

FARIBAULT COUNTY
BOARD OF COMMISSIONERS
OFFICIAL PROCEEDINGS
DRAINAGE AUTHORITY MEETING
SEPTEMBER 19, 2017

The Faribault County Board of Commissioners met as the Faribault County Drainage Authority at 1:00 p.m. in the Faribault County Ag Center Meeting Room, Blue Earth, MN for County Ditch 24. The following members were present: John Roper, Bill Groskreutz, Tom Loveall, Tom Warmka and Greg Young. County Auditor/Treasurer/Coordinator John Thompson, County Drainage Manager, and Drainage Inspector Zac Coxworth also attended.

The meeting was called to order by Chair Roper.

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Groskreutz/Loveall motion carried unanimously to accept affidavits of mailing for the hearing as presented by Auditor Thompson.

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Auditor Thompson explained the reason for the hearing. The hearing is being held pursuant to M.S. 103E.075 "Obstruction of a drainage system". A complaint was filed in district court that stated that an obstruction was present in the NE4 of section 17 in Winnebago Township, parcel #20.017.0302 on the shallow ditch system that is part of County Ditch #24 and other areas. The complaint stated that County Drainage Authority did not hold an obstruction hearing after hearing several times over the last few years from Charles Carlson that land owned by Golly Farm Partnership had an obstruction. The County Board did recognize that the shallow ditch system needed cleaning and gave the landowner, Golly Farm Partnership, and the entire system time to consider their options. The County Board, in June of 2016, while considering a repair report on the entire system received an improvement petition that, if approved, would abandon the shallow ditch system in question. That proceeding is working towards the final hearing portion of the improvement process.

The County Drainage Authority felt that the issue of obstruction on the parcel in question was on hold due to the improvement. The board did not feel that it was prudent to use system funds to clean and repair the system until the improvement process was complete.

The court ruled that the County Drainage Authority needed to hold an obstruction hearing on Mr. Carlson's complaint. That is the reason for this hearing. It should be noted that the court did not rule on whether an obstruction exists and stated that such a determination is the duty of the drainage authority. The court also stated "This order merely compels the exercise of discretion in determining the existence of an obstruction, and to hold the statutorily required hearing if it is determined that an obstruction does exist. The court order stated this Order does not prevent the Faribault County Drainage Authority, in the exercise of its sound discretion, from determining that any alleged obstruction should not be removed based upon the pending petition for improvement".

The drainage authority will need to first decide if an obstruction exists on the parcel owned by Golly Farm Partnership. If it decides that no obstruction exists then then action should be made stating such. If the drainage authority decides that an obstruction does exist it needs to decide what action to take. Possible actions were discussed.

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The meeting was opened for public comment. Todd Golly, representing Golly Farm Partnership stated that they would accept any decision made by the drainage authority in this matter. Charles Carlson, landowner on the system asked why it has taken this long to act on a violation of planting in the ditch right of way when others had their crops destroyed. Mr. Carlson was reminded that the purpose of the hearing was to determine if an obstruction existed and if it did how to remove it. Eric Kaardal, legal counsel for Charles Carlson attended the meeting. Mr. Kaardal presented documents including the 2016 repair report dated June 1, 2016, Grassed waterway options from the June 17, 2016 repair hearing that was reconvened from June 2, 2016, drainage staff reports from 2013, findings and order regarding repair dated June 27, 2016 along with copies of engineer's documents dated June 17, 2016, and a memorandum from Sambatek Engineering dated July 11, 2017. Mr. Kaardal asked to make inquiries of his client and questioned Mr. Carlson on various topics including engineer reports prepared by county appointed engineers that mentioned that parts of the waterway and never been built as planned or had been abandoned and filled in. Mr. Kaardal asked that board treat all landowners the same and that the drainage authority had failed in its duty by not order the removal of the obstruction including no action being taken at a repair hearing in July of 2016.

Auditor Thompson stated that action was taken to repair part of the system at the June 2016 proceeding but due to an improvement petition being filed by several landowners any action on the repair and cleaning of the rest of the ditch system under the proposed improvement route were delayed until the conclusion of the improvement process. The board did not want to spend system funds when the shallow ditch system may be abandoned. The improvement process was nearing completion with the viewer's working on their report.

The public comment section was closed.

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The Board discussed the issue. Commissioner Warmka stated that repair work outlined in June of 2016 was only partially ordered due to the improvement petition being filed. The issue was well discussed at the same hearing. Warmka took exception to Mr. Kaardal's comments that the drainage authority had failed to do its duty concerning Mr. Carlson.

Commissioner Loveall questioned the definition of an obstruction and if it pertained to soil that had been deposited over the years. He stated that the repair documented the cleaning in the system including the area under consideration. The repair, including the removal of soil in the parcel under consideration would be addressed if the improvement process did not result in an abandonment of the shallow open ditch. He had not been presented any evidence that the ditch had been filled in by intention.

Commissioners Young and Groskreutz stated their agreement with Commissioner Loveall's statements.

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Loveall/Warmka motion carried unanimously that the drainage authority finds that there is no obstruction on the parcel 20.017.0302 or in the shallow ditch system of County Ditch #24 or in the outlet ditch of CD#24 and that maintenance options will be discussed upon the completion of the pending improvement process and that staff prepare order detailing this motion.

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The meeting was adjourned.

John Roper, Chair

John Thompson, Auditor/Treasurer/Coordinator