

BUFFALO-RED RIVER WATERSHED DISTRICT

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**CLAY COUNTY DITCH NOS. 36, 40 & 60
MINUTES FOR REDETERMINATION OF BENEFITS
CONTINUATION HEARING
April 5, 2011**

In accordance with Minnesota Statutes Annotated (M. S. A.) 103E.351, and any other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a continuation hearing for the redetermination of benefits for Clay County Ditch (C.D.) Nos. 36, 40, and 60, including right-of-way (R/W) acquisition per M.S.A. 103E.021 on Tuesday, April 05, 2011, in the Comstock Community Center at 8:00 PM. BRRWD Managers attending were Gerald L. Van Amburg, Roger G. Ellefson, Curtis M. Nelson, John E. Hanson, and Breanna L. Paradeis Kobiela. Others attending included Bruce E. Albright, BRRWD Administrator, and Wade Opsahl, Technician, Houston Engineering Inc. (HEI), Eddie Bernhardson, Viewer, and landowners: Darin Brandt, Kevin Olsgaard, Richard Brakke, Dan Olsgaard, Curtis Lammers, Ted Olsgaard, Neil Wieser, Denice Wieser, Gail Leikas, John Ready, Duane Brandt, Robert Brandt, Doug Ishaug, Mel Nygaard, Blane Benedict, Dave Krabbenhoft, Harold Brandt, Dean Nelson, Steve Walker, Richard Schmillbach, Richard Bellemare, and Peter Livdahl.

Gerald L. Van Amburg, BRRWD Chairman, called the hearing to order at 8:00 PM. He introduced the BRRWD Board, Viewers, and staff. He noted this hearing is a continuation of the redetermination hearing that was held on March 22, 2011.

Albright announced that the meeting was being recorded to aid in the preparation of minutes and a sign-up sheet was available to record attendance.

Albright gave a brief history of the redetermination of benefits for Clay C.D. Nos. 11, 36, 40, and 60. He stated the process was originally started in 2002 with the first hearing being held in Moorhead on February 1, 2005. Since then, the BRRWD has had a variety of reasons which have kept us from finishing these proceedings, including workload, emergencies, and floods. In the interim, the BRRWD was petitioned for an improvement project on C.D. No. 11. There were hearings held to manage that system in 2009, which concluded that project. Albright stated that the redetermination of benefits began due to landowner concerns. He mentioned that C.D. Nos. 36, 40, and 60 are old ditches which have never had benefits redetermined since they were constructed. He went on to explain that currently there are parcels assessed to these ditch systems that do not even utilize them. There are other parcels assessed to multiple ditches while the quarter next to it may not be assessed to any ditch. Albright said he is unsure of how the benefits were determined in the 1900s, but the BRRWD assumes that the process was done properly through hearings.

Albright explained there were questions raised at the 03/22/11 meeting which have been addressed by the Viewers and changes were made accordingly. Opsahl has small maps available reflecting the Viewers' changes. However, the large maps displayed in the back are still from the 03/22/11 meeting and do not reflect the updates. Maps reflecting the overlapping benefits and the total assessments for all the ditch systems are also available. Albright mentioned there were some minor adjustments made to make assessments for some parcels more equitable. Albright said the Board hopes that tonight's hearing will finalize these proceedings.

Albright explained that the BRRWD will make a motion to adopt the new benefit areas once the Board believes everything is as accurate and fair as possible. He informed the landowners there is a 30-day appeal period if anyone is still dissatisfied with the redetermined benefits. Albright stated that Minnesota State Law mandates a one-rod grassed bufferstrip be installed on any ditch system as part of the redetermination process. The purpose of the bufferstrip is to attempt to improve water quality. BRRWD Engineer Erik Jones has calculated the R/W for the one-rod grassed bufferstrips, from the top/crown of the ditch into the field, or 16.5'. Albright stated the R/W will be staked this spring, and the seeding will be completed early spring/summer.

Albright explained that Eddie Bernhardson will present the Viewers' statement reflecting the benefit changes. He also noted the Viewers had allocated an easement value of \$2,000/acre for the R/W to install the one-rod grassed bufferstrip. This value was carried over from the original Viewers' Statement in 2005. The Viewers would consider increasing the easement to \$3,000/acre since current land sale values are higher.

Eddie Bernhardson explained that Arvid Thompson was unable to attend tonight due to health issues and Lauren Peterson is out of town for personal business.

Bernhardson presented the Viewers Report in accordance with M.S.A. 103D.315, and any other applicable statutes:

At the 3/22/11 hearings held by the BRRWD, regarding the redetermination of benefits for Clay C.D. Nos. 36, 40, and 60, the Board recessed the hearing for continuation tonight. Questions raised by landowners in attendance were reviewed by the Viewers following the 03/22/11 hearing. The Viewers met on 4/04/11 to review and make the following changes/modifications to our previous reports. While we did not conduct a field review, we did refer to the Google Earth maps to help determine drainage patterns. The images were dated 10/02/10.

Clay C.D. No. 60. The only changes we made pertain to the SE $\frac{1}{4}$, Section 9, Holy Cross Township.

- Remove the W $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ (40 acres). This land had benefits of \$30/acre. It was determined that a ditch along the railroad tracks drains this water south into Wolverton Creek, bypassing the ditch system.
- Change the benefits on the E $\frac{1}{2}$ W $\frac{1}{2}$ SE $\frac{1}{4}$ (40 acres) from \$30/acre to \$100/acre.
- Change the E $\frac{1}{2}$ SE $\frac{1}{4}$ from the benefit rate of \$30/acre to \$100/acre, reflecting the fact that the land drains directly into the ditch system, and not north, as previously thought, to C.D. No. 36.

Albright presented the damages and benefits as follows: the Viewers found damages of \$19,220.00 for 9.61 acres of permanent R/W. They found 2,125.85 acres of private lands being benefited by \$147,910.00 as shown on Exhibit 1. They found \$90 in benefits for railroads as shown on Exhibit 2, and \$3,115.00 in benefits for state, county, and township roads as shown on Exhibit 3. The total benefits shown on Exhibits 1, 2, and 3, are \$151,115.00.

Van Amburg asked if there were any questions or comments pertaining to C.D. No. 60. There being none, Bernhardson continued by presenting the summary of changes for Clay C.D. No. 36.

Clay C.D. No. 36.

- Delete the SE $\frac{1}{4}$, Section 9, Holy Cross Township, from the benefit area. This area did have benefits of \$100/acre. As previously discussed, review of the property shows that the water drains south into C.D. No. 60, and not north into C.D. No. 36.

- We did look at the overlap of the various drainage systems affecting this region to try to come up with a sense of equivalency regarding total ditch taxes on individual parcels. For the most part, we feel the proposed benefits are equitable. We have to keep in mind that some of the ditch systems are already in place and their benefits have been adopted, such as Clay C.D. Nos. 53 and 11. If we were going to redo C.D. No. 11, direct drainage benefits should have been closer to the range of \$130/acre, and not \$100/acre, as set.

The damages and benefits for C.D. No. 36 are as follows: the Viewers found damages of \$19,660.00 for 9.83 acres of permanent R/W. They found 3,201.35 acres of private lands being benefited by \$171,843.50 as shown on Exhibit 1. They found \$660 in benefits for railroads as shown on Exhibit 2, and \$7,180.00 in state, county, and township roads as shown on Exhibit 3. The total benefits shown on Exhibits 1, 2, and 3, are \$179,684.50.

Van Amburg asked if there were any questions or comments concerning C.D. No. 36. There being none, Bernhardson continued by presenting the summary of changes for Clay C.D. No. 40.

Clay C.D. No. 40.

- Using the east-west quarterlines in Section 13, Holy Cross Township, and Section 18, Alliance Township, lower all drainage benefits south of that line to \$15/acre. Because there are multiple assessments on this property, changing the benefit rates from \$30 and \$35/acre to \$15/acre will make the assessment more comparable to adjacent properties.
- Change the drainage benefit rate of \$30/acre to \$15/acre for the W½, Section 36, Kurtz Township, and the W½, Section 1, Holy Cross Township.
- Change the benefit rate from \$100/acre to \$50/acre for a narrow strip of property in the W½W½W½, Sections 24 and 25, Kurtz Township. This will create a more equitable transition from land having total benefits of \$80/acre to lands to the west having total benefits of \$130/acre.

The damages and benefits for C.D. No. 40 are as follows: the R/W damages in the amount of \$24,940 for 12.47 acres of permanent R/W. There are 11,228.89 acres of private lands being benefited, totaling \$504,432.90. There were \$660 in benefits for railroads, and \$9,137.75 in benefits for state, county, and township roads. Total benefits as proposed on Exhibit Nos. 1, 2, and 3 are \$514,230.65.

Van Amburg opened the floor for questions or concerns pertaining to C.D. No. 40. He then recessed the meeting for 20 minutes to give landowners the opportunity to look at the revised benefit maps. Van Amburg called the meeting back to order at 8:47 PM. He asked if there were any further questions or concerns regarding C.D. No. 40.

Landowner Kevin Olsgaard stated that he feels the presented easement value is too low, even at \$3,000. Van Amburg stated the Viewers had been discussed increasing the easement value to \$3,000. He asked if there were other landowners with the same concern. No one commented. Albright explained that part of the easement would contribute to cleaning up the deterioration of the ditches due to erosion and cleaning which increased the ditch width over the years. The actual new land acquisition is likely only half the acres presented in the Viewers' Statement. Albright restated the Viewers have discussed the \$3,000/acre easement value. Van Amburg asked if the Managers had any comments about the easement value. Ellefson felt any number is acceptable because the ditch system (landowner assessments) will fund the easement payments. However, the goal is to present a fair market value. He felt it becomes unfair for those landowners along the ditch who lose acres to the R/W, while others that are not along the ditch, do not lose the acreage. Landowner Blayne Benedict explained a similar situation when a county road was widened and regraded. An appraisal was completed in order to determine a fair value for the acquired land. Ellefson stated it is easier and more cost efficient to come to an agreement on a fair value rather than completing an

appraisal. He asked the landowners if they felt \$3,000 would be an adequate easement value. The audience had no comments. Albright stated the conclusion drawn, during discussions with the Viewers, was that \$3,000 was a more accurate value. Bernhardson informed the landowners that they can still have the bufferstrip (ditch easement), but it can't be farmed.

Landowner Harold Brandt asked if the Viewers attempted to get all lands assessed to multiple systems to add up to approximately \$100. Bernhardson stated they had, but it was difficult due to the fact that some parcels are assessed drainage and protection benefits to three different systems. The one ditch system already had benefits established, and this rate cannot change without redetermining benefits for that system. There were a few situations that did not allow the assessment to be below \$130. Albright explained the maps reflecting the overlapping benefits, helped identify a few small inconsistencies. These discrepancies have been corrected to the best of our ability. Albright explained the high values on Clay C.D. No. 11 land could have been lower. Then, the maps being discussed tonight would have been more equitable. Unfortunately, we have already redetermined benefits for C.D. No. 11, and it cannot be changed at this time.

Van Amburg asked if there were any further questions.

A landowner asked when the buffer strips would be planted. Opsahl stated it will be completed this spring, weather permitting. He stated they will get the strip staked before the landowners are in their fields this spring. Then, the seeding will be completed as soon as possible.

Ellefson asked if the consensus is to change the easement value to \$3,000/acre or if this was too low. Van Amburg mentioned again that this was the Viewers' recommended value. Albright stated the R/W payments could be distributed right after the 30-day appeal period has expired. He mentioned the Order is prepared for the BRRWD's action if they wish to proceed.

Van Amburg stated everything seems to be in order to move forward. He asked if anyone had any objections to the redetermined benefits. There were no comments.

Motion by Ellefson to adopt the redetermined benefits as presented tonight with a \$3,000/acre easement value. **Seconded** by Nelson. **Approved.**

Ellefson noted the 30-day appeal period is now open for anyone who has concerns and was not able to attend tonight's hearing.

Chairman Van Amburg adjourned the hearing at 9:00 PM.

Respectfully prepared and submitted by,

Bruce E. Albright, BRRWD Administrator