

Minnesota Public Drainage Manual – Chapter 2 – V

Administration and Legal Considerations - Final Hearing

Summary

An engineer's detailed survey report (Section V, B), the viewers' report (Chapter 4) and DNR Commissioner's final advisory report (Section V, C) follow the drainage authority's order calling for a detailed survey with appointed viewers. These reports become the focus of the final hearing.

The engineer must survey the lines of the proposed drainage project, as described in the preliminary hearing order, and survey and examine the affected property. From the survey, the drainage authority will determine which property must be taken and regulators may determine what proposed waters and wetlands will be impacted. The content of the engineer's report is specified in some detail in [Minn. Stat. § 103E.285](#) and discussed further in Section V, B.

Once the viewers' and engineer's reports are completed, a final hearing must be scheduled promptly for the board to weigh the benefits and costs of the proposed system. The actual hearing must take place not before 25 and not later than 50 days from the date of notice. The final hearing notice (Section V, D.1) and final hearing procedures (Section V, D.2) are discussed in more detail in referenced sections.

At the hearing, the board will consider the petition for the drainage system, the engineer's report, the viewers' report, the DNR Commissioner's final advisory report, and any testimony presented on behalf of interested parties. Changes to improve the engineer's detailed survey report and to make the viewers' report more equitable may be ordered. The final hearing may be recessed as many times as necessary to arrive at reports that are deemed complete and correct, and with benefits and damages properly determined. (Section V, E)

The drainage authority must dismiss the proceedings if it finds any of the following:

1. The benefits or the proposed project are less than the total cost including damages awarded;
2. The proposed drainage project will not be of public benefit and utility; or
3. The proposed drainage project is not practicable after considering the environmental, land use, and multipurpose water management criteria in [Minn. Stat. § 103E.015, subd. 1](#).

(Section V, F.1)

To establish the drainage project, the drainage authority must adopt six essential findings:

1. That the detailed survey report and viewers' report have been made and other proceedings have been completed under [Minn. Stat. 103E](#);
2. That the reports made or amended are complete and correct;
3. That the damages and benefits have been properly determined;
4. That the estimated benefits are greater than the total estimated costs, including damages;
5. That the proposed drainage project will be of public utility and benefit, and will promote the public health; and
6. That the proposed drainage project is practicable.

(Section V., F.2)

The final order should include detailed findings as set forth in the facts elicited at the final hearing. Other features to be included in the final order are further discussed in Section VIII, under “Funding, Collection, and Payment of Drainage System Costs.” See Section V, F.1 and Section V, F.2, respectively for more information on dismissal of proceedings and establishment of the proposed drainage project.

A. General

After the drainage authority has signed the order calling for a detailed survey and appointing viewers, the engineer must proceed with a detailed survey showing plans and specifications of the proposed drainage project.⁶⁷⁴ Meanwhile, the viewers proceed with the viewing.⁶⁷⁵ The engineer’s and the viewers’ reports are the focus of the final hearing. The technical aspects of the detailed survey are found in Chapter 3 of this manual and the technical aspects of preparing the viewers’ report will be covered in Chapter 4. This section will discuss the execution of the preliminary order through the final hearing and preparation of the final order.

FOOTNOTES

⁶⁷⁴ Minn. Stat. § 103E.265, subd. 1 (2015).

⁶⁷⁵ Minn. Stat. § 103E.305, subd. 1 (2015).

B. Engineer’s Detailed Survey Report

After the detailed survey is ordered, the engineer must proceed to survey the lines of the proposed drainage project and survey and examine affected property.⁶⁷⁶ The public drainage code defines “affected” to mean “benefited or damaged by a drainage system or project.”⁶⁷⁷ The engineer’s detailed survey report is discussed in greater detail in Chapter 3, Section IV, Paragraph B.

The engineer has more discretion in preparing the detailed survey than in preparing the preliminary survey. The public drainage code allows the engineer to lay out the project differently, to start from a different starting point, and to realign the drain and plan described in the preliminary hearing, in order to drain the property likely to be assessed in the proposed project.⁶⁷⁸ The engineer may survey and recommend the location of additional ditches and tile, more desirable outlets or extension of outlets, and may even have the drainage flow in different directions from that which was described at the preliminary hearing.⁶⁷⁹

Information required within the engineer’s detailed survey report is detailed in Chapter 3, Section IV, Paragraph C.

If the outlet is only practical in an adjoining state, the engineer must also describe the right-of-way needed and the cost of obtaining the right-of-way and constructing the outlet.⁶⁸⁰

If construction of the proposed drainage project would be more economical, the engineer may, in the detailed survey report, recommend that the work be divided into sections and contracted separately, that the ditch and tile work or tile and labor on the project be contracted separately, or otherwise propose the time and manner in which the work is to be completed.⁶⁸¹

Please refer to Chapter 3 for additional recommended instructions on preparing the engineer’s detailed survey report.

When the engineer files duplicate copies of the engineer's final report with the auditors of any affected counties or secretary of the watershed district, the auditor or secretary must send a copy of the report to the Commissioner of Department of Natural Resources.⁶⁸²

FOOTNOTES

⁶⁷⁶ Minn. Stat. § 103E.271, subd. 1 (2015).

⁶⁷⁷ Minn. Stat. § 103E.005, subd. 2 (2015).

⁶⁷⁸ Minn. Stat. § 103E.275(a) (2015).

⁶⁷⁹ Minn. Stat. § 103E.275(b)(1)-(3) (2015).

⁶⁸⁰ Minn. Stat. § 103E.285, subd. 11 (2015).

⁶⁸¹ Minn. Stat. § 103E.285, subd. 9(1)-(3) (2015).

⁶⁸² Minn. Stat. § 103E.291 (2015).

C. Commissioner's Final Advisory Report

The Commissioner of the Department of Natural Resources ("DNR") must examine the engineer's final report and, within 30 days of receipt of same, make a final advisory report to the drainage authority.⁶⁸³ Again, this document is normally signed by the Director of the Division of Ecological and Water Resources of the DNR or other appropriate delegate. The DNR Commissioner's final advisory report must state whether the Commissioner:

1. Finds the engineer's final report is incomplete and not in accordance with the provisions of the drainage code, specifying the incomplete or nonconforming provisions;
2. Approves the engineer's final report as an acceptable plan to drain the property affected;
3. Does not approve the plan and makes recommendations for changes;
4. Finds the proposed drainage project is not of public benefit or utility under the environmental, land use, and multipurpose water management criteria in [Minn. Stat. § 103E.015, subd. 1](#), specifying the facts and evidence supporting the findings; or
5. Finds a soil survey is needed and, if it is, makes a request to the engineer to make a soil survey.⁶⁸⁴

FOOTNOTES

⁶⁸³ Minn. Stat. § 103E.301(a) (2015).

⁶⁸⁴ Minn. Stat. § 103E.301(a)(1)-(5) (2015).

D. The Final Hearing

The final hearing may not be held until the engineer has filed the engineer's detailed survey report, the viewers have filed the viewers' report, and the Commissioner of the Department of Natural Resources has filed a final advisory report.⁶⁸⁵

1. Notice

The drainage authority in consultation with the auditor or secretary of the watershed district, sets the time, place, and location for the final hearing on the petition, the engineer's detailed survey report, and the viewers' report.⁶⁸⁶ The hearing must not be set less than 25 days nor more than 50 days after the date of the final hearing notice.⁶⁸⁷ **A sample Order Setting Time, Place, and Location for Final Hearing is found in [Template A](#).**

The final hearing notice must state the following:

1. That the petition is pending;
2. That the detailed survey report is filed;
3. That the viewers' report is filed;
4. The time and place set for the final hearing;
5. A brief description of the proposed drainage project and affected drainage system, giving in general terms the starting point, terminus, and general course of the main ditch and branches;
6. A description of property benefited and damaged, and the names of the owners of the property⁶⁸⁸; and
7. The municipal and other corporations affected by the proposed drainage project as shown by the detailed survey report and viewers' report.⁶⁸⁹

For a joint county proceeding, separate notice may be prepared for each county affected, showing the portion of the proposed drainage project and the names and descriptions of affected property in the county.⁶⁹⁰ **A sample Notice of Final Hearing is found in Template B.**

It is the auditor's or secretary's responsibility to notify the drainage authority, auditors of affected counties, and all interested persons of the time and location of the final hearing by publication, posting, and mail.⁶⁹¹

1. **POSTING:** A printed copy of the final hearing notice for each affected county must be posted at least three weeks before the date of the final hearing at the front door of the courthouse in each county.⁶⁹²
2. **PUBLICATION:** The final hearing notice must be published at least once a week for three successive weeks in a legal newspaper in general circulation in each county affected by the notice.⁶⁹³
3. **MAILING:** A copy of the final hearing notice and property owners' report must be mailed to all interested persons (i.e., members of the drainage authority, auditors of other affected counties, petitioners, all owners of property benefitted or damaged by the project, and the Commissioner of the Department of Natural Resources) within one week after the notice of the final hearing is first published.⁶⁹⁴

After the final hearing notice is properly given⁶⁹⁵, the drainage authority has jurisdiction of all property described in the engineer's and the viewers' reports, of the persons and municipalities named in the reports, and of all persons having an interest in a mortgage, lien, or encumbrance against the property described in the reports.⁶⁹⁶

2. Final Hearing Procedures

At the final hearing, the engineer or the engineer's assistant and at least one of the viewers must be present.⁶⁹⁷

The meeting should again be convened by the chairperson of the drainage authority. The petitioners' representative should then be given the floor to review the proceedings. The technical aspects of the proposed project should be left to the engineer.

The petitioners' representative should then return the floor to the chairperson, and the chairperson should give the floor to the project engineer. The engineer, using maps and profiles, should then explain the proposed project. The hearing should then be open for questions for the engineer.

Following the engineer's presentation, the chairperson should call for the reading of the Commissioner of the Department of Natural Resources' ("DNR") final advisory report.⁶⁴⁹ The Director of the DNR Division of Ecological and Water Resources, or the Director's designated representative, typically summarizes and highlights the report.⁶⁵⁰ If the Director is not present, the final advisory report should be read verbatim during the hearing.⁶⁵¹

Following the engineer's presentation, the chairperson should call for the reading of the Commissioner of the Department of Natural Resources' ("DNR") final advisory report.⁶⁹⁸ The Director of the DNR Division of Ecological and Water Resources, or the Director's designated representative, typically summarizes and highlights the report.⁶⁹⁹ If the Director is not present, the final advisory report should be read verbatim during the hearing.⁷⁰⁰

Following the final advisory report one of the viewers, as spokesperson, should present the viewers' report. It is recommended that copies of the viewers' report be available for review at the hearing. In any case, owners of property benefitted or damaged by the project will receive a summary of the viewers' determination of benefits and damages as part of the property owners' report mailed in advance of the hearing.⁷⁰¹ The viewers' presentation should not be a line by line review of each item of benefits and damages. Rather, it should be a discussion of the approach to viewing adopted by the viewers, any special problems encountered, and a statement of the total amounts of benefits and damages found.

When the hearing is opened to questions from the floor, specific questions or disputes regarding benefits or damages determinations for particular tracts must be allowed to be stated for the record and, where possible, should be addressed to the satisfaction of the drainage authority during the hearing. If such concerns cannot be satisfactorily addressed during the hearing, the drainage authority may recess the hearing in order to allow landowners and the viewers an opportunity to meet on an individual basis in an effort to resolve disputes. In some cases, if there are numerous disputes, it may be appropriate to recess the hearing to a new date and time in order to allow for landowner meetings with the viewers and to allow the viewers to make any revisions to their report. In any case, the viewers should provide resolution of the landowner concern, even if such resolution is a justification for the originally determined benefits or damages.

Small adjustments and compromises frequently will satisfy a landowner's concerns. Giving the landowner an opportunity to discuss the benefits or damages privately before the establishment order comes out may lead to better understanding of the basis of benefits or damages and will go a long way toward avoiding appeals. When everyone has had a chance to talk to the viewers, and the meeting is reconvened, the viewers present their adjusted report.

FOOTNOTES

⁶⁸⁵ The drainage code gives the DNR Commissioner 30 days to file its final advisory report. See Minn. Stat. § 103E.301(a) (2015). The drainage authority must ensure that the DNR Commissioner has been afforded, at least, 30 days from the date it receives the engineer's detailed survey report in which to review, prepare, and file a final advisory report with the drainage authority. Before establishing a project, the drainage authority must determine that "the reports made or amended are complete and correct." Minn. Stat. § 103E.341, subd. 2(2). If the DNR Commissioner fails to make a report, despite having the opportunity to do so, the drainage authority may proceed with adopting a final order finding that the reports actually made are complete and correct.

⁶⁸⁶ Minn. Stat. § 103E.325, subd. 1 (2015).

⁶⁸⁷ Minn. Stat. § 103E.325, subd. 1 (2015).

⁶⁸⁸ Names may be listed in narrative form and property affected may be separately listed in narrative form by governmental sections or otherwise. Minn. Stat. § 103E.325, subd. 2(b) (2015).

⁶⁸⁹ Minn. Stat. § 103E.325, subd. 2(a)(1)-(7) (2015).

⁶⁹⁰ Minn. Stat. § 103E.325, subd. 2(c) (2015).

⁶⁹¹ Minn. Stat. § 103E.325, subd. 3 (2015).

⁶⁹² Minn. Stat. § 103E.325, subd. 3 (2015).

⁶⁹³ Minn. Stat. §§ 103E.325, subd. 3 and 103E.005, subd.24 (2015).

⁶⁹⁴ Minn. Stat. § 103E.325, subd. 3 (2015).

⁶⁹⁵ If proper notice has been given to some parties but the notice is defective or not given to other parties, the drainage authority has jurisdiction of all parties that received proper notice. Minn. Stat. § 103E.035 (2015). The proceedings may be continued by order of the drainage authority for the time necessary to publish, post, or mail a new notice. Minn. Stat. § 103E.035 (2015). The new notice needs only to be given to those not properly notified by the first notice. Minn. Stat. § 103E.035 (2015).

⁶⁹⁶ Minn. Stat. § 103E.331 (2015).

⁶⁹⁷ Minn. Stat. § 103E.335, subd. 1 (2015).

⁶⁹⁸ Minn. Stat. § 103E.335, subd. 1 (2015).

⁶⁹⁹ See Minn. Stat. § 103E.335, subd. 1 (2015).

⁷⁰⁰ Minn. Stat. § 103E.335, subd. 1 (2015).

⁷⁰¹ Minn. Stat. § 103E.323 (2015).

E. Making Changes: Engineer's Detailed Survey Report and Viewers' Report

If the drainage authority determines that the general plan reported by the engineer may be improved by changes, or that the viewers have made an inequitable assessment of benefits or damages to any property, the drainage authority may amend the detailed survey report or the viewers' report, and make necessary and proper findings in relation to the reports.⁷⁰² When significant changes are necessary, however, the drainage authority should move to recess the meeting to a new date and time in order to give the engineer and the viewers an opportunity to amend their respective reports, in accordance with the changes directed by the drainage authority.⁷⁰³ The engineer or viewers shall proceed promptly to reconsider the resubmitted matters and must make and file the amended findings and reports.⁷⁰⁴ The amended reports are a part of the original reports.⁷⁰⁵

If the drainage authority determines that property not included in the notice should be included and assessed or that the engineer or viewers, or both, should reexamine the proposed drainage project or the property benefited or damaged by the system, the drainage authority may resubmit the reports to the engineer and viewers.⁷⁰⁶ If a report is resubmitted, the final hearing may be continued as is necessary to make the reexamination and reexamination report.⁷⁰⁷ If the reexamination report includes property not included in the original report, the drainage authority may, by order, adjourn the hearing and direct the auditor to serve or publish, post, and mail a final hearing notice with reference to all property not included in the previous notice.⁷⁰⁸ The jurisdiction of the drainage authority continues in the property given proper notice, and new or additional notice is not required for that property.⁷⁰⁹

The final hearing may be recessed as many times as necessary to arrive at a satisfactory detailed report(s). If the final hearing is recessed to a date certain, it is not necessary to mail notices of the date and time of the reconvened meeting. Nonetheless, it is a good idea to publish a notice of the reconvening of the recessed final hearing as a reminder to affected landowners.

FOOTNOTES

⁷⁰² Minn. Stat. § 103E.335, subd. 2 (2015).

⁷⁰³ See Minn. Stat. § 103E.335, subd. 2 (2015).

⁷⁰⁴ Minn. Stat. § 103E.335, subd. 2 (2015).

⁷⁰⁵ Minn. Stat. § 103E.335, subd. 2 (2015).

⁷⁰⁶ Minn. Stat. § 103E.335, subd. 3 (2015).

⁷⁰⁷ Minn. Stat. § 103E.335, subd. 3 (2015).

⁷⁰⁸ Minn. Stat. § 103E.335, subd. 3 (2015).

⁷⁰⁹ Minn. Stat. § 103E.335, subd. 3 (2015).

F. Adoption of Final Order

The detailed findings should set forth those facts elicited at the final hearing which, by virtue of their source or their frequent repetition, appeared credible enough to support the findings. Testimony at the hearings (preliminary and final) is not taken under oath, nor is it necessarily reported verbatim. Other features to be included in the final order are discussed in Section VIII on “Funding, Collection, and Payment of Drainage System Costs.”

1. Dismissal of Proceedings

If, after the final hearing is complete, all potential changes have been explored and all continued hearings held, the drainage authority is still dissatisfied with the plan, the drainage authority may dismiss the proceedings. The drainage authority must dismiss the proceedings and petition, by order, if it determines that:

1. The benefits of the proposed drainage project are less than the total cost including damages awarded;
2. The proposed drainage project will not be of public benefit and utility; or
3. The proposed drainage project is not practicable after considering the environmental, land use, and multipurpose water management criteria in [Minn. Stat. § 103E.015, subd. 1](#).⁷¹⁰

If possible, the drainage authority should pass a motion to dismiss at the final hearing stating the grounds upon which the dismissal is made. The persons in attendance, then, should be told that the drainage authority will make detailed findings and will mail them out to persons in attendance and/or all interested persons. The drainage authority’s legal counsel should be directed to prepare detailed findings and an order. The drainage authority’s legal counsel will have a much easier time of doing that if in attendance at the hearing. **A sample Findings and Order Dismissing Proceedings and Petition is found in [Template C](#).**

2. Establishment of Proposed Drainage Project

If the drainage authority, after the final hearing is concluded, is generally satisfied with the plan and desires to establish the project, a motion so indicating should be adopted. Such a motion should state that all the criteria necessary for establishment are met and that the project, as amended, is established. To establish the drainage project, the drainage authority must determine that:

1. The detailed survey report and viewers’ report have been made and other proceedings have been completed under this chapter;
2. The reports made or amended are complete and correct;
3. The damages and benefits have been properly determined;

4. The estimated benefits are greater than the total estimated cost, including damages;
5. The proposed drainage project will be of public utility and benefit, and will promote the public health; and
6. The proposed drainage project is practicable.⁷¹¹

The order must contain the drainage authority's findings, adopt and confirm the viewers' report as made or amended, and establish the proposed drainage project as reported and amended.⁷¹²

The drainage authority's or the petitioners' attorney may prepare the detailed findings adopting and confirming the engineer's detailed survey report, as amended, and the viewers' report, as amended, and establishing the proposed drainage project as reported. If prepared by the drainage authority's attorney, the drainage authority's attorney may consult the petitioners' attorney to assist in the preparation of the final order. Again, the final order should set forth all credible facts established at the final hearing supporting the conclusion that the project should be established. If prepared by the petitioners' attorney, the drainage authority's attorney should review and approve the proposed findings and order before they are submitted to the drainage authority for approval.

The proposed findings and order may be considered and adopted at an open meeting of the drainage authority without further notice. The resolution adopting the findings and order should designate the member of the drainage authority, presumably the chairperson or vice chairperson, who will sign the findings and order on behalf of the drainage authority. It is recommended that a copy of the findings and order or a notice of the filing of the order be mailed out by the auditor or secretary to all interested persons. **A sample Findings and Order Establishing a Drainage Project is found in Template D.**

No construction contracts may be let for at least 30 days after date of filing. If no appeals have been filed within that time, contracts may be let.⁷¹³

Appeals from orders are de novo,⁷¹⁴ but the findings of the drainage authority are deemed prima facie⁷¹⁵ evidence of the matters stated therein.⁷¹⁶ The drainage authority's order is deemed prima facie reasonable. However, the reviewing trial court will accept evidence at the appeal hearing as opposed to a pure review of the record.⁷¹⁷ The drainage authority should strive to include detailed, credible facts in its order to support the drainage authority's conclusions. Detailed findings are the single, best deterrent to appeals. For a more detailed discussion on appeals, see **Section VII of this Chapter.**

FOOTNOTES

⁷¹⁰ Minn. Stat. § 103E.341, subd. 1(1)-(3) (2015).

⁷¹¹ Minn. Stat. § 103E.341, subd. 2(a)(1)-(6) (2015).

⁷¹² Minn. Stat. § 103E.341, subd. 2(b) (2015).

⁷¹³ Minn. Stat. § 103E.505, subd. 1 (2015).

⁷¹⁴ *Schultz v. Chippewa Cnty.*, 57 N.W.2d 158, 164 (Minn. 1953).

⁷¹⁵ "Prima facia" is defined by Black's Law Dictionary, 4th ed., as "such as will suffice until contradicted and overcome by other evidence."

⁷¹⁶ Minn. Stat. § 103E.095, subd. 2 (2015).

⁷¹⁷ Minn. Stat. § 103E.095, subd. 2 (2015).