



Board of County Commissioners Agenda Request

4A
Agenda Item #

Requested Meeting Date: February 24, 2015

Title of Item: Request for Partial Ditch Abandonment - EverStar LLC

<input checked="" type="checkbox"/> REGULAR AGENDA <input type="checkbox"/> CONSENT AGENDA <input type="checkbox"/> INFORMATION ONLY	Action Requested: <input type="checkbox"/> Approve/Deny Motion <input checked="" type="checkbox"/> Adopt Resolution (attach draft) <small><i>*provide copy of hearing notice that was published</i></small>	<input type="checkbox"/> Direction Requested <input type="checkbox"/> Discussion Item <input type="checkbox"/> Hold Public Hearing*
Submitted by: Kirk Peysar		Department: Auditor's Office
Presenter (Name and Title): Kirk Peysar, County Auditor		Estimated Time Needed:
Summary of Issue: After deliberations at the February 10, 2015 County Board meeting, staff was directed to prepare findings for denial of the petition, and to bring those findings to the February 24th Board meeting for a final determination to be made. The findings are attached.		
Alternatives, Options, Effects on Others/Comments:		
Recommended Action/Motion: Adopt resolution denying EverStar LLC's petition for partial ditch abandonment.		
Financial Impact: Is there a cost associated with this request? <input type="checkbox"/> Yes <input type="checkbox"/> No What is the total cost, with tax and shipping? \$ Is this budgeted? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>		

**DENIAL OF A PETITION FOR PARTIAL ABANDONMENT
OF A PORTION OF COUNTY DITCH #24**

WHEREAS, a Petition was received by County Auditor Kirk Peysar dated June 6, 2014 from EverStar, LLC for the Impoundment and Diversion and Alternative Petition for Partial Abandonment; and,

WHEREAS, on August 1, 2014, the County received a letter from EverStar, LLC, seeking to change their Petition to a Petition for Partial Abandonment of a portion of County Ditch #24, pursuant to Minnesota Statutes, § 103E.806; and

WHEREAS, a public hearing was held on September, 9, 2014 and continued to October 28, 2014, November 25, 2014 and December 23, 2014. At the December 23, 2014 hearing, the County Board stated the public comment period would be open until 4:30 p.m. on January 5, 2015; and

WHEREAS, on February 4, 2015, County Staff and attorneys for the County received a letter from EverStar, LLC's attorney responding to County Engineer Welle's January 5, 2015 submission. Despite the fact the record was closed on January 5, 2015, County Staff and attorneys for the County recommended to the County Board the February 4, 2015 letter be added to the record because it was merely a summary of evidence already in the record and did not contain any new information; and

WHEREAS, in addition to comments and records from EverStar, LLC, the County also received comments and records from County Staff, the Aitkin Airport Commission, the City of Aitkin, Spencer Township and the public. All comments, evidence and records were included in the public record; and

WHEREAS, on February 10, 2015, the County Board, after reviewing and analyzing the evidence in the public record and in EverStar, LLC's counsel's February 4, 2015 letter, had deliberations on the Petition. As part of the deliberation process, the County Board presented questions to County Staff and the counsel for EverStar, LLC.

NOW, THEREFORE, based on the petition, the evidence presented at the public hearings, the Aitkin County Board of Commissioners, acting as Drainage Authority for Aitkin County Ditch #24, makes the following Findings of Fact:

1. Pursuant to Minnesota Statutes, § 103E.806, a drainage authority may direct a part of a drainage system be abandoned, if the drainage authority determines that part of the drainage system does not serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is not part of a substantial public benefit and utility.
2. Under Minnesota case law and statutes, the term substantial, as used in Minnesota Statutes § 103E.806, is not defined. The drainage authority, however, is afforded discretion to balance the purpose served against costs of continued maintenance of the ditch.
3. All interested municipalities – the Aitkin Airport Commission, the City of Aitkin and Spencer Township all opposed the Petition because they believe abandonment will negatively affect public and private property, as well as public infrastructure.
4. The Aitkin County Engineer reviewed the Petition, submissions of EverStar, LLC and County Records and determined the abandonment of County Ditch #24 is likely to cause increased stage and duration of water on upstream benefitted properties.
5. In support of his determination, the Aitkin County Engineer compared Public Record Document No. 7, Exh. 2 (drainage maps provided by EverStar, LLC) with County lidar data. Specifically, Public Record

Document No. 22 (Benefited Area Map) and GIS maps prepared by the County and contained in Public Record No. 17 show 29 acres of the Aitkin Airport are located in the County Ditch #24 assessment area and substantially benefit from County Ditch #24.

6. The County Board finds the position set forth in January 5, 2015 letter of the Aitkin County Engineer to be accurate and supported by the evidence.
7. EverStar, LLC does not dispute overland drainage is typically not nearly as efficient as channelized flow in a ditch system.
8. The County Board does not believe the modeling evidence in the record supports the position set forth by the Petitioner. Moreover, the County Board interpretation of the modeling is that it does show that County Ditch #24 does serve a substantial useful purpose as part of the drainage system and that it does have a substantial public benefit and utility.
9. Based upon the evidence presented, the costs of continued maintenance of the ditch do not outweigh the purpose served by the ditch.
10. The County Board's interpretation of the evidence in the record shows the property will take longer to drain and the abandonment of the ditch will result in a change in the stage and duration of flooding which will negatively impact properties remaining in the system.
11. Based upon the County Board's interpretation of the evidence in the record, the Board finds the portion of County Ditch #24 which is sought be abandoned does serve a substantial useful purpose as part of the drainage system to any property remaining in the system and is part of a substantial public benefit and utility.

THEREFORE, it is hereby ordered Petition for Partial Abandonment of a portion of County Ditch #24, pursuant to Minnesota Statutes, § 103E.806 is denied.

Commissioner XX moved the adoption of the resolution and it was declared adopted upon the following vote

FIVE MEMBERS PRESENT

All Members Voting Yes

STATE OF MINNESOTA)
County of Aitkin) ss.
Office of County Auditor.)

I, Kirk Peysar, Auditor, of the County of Aitkin, do hereby certify that I have compared the foregoing with the original resolution filed in my office on the 24th day of February A.D., 2015, and that the same is a true and correct copy of the whole thereof.

WITNESS MY HAND AND SEAL OF OFFICE at Aitkin, Minnesota, this 24th day of February A.D., 2015

KIRK PEYSAR, County Auditor

BY _____, Deputy