



**MINUTES**  
**SCOTT COUNTY DITCH BOARD MEETING**  
**SCOTT COUNTY, MINNESOTA**  
**FEBRUARY 7, 2023**  
**9:00 AM**

**9:00 AM**

**(1) CONVENE**

The Board of Commissioners, in and for the County of Scott, Minnesota, met in the County Board Room in the City of Shakopee, Minnesota, and convened at 9:03 a.m. The following members were present: Commissioner Weckman Brekke, Commissioner Wolf, Commissioner Brennan, Commissioner Beer, and County Commissioner Ulrich. Commissioner Wolf presided.

The following were also in attendance:

1. Lezlie Vermillion, County Administrator
2. Jeanne Andersen, Senior Attorney
3. Danny Lenz, DFO/Deputy County Administrator
4. Brad Davis, Planning & Resource Management Director
5. Cindy Geis, Community Services Director
6. Barb Dahl, Health and Human Services Director
7. Molly Bruner, Community Corrections Director
8. Chris Harder, Quality Improvement Manager
9. Luke Hennen, County Sheriff
10. Keri Lorenz, Community Corrections Supervisor
11. Kris Lage, Operations Analyst
12. Christian Huskey, Deputy County Assessor
13. Dan Wormer, County Surveyor
14. Scott Haas, Sheriff's Captain
15. Tracy Cervenka, Administrative Office Supervisor
16. Michelle Hesse, Deputy Clerk to the Board

**Guests:**

1. John Kolb, Attorney, Rinke Noonan Law Firm
2. Darrell Pettis, ISG
3. Joe Donkers, ISG
4. Troy Kuphal, Scott Soil and Water Conservation District
5. Joe Hale, Scott Soil and Water Conservation District
6. Leon Volek
7. Roger Bauer
8. Bruce Volek
9. Jim Glisczinski, Belle Plaine
10. Myron Bratsch, Belle Plaine
11. Teresa Bratsch, Belle Plaine
12. Tim O'Loughlin
13. Sharon Swanson
14. Jim Jeurissen
15. Greg Schmitt

16. Sherry Pekarna
17. Greg Glisczinski
18. Ernie Stumpf
19. Larry Entinger
20. LaJune Zellman

**(2) CONSENT AGENDA**

**(3) APPROVE MINUTES**

***January 17, 2023***

Motion by Commissioner Weckman Brekke, seconded by Commissioner Ulrich to approve the January 17, 2023 Minutes. The motion carried unanimously.

**(4) NON-CONSENT**

**4.1 Enter into the Minutes the Record of Notice Requirements and Receive Information on the Purpose of the Hearing and the Procedural Requirements**

John Kolb, the Draining Authority's Attorney explained that today's proceedings are being conducted under Minnesota Statutes, section 103E.715 which is the drainage code section governing formal proceedings for repair of public drainage systems.

The term "repair" under the drainage code means to restore all or part of a drainage system as nearly as is practical to the same hydraulic capacity as originally constructed and subsequently improved, including re-sloping of ditches, leveling of spoil banks, and removal of trees that are inhibiting either the flow of water in the ditch or preventing access to the ditch for maintenance or inspection purposes.

An individual or entity interested or affected by a drainage system (determined to be benefited from the drainage system) may file a petition for the repair of the drainage system. If the Drainage Authority determines that the drainage system needs repair, the Drainage Authority will appoint an engineer to examine the drainage system and make a repair report. The report must show the necessary repairs, estimated cost of repairs, all details, plans and specifications necessary to prepare and award a contract for the repair.

The Board must follow a standard of decision in deciding whether the repairs are necessary and whether the repairs should proceed forward. If the repair or other work affecting a public drainage system is considered by the Board, they must consider whether the system is operating at its established hydraulic capacity. Hydraulic capacity may be affected by accumulations of sediment and other debris in the ditch, placement, or sizing of culverts at improper elevations, improper culvert sizing, or other factors influencing the flow of water in the ditch. This ditch was inspected on the instruction of the County Board and later a petition for repair was received by the County Board which initiated these proceedings. Over the course of months, engineers reviewed the system and came up with an initial scope of repairs and it was presented to landowners. Based on landowner comments, County staff consulted with landowners and provided additional details to the engineers to limit the scope of repair. The Board will hear an engineer's presentation of various repair options. The Board possesses the discretion under the law to determine what option is most appropriate. The Board is not required to make a decision to reconstruct the ditch to its original constructed configuration or efficiency but should consider the desired operation of the ditch with cost, practicality and other factors. In addition, they have to give consideration to the conservation of soil, water, wetlands, forests, wild animals and related natural resources, and other public interests affected together with other material matters as provided by law to determine whether the work will be of public utility benefit and welfare. There are landowner concerns.

Drainage systems in Minnesota are paid for by the lands that are drained to that system or are determined to be benefited by that system. Several months ago, the Board undertook a Redetermination of Benefits of County Ditch 10 (CD10) as the original benefits are decades old and no longer reflect the way that properties utilize the ditch as an outlet for beneficial drainage, or no longer reflect land values that are sustained by or promoted by the existence of the ditch as an outlet for beneficial drainage. The Determination of Benefits details each individual land's obligation to the ditch system as a percentage of the total benefits on the ditch. The Board has to take into consideration the economic impacts of the decision it makes and between repair options it must weigh the utility of each repair option against the impact that that may have on individual landowners. Staff worked diligently with landowners adjacent to the ditch and those within the watershed area to better inform the engineers in preparing repair options. Following today's public hearing, the Board has options. If it feels the statutory criteria for ordering the repair are met, it may select one or more or modify the repair alternatives presented by the engineer and direct that the repair go forward.

- Return the matter to the engineers for further analysis or modification of the repair plan.
- Dismiss the action in its entirety. If it dismisses the action in its entirety, it will have to either find that the system is not in need of repair or that the repairs are impractical such that there is no amount of work or no expense that could be expended on the ditch that would be for the benefit of those individual landowners.
- Continue the hearing to another date to allow for the preparation of findings and to respond to any comments that are made during the public comment portion of the hearing.

Operations Analyst Kris Lage stated that on January 26, 2023, notices for this hearing were mailed out to all benefited owners and political subdivisions that are likely to be affected by the repair. This notice included the date and time of this hearing, and an estimate of the cost of repair to the parcel indicated on the notice.

Darrell Pettis, ISG Engineer, referenced Minnesota Statute 103E Drainage Process that states the Engineer's goal is to estimate repair cost and receive feedback from landowners and benefited property owners within the system. ISG was appointed in 2021 to prepare plans and specifications for possible construction in the summer of 2023.

Mr. Kolb responded to an inquiry from Myron Bratsch of Belle Plaine Township about ditches and their classification, stating that it is not uncommon that only a portion of an existing waterway was converted or brought into the public system. He added that we do know that only that small extent was constructed by the draining authority in 1979.

Mr. Pettis stated that a review of existing culverts, drainage coefficient, road authority costs vs. landowner costs were reviewed. A decision to remove the trees and buffer was made at the landowners' meeting. Each estimate includes a ditch and a buffer on each side. Alternative Side Inlets (ASI) were discussed at the public meeting. ASIs can be grant funded. They are working with the Scott Soil & Water Conservation District (SWCD) to get grants for approximately 11 ASIs. Culvert options were reviewed at the public meeting. Any culverts not covered under option 1 would be rip-wrapped. A Multi-Purpose Drainage Management Practices map and plan were presented, as well as a wetland map. Anticipated Project Cost:

- Option 1 Landowner cost: \$1.09M; Road Authority cost: \$146K
- Option 2 Landowner cost: \$1.2M; Road Authority cost: \$146K
- Option 3 Landowner cost: \$1.3M; Road Authority cost: \$210K

A map of landowner costs was prepared by Scott County GIS and was provided to landowners. Conclusion: it should be repaired, in agreement with landowners on option number one, and recommend that the Board move forward and order the repair. Since the project is over \$175K, a public bid is required.

4.2 Conduct a Public Hearing to Receive an Overview of the Revised Repair Report Highlighting the Options for Repair and Receive Public Comment on the Repair Report and Alternatives for County Drainage Ditch No. 10

Motion by Commissioner Weckman Brekke, seconded by Commissioner Ulrich to open the public hearing at 9:38 a.m. The motion carried unanimously.

Jim Glisczinski, Belle Plaine

Mr. Glisczinski asked if culverts would be new or would existing be lowered. Mr. Pettis answered that culverts would be new. Mr. Donkers added some culverts would be concrete, some CMP.

Myron Bratsch 8116 Union Hill Boulevard and 8246 Union Hill Boulevard, sections 14 and 15 Mr. Bratsch commented that landowners received letters last fall with the value of engineering and maintenance costs. He feels Board is being vague with costs. He did not receive a printed map with percentages and wants to see everyone's costs. He asked if grant or ARPA money can be applied, if the project can be done in stages to reduce the tax burden, if the project is at 6% interest, if property roads can be excluded from benefited land, and who is responsible at the county level for approving the assessments.

Mr. Kolb responded that benefits are available public data. Land classifications were provided to the County Auditor's office. Costs are not known until a contract is awarded. The drainage code requires imposing interest if the assessment is over a period of more than one year.

Minimum interest is the judgment rate of interest, which is currently around 4%. The Drainage Authority will typically cover the costs while assessments catch up by imposing the statutory minimum interest, but may add a percent or two to cover administrative costs of administering the assessment over a number of years, to cover the risk of non-payment, or cover late payments by various landowners. Certain aspects of drainage system work, primarily ecological, are grant eligible, but the fundamental drainage work is not. The scope of repair and timing of assessments are relevant to today's proceedings. Commissioner Weckman Brekke noted that the County Commissioners have accepted the Redetermination of Benefits.

Mr. Kolb added that landowner(s) reported there are portions of CD10 that aren't working and asked that CD10 be investigated to determine whether or not a repair is necessary, which triggered a statutory process. The petition resulted in the appointment of an engineer to work with county staff to investigate the ditch conditions and determine where and what aspects of the ditch were not functioning properly, or according to established hydraulic efficiency.

Teresa Bratsch, 8116 Union Hill Boulevard, Belle Plaine

Ms. Bratsch questioned the 6% interest rate and whether or not the project could be parceled out and built in stages. Mr. Pettis responded that the project can be built in stages; however, each project in excess of \$175K must go through a bidding process. The longer projects are stretched out, the overhead gets added each time and tends to cost more.

Jim Jeurissen Belle Plaine Township section 17

Mr. Jeurissen asked for clarification on "private ditch" and if it could still be part of the watershed.

Mr. Kolb responded that all lands that flow and utilize CD10 as an outlet are included in the watershed of the ditch and all were considered by the Viewers in the Redetermination of Benefits. Benefit determinations vary. There are many private drainage systems within the drainage area that flow to and utilize CD10 as an outlet. They are not considered part of the public system and are the responsibility of individual landowners to maintain.

Myron Bratsch, Treasurer, Belle Plaine Township

Mr. Bratsch referred to Road Authority costs, stating that Belle Plaine Township has never been assessed for any watershed district costs. He will suggest to the supervisors that their portion of the project of \$146K be done on its own. He suggested removing the blue lines on the map so that it is clearly marked as private and does not appear to be part of the future main ditch line or spur. Commissioner Weckman Brekke noted that other landowners had different requests regarding the private ditch.

Mr. Kolb cited Statute 103E.525 which is part of the Drainage Code and states that bridges and culverts on public roads must be constructed and maintained by the road authority responsible for keeping the road in repair. It talks about the process by which the road authority is given notice of the requirement, a timeline by which the requirement has to be fulfilled, and the option if they don't want to do it themselves according to the timeline that's given to them to have the drainage authority do it and charge those costs back to the road authority. If the drainage authority determines the culvert needs to be replaced, the township cannot wait for a time that is convenient for them to repair or replace it. The engineer pointed out that in 1978, all road authorities were paid damages for the crossings. A key component of the drainage code is that once the drainage authority has paid the road authority a damage for crossings, then the obligation to maintain it is vested with them.

Joe O'Brien 18781 Naylor Avenue

Ms. Lage said that she had received a phone call from Mr. O'Brien asking if it is possible to work with Excel Energy to help cover some costs due to towers on some of the land that is benefited by CD10. Mr. Kolb answered that it is not possible because the Redetermination is complete. Provisions in the drainage code allow Viewers to look at easement interests and utility interests and determine a benefit to them. Transmission towers are unique as most of them exist within easements. Most of the tower footprints damages were paid to the landowners at the time the towers were put in.

Mr. Jeurissen asked if the Board might look for outside sourcing for \$200K of the cost of this project for tree removal.

County Administrator Lezlie Vermillion pointed out that Soil & Water Conservation District and County Watershed Management staff are exploring potential funds that could bring down the overall cost of the project. The County could work with the township, similar to other road projects, to develop a time frame of repayment.

In response to Commissioner Weckman Brekke's inquiry, Ms. Geis responded that a resolution setting the costs will be brought to the Commissioners once repairs are completed and costs are known. The interest rates are estimated on a case-by-case basis and were included in the Redetermination of Benefits packet. Commissioner Weckman Brekke clarified that the Board could set a different interest rate when the costs are assessed. If there is no outside funding, this is an estimate of how much each landowner will be paying. Ms. Geis acknowledged that is correct.

Mr. Kolb shared that there may be external funds available to defray some of the expenses of this drainage system. They are typically available for ancillary work, and not for the actual drainage work. If the Board determined that the inspection maintenance of CD10 was less than proactive and caused increased expenses due to tree removal, the Board could defray some of those expenses. Consider that the cost would be paid by everyone else in the county for something that is, by statute, primarily benefitting and intended to be paid for by a specific number of landowners. The County Auditor has the option to allow landowners to prepay to avoid the interest or portions of the interest and assessments. If the County bonds for the project, there is a debt service component to be accommodated and influences some decisions as to what type of interest rate is charged.

Mr. Bratsch inquired about reopening the redetermination of benefits as people at previous meetings wanted to have their classification changed. He asked the number of Redeterminations that were switched following. Mr. Kolb replied that Viewers did file amended reports and adjusted some of the benefits. The majority of adjustments occurred at the edge of the watershed area of the drainage system where landowners demonstrated their land was either tiled or drained into a different direction. He doesn't believe any landowners provided information that would have changed their land classification. Some acres were removed from the benefits role based on enrollment in certain permanent programs and restoration. However, those were limited situations.

Mr. Bratsch noted that landowners did not receive a report from the County saying how much they were going to be assessed. He suggested the project be billed by hour or percentage rather than by project and the SWCD or staff oversee the project to limit costs. He inquired about discrepancies between SCWD or FSA maps and this map. Mr. Kolb added that the FSA, Natural Resources Conservation Service or USDA will not release their maps as that data is protected. SWCD and County staff talked with many landowners to assess the actual need of the project and eliminated a fair number of open ditch work and prioritized culverts and crossings to limit costs.

Greg Schmitt

Mr. Schmitt inquired if engineers would be willing to correct errors if things were missed in the Redetermination of Benefits.

Mr. Kolb answered that the Redetermination of Benefits was conducted by Viewers, not engineers. However, if an error was made, we can try to correct that error. Has not heard specific evidence about a specific error, just a difference of opinion on how benefits should be treated. If a landowner has constructed permanent and permanently restricted facilities on their property from utilizing CD10 as an outlet for beneficial drainage, they can petition under the drainage code to have that property removed from the benefits role and then they can have it taken out. That does not require a redetermination of benefits. It is a parcel specific consideration.

Temporary programs where the landowner has received financial assistance to install or receipt of annual payment to maintain for the period of their contract is a management decision by the landowner, not a permanent restriction. It creates income and is partially related to the fact that the land has been previously drained, which is likely facilitated by the existence of CD10. It is considered a temporary management decision that can be pulled out and that land could be placed back into production. If the landowner has modified their land to prevent it from draining to the ditch that it's permanently restricted so it can't be restored or put back into a condition where it can utilize the ditches for drainage, then that property can be petitioned for removal from the benefits role.

Mr. Schmitt asked about what to expect after this project regarding assessments.

Mr. Kolb replied that ditch repairs involve a one-time cost and then there is a life cycle to the repair. The decision to do a very proactive maintenance program every few years and spread the costs over the course of those years or spend the money once every two generations is at the discretion of the ditch authority. The drainage authority is required to inspect open ditches once every five years and conduct reasonable and routine maintenance.

Ms. Geis shared that the plan was discussed with landowners on multiple occasions and staff is working with the SWCD for the five-year review. Approximately every three years there will be an aggressive spray program to minimize or eliminate the cost of tree removal.

In response to Mr. Bratsch's inquiry about revisiting the redetermination, Mr. Kolb responded that the Redetermination itself has been adopted and no appeals were taken from the Redetermination of Benefits and the ability to appeal is closed. If there were errors that are discovered and there are articulable facts as to the error or if there is land that is not draining into the drainage system and is permanently restricted, there are options available to both landowners and the drainage authority to address those issues, but that is very separate.

Sherry Pekarna

Ms. Pekarna presented an assessment notice from 2011 for a project in the amount of \$87,500. This included landowner, parcel and costs. She asked what state statutes state about JD3 as a beneficiary.

Mr. Kolb explained that JD3 utilizes CD10 as an outlet. Viewers determined an outlet charge to the entirety of JD3 of 7 percent of the total benefits on CD10 based on factors as articulated by the viewers at the redetermination of benefits. (1) How much of CD10 is necessary to provide JD3 an outlet, (2) What is the volume capacity requirement of CD10 to provide an adequate outlet for JD3, (3) What is the cost of providing that capacity. Those factors were used by the viewers in determining an outlet charge or an outlet benefit to JD3. For every hundred dollars that's spent on CD10, seven of those dollars are paid for by the beneficiaries on JD3.

Ms. Pekarna asked if the value is adjusted or listed somewhere, to which Mr. Kolb responded that the benefit value for JD3 was articulated in the Viewers Report for the Redetermination of Benefits for CD10. Notice was also given to all JD3 as to the responsibility that they have for costs on CD10. They were given the opportunity to participate in those proceedings in the appeal and so they are listed in the benefits role for CD10. When seven out of every hundred dollars gets assessed to JD3, then that is distributed among all the beneficiaries on JD3 according to their individual percentage of benefit on JD3.

Ms. Pekarna noted that the final notification received for this hearing indicated that her estimate increased 25.7% from the original notice. Ms. Lage clarified that the August notice was a notice of assessment. If paid early, it would not go on to taxes. If you do not pay early, it will go on your 2023 taxes to cover costs of Redetermination of Benefits, ISG, and maintenance costs until the project commences. The estimate is based on option 1 and will not be assessed until the project is completed.

Ms. Weckman Brekke referred to Ms. Pekarna's 2011 assessment notice and asked if any repairs were done at that time. Ms. Geis responded that ongoing maintenance was done, but no repairs. Landowners are generally assessed once every two to three years. When the fund balance gets low, this Board re-establishes a maintenance fund for ongoing incidental maintenance things. It may have been a substantial maintenance clean-out. Ms. Pekarna clarified that her document states CD10 full clean out, tile repair and three-year maintenance fund.

Administrator Vermillion shared a zoom chat question regarding culvert inspection to make sure they are installed at right level. Mr. Pettis responded that staff will be on site to stake, survey, and re-level tile after project completion and a final hearing for pay estimates.

LaJune Zellman

Ms. Zellman asked who is responsible for keeping trees out of ditches. Mr. Kolb responded that removal of trees from the ditches is a maintenance obligation/cost of the drainage system. Landowners may manage trees themselves, but there is no mechanism to acknowledge or reimburse them. The only entity that has authority to do work specifically in or adjacent to the drainage system or is the Drainage Authority. It's not always safe for the drainage system or for private people to do that work, so it is looked at as a cost of the drainage. Everyone pays according to their percentage of benefits.

Mr. Jeurissen encouraged the Board to move forward.

Motion by Commissioner Weckman Brekke, seconded by Commissioner Brennan to close the public hearing at 10:47 a.m. The motion carried unanimously.

4.3 Adopt Resolution 2023-45; Requesting the Establishment of Findings and the Creation of the Order For Repairs on Scott County Ditch 10

Mr. Kolb referred the Board to the deliberation guide, and by consensus the Commissioners responded as follows:

- Is the work proposed by the engineer a “repair” as that term is defined in the Drainage Code? Yes.
- Does the proposed repair and scope of proposed work address conservation of soil, water, wetlands, forests, wild animals, and related natural resources? Yes.
- Does the proposed repair create a risk of significant environmental or other harm? No.
- Is the proposed repair of public utility, benefit or welfare? Yes.
- Are the proposed repairs necessary for the best interests of the affected property owners? Yes.
- Does the incorporation of a multistage ditch cross-section, flattening of side slopes, installation of best management practices, spreading and leveling of spoils or removal of trees, as proposed by the engineer, require the taking of any property not previously acquired, or contemplated and included in the original proceedings for the establishment or subsequent improvement? No

Commissioner Weckman Brekke commented that she feels the Board should reconvene to consider the findings in an order.

Administrator Vermillion asked if there is grant funding or a way to work with the township on their costs similar to what we have on road projects, could that be an overall reduction to the project? Mr. Kolb responded that it can be addressed after. We would put a placeholder in any order of the Board to encourage staff and the county to look for and leave open as an option any additional funding sources to defray any portion of the expense of the repair.

Commissioner Ulrich clarified that if additional funding would come in, at the time of assessment we'd say the total project has been reduced by a specific amount because of funding sources and so the amount being assessed is “X.” Mr. Kolb stated the default is 100 percent of the cost to be assessed to landowners. If we leave it open as an option in the order, then up until the time when the assessment is certified, any funds can come in to defray the expenses.

Commissioner Weckman Brekke summarized conversations here and with landowners in the past week that this isn't something we do very often. We've learned this is different than streets and other types of infrastructure and we are limited with the statute benefiting just the landowners. We've learned from some landowners the culture of ditch maintenance, until recently, has been to spend a little bit on a consistent maintenance program, so we don't have this kind of huge repair.

Motion by Commissioner Weckman Brekke, seconded by Commissioner Beer that the Drainage Authority order the repair of County District 10 as detailed in the Engineers Report as option one; that based on the repair report, the engineers recommendation, and the evidence presented, the Drainage Authority find that the engineers recommended repair is necessary for the best interests of the affected property owners and best supports considerations of public utility benefit and welfare; that based on the evidence presented, the work can occur within existing easements or rights of way acquired for the drainage system; and to allow for the preparation of details findings and in order we close this hearing and we'll reconvene February 21st 2023 at 8:30 a.m. at which meeting we will consider findings in an order for the repair in a matter consistent with the proceedings. As discussed, we will look at any outside resources to help offset some of these costs. The motion carried unanimously.

**(5) ADJOURN**

Chairman Wolf recessed the meeting at 11:01 a.m.