

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF POLK

NINTH JUDICIAL DISTRICT

In the Matter of Keystone Township,
Owen Peterson, Lamont Peterson,
Curt Vanek, Mark and Charlene Holy,
John Giese, James Pulkrabek,
Peter Giese, J-P, Inc., David Straus,
Dan and Donna Driscoll, Tim Kozel,
Peter Ciekliniski, Tom Kozel, Curtis
Amundson, Suzie Larson, Tami Neilson,
Donna Driscoll, Stanley Hotvedt,
Norma Lacano Hotvedt, Charles Hotvedt,
Marvin Zak, Dorothy and Robert Jerik,
and Brad Owens,

**ORDER GRANTING
SUMMARY JUDGMENT**

Appellants,

File No. 60-CV-20-1387

vs.

Red Lake Watershed District,

Appellee.

This matter came before the Court on April 26, 2022 for hearing on the Appellants' Motion for Summary Judgment. Because of the COVID-19 pandemic, this hearing was held by Zoom. Appearing at the hearing were the following:

Mark A. Grainger, attorney at law, appeared on behalf of the Appellants.

Delray L. Sparby, attorney at law, appeared on behalf of the Appellee.

John C. Kolb, attorney at law, appeared on behalf of Petitioner-Respondents.

At the hearing, the Court heard argument from counsel and took the matter under advisement as of April 26, 2022.

Based upon the contents of the file, the briefing and argument of the parties, the entire record, and the proceeding herein, **IT IS ORDERED:**

1. Appellants' Motion for Summary Judgment filed on March 29, 2022 is GRANTED.

2. The Appellee failed to obtain jurisdiction as the drainage authority over Polk County Ditch #39 under Minn. Stat. Ch. 103E and therefore, the order of the Appellee establishing the improvement of Polk County Ditch #39 is null and void.

3. The attached Memorandum is made a part of this Order and constitutes the Court's findings of fact and conclusions of law.

LET JUDGMENT BE ISSUED ACCORDINGLY, AND WITHOUT DELAY.

BY THE COURT:

Hon. Tamara L. Yon
Judge of the District Court

JUDGMENT

I hereby certify that the foregoing Order constitutes the Judgment of the Court.

Date: _____

BY THE COURT:

Kathy Narlock, Court Administrator

By: _____, Deputy

MEMORANDUM

INTRODUCTION AND FACTUAL SUMMARY

This case involves an appeal challenging the Order of the Board of Managers of the Red Lake Watershed District (Appellee) which established an improvement under Minn. Stat. § 103E.215¹ to Polk County Ditch #39. Appellants are farmers, landowners, and a township within the affected drainage area who oppose the improvement².

APPELLANTS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (APPELLANTS' BRIEF) filed March 29, 2022 at pg. 5. The Petitioner-Respondents are property owners who are in favor of the improvement.

On March 29, 2022, Appellants filed their Motion for Summary Judgment asking the Court to find that the Petition for Improvement of Polk County Ditch #39 pursuant to Minnesota Statutes 103E.215 (Petition) which initiated the drainage proceedings for improvement failed to meet statutory requirements and determine as a matter of law that the various defects in the drainage proceedings conducted by the Appellee rendered its final order from those proceedings void. The defects claimed by the Appellants in their dispositive motion include:

1. The Petition was not filed with the Polk County Auditor as mandated by Minn. Stat. § 103E.215, subd. 4(b).
2. The Petition was not presented to the Polk County Board of County Commissioners in dereliction of Minn. Stat. § 103E.215, subd. 5.
3. While a bond may have been filed with the Appellee, no bond for the drainage project was filed with the Polk County Auditor as directed by Minn. Stat. § 103E.202, subd. 4.
4. The Polk County Auditor did not certify the Petition as to whether the petitioners were resident owners from the tax records or certify the number of petitioners who are owners or file a certification with any Board as required under Minn. Stat. § 103D.211.
5. A Property Owners Report was not made or mailed to the owners of the properties that lie within the benefited area of Polk County Ditch #66 pursuant to Minn. Stat. § 103E.323, subd. 1.

¹ “[I]mprovement’ means the tiling, enlarging, extending, straightening, or deepening of an established and constructed drainage system including construction of ditches to reline or replace tile and construction of tile to replace a ditch.” Minn. Stat. § 103E.215, subd. 2.

² Appellants contend that the improvement would increase the capacity of Polk County Ditch #39 (CD 39) and increase the length of the ditch. APPELLANTS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (APPELLANTS' BRIEF) filed March 29, 2022 at pg. 2. Additionally, the Appellants assert that if completed, the improved ditch would also become an outlet for Polk County Ditch #66 (CD 66). *Id.*

6. The notice of the final hearing was defective because it was not published and also was mailed fewer than 25 days prior to the hearing date.
7. The final hearing was not timely held as required by Minn. Stat. § 103D.735(a).
8. The Property Owners Reports that were made and delivered were delinquent under Minn. Stat. § 103E.323, subd. 1, by twice the amount of time that is statutorily required.

APPELLANTS' BRIEF at pp. 9-17.

Petitioner-Respondents and Appellee (Appellee Parties) respond that even though the facts in this matter are not in dispute and have either been stipulated³ or are apparent in the certified record of the proceedings, the Appellants are not entitled to judgment as a matter of law. The Appellee Parties contend the majority of Appellants' motion arises from Minn. Stat. § 103D.625, subd. 4, which states, in pertinent part:

Construction of new drainage systems or improvements of existing drainage systems in the watershed must be initiated by filing a petition with the managers. **The proceedings for the construction or improvement of drainage systems in the watershed district must conform to chapter 103E**

Id. (emphasis added).

Appellee Parties assert the drainage proceedings for the Polk County Ditch #39 (CD 39) improvement conformed to governing Drainage Code⁴ provisions contained in Minn. Stat. ch. 103E because analogous watershed district officers or staff performed the 103E functions in the same way as would county officers and staff and therefore the Order establishing the improvement of CD 39 is valid.

Applying principles of statutory interpretation and referring to the historical context of the Drainage Code and common practice thereunder, the Appellee Parties argue that the word “conform” as utilized in § 103D.625, subd. 4, is ambiguous. Appellee Parties advocate that this Court give the term a common definition of “similar”

³ The facts which have been stipulated by the parties were filed on March 22, 2022 in a separate document entitled “Stipulated Facts.”

⁴ Minnesota appellate courts commonly refer to Minn. Stat. ch. 103E as “the Drainage Code.” See *Minnesota Dept. of Natural Resources v. Chippewa/Swift Joint Board of Commissioners*, 925 N.W.2d 244, 247 (Minn. 2019); *In the Matter of Petition of MCEA for Commencement of an Environmental Assessment Worksheet*, 967 N.W.2d 425, 428 n.2 (Minn. Ct. App. 2021).

or to be “in agreement or harmony with” as found in Meriam Webster, so the legislation in § 103D.625, subd. 4, authorizing the filing of a petition with the managers of a watershed district can be harmonized with the provisions of Chapter 103E which require certain actions by county officers and staff. Appellee Parties posit that if drainage proceedings are conducted by the watershed district using Drainage Code procedures with analogous watershed district personnel performing the required procedures, then the intent and purposes of both Minn. Stat. ch. 103E and 103D have been satisfied. In other words, it is the position of the Appellee Parties that “it is the action, not who performs it, that is required by the phrase ‘conform to chapter 103E.’” [APPELLEE PARTIES’] MEMORANDUM OF LAW IN OPPOSITION TO APPELLANTS’ MOTION FOR SUMMARY JUDGMENT (MEMO IN OPPOSITION) filed April 12, 2022 at pp. 3 & 13. In support of their position, the Appellee Parties have cited the Court to Minn. Op. Atty. Gen. 206A (Minn.A.G.), 1988 WL 483422 (Feb. 5, 1988); Minn. Op. Atty. Gen. 206A (Minn.A.G.), 1983 WL 180934 (Aug. 4, 1983); and *Lenz v. Coon Creek Watershed District*, 153 N.W.2d 209 (Minn. 1967).

Addressing the Appellants’ claim that a Property Owners Report was not made or mailed to the owners of the properties that lie within the benefited area of Polk County Ditch #66 (CD 66), the Appellee Parties respond that:

Here, the viewers did not determine specific benefits to any property within the CD 66 watershed. Rather, the viewers determined a benefit to CD 66 as an entity. The benefit to CD 66 would be distributed among landowners on CD 66 according [sic] the existing benefits roll established in prior proceedings. For that reason, there is no information specific to those lands or owners from which to prepare an Owner’s Report. Polk County, as Drainage Authority for CD 66, did receive notice of the final hearing and was included in the notice as an entity affected by the proceedings. See Certified Record, Doc. #26 at pp. 3, 4 and 18.

MEMO IN OPPOSITION at pp. 14-15.

With regard to the Appellants’ remaining arguments concerning the timing or delivery of notices and convening the final hearing, the Appellee Parties note that “[a] party may not take advantage of an error in a drainage proceeding or an informality, error, or defect appearing in the record of the proceeding or construction, unless the party complaining is directly affected.’ Minn. Stat. § 103E.051(a).” *Id.* at 15. They

observe the Appellants did not allege any prejudice or harm to them caused by the alleged defects. Additionally, the Appellee Parties have provided documentation of the publication of the notice of final hearing, and contend the timelines relied upon by the Appellants for their claims are not required to confer jurisdiction over persons or property nor are they mandatory. Instead, the Appellee Parties contend the timelines are directory and therefore their duty to comply with them is “as nearly as practicable” under the three-part test found in *State v. Frisby*, 108 N.W.2d 769773 (Minn. 1961). They observe that action was taken “with reasonable diligence in preparing for and noticing the final hearing in a complicated and sizable drainage system improvement proceeding.” MEMO IN OPPOSITION at p. 18. In summary, the Appellee Parties request the summary judgment motion of the Appellants be dismissed in its entirety.

Appellants reply asserts there is no ambiguity in the statutes as claimed by the Appellee Parties which needs to be harmonized and that the procedural requirements of the statutes are clear and not superfluous or redundant. Because the duties required to be performed by statute are specifically consistent with the roles and responsibilities of identified county officers and staff, and there are no such individuals within a watershed district with these kinds of roles and responsibilities, the Appellants contend the argument of the Appellee Parties in this regard is illogical. Appellants contend that even if the Court were to find the term “conform” to be ambiguous (which they do not agree is the case), utilizing such a loose and vague definition of “similar” as proposed by the Appellee Parties would be out of harmony with too many other provisions within the Drainage Code creating a procedural scheme of the making of the watershed district and not that of the legislature.

Appellants further point out that the Petition contains the additional request that jurisdiction of CD 39 be transferred from Polk County to the Watershed District so that notice to the County is required. Appellants assert that the drainage proceedings as conducted in this instance failed to provide proper notice to the County in this regard as required. Overall, the Appellants argue that the Appellee Parties have not demonstrated an issue of material fact that would preclude the granting of summary judgment in their favor.

ANALYSIS

A. Standard of Review.

Summary judgment should be granted where there is no genuine issue of material fact in the record (the pleadings, depositions, answers to interrogatories, and admissions on the file, together with the affidavits, if any) and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. A fact is “material” if it will affect the outcome or result in a case. *O’Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

It is not the province of the court to decide issues of fact; rather, the court must decide whether any genuine factual issues exist. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997). When there are no material facts in dispute, summary judgment is appropriate. *Fire & Casualty Ins. Co. of Connecticut v. Illinois Farmers Ins. Co.*, 352 N.W.2d 798, 799 (Minn. Ct. App. 1984). A genuine issue of material fact exists if the evidence “would permit reasonable persons to draw different conclusions.” *Bank of St. Paul v. Coating Specialties, Inc.*, 787 N.W.2d 202, 205 (Minn. Ct. App. 2010) (citing *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002)). If reasonable persons might draw different conclusions from the evidence that is presented, summary judgment should be denied. *Alberts v. United Stockyards Corp.*, 413 N.W.2d 628, 629 (Minn. Ct. App. 1987).

“To successfully oppose a summary judgment motion, the nonmoving party must present affirmative evidence sufficient to raise an issue of material fact: mere denials, general assertions and speculations are not enough.” *Gurbrod v. County of Hennepin*, 529 N.W.2d 720, 723 (Minn. Ct. App. 1995) (citing Minn. R. Civ. P. 56.05; *Gonzales v. Hollins*, 386 N.W.2d 842, 845 (Minn. Ct. App. 1986)). In reviewing a motion for summary judgment, the district court must view the evidence in a light most favorable to the non-moving party. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

Summary judgment should only be granted when there has been adequate time for discovery “and upon motion, against the party who fails to make a sufficient showing to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex v. Catrett*, 477 U.S. 317, 322-23 (1986). The reviewing court must not weigh the evidence or make credibility

determinations while ruling on a motion for summary judgment. *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020).

B. The Drainage Proceedings for Improvement of CD 39.

Chapters 103D and 103E of the Minnesota Statutes are interrelated components of the State’s water law and should be construed together. *Minch v. Buffalo-Red River Watershed District*, 723 N.W.2d 483, 487 (Minn. Ct. App. 2006). Chapter 103D “governs the [broad] administrative powers and operations of watershed districts” for purposes of land-use planning, flood control, and other conservation projects. *Id.*; see Minn. Stat. § 103D.201. On the other hand, Chapter 103E (commonly known as the Drainage Code as previously noted) focuses more narrowly on drainage authorities and “governs the proceedings by which new drainage systems are constructed and existing ditches are maintained by drainage authorities such as county boards or watershed districts.” *Minch*, 723 N.W.2d at 487.

Under the Drainage Code, the legislature has vested the power to engage in drainage proceedings in the “drainage authority.” Minn. Stat. § 103E.011. A drainage authority is defined as “the board or joint county drainage authority having jurisdiction over a drainage system or project.” Minn. Stat. § 103E.005, subd. 9. In this case, the parties have stipulated that:

Prior to the filing of the [P]etition (and bond) to improve CD 39 with the [Appellee], CD 39 was under the jurisdiction of Polk County and the Polk County Board of Commissioners was the Drainage Authority for CD 39.

STIPULATED FACTS filed March 22, 2022 at p. 2, ¶ 1.

When a County is the Drainage Authority, petitions for improvements to the drainage system are required to be filed with the auditor. Minn. Stat. § 103E.215, subd. 4(b). The auditor then is required to present the petition to the board at its next meeting. *Id.* at subd. 5. If directed by a County Drainage Authority, a watershed district “shall take over a . . . county drainage system within the watershed district and the right to repair and maintain the drainage system . . .” Minn. Stat. § 103D.625, subd. 1. However, transfer of the drainage system to a watershed district may not be made until the County has held a hearing on the transfer and the County orders the watershed district to take over the drainage system. *Id.* at subds. 1(b) & (c). Petitions for

construction of new drainage systems or improvements of existing drainage systems in the watershed district must then be filed with the managers. Minn. Stat. § 103D.625, subd. 4; *Minnesota Public Drainage Manual 2(II)(G)(1)* (Minnesota Board of Water and Soil Resources (BWSR), 2016)⁵ (noting that a petition for a project where the drainage authority is a water shed is filed with the board of managers and where the drainage authority is a county, the petition is filed in the office of the county auditor).

As previously noted, Minnesota Statute § 103D.625, subd. 4, provides authority for a petition for an improvement to an existing drainage system “in the watershed district” to be filed with the watershed district. The phrase “in the watershed district” is not defined as to whether it means geographically located within the boundaries of the watershed district or under the jurisdiction of the watershed district. Since the phrase is subject to more than one reasonable interpretation, the statute must be read as a whole to “harmonize all its parts, and, whenever possible, no word, phrase or sentence should be deemed superfluous, void or insignificant.” *Owens v. Federated Mut. Implement & Hardware Ins. Co.*, 328 N.W.2d 162, 164 (Minn. 1983). “[W]ords of a statute are to be viewed in their setting, not isolated from their context.” *Citizens Advocating Responsible Dev. v. Kandiyohi Bd. of Com’rs*, 713 N.W.2d 817, 824 (Minn. 2006).

Here, to read the provisions of § 103D.625, subd. 4, as providing a watershed district with drainage authority for an improvement simply because an existing drainage system is geographically located within the boundaries of the watershed district would be in complete disregard of the requirement contained in the very same section of the statute that a transfer of an existing drainage system from a county board be accomplished prior to the watershed district taking over the drainage system. “Since an ‘improvement’ proceeding equally contemplates the taking and injury of land not otherwise damaged and appropriated by the original ditch establishment, it follows that the proper petition is also a jurisdictional prerequisite to an ‘improvement’ proceeding.”

⁵ The Minnesota Public Drainage Manual (MPDM) is a reference document concerning Minnesota Statutes, Chapter 103E Drainage, compiled for use by drainage authorities, their advisors, and others involved with state drainage law. The MPDM is available online at: [Minnesota Public Drainage Manual | MN Board of Water, Soil Resources \(state.mn.us\)](https://www.state.mn.us/bwsr/mpdm/). The Minnesota Court of Appeals has found the MPDM to be similar to a law review article or a treatise. *In re Order of Joint Board of Kandiyohi and Meeker Counties*, 2019 WL 272904 at *4 (Minn. Ct. App. 2019).

Johnson v. Steele County, 60 N.W.2d 32, 37 (Minn. 1953). In this case, since a transfer of CD 39 from the Polk County Board of Commissioners as the Drainage Authority to the Appellee had NOT taken place at the time the Petition for the improvement was filed, the Petition was required to be filed with the Polk County Auditor and presented by the Auditor to the Polk County Board at the next meeting pursuant to Minn. Stat. § 103E.215, subds. 4(b) & 5.⁶ “Drainage laws are sustained on the theory that the state is exercising its police power, the right of eminent domain, or its taxing power, either to protect public health, promote the public welfare, or reclaim waste lands and make them suitable for agricultural uses.” *In re County Ditch No. 34*, 170 N.W. 883, 885 (Minn. 1919). Therefore, “[i]n order to successfully establish jurisdiction over a drainage proceeding, the drainage authority must strictly comply with statutory procedures for commencing the proceeding.” *In re Bd. of Managers of Bois de Sioux Watershed District*, 818 N.W.2d 583, 586-87 (Minn. Ct. App. 2012) (citing *Hagen v. County of Martin*, 91 N.W.2d 657, 660 (Minn. 1958)).

Based upon the record herein, specifically the stipulated fact that Polk County Board of Commissioners was the Drainage Authority for CD 39 at the time the Petition for improvement was filed, strict compliance with the statutory procedures for commencing a drainage proceeding for improvement of CD 39 required that the Petition be filed with the county auditor and then presented by the auditor to the board at the next meeting. It was not. Therefore, the Appellee did NOT have jurisdiction over the drainage proceeding for improvement of CD 39 and its final order from those proceedings void for lack of authority to establish the improvement.

CONCLUSION

For the foregoing reasons, Appellants’ Motion for Summary Judgment is GRANTED.

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⁶ Because CD 39 had not been transferred to the Appellee by the Polk County Board of Commissioners as the Drainage Authority and filing of the Petition with the county auditor was required under Minn. Stat. § 103E.215, subd. 4(b), it is not necessary for the Court to undertake consideration of whether the word “conform” as utilized in § 103D.625, subd. 4, is ambiguous or resolution of the Appellants remaining claims of defects in the drainage proceedings concerning the improvement of CD 39.