

ST. LOUIS COUNTY DRAINAGE AUTHORITY

AGENDA

November 24, 2015

Immediately following the County Board meeting.

1. Call to order/roll call.
2. Minutes for August 4, 2015.
3. Establish Public Hearing on Partial Ditch Abandonment Petition Submitted by EIP Minnesota, LLC (**15-05**)
4. Other business.
5. Adjourn.

**ST. LOUIS COUNTY DRAINAGE AUTHORITY
PROCEEDINGS**

Tuesday, August 4, 2015

The St. Louis County Drainage Authority meeting was called to order at 10:35 a.m., by Chair Pete Stauber at the St. Louis County Courthouse, Duluth, Minnesota, with the following members present: Commissioners Frank Jewell, Patrick Boyle, Chris Dahlberg, Tom Rukavina, Keith Nelson, Steve Raukar, and Chair Pete Stauber - 7. Absent: None – 0.

Commissioner Nelson, supported by Commissioner Raukar, moved to approve the minutes of the July 14, 2015 St. Louis County Drainage Authority meeting. The motion passed; seven yeas, zero nays.

At 10:36 a.m., a public hearing was conducted pursuant to County Drainage Authority Resolution No. 15-03, adopted July 14, 2015, to consider Repair and Partial Abandonment Petitions submitted by EIP Minnesota, LLC. St. Louis County Attorney Kim Maki gave the initial presentation and submitted a packet for the record that included petitions for partial abandonment and repair, a memo revising the requested repair, a supplemental petition, affidavit of publication, and an affidavit of mailing and website publication. St. Louis County Public Works Director Jim Foldesi gave a presentation to the Drainage Authority outlining the ditch abandonment and repair proposal. Chair Stauber asked if there were any other governmental entities, supporters or opponents, or citizens who wished to speak regarding the proposed action. Neil Anderson, of Zim, had questions regarding the location of ditch #6. Don Triebwasser, of Cotton, expressed concerns that the abandonment of ditch #6 would negatively affect his property. Randy Flanagan questioned the process in the event there were damages due to the abandonment of ditch #6. At 11:34 a.m., Commissioner Jewell, supported by Commissioner Nelson, moved to close the public hearing. The motion passed; seven yeas, zero nays.

Commissioner Nelson, supported by Commissioner Jewell, moved to that the County Drainage Authority conditionally approve EIP's petitions for repair and partial abandonment as set forth in Resolution No. 15-04. Commissioner Dahlberg stepped out of the meeting from 11:42 a.m. to 11:44 a.m. Kurt Deter, of Rinke Noonan Attorneys at Law, discussed the thoroughness of the analysis process.

At 11:57 a.m., the Drainage Authority recessed. At 1:34 p.m., the Drainage Authority re-convened with all members present except Commissioner Raukar.

The Drainage Authority recessed from 1:40 p.m. to 1:42 p.m.

After further discussion, the motion passed; six yeas, zero nays, one absent (Raukar). Resolution No. 15-04.

COUNTY DRAINAGE AUTHORITY RESOLUTION NO. 15-04

BY COMMISSIONER NELSON:

WHEREAS, Pursuant to Minn. Stat. Chapter 103E, the St. Louis County Board is required to convene as the County Drainage Authority (the "Drainage Authority") to discuss and approve pending matters related to county ditches; and

WHEREAS, The Drainage Authority received a petition for the repair of a portion of County Ditch #1 and petitions for the partial abandonment of County Ditches #1 and #6 from EIP Minnesota, LLC ("EIP"); and

WHEREAS, It was recently discovered that some of the ditches that EIP wishes to have partially abandoned are located in State Ditch #53 and Sections 8, 16, 17, 20, 21, 28, 29 and 32 of Township 55 North, Range 17 West (the "Unidentified Ditch System") and are not encompassed by the County Ditch #1 and #6 systems. EIP has submitted a supplemental petition correctly describing these ditches; and

WHEREAS, EIP also submitted a revised plan for the proposed repair after review by EIP and Emmons & Olivier Resources, Inc., the Drainage Authority's consulting engineer; and

WHEREAS, The county gave due notice of the hearing by publication to all persons interested in the partial abandonment and repair and by mail to EIP, affected landowners of property benefitted by the ditch systems, and affected political subdivisions; and

WHEREAS, On August 4, 2015, the Drainage Authority, pursuant to proper notice, held a public hearing on the ditch petitions as revised;

THEREFORE, BE IT RESOLVED, That based on the Engineer's Report and evidence presented at the public hearing, the Drainage Authority makes the following Findings of Fact and Order as to the repair petition:

FINDINGS OF FACT

1. The Drainage Authority finds the repair proposed by EIP as necessary for the best interests of the affected property owners and assures maintenance of the outlet from Stone Lake; and
2. That EIP has agreed to prepare, award and pay for the entirety of the repair contract and all associated costs; and
3. That the Drainage Authority specifically does not need to award a contract or appoint viewers to assess benefits and damages occasioned by the repair as all costs will be paid by Petitioner EIP.

ORDER

IT IS THEREFORE ORDERED by the St. Louis County Board of Commissioners, acting as Drainage Authority for the above-referenced ditches, that, upon completion of the conditions set forth below, the repair as described in Board File No. 60069 is hereby ordered and the entirety of the repair cost shall be paid by Petitioner EIP.

RESOLVED FURTHER, That upon consideration of the Engineer's Report submitted by Petitioner, review by the Drainage Authority's engineering consultant and written and oral evidence presented at the public hearing, the St. Louis County Board of Commissioners, acting as Drainage Authority for County Ditch #1, County Ditch #6, State Ditch #53, and exercising any abandonment authority it has acquired by virtue of the impending proceedings over the Unidentified Ditch System, makes the following Findings of Fact and order as to the partial abandonment petitions:

FINDINGS OF FACT

1. That the ditch segments set forth in Board File No. 60069 do not serve a substantial useful purpose as part of the drainage system to any properties remaining in the system and are not of substantial public benefit and utility.
2. That the legislative history of preceding statutes, specifically Minnesota Statutes Chapter 106, grant the St. Louis County Board of Commissioners, acting as Drainage Authority, jurisdiction over what are known as state ditches, and no legislative history identifies any other Drainage Authority with responsibility over the State Ditch #53 or the Unidentified Ditch System.

ORDER

IT IS THEREFORE ORDERED by the St. Louis County Board of Commissioners, acting as Drainage Authority for County Ditch #1, County Ditch #6, State Ditch #53, and exercising any abandonment authority it has acquired by virtue of the impending proceedings over the Unidentified Ditch System, that, upon completion of the conditions set forth below, the ditch segments set forth in Board File No. 60069 are hereby abandoned.

RESOLVED FURTHER, That the partial abandonment and repair orders issued herein shall be conditioned upon and shall not become effective until (1) the completion of all contingencies related to and final approval of EIP Credit Co., LLP's Lake Superior Wetland Bank application; (2) full execution of the Indemnification Agreement between the parties, as set forth in Board File No. 60069; and (3) Petitioner EIP's payment of the Drainage Authority's engineering services costs which have been, to date, paid from the county's ditch fund.

Yeas - Commissioners Jewell, Boyle, Dahlberg, Rukavina, Nelson and Chair Stauber – 6

Nays – None

Absent – Commissioner Raukar – 1

Adopted July 14, 2015.

At 1:46 p.m., August 4, 2015, Commissioner Nelson, supported by Commissioner Jewell, moved to adjourn the meeting. The motion passed; six yeas, zero nays, one absent (Raukar).

Pete Stauber, Chair of the Board of County Commissioners

Phil Chapman, Deputy Auditor/Clerk of the County Board

COUNTY DRAINAGE AUTHORITY NO. 15 – 05

DATE: November 24, 2015 **RE:** Establish Public Hearing on
Partial Ditch Abandonment
Petition Submitted by EIP
Minnesota, LLC

FROM: Kevin Gray
County Administrator

James T. Foldesi
County Engineer/Public Works Director

RELATED DEPARTMENT GOAL:

To administer county ditch systems.

ACTION REQUESTED:

It is requested that the County Drainage Authority set a hearing to consider a petition for the partial abandonment of a segment of ditch system located in Sections 8, 16, 17, 20, 21, 28, 29 and 32 of Township 55 North, Range 17 West (the Unidentified Ditch System).

BACKGROUND INFORMATION:

On October 15, 2015, EIP Minnesota, LLC (EIP) submitted a petition for partial abandonment of a ditch segment located in the Unidentified Ditch System depicted on the attached map. This request was contained in the original set of partial abandonment petitions submitted by EIP earlier this year, but was removed from consideration until such time that EIP obtained approval from the Minnesota Department of Transportation (MnDOT) because of the segment's proximity to Trunk Highway 53. The county has received correspondence from MnDOT indicating its approval of the proposed partial abandonment of this ditch segment.

Minn. Stat. Chapter 103E requires that the County Board, acting as the County Drainage Authority, set a hearing to consider this petition. It is desired that the hearing be set on December 15, 2015 at the Duluth Courthouse.

RECOMMENDATION:

It is recommended that the County Drainage Authority set the hearing on EIP's petition for partial abandonment of a ditch segment located in the Unidentified Ditch System for December 15, 2015, at 9:55 a.m. at the St. Louis County Courthouse, Duluth, MN.

**Establish Public Hearing on Partial Ditch Abandonment Petition
Submitted by EIP Minnesota, LLC**

BY COMMISSIONER _____

WHEREAS, Pursuant to Minn. Stat. Chapter 103E, the St. Louis County Board is required to convene as the County Drainage Authority to discuss and approve pending matters related to county ditches; and

WHEREAS, The County Drainage Authority received a petition from EIP Minnesota, LLC for the partial abandonment of a segment of a ditch system located in Sections 8, 16, 17, 20, 21, 28, 29 and 32 of Township 55 North, Range 17 West (the Unidentified Ditch System); and

WHEREAS, Minn. Stats. Chapter 103E requires that the County Drainage Authority hold a hearing on this petition; and

WHEREAS, It is desired that the County Drainage Authority set the hearing to consider EIP's petition for partial abandonment of a ditch segment located in the Unidentified Ditch System for December 15, 2015, at the Duluth Courthouse;

THEREFORE, BE IT RESOLVED, That the St. Louis County Board of Commissioners, acting in the capacity of the County Drainage Authority, hereby establishes the hearing on EIP's petition for partial abandonment of a ditch segment located in this Unidentified Ditch System for December 15, 2015, at 9:55 a.m. at the St. Louis County Courthouse, Duluth, MN.



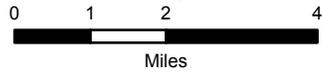
St. Louis County MN

EIP Project Area



Legend

- Proposed EIP Boundary
- Ditch Checks
(1-ft Elevation Intervals)
- Minimum Ditch Fill
*Minimum Ditch Fill
(100' below, 200' above)*
- Abandon Ditch
- Maintain as Public Ditch
- Flow_Arrows
- Ditch 1
- Ditch 6
- Ditch 53
- Unidentified Ditch System
- SLC Minor Civil Division
- M06 East Abandonment



Prepared By: Planning and Community Development
(218) 725-5000
www.stlouiscountymn.gov

Team Credits: Planning, Land, Public Works, 911
Source: St. Louis County, DNR
Map Created: 11/12/2015

Disclaimer
This is a compilation of records as they appear in the St. Louis County Offices affecting the area shown. This drawing is to be used only for reference purposes and the County is not responsible for any inaccuracies herein contained.



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