoint Chris to be your County Engineer and allow him to hire additional people...that he will faithfully do his duties...that he will keep track of his expenses...then order him to go forward with a repair report..."

Peschl/Bauerly unanimous to hereby order:

- A. The petitions for repair of Benton County Ditch No. 3 are accepted.
- B. That Chris Byrd, Public Works Director, is hereby appointed as the engineer for these proceedings and shall make a repair report pursuant to Minn. Stat. ch. 103E.715, subd. 2.
- C. Prior to commencing any work, the engineer must subscribe to an oath to faithfully perform the assigned duties in the best manner possible with the auditor within ten days after being appointed.
- D. The engineer may appoint assistant engineers and hire help necessary to complete the engineer's duties. The engineer shall be responsible for the assistant engineers and may remove them.
- E. The engineer shall make an expense report every two weeks after the beginning of the engineer's work until the construction of the contract is awarded. The report must show costs incurred by the engineer and expenses incurred under the engineer's direction relating to the proceeding, and include the names of the engineer, engineer assistants, and employees and the time each was employed, and every item of expense incurred by the engineer.

Popp/Heinen unanimous to adjourn at 10:29 AM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator