

BENTON COUNTY DITCH AUTHORITY

Tuesday, May 5, 2020

Benton County Board Room

The Benton County Ditch Authority met in special session on May 5, 2020 in the Benton County Board Room in Foley, MN with Board members Steve Heinen, Jake Bauerly, Ed Popp, Warren Peschl and Spencer Buerkle present. 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 Buerkle was at 10:38 AM.

Peschl/Popp unanimous to approve the agenda as written.

Heinen/Bauerly unanimous to approve the minutes of April 7, 2020 as written.

The next item on the agenda was a public hearing to consider the Engineer's Report to reestablish the drainage records for County Ditch No. 6 located in Sections 25, 26, 27 and 28 in Graham Township. Chris Byrd, County Engineer, introduced Garrett Monson from Houston Engineering, Inc.; Monson provided an overview of Benton County Ditch 6 Record Reestablishment:

- Drainage Authority Responsibilities
 - Benton County serves as the "drainage authority", enforcing the State Drainage Law (Minnesota Statutes Chapter 103E)
 - M.S. 103E.101 Subd. 4a. If, after investigation of drainage system records, the drainage authority finds that the records are lost, destroyed, or otherwise incomplete, it may, by order, reestablish records defining the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; or right-of-way of the drainage system as originally constructed or subsequently improved
 - The drainage system is "owned" by landowners that paid for it (i.e. assessed)
 - Lands assessed have a right to drain water to the ditch (within reason)
 - Assessed landowner can request action by the drainage authority
 - Drainage authority "administers" the system on behalf of the assessed landowners
- Comprehensive Drainage System Management Cycle
 - Records
 - Inspection
 - Financing
 - Policy/Permitting
 - Project (Action)
- Record Reestablishment Purpose
 - Defines where the Drainage Authority can do work (limited to the public drainage system)
 - Defines maximum level of repair (as-built condition) and, therefore, drainage quality
 - Work beyond the as-built (improvement) has regulatory implications
 - Not exempt from Corps of Engineers
 - Wetland mitigation
 - Potential downstream impacts
- Record Reestablishment Process
 - Investigate the historical development of the system by record review
 - Field survey

- Establish the “As-Constructed and Subsequently Improved Condition”
- Describe the right-of-way of the system
- Engineer’s Report
- County Ditch 6 Location and History
 - Graham Township
 - Approximately 4 miles of open channel ditch
 - Established in 1905
 - No documented repairs
- Benefitted Area
 - Benefitted lands are those lands assessed for any work on the drainage system and those who have the right to petition for that work. The drainage area of this public drainage system is about 1,805 acres; of that acreage, only 439 acres are determined to be benefitting based on the original viewer’s report. There are likely more lands that actually do benefit from the public drainage system; therefore, the Drainage Authority may consider doing a redetermination of benefits prior to ordering any work on the system.
- Determination of the As-Constructed Alignment
 - 1987 memo describing channel alterations
 - 1938 and 1953 aerials reflect existing alignment
 - Current alignment reflects “As Constructed and Subsequently Improved Condition”
- Determination of the As-Constructed Grade
 - Soil probes identify the hard bottom of open channel ditch
 - Field surveyed bottom of channel are compared to the design profile. Due to lack of a good correlation, a best-fit line of the soil borings was used.
- As-Constructed or Subsequently Improved Condition
- Culverts
 - Important to review the culverts--size/capacity as well as elevation. Drainage Authority can order culverts to be lowered once a legal grade is known.
- Why Are Some Culverts Higher Than the “As Constructed or Subsequently Improved Condition”?
 - Some roads weren’t present or in present location in 1906
 - Over years, sediment accumulated
 - New or replacement culvert placed on top of existing sediment (not “As Constructed or Subsequently Improved Condition”)
- Right-of-Way
 - Damages awarded during drainage system establishment for: 1) area physically occupied by the ditch; 2) area required to construct and maintain the drainage system
 - Based on channel depths, visible spoil areas, topography
 - There was no clear documentation of the right-of-way in the original documents for the drainage system. There are portions of the system where the original spoil pile and spoil piles from subsequent repairs were visible.
- Recommendations
 - Benton County Board of Commissioners, sitting as the Drainage Authority, prepare a Findings and Order reestablishing the public drainage system record following MS103E.101
 - Continue with the preparation of a Repair Report consistent with MS103E.

A public hearing to consider the Engineer's Report to reestablish the drainage records for County Ditch No. 6, located in Sections 25, 26, 27 and 28 in Graham Township, was opened at 11:08 AM. With no one wishing to address the Board, the public hearing was closed at 11:09 AM.

Bauerly asked the question "...if a culvert is too high or too small, does the Ditch Authority have the authority to direct the landowner to fix it...or can we fix it and assess it back..." Monson responded "...both are acceptable...often times, a drainage authority will order a party to lower a culvert that they own, and with that order they will say...you have x amount of time to comply...if you don't, we, as the drainage authority, will complete the work and bill you for it..." Bauerly asked "...what if the county road ditch is too high..." Monson stated "...if the county crossing of the public drainage system is too high...yes...the drainage authority could order the highway department or the county, as the road authority, to lower their crossing..."

Peschl inquired if farmers could tile into this ditch. Monson explained "...benefitting landowners who are determined to have originally benefitted from the drainage system who have the right to drain to the public drainage system...other landowners can also petition for an outlet to the public drainage system...if it's believed there needs to be an opening of length for people to drain to the public drainage system...looking back at the drainage area map...in order to drain to it, it would be better if they are a benefitted landowner...a redetermination of benefits may be in order...I believe MN State Statutes require appointment of a viewer to determine the out-letting fee for draining of new lands into the drainage system..." Peschl inquired about the assessment for landowners tiling outside of the drainage area. Byrd commented "...as of today, only those parcels in the light-blue shaded area have the right to drain their water into County Ditch 6...at the public hearing for a redetermination, landowners have the opportunity to comment to the viewers...that could change the numbers based on what the landowners say about their actual tiling plans...that may express the need to have a redetermination of benefits to capture everyone who is draining into County Ditch 6..." Bauerly stated his belief that any ditch more than 30 years old should have a redetermination of benefits performed. Byrd added "...the amount of drainage that comes from a county road into those ditches is calculated too...the county pays our fair share of the assessments as well..."

Meyer advised that the County Board, sitting as the drainage authority for Benton County Ditch No. 6, adopt a Findings and Order Reestablishing Drainage System Records.

Bauerly/Peschl unanimous that the Board hereby corrects the drainage system records of Benton County Ditch No. 6 to reflect the alignment; cross-section; profile; hydraulic structure locations, materials, dimensions, and elevations; and right-of-way of the drainage system as detailed in the engineer's report of findings dated January 29, 2020.

Popp/Heinen unanimous that the Board further directs filing and recording of documents necessary to reflect the reestablishment and correction of the public drainage system records established herein.

Meyer clarified that the redetermination of benefits is a separate process defined by law; the process includes the appointment of viewers and determining the need for the redetermination.

Bauerly inquired if there are any other ditch projects on the horizon. Byrd stated "...we already have County Ditch 14 that we received a petition for...in the Oak Park area...Houston Engineering is working on doing a very similar process for that one...we received a repair petition for County Ditch 3...Sauk Rapids/East St. Cloud area...will keep moving forward...County Ditch 7...never received a repair petition

at this time..." Byrd clarified that a repair petition can originate from one landowner who has an interest in the ditch (a benefitted property owner). Meyer clarified that, every five years, the drainage authority is responsible for going out and inspecting the ditches; it would be up to the Engineer to provide a report to decide if repairs are necessary. Byrd stated "...I would anticipate, as the County Engineer, seeing more and more processes like we've just gone through to get all of our ditches up to date...ideally, we have this report that we just adopted today...we have good data now...we don't have to wait for a repair petition...we can initiate repair projects without waiting for a petition..." Bauerly commented "...our goal should be at least 2 a year..." Buerkle added "...or 20% each year..."

Byrd provided a summary of the process for establishment of a new drainage system:

1. PETITION, Must be signed by majority of property owners or owners of at least 60% of the property and filed with the County Auditor, Minn. Stat. §§103E.212 and 103E.202
2. BOND, Must accompany the petition and must be a minimum of \$10,000, Minn. Stat. §103E.202 (Bond must cover all the initial proceedings)
3. REVIEW, County Attorney must review the Petition and Bond for compliance and either reject it or refer it to the Board, Minn. Stat. §103E.238
4. PRELIMINARY ACTION, Within 30 days after receiving Petition and Bond, the Drainage Authority shall, by order, appoint an engineer to make a preliminary survey within a prescribed time, Minn. Stat. §103E.241
5. PRELIMINARY SURVEY, Engineer must examine petition and order, make a preliminary survey of affected area, examine public waters, and, if applicable, examine capacity of outlet and necessary extension. Report the proposed drainage project plan or recommend a different practical plan. File Report with Auditor, Minn. Stat. §§103E.245 and 103E.251
6. COMMISSIONER REVIEW, DNR, Commissioner shall make a preliminary advisory report with an opinion about the adequacy of the preliminary survey report, Minn. Stat. §103E.255
7. PRELIMINARY HEARING, Determined sufficiency of petition, consider Minn. Stat. §103E.015 requirements, dismiss petition or order proposed drainage project proceed subject to additional investigation and consideration. If proceeding is not dismissed, order the engineer to complete a detailed survey and survey report, Minn. Stat. §§103E.261 and 103E.265

Byrd clarified that a county ditch may be an underground tiling system, subject to many of the same requirements. He added "...you would need to determine benefits...appoint viewers to view the drainage area of all the parcels and determine who is benefitting...determine damages...it's a multi-year process before we would even do any digging..."

Peschl/Bauerly unanimous to adjourn at 11:33 AM.

Spencer C. Buerkle, Chair
Benton County Ditch Authority

ATTEST:

Montgomery Headley
Benton County Administrator

