

STATE OF MINNESOTA
NOBLES, JACKSON AND MURRAY COUNTIES JOINT BOARD OF COMMISSINERS
JOINT DRAINAGE AUTHORITY FOR THE IMPROVEMENT OF JUDICIAL DITCH 17

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| The matter of the petitioned improvement of Judicial Ditch 17 | Preliminary Hearing Order |
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The Joint Drainage Authority of Nobles, Jackson and Murray Counties Judicial Ditch 17, at a hearing on June 23, 2023, considered the petition for the improvement of Judicial Ditch 17. Upon review of the petition for improvement and the accompanying bond, Commissioner Eigenberg moved, seconded by Commissioner Malone, for adoption of the following:

Findings:

1. The Drainage Authority met at 9:00 a.m. on Friday, June 23, 2023, for the preliminary hearing on the Engineer's Preliminary Survey Report related to the petitioned improvement of Judicial Ditch (JD) 17.
2. The hearing was held according to Minnesota Statutes Section 103E.261.
3. The Drainage Authority's attorney presented the history of the proceedings through the preliminary hearing and summarized the requirements of the drainage code.
4. The hearing was noticed according to statute after filing of the preliminary engineer's report.
5. The Drainage Authority's attorney presented an examination of the petition to determine its sufficiency.
6. The Drainage Authority finds the following regarding the sufficiency of the petition:
 - a. The Board's attorney verified the signatures and ownership interests of the petitioners and finds that the petitioners are the owners of at least 26 percent of the property area affected by the proposed improvement. (103E.215)
 - b. The petition was properly filed with the Nobles County Auditor-Treasurer.
 - c. The petition properly designated the drainage system proposed to be improved by number and map description that identifies the drainage system.
 - d. The petition alleges that the drainage system has insufficient capacity or needs enlarging to furnish sufficient capacity.

- e. The petition describes the improvement, including the names and addresses of owners of the 40-acre tracts or government lots and property that the improvement passes over.
 - f. The petition alleges that the proposed improvement is necessary and will be of public utility and promote the public health.
 - g. The petition contains an agreement by the petitioners that they will pay all costs and expenses that may be incurred if the improvement proceedings are dismissed.
 - h. The petition alleges that the existing drainage system needs repair and further petitions the Board to consider separable maintenance when determining the allocation of costs of the improvement.
 - i. The petition was accompanied by commercial surety bond in the amount of \$50,000.00. The bond is adequate surety and has been reviewed by the Board's attorney. The bond is conditioned to pay the costs incurred if the proceedings are dismissed or a contract is not awarded to construct the drainage system proposed in the petition. (103E.215)
 - j. The costs incurred before the proposed drainage project is established may not exceed the amount of the petitioners' bond. A claim for expenses greater than the amount of the bond may not be paid unless the bond amount is increased or an additional bond is filed. If the Drainage Authority determines that the cost of the proceeding will be greater than the petitioners' bond before the proposed drainage project is established, the Drainage Authority shall require an increase in the bond amount or an additional bond to cover all costs to be filed within a prescribed time. The proceeding will be stopped until the additional bond prescribed by the Drainage Authority is filed. If the additional bond is not filed within the time prescribed, the proceedings will be dismissed.
 - k. The Board's attorney has reviewed the petition and bond and determined they meet the requirement of these proceedings.
7. The preliminary engineer's report was read and reviewed by the Drainage Engineer. The report contains two options. One option calls for improvement of Branch B by providing an independent outlet. By providing an independent outlet, capacity is increased in the main. The second option provides for improvement of the main.
8. The portion of JD 17 to be improved has insufficient capacity and is in need of repair. The installation of larger tile is required to furnish sufficient drainage capacity and fulfil its original intended purpose.
9. The portions of JD 17 proposed to be improved are in need of repair. Tiles of this age typically experience displacement of individual pipe sections which decrease the functional cross-section of the pipe and consequently decrease the capacity from its as-built condition. Due to its age, the existing tile cannot be effectively maintained and must be replaced in its entirety.

10. The proposed improvement includes a separable maintenance portion of cost.
11. A copy of the preliminary engineer's report was provided to the commissioner of natural resources as required by Minnesota Statutes Section 103E.255. By letter dated June 22, 2023, the commissioner provided comments (preliminary advisory report) on the preliminary engineer's report. The comments were read into the record.
12. A copy of the preliminary engineer's report was also provided to the County SWCDs and NRCS offices to initiate coordination and investigation of potential external sources of funding to facilitate incorporation of environmental, land use, and multipurpose water management features or alternatives into the project as required by Minnesota Statutes Section 103E.015. As of the date of the preliminary hearing, the Board has not identified any external sources of funding to facilitate incorporation of environmental, land use, and multipurpose water management features or alternatives.
13. The Board invited comment from landowners present at the hearing.
14. Comments were received regarding the condition of the ditch and the need for the improvement.
15. The proposed improvement of JD 17 as petitioned and as addressed in the engineer's preliminary report is feasible, necessary, will be of public utility and benefit, and promote public health.
16. The environmental and land use criteria in drainage code have been adequately considered by the engineer and, as directed herein, will be further investigated in considering the final scope of improvement.
17. Based on the engineer's evaluation of the receiving watercourse, the outlet for the proposed improvement is adequate, but the engineer should address the modeling and other concerns raised in the DNR's preliminary advisory report.
18. The Drainage Authority has identified a viewing team, consisting of three disinterested residents of the state, qualified to assess benefits and damages, available to view this project and willing to perform the duties of viewers for this project.

Based on the foregoing findings, the Joint Drainage Authority adopts the following:

Order:

- a. The Board accepts and adopts the preliminary engineer's report for the petitioned improvements.

- b. The Board, upon filing this preliminary hearing order with the County Auditor-Treasurers, orders the engineer to make a detailed survey with plans and specifications for the proposed drainage project and submit a detailed survey report to the Drainage Authority as soon as possible.
- c. The Board directs the engineer to address comments of the DNR commissioner and to provide a response as requested, to evaluate whether changes to the proposed project are feasible to address concerns raised by the commissioner, and to address the additional analysis and information identified in the DNR advisory report. If feasible, the engineer should include changes in the final project plans.
- d. The Board directs the engineer to continue to work through the processes contained in statutes section 103E.015 to ensure that environmental, land use, and multipurpose water management criteria are considered for inclusion in final project plans. This consideration should include an attempt to directly coordinate with the DNR staff to further clarify and address any disagreement between the engineer and the DNR's comments as contained in the DNR preliminary advisory report.
- e. The Board directs the engineer to continue to coordinate, in addition to the coordination which occurred in advance of this order, with soil and water conservation district, county and USDA planning authorities about potential external sources of funding and technical assistance for environmental, land use, and multipurpose water management features or alternatives.
- f. The Board directs the engineer to request additional information about potential funding or technical assistance for environmental, land use, and multipurpose water management features or alternatives from the executive director of the Board of Water and Soil Resources.
- g. The Board appoints the following viewers from H2Over Viewers, Inc., to determine the benefits and damages to all property affected by the proposed drainage project and make a viewers' report:

Scott Henderson, Viewer
Larry Murphy, Viewer
Ken DeGier, Viewer
Robert Conely, Alternate Viewer

The Board authorizes the Board Chair or appropriate staff to enter into a contract for viewing services.

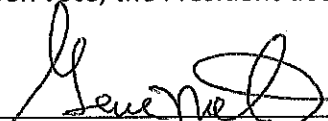
- h. The viewers shall subscribe to an oath to faithfully perform their duties.

- i. The Board directs the viewers, once qualified, to work with the engineer and to commence viewing as soon as practical upon receipt of the engineer's design plans and specifications indicating the efficiency of the drainage system improvement.
- j. The engineer is directed to assist the viewers in identifying properties receiving a hydrological improvement from the project and in identifying properties responsible for increased sedimentation in downstream areas of the watershed or responsible for increased drainage system maintenance or increased drainage system capacity because the natural drainage on the properties has been altered or modified to accelerate the drainage of water from the property.

After discussion, the Board Chair called the question. The question was on the adoption of the foregoing findings and order, and there were 5 yeas and 0 nays as follows:

| | <u>Yea</u> | <u>Nay</u> | <u>Absent</u> | <u>Abstain</u> |
|---------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Malone (Murray) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Eigenberg (Jackson) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Paplow (Nobles) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Alhers (Nobles) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Metz – (Nobles) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Upon vote, the President declared the motion Passed.



 Gene Metz (Nobles), Board Chair

Dated: June 23, 2023

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I, Joyce Jacobs, Nobles County Auditor-Treasurer, do hereby certify that I have compared the above resolution with the original thereof as the same appears of record and on file with the County and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I hereunto set my hand this 23rd day of June 2023.



 Joyce Jacobs
 Nobles County Auditor-Treasurer