

STATE OF MINNESOTA  
NOBLES COUNTY BOARD OF COMMISSIONERS  
SEATED AS DRAINAGE AUTHORITY UNDER STATUTES CHAPTER 103E  
FOR NOBLES COUNTY DITCH 12

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The Matter of the Redetermination of  
Benefits for Nobles County  
Ditch 12

**Findings and Order Adopting  
Redetermination of Benefits**

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At a public hearing conducted by the Nobles County Board of Commissioners, Drainage Authority for Nobles County Ditch 12 (CD 12), originally scheduled and noticed for January 3, 2023, postponed to January 10, 2023, due to inclement weather, and further continued to January 24, 2023, Commissioner Metz moved, seconded by Commissioner Applaw for adoption of the following Findings and Order:

**Findings:**

1. CD 12 was originally established in 1916. Original benefits for Nobles County Ditch 12 were determined concurrent with establishment in 1916.
2. The system provides an outlet for lands in Sections 6, 7, 8, 17, 18, and 19 of Lorain Township; and Sections 10, 11, 12, 13, 14, and 15 in Worthington Township all in Nobles County.
3. Benefits for CD 12 were last determined in 1916, prior to the enactment of various laws, regulations, and programs protecting wetlands.
4. The current benefits roll reflects the benefitted properties, benefitted areas and benefit values as determined by viewers based on assumptions regarding the ability of landowners to convert wetlands for agricultural purposes.
5. The current benefits roll reflects the drainage benefits to the City of Worthington, and properties therein, including benefits to the City's wastewater treatment facility as determined by viewers based on assumptions regarding the burdens placed on the drainage system and benefits to both entities by the drainage system being used as and providing an outlet for municipal stormwater and treated wastewater discharges.
6. Additionally, since the most recent determination of benefits and damages, land uses and drainage practices have changed to accelerate and increase the flow of water to the drainage system changing the nature and value of benefits accruing to lands from construction of CD 12.

7. Since the most recent determination of benefits and damages, additional lands not previously determined to be benefitted have improved drainage to take advantage of CD 12 as an outlet for drainage.
8. Since the most recent determination of benefits and damages, land values have changed within the benefitted area of CD 12.
9. Based on its finding that the conditions required for the initiation of a redetermination of benefits exist, that the original benefits and damages did not reflect reasonable present-day land values, and the benefitted areas had changed for CD 12, the Drainage Authority ordered a redetermination of benefits and appointed Bryan Murphy, Larry Murphy, Shantel Hecht as viewers, and Robert Conely as alternate viewer, for the redetermination of benefits.
10. Upon taking their oath, the viewers initiated a redetermination of benefits according to statutes chapter 103E.
11. Under Minnesota Statutes § 103E.351 subdivision 1, the viewers' obligation is to proceed as provided for viewers and the Viewers' Report in sections 103E.311 to 103E.321. Under § 103E.311, they are obligated to determine the benefits and damages to all property affected by the drainage project and make a Viewers' Report.
12. Since appointment, Shantel Hecht resigned as a ditch viewer and Robert Conely took her place.
13. The viewers completed their report which included a Benefits and Damages Statement in November 2022 for all property affected by CD 12 and filed their report with the Drainage Authority.
14. Upon the direction, and under supervision, of the Drainage Authority, the viewers prepared Property Owners' Reports and mailed them to the owners of property identified in the Viewers' Report.
15. The Drainage Authority noticed and held an informational meeting on a proposed redetermination of benefits for CD 12 on December 20, 2022. The informational meeting was attended by viewers and by landowners who confirmed conditions, land uses and land values on CD 12. The viewers used the information gathered at that meeting to better inform their benefits determination.
16. The final hearing was scheduled to be held on January 3, 2023, but due to inclement weather, was postponed to January 10, 2023. As discussed below, at the January 10, 2023, hearing, the Drainage Authority received evidence, including the viewers report and public comment. Following public comment, the Board further continued the

hearing to its regular meeting at 11:00 on January 24, 2023, and directed the viewers to reexamine certain properties in sections 6, 18 and 19 of Lorain Township.

17. The Drainage Authority prepared a notice for the final hearing and (1) mailed it to owners of properties identified in the Viewers' Report, governmental units affected by the project and the commissioner of the MDNR; (2) posted it at the Nobles County Government Center; and (3) published it in a newspaper in general circulation in the area of CD 12 in Nobles County. The timing and duration of notices were consistent with the requirements of statutes section 103E.325. On the date originally noticed for the hearing, the Board posted notice of its postponement and provided supplemental notice mail to all owners of property and entities required to received notice of the hearing.
18. Evidence of all actions in this matter, including preliminary orders, appointments, oaths, affidavits of mailing, publication and posting as well as hearing agendas and presentation materials are present in the record of proceedings and are incorporated herein by reference.
19. At the January 10, 2023, hearing, the viewers appeared and presented the Viewers' Report, Benefits and Damages Statement and redetermined benefits. The viewers further provided detail of the viewing process and the information used by the viewers to: (1) verify the boundary of the watershed of the ditch; (2) verify and confirm the existence of drainage benefit; and (3) determine the economic benefit to lands deriving a drainage benefit from the construction of CD 12.
20. The viewers included, in their determinations, the amount of damages necessary to acquire and establish a one rod grass buffer strip along all reaches of open ditch on CD 12.
21. Comments were offered during the public comment portion of the hearing as follows:
  - a. Steve Schnieder, City of Worthington, commented regarding continued disagreement with the viewers' determination of benefits to the City wastewater plant. Mr. Schnieder's comments were that the plant does not need to the full capacity of the drainage system for its discharge. Mr. Schnieder also suggested that the benefits to the urban area for management of stormwater management, were lower than he would have anticipated. Mr. Schieder concluded, however, that the combined benefits are likely offset and consistent with the overall benefits to both the City and its wastewater plant. Mr. Schnieder requested that the Drainage System combine the overall benefits into a single assessment/billing notice and allow the City to exercise its discretion regarding how to allocate costs within the City's budget. Mr. Schnieder also requested that the payback period for current costs be extended over a period of at least four years.

- b. Jared Ahlers appeared and commented regarding property he rents on the drainage system in section 6 of Lorain Township (PID 13-0041-000, Sitter). Mr. Ahlers asserts that the property he rents does not drain to CD 12, rather drains to JD 8. Mr. Ahlers asserted that there is no culvert under the road south of the property and that this prevents drainage to CD 12.
  - c. Brian Kempama appeared and commended on the designation of non-benefitted acres in the SE ¼ of section 18 of Lorain Township (PID 13-0120-000, JBS). Mr. Kempama commented that there exists a tile under I90 providing access for that property to drainage to CD 12. The viewers commented that they conformed the watershed boundary of CD 12 to the adjacent system to the east of the property (for which a ROB has already been completed) and could not find any evidence of drainage from this property to CD 12. Mr. Ahlers commented that he was aware of the installation of drainage from the property using CD 12 as an outlet. Mr. Ahlers stated that he would provide that information to the Drainage Authority staff and viewers.
  - d. Following these comments Mr. Schnieder provided further comments regarding the area indicated by the viewers as non-benefitted in the NW ¼ of section 19 of Lorain Township (PIDs 13-0131-000 and 13-0131-000, Calvin). Mr. Schnieder indicated that portions of the non-benefitted area are drainage to a lift station in the NW corner of the parcel and pumped to the adjacent road ditch and, subsequently draining to CD 12.
22. After opening the public comment period and receiving and replying to comments, the Drainage Authority adopted a motion to: close the hearing to public comment, to direct the viewers to reexamine the properties in sections 6, 18 and 19 discussed by the commenters, to file an amended report, if any, and to continue the hearing to the Board's regular meeting at 11:00 a.m. on January 24, 2023, in the commissioners room of the Nobles County Courthouse, or thereafter on the Board's agenda for the purpose of considering and adopting findings and an order adopting the redetermined benefits and damages, as amended.
23. At the reconvened hearing, the Board received an updated report from the viewers upon reexamination. As to the properties reexamined, the viewers stated as follows in their summary of changes:

Section 6 of Lorain Township – no changes to the benefitted area or benefitted amount. The viewers observed a culvert that runs north/south under 230<sup>th</sup> Street. Surface flow drains to the culvert and utilizes CD 12 for drainage.

Section 18 and 19 – The non-benefitted lands in these sections, hatched designation in the originally submitted report, were reexamined with the help of County staff and newly acquired tile information and those areas were adjusted to benefiting lands. Those two areas received Class 2 (yellow) and Class 3 (green) land

classifications. The total watershed did NOT increase, but the benefitted area increased by 79.8 acres and increased the overall benefit amount by \$139,836.44.

24. All owners of property affected by the viewers' reexamination were originally noticed of the final hearings as owners of other and adjacent benefitted property.
25. The Viewers' Report, as amended, is attached as **Exhibit A**.
26. The viewers prepared a Benefits and Damages Statement outlining the basis of their benefits and damages determinations. The Benefits and Damages Statement is attached as **Exhibit B**.
27. The viewers reviewed all property within the drainage areas of the drainage system as part of the redetermination of benefits process.
28. The viewers determined the amount of damages to be paid for the acquisition of property for the establishment of best management practices, including grass strips, necessary to control erosion, sedimentation, improve water quality, or maintain the efficiency of the drainage system as required under statutes section 103E.021. The viewers compared sales in the area in arriving at an average sales price used in establishing a payment rate.
29. The viewers used maps, LIDAR data and other information, along with visual inspection of the watershed of the drainage system to determine the boundaries of the benefiting area.
30. Within the watershed of the drainage system, the viewers paid particular attention to altered land use and drainage alterations which facilitate the removal of water from property directing it to the drainage system.
31. To determine the economic benefit to lands deriving a drainage benefit from the drainage system, the viewers conducted a condition comparison comparing the expected, pre-ditch, unaltered state of the watershed to the existing, altered and improved condition of the watershed. The viewers used this comparison in determining the increased market value of the properties receiving a direct drainage benefit.
32. Based on their detailed observations, the viewers determined benefit classifications, classified acres and assigned economic benefit on a per acre basis.
33. The viewers determined that some acres within the watershed of the drainage system, i.e. existing wetlands and non-contributing basins, received no benefit from the drainage system.

34. The viewers accounted for the efficiency of the drainage system, as designed, and the proximity of lands to and the elevations of lands above the ditch.
35. The viewers applied an economic analysis using sales and income approaches to determine the increased value to each classification acre based on the drainage benefit provided by the drainage system.
36. The viewers determined the amount of economic benefit to property benefitted immediately by the drainage system, or for property for which the drainage system can become an outlet for drainage, make an outlet more accessible, or otherwise directly benefit the property.
37. The viewers determined that the drainage system draws off water from lower, previously assessed lands, thereby allowing drainage from unassessed lands to flow more readily and escape faster, thus preventing damage to the previously assessed lands, and such drainage constitutes a drainage benefit.
38. The viewers determined economic benefits based on: (1) an increase in the current market value of the property as a result of constructing the project; (2) an increase in the potential for agricultural production as a result of constructing the project; or (3) an increased value of the property as a result of a potential different land use.
39. Within the watershed of the drainage system, the viewers determined benefits on property that is responsible for increased drainage system maintenance, or increased drainage system capacity because the natural drainage on the property has been altered or modified to accelerate the drainage of water from the property.
40. The viewers determined benefits to the City of Worthington based on use of the drainage system as an outlet for municipal stormwater management. The viewers' benefits determination to the City was made pursuant to statutes section 103E.315, subd. 2.
41. The viewers determined benefits to the City of Worthington's wastewater treatment facility based on the actual, average volume discharge from the facility and comparing that to the same discharge from agricultural property within the watershed of the drainage system.
42. The viewers kept an accurate account of all time engaged in viewing and examination; the nature and kind of work performed; the days each viewer was engaged in said work; the amount charged per day by each viewer; and every item of expense incurred by the viewers in said work.
43. The viewers' account of work has been filed with the Drainage Authority.

44. Upon review of information provided to the Drainage Authority during the public hearing, the Drainage Authority further finds and confirms that the benefits and damages determined in the original proceedings as well as the benefitted and damaged areas determined in the original proceedings, do not reflect current, existing, actual benefits and benefitted areas.
45. Based on the record before it, and the comments of those present at the hearing, the Drainage Authority determines that the redetermined benefits, as reflected in the Viewers' Report at **Exhibit A** are proper, reasonable and conform to the drainage code.

**Order:**

- A. The redetermined benefits on CD 12, the amended Viewers' Report and the Benefits and Damages Statement, prepared by the viewers and attached hereto as **Exhibits A and B** are hereby adopted by the Drainage Authority.
- B. The viewers are allowed payment of their account of work.
- C. The Nobles County Auditor-Treasurer shall ensure that the redetermined benefits replace the existing benefits previously determined for the ditch.
- D. Pending resolution of any appeals, the damages for the acquisition of the grass buffer area shall be paid and the grass buffer areas established and seeded as required by statute.
- E. The Drainage Authority staff is directed to work with the County Recorder's office to ensure that the drainage system and the grass buffer area acquisition is reflected on the property record of affected landowners.
- F. The Nobles County Auditor-Treasurer is directed to combine the City's and the City wastewater plant benefits and assessment into a single notice in order to allow the City to distribute costs, in its discretion, according to the City's budget, taxing and charging authorities.

After discussion, the Board Chair called the question. The question was on the adoption of the foregoing findings and order. Commissioner Dybevic, having been absent during the initial public hearing, abstained from the vote. Upon roll call there were 4 yeas, 0 nays as follows:

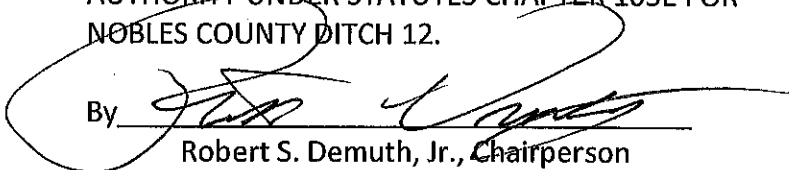
	Yea	Nay	Absent	Abstain
AHLERS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
METZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PAPLOW	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DEMUTH	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DYBEVICK	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Upon vote, the Board Chair declared the Resolution passed and the findings and order adopted.

Dated this 24<sup>th</sup> day of January, 2023.

NOBLES COUNTY, SEATED AS DRAINAGE  
AUTHORITY UNDER STATUTES CHAPTER 103E FOR  
NOBLES COUNTY DITCH 12.

By

A handwritten signature in black ink, appearing to read "R. S. Demuth, Jr.", is written over a horizontal line. The signature is stylized and somewhat cursive.

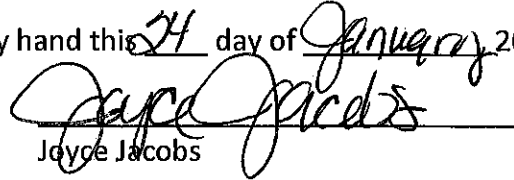
Robert S. Demuth, Jr., Chairperson



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I, Joyce Jacobs, Nobles County Auditor-Treasurer, do hereby certify that I have compared the above motion; Findings and Order with the original thereof as the same appears of record and on file with the Nobles County Board of Commissioners and find the same to be a true and correct transcript thereof. The above Order was filed with me, Nobles County Auditor-Treasurer on January 10, 2023.

IN TESTIMONY WHEREOF, I hereunto set my hand this 24 day of January, 2023.

  
Joyce Jacobs