

BUFFALO-RED RIVER WATERSHED DISTRICT

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Project No. 42, Clay County Ditch No. 67 Redetermination of Benefits Hearing March 21, 2013

In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.351 and other applicable statutes, the Board of Managers, Buffalo-Red River Watershed District (BRRWD), held a redetermination of benefits hearing on Thursday, March 21, 2013, at 7:00 PM in the Council Chambers, 1st Floor, City Hall, 500 Center AVE, Moorhead, MN for Project No. 42, Clay County Ditch (C.D.) No. 67. BRRWD Managers attending were Roger G. Ellefson, Curtis M. Nelson, John E. Hanson, Troy Larson, Peter Fjested and Breanna Paradeis Kobiela. Others attending included: Bruce Albright, BRRWD Administrator, Wade S. Opsahl, Technician, and Erik S. Jones, Engineer, Houston Engineering, Inc. (H.E.I); Arvid Thompson and Eddie Bernhardson, Viewers; Sara Maninga, Minnesota Department of Transportation (MNDOT); and landowners: Kevin Kuehl, Dan Fiandaca, Mike Stulz, Dick Watkins, Larry Carlson, Steve Timmer, Jan Karsman, Gene R. Nickalser, Dianne Gullickson, Kathy Hegland, June Dahnke and Zach Johnson.

Vice Chair Paradeis Kobiela called the hearing to order at 7:00 PM and introduced the BRRWD Managers, Staff, and Appraisers. She announced that the proceedings were being recorded to aid in preparation of the minutes and asked that anyone giving testimony please state their name for the record. There was also a sign-up sheet to record attendance.

Bruce Albright, BRRWD Administrator, gave a brief overview of Project No. 42, Clay C.D. No. 67. In the late 1980s, the BRRWD was approached by home owners, Ross Solwood and Gina Sandgren, on the west side of County Road (C.R.) No. 96. They requested a repair of the existing ditch out of concern for their property, because the ditch banks had begun to erode. A discussion followed about a larger project that would extend from Trunk Highway (T.H.) No. 75 all the way to the Red River. The end result was that the BRRWD built Project No. 42, Clay County Ditch (C.D.) No. 67 in 2000 and has maintained it ever since. Recent and continued maintenance includes the use of a backhoe in the spring to get the water flowing through the ditch from the fields on the east side.

When the hearing for Project No. 42 was held back in 2000, the area landowners were assessed benefits for drainage. Most of the assessed area was agricultural, but there were some building sites. Benefits were also assessed on the east side of T.H. No. 75 in McCann's First Addition, and on the west side in McCann's Second Addition. The lots in McCann's Second Addition were assessed at the rate of \$250 per lot, and the First Addition benefit rates were all at \$500 a lot. Since that time, the BRRWD has used the map that was adopted by the Board back in 2000, to set the levies to pay for the initial project construction and maintenance. Any money raised for C.D. No. 67 goes into an account set aside just for that project. Each year at their annual budget hearing, the Board reviews the projected expenditures for each project/ditch system and sets levies to cover those costs. The BRRWD has levied a number of assessments over the years to pay off the cost of the Clay C.D. No.67 project according to the rates designated on the benefit map.

In 2011, the Stumbo family purchased the Ross Solwood/Gina Sandgren property on the west side of C.R. No. 96. Joy Stumbo attended a BRRWD meeting on May 11, 2009, and asked why her family was paying 8.5 times more than her neighbors for Project No. 42. It was explained to Mrs. Stumbo that Project No. 42 had corrected a very serious erosion problem with the project development, on her property. Due to this fact, the project provided her property with the greatest benefit, and the previous

owner had agreed to that rate. Mrs. Stumbo argued that since the problem had been fixed, and there wasn't any more erosion, her family requested that the Board consider a redetermination of benefits that would make her property similar to other lots.

Viewer Eddie Bernhardson presented the Viewers' Report.

In accordance with Minnesota Statutes Annotated (M.S.A.) 103E.351, and any other applicable statutes, we hereby submit the following Viewers' Report:

Benefits Statement

This report covers the redetermination of benefits for Project No. 42, C.D. No. 67, which is being completed by the BRRWD in accordance with Minnesota Drainage Law. We did not determine any damages for the project, as no right-of-way changed with this particular process. The basis for determining our benefits is a comparison of the conditions expected with the existing ditch in relationship with no C.D. No. 67 ever having been constructed.

Historically, this area has had drainage and erosion issues, and in the late 1990's, the BRRWD worked with the homeowner of Lot 16, Block 1, McCann's Second Subdivision, Oakport Township, and the Clay Soil and Water Conservation District (SWCD) to implement Project No. 42, C.D. No. 67. The referenced property at the time was owned by Ross Solwood/Gina Sandgren, and is currently owned by Joy and David Stumbo. Since constructed, the BRRWD does the noted ditch maintenance, including snow removal during most spring melts.

We (Lauren Peterson, Arvid Thompson, and I, Eddie Bernhardson) were appointed by the BRRWD to redetermine the benefits for the proposed project. We took our Oath of Office and held our first meeting on June 7, 2012. On that same date, we toured the project area. We filed our report with the Board of Managers, BRRWD, (drainage authority) on January 14, 2013. The request for a redetermination of benefits was filed by Joy Stumbo on May 11, 2009, when she attended a Watershed meeting in Barnesville, and questioned why their benefits costs were 8.5 times higher than her neighbors.

Supporting documentation for our analysis and conclusions of the Report are contained in our files and are available for inspection.

The figures stated within our Report are based on a full and fair consideration of all pertinent facts and information that we were aware of at the time of our work. The following aids were used during our review process:

1. Clay County soil survey manuals and maps
2. FSA aerial photographs
3. USGS topographical maps
4. Sales data from the Clay County Assessor's Office
5. Visual inspections of the project properties
6. Market values as determined by the Clay County Assessor's Office

7. LiDAR data.

In our report, we found new total benefits of \$132,017.00. Previously, the total benefits were \$136,822.50. The only changes made from the 10/23/00 original report to the 01/14/13 redetermination, pertains to Lot 16, Block 1, McCann's Second Addition, where the original benefits of \$4,250.00, were changed to \$500.00, which matches the same benefit for all of the lots on the east side of C.R. No. 96 in McCann's First Addition. At the time the project was built, higher benefits were placed this lot because of the erosion that was occurring, threatening the house. That problem was corrected with the initial project, and has not been a problem since. Since built, the BRRWD has levied a number of assessments against the benefit area for ditch maintenance construction, including \$10,000 in 2011, \$10,000 in 2010, \$20,000 in 2009, \$5,000 in 2007, \$5,000 in 2006, and \$5,000 in 2005. Over the years, these levies paid for the initial construction costs (\$31,615.14), right-of-way, and maintenance. The current project balance is \$18,168.80. As noted, Stumbo contacted the BRRWD on 05/11/09, to voice concerns about their benefits. At the time, when the initial project was built, the benefits were probably fair, and accepted by Solwood/Sandgren. But, after the project was built, the erosion problem fixed, and the system is just in a maintenance mode, those higher benefits for this particular tract, are probably unfair/unjustified.

We would be happy to answer any questions you may have regarding our work or findings, and we are pleased to be of service to the Board in this regard.

Paradeis Kobiela opened the floor for questions and noted that the BRRWD did send out a property owner's statement to everyone on the system and in that letter there was a hypothetical \$10,000 levy that showed, at that hypothetical amount what a home owner's cost would be. The hypothetical amount and benefiting area were based off the existing system with the higher benefits on the Stumbo tract. Next there was another hypothetical amount of \$10,000 that showed benefits in the system that is lowered on the Stumbo land and equaled out to each lot. The hypothetical benefit amounts rose from \$42.50 to \$500.00. For a lot in McCann's on the new system each lot was raised about a dollar per lot. The farmland east of T.H. No. 75 raised \$15 or so for a quarter of land. This information was furnished to the land owners so they could know what the redetermination would mean for them.

Breanna Paradeis Kobiela asked if there were any further questions.

Sara Maninga, MNDOT, asked a question regarding the \$1,000/acre that MNDOT was being assessed for benefits. She wanted to know why was it \$1,000/ acre verses some of the county roads that were at \$50/ acre.

Albright explained that he had looked at the MNDOT benefits. For C.R. No. 96, or Oakport Street, it was at \$1,000/acre benefits, and some of the gravel roads were at \$50/acre. Albright reassured Maninga that nothing in this redetermination proceeding was going to be changing the way the project was done in 2000. He stated that he'd have to go back over the original documents to find the exact explanation/justification and if that could be done, the information would be furnished to MNDOT. Albright further explained that he could provide information to Maninga showing that the payments haven't changed from year 2000. Maninga had a further question regarding the hypothetical amounts given in the Property Owner's Statement that Albright had mentioned previously. She questioned why there would only be about a \$25 difference from one property assessment to the next.

Albright clarified that if you took the current benefits, which are \$136,822.50, and lowered the Stumbos' benefits to match the benefit payments of the other neighboring properties , they would all

have to pay a little bit more than they are currently are, but the fixed number, or the hypothetical \$10,000, does not change.

Maninga requested a document from the BRRWD explaining all the different benefit rates.

Albright agreed that the BRRWD could provide the documentation requested.

Landowner Steve Timmer asked where C.D. No. 67's water drains and whether the initial project construction costs have been paid.

Albright explained that the previous drainage benefits (except for Stumbo) wouldn't change from the Viewers' determination in 2000. He also stated that the project costs are now paid, and the financial account has a balance of approximately \$18,000. Albright said that it may be a few years until there would be another assessment, barring any unforeseen problems. Albright went on to say that if there were an assessment at that time, it would likely show up on 2014 or 2015 tax statements as the owner's proportionate share in accordance with the revised Viewers' Report resulting from this redetermination of benefits hearing.

Steve Timmer asked another question regarding C.D. No. 67's capacity.

Albright responded that the Engineer designed the ditch to provide adequate drainage for all the assessed property in the system.

Project Engineer Erik Jones confirmed that C.D. No. 67 was built to convey the 5-10 year run-off event. Erik Jones also relayed that the drop structure on C.D. No. 67 was designed for the 50-year event.

Albright also added that his question might be answered more thoroughly at the next hearing at 7:30 PM for Project No. 70, Crystal Creek/McCann's Additions Flood Control, where the issue of possibly moving the ditch north and installing a berm might be addressed more fully. Paradeis Kobiela advised that the hearing should be adjourned, as the next hearing is scheduled to start at 7:30 PM

Albright suggested that if we needed to, the Board could continue the current hearing so that anyone who wanted to attend a BRRWD meeting could do so and would be welcomed the second and fourth Monday of the month in Barnesville.

Roger G. Ellefson asked the audience if there were any landowners present at the meeting that lived in the assessment area that felt it was not fair to lower the benefits on the Stumbo property.

Sara Maninga asked once more for clarification on the hearing's purpose, and how it effects MNDOT.

Paradeis Kobiela explained that the Stumbo property had been paying 8.5 times more in benefits than everyone else with similar property on the ditch system. Tonight's hearing was held to discuss if anyone was opposed to equalizing the payments through a redetermination of benefits so that the Stumbo family's tax assessment would be less, now that the project has been constructed and the initial costs paid off. In order to make the payments equal, the other property owners would have to pick up a slightly larger portion of the Stumbo's original assessment.

Albright clarified that there were probably over 100 individual property owners that would pick up the extra cost to balance out the payments to make them fair.

Kevin Kiehl, the new owner of NE¼, Section 22, Moorhead Township, stated that he didn't feel that making Stumbo's benefits similar to the neighboring houses was a big deal.

Mike Stulz had one question about whether the City of Moorhead would have a share of the maintenance cost and would the BRRWD retain jurisdiction of the ditch.

Albright said that City of Moorhead would not have a share of any cost (in accordance with the Viewers' Report). The project would remain C.D. No. 67 and would continue to be maintained by the BRRWD. Albright clarified that, as landowners, the ditch technically belongs to the benefited property owners, while the BRRWD is the ditch authority and is responsible for ditch maintenance, for which in the landowners are assessed.

Kevin Kiehl asked a question regarding drainage for Section 22.

Wade S. Opsahl, H.E., responded that there had been some cleaning done in Sec. 22 between 2000-2003. He also explained that C.D. No. 67 ended at T.H. No. 75 and to the east of that, it turns into a road ditch.

At 7:32 PM, Paradeis Kobiela recessed the hearing. She stated that if there was anyone who wanted to attend the next BRRWD meeting, they could come and discuss the issue further, or make a comment for the record. Albright added that anyone who didn't want to attend the meeting could contact the Watershed Office via E-mail or telephone with the comment and it would be discussed at the upcoming meeting on Monday, March 25, 2013, at 7:00 PM

Respectfully prepared and submitted by,

John E. Hanson, BRRWD Secretary