

Resolution

Distribution

Stark County Commissioners

Petitioner
County Engineer
File

Adopted September 30, 2020

Subject **A Resolution Dismissing the Rudy Friedman Ditch Nobles Pond improvement petition.**

Commissioner Smith moved for the adoption of the following Resolution which was seconded by Commissioner Crighton:

WHEREAS, a petition was filed on January 30, 2020, with the Board of Stark County Commissioners, pursuant to R.C. 6131.01 et seq. for certain improvements to the Rudy Friedman Ditch Nobles Pond improvement petition; and

WHEREAS, upon allowance by the Board, an amended petition was filed on March 2, 2020, listing the owners of properties averred to be benefitted; and

WHEREAS, upon allowance by the Board, a second amended petition was filed on June 10, 2020, requesting reduced scope of work; and

WHEREAS, on June 24, 2020, the Board and the County Engineer met at the site of the proposed improvements and conducted a view of the proposed improvement pursuant to R.C. 6131.10; and

WHEREAS, pursuant to R.C. 6131.09, the Stark County Engineer prepared a preliminary report, including his preliminary estimate of cost, his comment on feasibility of the project, and a statement of his opinion as to whether benefits from the project are likely to exceed the estimated cost, which was presented to the Board at the scheduled hearing held September 22, 2020; and

WHEREAS, pursuant to R.C. § 6131.10, the Board held a further hearing on September 22, 2020, wherein the Board received written statements both for and against the proposed improvements, the Engineer's preliminary written report, the Engineer's testimony, and the testimony of property owners averred to be benefitted, both for and against the proposed improvement together with tangible evidence offered; and

WHEREAS, at the close of the hearing, the Board adjourned to deliberate on the evidence received, the Engineer's report and advice of counsel on the relevant law until making its decision as to whether to grant the prayer in the Petition as amended, until today, September 30, 2020.

WHEREAS, having heard and considered all of the evidence presented, including the written statements for and against, the Engineer's preliminary report, the testimony of property owners averred in the petition to be benefitted, and exhibits received,

NOW, THEREFORE, being fully informed in the premises, it is hereby **RESOLVED** that this Board of Stark County Commissioners hereby finds the following:

1) The petition for drainage improvements and amendments thereto for the Rudy Friedman Ditch Nobles Pond improvement have been sufficient to satisfy the requirements of the Revised Code and this Board has jurisdiction to hear and address the same.

2) The Second Amended Rudy Friedman Ditch Nobles Pond improvement petition requests four items, pursuant to R.C. 6131.01 et seq., to wit: 1) flood control and prevention; 2) maintenance of the Rudy Friedman Ditch; 3) dredging of Nobles Pond; and 4) the installation of adequate detention/retention basins to handle flow into Nobles Pond.

3) The testimony by those property owners in favor of the improvement was that they agreed with the summaries set forth in the Stark County Engineer's Preliminary Report.

4) The testimony of those property owners opposed to the improvement expressed various grounds ranging from lack of necessity because the drainage from their property either did not contribute to the ditch or had previously been addressed under existing regulations, was too costly, or provided no benefit either to their property or to the public.

5) With respect to flood control and prevention and the installation of detention/retention facilities, the Engineer's preliminary report and testimony discloses the following;

- a) Flooding occurs in the lower levels of one or more homes and up to five backyards located along the south shoreline of Nobles Pond on Sweet William Circle NW.
- b) There are no reports of significant flooding along the limits of the Rudy Friedman Ditch.
- c) The report indicates that there is land available for retention/detention water storage facilities, but that it is located on commercially zoned property, which would be expensive to acquire.
- d) Further, the Engineer stated that this improvement would only partially benefit a few residences and would not completely eliminate potential for lower-level flooding.
- e) The estimated cost for detention/retention facilities is \$8.2 million. The Engineer testified that the benefits of the proposed improvement will not exceed the cost.

6) With respect to the maintenance of the Rudy Friedman Ditch the Engineer's preliminary report and testimony discloses the following;

- a) There exists, for portions of the Rudy Friedman Ditch lying south of Fulton Drive N.W., a private agreement, styled as Nobles Pond Private Drainage District Agreement, the purpose of which is to maintain the physical integrity and quality of Nobles Pond as well as the inlet and outlet structures supporting the pond.
- b) Upon inspection of the ditch, areas of substantial erosion or loss of usable property were not observed.

- c) There are localized areas of toe erosion, with the most significant areas being located south of Fulton Drive NW, which also appears to be the most significant area as a source of sediment reaching Nobles Pond.
- d) Bank improvements along that 700' of the ditch and the addition of rock in the same area would help with erosion of the sediment that reaches Nobles Pond.
- e) The estimated cost of the first is \$233,000.00 and the cost of the Upstream Inlet Restoration Project (adding rocks) is \$75,000.00.
- f) The area indicated for both of these improvements is encompassed within the Nobles Pond Private Drainage District Agreement.

7) With respect to the dredging of Nobles Pond, the Engineer's preliminary report and testimony discloses the following; to wit:

- a) Dredging of Nobles Pond does not improve the pond's capacity to handle rain/flood events.
- b) The sedimentation issue the Petition seeks to address by dredging would improve water quality issues of the pond.
- c) The estimated cost for dredging Nobles Pond is \$1,150,000.00.
- d) The Forebay Expansion, according to the Engineer, will not improve the overall drainage efficiency or capacity.
- e) The estimated cost for the Forebay Expansion is \$110,000.00.

8) The total estimated cost for the improvement project, including channel/bank improvement, inlet channel restoration, and Forebay expansion is \$418,000. The Engineer's report does not allocate benefits accruing a particular property, or to any general category of property. The Engineer's report suggests that costs for a project encompassing the maintenance and repair of the ditch and the existing Forebay Expansion/improvement are the only items in which the benefits from the project are likely to exceed the estimated costs.

BE IT FURTHER RESOLVED THAT:

9) This Board is guided in its decision making (if denying the petition) by § 6131.11 and (if granting the petition) § 6131.12 of the Ohio Revised Code. Both sections require findings by the Board that the proposed improvement is (or is not) necessary, conducive (or not) to the public welfare, and that the estimated cost of the improvement will be less (or more) than the benefits conferred upon benefitted properties.

- a) "Necessary" in the context of R.C. 6131.01 et seq. is defined as "necessary for the disposal or removal of surplus water, for controlled drainage of any land, for irrigation, for storage of water to regulate stream flow or to prevent the overflow of any land in the county, or for water conservation." R.C. 6131.02.

- b) "Conducive to the public welfare" has been found to mean that the community, generally, in the vicinity is benefitted, and not the lands of the petitioners or others. It is a finding that it is for the public welfare as distinguished from a mere private advantage." *Chesbrough v. Commissioners*, 37 Ohio St. 508 (1882).
- c) While the cost/benefit analysis is a matter of weighing the total cost against the benefits conferred, Ohio law has held that assessments substantially in excess of benefits constitute a taking.

BE IT FURTHER RESOLVED THAT:

This Board finds that:

10) Since the requested improvement would benefit just a few of the petitioners, it is not conducive to the public welfare.

11) The dredging the pond will not increase or improve the capacity of the pond to control or prevent flooding and is not necessary, not conducive to the public welfare, and the estimated cost exceeds the benefits.

12) The bank improvement and the Upstream Inlet Restoration Project are not necessary, as defined in R.C. 6131.02. Further, these projects are not conducive to the public welfare because they would benefit those property owners who are parties to the Private Drainage District Agreement, and not the property owners that Petitioner seeks to have assessed for the costs of the improvement projects.

13) The Forebay Expansion is not necessary and is not conducive to the public welfare.

BE IT FURTHER RESOLVED:

14) Based on the findings set forth above it is the decision of this Board that the Rudy Friedman Ditch Nobles Pond improvement petition be, and is hereby, DISMISSED.

Upon roll call the vote resulted as follows:

Mr. Smith - yes Mrs. Creighton - yes Mr. Regula - yes

C-E-R-T-I-F-I-C-A-T-E

I, the undersigned, hereby certify the foregoing to be a true and correct record of the Resolution adopted by the Board.

Richard Flory