

PROCEEDINGS OF THE COUNTY DITCH NO. 69 PUBLIC HEARING

October 7, 2008

The Board of Commissioners of Roseau County, Minnesota, acting as the Ditch Authority on State Ditch No. 69, met in the courthouse in the City of Roseau, Minnesota on Tuesday, October 7, 2008. Commissioners present were Orris Rasmussen, Mark Foldesi, Jack Swanson, Russell Walker and Alan Johnston. Roseau River Watershed District (RRWD) Managers present were Todd Miller, Steve Lee, and LaVern Voll. Others present include RRWD Administrator Rob Sando, RRWD Attorney Pat Moren and the following citizens: Floyd Haugen, Farrell Erickson, Wayne Transgrud, Mayo Gregerson, Brach Svoboda, and Brian Transgrud. Also present for the meeting was County Highway Engineer Brian Ketring.

The Public Hearing was called to order at 9:00 a.m. by County Board Chair Jack Swanson.

Chair Swanson reviewed the intent of the public hearing related to a petition from the Roseau River Watershed to install a 24" culvert in the East/West configuration through Roseau County Road #139 south of the intersection of County Road #10 for the purpose of accessing County Ditch #69.

The Board reviewed and discussed correspondence received from Ditch Attorney Kurt Deter of Rinke-Noonan. Mr. Deter advised that the petition before the Board is for an improvement to Watershed District #3 and that the request for petition would first be made to the Watershed District and handled as an improvement to Watershed District No. 3. In compliance with MN statute 103E.401, the Watershed District would need to hold a public hearing on the proposed improvement project and determine such things as the adequacy of outlet, potential damages as a result of the improvement, necessary easements and an outlet fee. Mr. Deter further advised that the County's role would be to decide whether or not to grant an outlet into Ditch No. 69. Mr. Deter noted that the actual determination of the installation of the culvert and funding the project would fall under an improvement project for the Watershed District.

RRWD Administrator Rob Sando stated that he agreed with the synopsis provided by attorney Kurt Deter.

Chair Swanson asked for clarification on what the county needed to do. Commissioner Johnston noted that the Board would need a hydrology report similar to the one completed for the Joe Laurin petition.

RRWD Administrator Rob Sando asked if the Board was willing to hear public comment.

Chair Swanson noted that he felt it was more appropriate for the RRWD to take public comment at their improvement hearing.

The Board discussed whether it was appropriate to continue with the Public Hearing given that the legal procedures had not been followed.

RRWD Chair LaVern Voll stated they, the Watershed, had held a public hearing some time ago and made a decision at that time to petition the Roseau County Board for the 24 inch culvert.

Roseau River Watershed Attorney, Pat Moren stated that the Watershed District held an

informational meeting not a public hearing on the proposed improvement and recommended that the Watershed officially notice and hold the appropriate public improvement hearing before proceeding further.

Former RRWD Manager Ferrell Erickson stated that the RRWD has the right to petition for a project but that there is a process to follow and consequences for not following the legal process. Mr. Erickson informed the Board that he believed County Ditch No. 69 would be adequate to handle the additional water from WD No. 3 if it were cleaned. Mr. Erickson noted that the county has an obligation to clean ditches.

RRWD Manager Todd Miller stated that he believed the RRWD had followed the correct process noting that this matter has been ongoing for over 30 years and that it is time for the two Boards to work together without outside expertise and take the initiative themselves and get something done.

Chair Swanson suggested that two county board members, two watershed managers and the two attorneys, Kurt Deter and Pat Moren, meet and determine the appropriate course of action.

Engineer Ketring advised the Board that he that did not think Mr. Deter had the correct facts. Mr. Ketring stated that he believed the RRWD had gone through the appropriate procedures and complied with the statute regarding this improvement project and that the Board had the authority to act on the petition before them. Mr. Ketring advised the Board that it is their responsibility to hear testimony for and against the project now and if they do not have the information they need to act, to request that the RRWD provide it.

RRWD Chair Voll stated that we are just going around and around in circles and need to act. RRWD Manager Miller stated that all the Board needs to do is approve the petition and install a culvert through the road.

RRWD Attorney Pat Moren advised that the Watershed must follow statute and notice and hold an improvement hearing.

RRWD Chair Voll stated that the hydrology report is done. Commissioner Johnston then requested a copy. Chair Voll stated that the county already had it. Commissioner Johnston stated the RRWD was supposed to provide the county with a hydrology report for the location in question.

Coordinator Klein noted that a hydrology report was done, but it was for the culvert two miles south as part of the Joe Laurin petition.

Commissioner Foldesi asked if another complete study would need to be done or if we could use the information we have as the 69 system is the 69 system as it should be the same or nearly the same. Does someone have to pay for another complete study?

Voll stated that two miles north there is nothing but a big slough, so there is no negative impact it could possibly have.

Mr. Erickson stated that he did not think the County had to do any further study just need to look at two culverts instead of one.

Chair Swanson stated that he agreed that this water concern has been ongoing for over

30 years, but that in the scheme of things, he would prefer that the process be done legally according to statute so that whatever the resolution is, that it was done the way it was suppose to be done.

Commissioner Johnston asked if the RRWD study on this improvement project indicated that the ditch would be able to handle the water.

RRWD Manager Todd Miller stated that the county's study indicates that the system can handle it.

Commissioner Johnston noted that the previous study was done at a different location for a different culvert. Commissioner Johnston stated that the RRWD needs to bring the county a study that indicates installing this culvert will not be a problem.

Commissioner Foldesi responded to Mr. Erickson's concern regarding cleaning County Ditch No. 69 and requested that Engineer Ketring explain why the cleaning project stalled.

Engineer Ketring stated that the county was out doing repair on the 69 system but due to the DNR they have had to stop. Ketring noted that if we take the sediment out and slope the ditch it is a much cheaper repair than trying to shape an existing slope at its current elevation. In doing so, were working with the DNR and everything was going good and then a local manager decided he did not like us working out in this area and raised enough questions that it shut down the project. It was determined it is not an improvement rather a right of way issue. We have had several meetings with DNR to resolve it. The reason we have not been able to push any further is because we have many other systems that we are trying to work on and need to work with the DNR on and that is why it is at a standstill. We have authorization to repair that whole 69 system. We are just getting through the bureaucracy now.

Commissioner Foldesi stated that we do need to get out and get rid of the beaver dams.

Commissioner Rasmussen stated that it appears that the RRWD needs to have a public hearing, but that the Board will still need to act on the petition and if they do not go forward with the public hearing today, the project will have lost all forward motion. Commissioner Rasmussen said that he agreed with RRWD Manager Todd Miller and wondered if the Board could approve the petition pending the RRWD holding a public hearing.

Commissioner Johnston stated that he did not think that was a good idea. He noted that the Board had denied the previous petition and ordered the culvert to be capped and the RRWD did not act on that. So we spent a lot of money and have gotten nowhere. Johnston stated that we need to have the information in order to make a decision. This culvert may be just about the same but that does not mean we do not have to follow the correct process. We as the ditch authority are going to do it right.

RRWD asked if Johnston had seen an original design of WD No. 3. Commissioner Johnston stated that it does not matter. RRWD Manager Todd Miller stated that the county is one who originally petitioned for the WD 3 System.

Engineer Ketring again noted that the RRWD did hold a public hearing. It is before the Board because they have enough people who want the culvert. He said they have done the study, spent a lot of money and now they want the culvert. He said that there was a hydraulic study done. Now they are coming to the Board to ask for permission to put in a 24" culvert. He told the Board that as a ditch authority they want to hear from the locals and maybe they do not

have a problem with it and it was an insignificant increase. That way the watershed does not have to go back and spend a lot of money and re-engineer. We can sit at this meeting today and follow the process and simply request more information.

Coordinator Klein asked for the date that the public hearing had been held on this improvement project.

Engineer Ketring asked why the county cared whether or not the RRWD had followed statute. Ketring noted that all the Board needs to do is make a decision. Ketring stated that the county does not want to bog this down with anything else. Ketring added it is cut and dried for the Board; yes or no. If yes, is there enough information to make the decision and is the public on the 69 system for or against the system. Ketring advised that the Board not get bogged down with whether the RRWD held a public hearing or not.

Char Swanson noted that he is hearing the RRWD attorney say otherwise.

Pat Moren stated that his understanding is that it was an informational meeting. RRWD Administrator confirmed that.

Engineer Ketring stated that this petition is what came out of the denial of the Joe Laurin petition. At that time, the Board agreed to sit down with the RRWD and look at other options. Ketring noted that this petition before the Board is part of what came out of those meetings.

Commissioner Johnston asked what the ruling was on the Joe Laurin crossing. Engineer Ketring stated that the Engineer determined that Ditch 69 could handle the water but that the conveyance could not. Engineer Ketring added that there would be damages so the County Board denied the petition.

Commissioner Johnston stated that the Board does not have enough information to make a decision on the petition before them at this time.

Attorney Pat Moren suggested that since the interested constituents are present, and the Board has the ability to access Kurt Deter by phone, that the Board hears their testimony.

Chair Swanson asked again if there was validity in hearing testimony. Commissioner Swanson noted that he had been at the informational meeting that is being referred to and that there was no agreement. He said he did not see how it would be productive in any way to hear the same testimony again today.

Commissioner Foldesi stated that the new location of the culvert puts a different twist on things and stated that he would like to hear what the public has to say about this new location.

It was agreed to proceed with the public hearing and to hear testimony.

Commissioner Walker stated that all we are going to be out is our time and suggested that we listen to the public.

Coordinator Klein asked for clarification as to whether this petition is an extension of the Joe Laurin petition that was denied by the Board or whether it is a new petition. Coordinator Klein noted that Kurt Deter sees the petition as a separate petition and as such has advised the Board to treat it like any improvement petition that comes before it.

Engineer Ketring stated that Mr. Deter is mudding the water. He stated the RRWD has a procedure for improving a ditch. Ketring stated it is not up to the county board to determine whether or not the RRWD is following procedure. He said the county is not liable. Ketring stated the RRWD is coming to the Board for approval on a culvert. Ketring stated that historically procedures have not been followed. Ketring said this is a public hearing adding that if we go across the county line every culvert that is put in is through a public hearing and they don't spend \$10,000 to engineer it. He said the Board can ask for more information. Ketring stated that the petition is from the Joe Laurin matter but not necessarily from the Joe Laurin petition, adding that that situation was not going that way it should have gone either.

Chair Swanson called for written or oral comment. Coordinator Klein advised the Board that an email correspondence had been received from Marlin Lindland, a landowner located east of the proposed outlet area, expressing opposition to the petition.

Chair Swanson opened the meeting to comment from the public in the audience.

Mayo Gregerson stated that this was one of the ideas that he recommended to the RRWD Board. Ketring stated that we need to clarify which culvert we are referring to. Mayo Gregerson stated he understands which culvert is being discussed. Gregerson noted that the purpose of the WD 3 is to empty water into the Roseau River and that what is being looked at is for excessively high water over flow where we need a culvert to protect the land.

Ferrell Erickson stated that he is in favor of this culvert if it is set at an elevation that is good for both sides. He stated it has been surveyed in the past and the elevations look just fine. He said that ditch system is a \$50 an acre improvement and it is not enough of a ditch to handle the added drainage that has come in since it was built. Erickson added that WD 3 is not a cure all ditch. He said Ditch 69 is only a 10 year event ditch and it will flow over in a water event. He suggested people need to get a big picture perspective instead of just from their own individual needs.

RRWD Manager Steve Lee stated that the RRWD meeting was noticed as a Public Hearing/Informational Hearing. He added that we are here to talk about this one culvert and not the ditch systems.

RRWD Manager Todd Miller stated that the WD 3 design was marginal to begin with. He said that the ditch is going to flood one out of five years and that there were west pipes in the system when it was built which is probably why the Joe Laurin culvert was left in. He said there has to be some relief to the west and that it is all spelled out in the public hearing documents. Miller added that since he has been on the RRWD there has been a lot of discussion and money spent on this matter with no resolution.

Chair Swanson asked who is opposed to the proposed culvert.

Wayne Transgrud stated that answer would depend on how much water we are talking about.

The group discussed the flow of water in this area noting that any time the Roseau River backs up the water flows south down the ditch to this corner.

A concern was expressed that if a 24" pipe is put in that Ditch 69 west needs to be cleaned and that there need to be laterals running west south of this proposed culvert so that the water isn't backing up.

Chair Swanson asked the Board if they have any more clarity after hearing testimony.

Commissioner Rasmussen stated we are making a mountain out of a mole hill. He asked Engineer Ketring to correct him if he was wrong, but a 24 inch culvert is only going to drain 40 or 80 acres, 160 acres. He said that 24 inch culvert isn't going to have any big impact. He does agree that the 69 system needs to be maintained and that it can handle a lot of water when it is working properly. He added that if the ditch is not being maintained properly that the buck stops at the Board table and it needs to be taken care of. Whatever we do here, is not going to make a difference to any one present as long as the 69 system is working. Commissioner Rasmussen stated that this has been handled very inefficiently.

Mayo Gregerson stated that the only reference he has seen in the WD 3 documents is a recommendation from the State that during high water times that the water be diverted to the west at the corner in question to the Duxby Dike.

RRWD Manager Todd Miller stated that there is a hand sketch in the WD 3 design of a culvert at the Joe Laurin corner to provide relief.

Mayo Gregerson stated that the RRWD has an order from the County Board to remove the culvert and they still have not acted on it.

RRWD Manager Todd Miller stated that is because that is what the RRWD decided to do.

Mayo Gregerson asked why the RRWD is acting in direct violation of an order.

RRWD Manager Todd Miller stated that he thought Mayo Gregerson was confused.

Mayo Gregerson stated that every attorney he has spoke to says that the watershed is in violation and that it was determined by the county that they wanted the watershed to block the culvert.

RRWD Todd Miller stated that the culvert was in the original plan.

Mayo Gregerson stated that it does not matter because the county determined that the conveyance was not adequate to handle the water and they ordered the culvert to be closed. Mayo Gregerson stated that his attorney is going to find out. He said as a result of the informational meeting held by the RRWD that he has gotten an attorney to sort out this matter. He noted that he has property damage and crop damage.

Commissioner Rasmussen stated that discussion on the Joe Lauren culvert is not the purpose of this meeting.

Chair Swanson asked again if there is anyone opposed to putting in the culvert at the location suggested in the petition.

Floyd Haugen stated that he is not opposed to the proposed culvert but that they need to do some improvements in the WD 3 because they are not getting the water to move adequately in this ditch system. He said you can't have crossing sitting up 178 inches higher than in another place and that those types of things need to be taken care of and also the two culverts in No 10 need to be replaced or relayed.

Chair Swanson reviewed Minn. Statute 103E.401, Subd 4.

Pat Moren stated that it is the Board's responsibility to follow the directives in this statute.

Engineer Ketring stated that the Board determines the capacity as to whether or not it can handle the water, listens to the public as to whether they think the system can handle the water, and follow the statute with the requirements.

Swanson asked for clarification regarding determining the outlet fee.

Foldesi stated that he and a couple of members of the watershed talked about leaving the culvert in at the Joe Laurin corner, on the condition that the ditch moving the water be improved and that the agreement was that until that is done to put a weir on it.

Chair Swanson asked for any further comment.

Mayo Gregerson stated that he has been an instigator in this whole deal and that he feels compelled to state why. He said that ever since the WD 3 system was put in that he has watched his and his neighbors land – and he has noticed that there are many years where landowners east, south and north are farming while his fields are covered with water. Mr. Gregerson added that this is why he has tried to get the Joe Laurin culvert closed. Gregerson stated that he is not asking for all the flooding to be controlled but he is asking for equal footing. Gregerson stated that this is why he is so frustrated with the RRWD for putting in a weir on it and why he has consulted an attorney. Mayo Gregerson stated that he has had 2 million dollars in crop losses as a result of this culvert.

RRWD Manager Steve Lee said that the weir is temporary until they get the problem fixed. Lee added that they put in the weir in an attempt to save Mayo Gregerson's crop this year. Lee stated that he checked water five days in a row and that water was not any higher on one side than another but agreed that we need to get the conveyance cleaned out.

Chair Swanson called for a motion to close the public hearing. A motion was made by Commissioner Johnston, seconded by Commissioner Walker and carried unanimously to close the SD No. 69 Petition Public Hearing.

Attest:

Date: _____

Teresa Klein, County Coordinator
Roseau County, Minnesota

Jack Swanson, Chairman
Board of County Commissioners
Roseau County, Minnesota