

## ANOKA COUNTY ATTORNEY

TONY PALUMBO

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[http://www.anokacounty.us/departments/co\\_attorney](http://www.anokacounty.us/departments/co_attorney)

May 31, 2013

**VIA CERTIFIED MAIL**

Jeffrey and Penny Penn  
7340 180<sup>th</sup> Ave. NE  
Columbus, MN 55025-8813

**Re: County Ditch 35 – Notice of Repairs and Public Hearing**

Mr. and Mrs. Penn:

Recently, Anoka County Public Services conducted inspections of County Ditch 35 and its 5 branches in the City of Columbus and Linwood Township, in an effort to identify the cause of drainage problems and complaints occurring within that area. County Ditch 35 and its Branches are in poor repair which has led to decreasing effectiveness in providing the level of drainage that was intended. Several culverts and bridges were observed that are, in fact, obstructions of the ditch. These obstructions affect the hydraulic capacity of the ditch.

Please note that a Public Hearing regarding County Ditch 35 has been set before the Anoka County Board of Commissioners on **July 25<sup>th</sup>, 2013 at 10:00 AM**, at the Anoka County Government Center, 2100 Third Ave., Suite 710, Anoka, Minnesota 55303. If you disagree with the county's recommendations, you may appear at the hearing on July 25<sup>th</sup>, 2013, to address this matter.

Minnesota law provides that, when a county ditch is located on private property, the property owner is responsible to remove or repair the obstructions.<sup>1</sup> The purpose of this letter is to inform you of the identified obstruction(s) on your property. Normally, this letter would ask that you restore branch 3 to its original condition in order to restore the drainage that was originally provided.

However, in your case, it is apparent that you and your neighbors have changed Branch 3 of County Ditch from a drainage amenity to a water amenity. As such, the County would like to offer an alternative for that part of Branch 3 of County Ditch 35, which is west of the northward extension of the east right of way line of Potomac Street. This alternative would be to abandon this portion of Branch 3 of County Ditch 35 using MN Statute 103E.805 (see attached copy). The County is recommending that you get together with your neighbors and sign a petition to abandon that part of Branch 3.

A sample petition is attached. Others who are receiving this same letter include Michael and Sandra Charles, and Daniel and Kim Zimmerle.

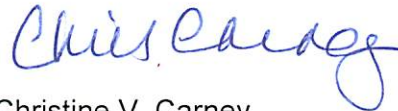
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<sup>1</sup> Minnesota Statutes §103E.075 (2012).

The county would like to resolve this issue this summer, so your assistance in filing this petition by the end of July would be helpful. Once the County receives the petition, the County will call a public hearing. If there are no objections at that hearing, we will request that the board order that part of Branch 3 of County Ditch 35 abandoned. The hearing would likely be held in September of 2013.

If you have any questions or wish to discuss a schedule for this process, please contact the Public Services Division Manager, Jon Olson, at 763-323-5789.

Sincerely,



Christine V. Carney  
Assistant Anoka County Attorney  
Civil Law Division

cc: Jon Olson, Anoka County Public Services Manager

**PETITION TO ABANDON A PORTION OF BRANCH 3 OF COUNTY DITCH #35**

**PURSUANT TO MINN. STAT. §103E.805**

TO: Anoka County Property Records and Taxation Division Manager on behalf of the Anoka County Auditor.

We, the undersigned, being the affected owners of property benefitted by Branch 3 of County Ditch #35, do hereby petition the County of Anoka, Minnesota, to abandon that portion of Branch 3 of County Ditch #35 described as:

That part of Branch 3 lying west of the East section line of Section 4; Township 32, Range 22 Columbus, Anoka County, Minnesota.

The basis for this petition is that the portion of Branch 3 of County Ditch #35 described above is no longer of public benefit and utility and does not serve a substantial useful purpose, for the reason that the ditch has been converted to a water amenity to the property and outlets to Branch 3 at the East section line of said Section 4.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## 2012 Minnesota Statutes

### 103E.805 REMOVAL OF PROPERTY FROM A DRAINAGE SYSTEM.

#### Subdivision 1. Petition.

After construction of a drainage system, an owner of benefited property may petition the drainage authority to remove property from the drainage system.

#### Subd. 2. Filing.

If the drainage system is under the jurisdiction of a county drainage authority, the petition must be filed with the auditor of the county. If the drainage system is under the jurisdiction of a joint county drainage authority, the petition must be filed with the county having the largest area of property in the drainage system, where the primary drainage system records are kept. If the system is under the jurisdiction of a watershed district, the petition must be filed with the secretary of the district.

#### Subd. 3. Hearing.

(a) When the petition is filed, the drainage authority in consultation with the auditor or the secretary shall set a time and location for a hearing on the petition and shall give notice of the hearing by mail to the owners of all property benefited by the drainage system, and either in a newspaper of general circulation within the affected drainage area or by publication on a Web site of the drainage authority.

(b) At the hearing, the drainage authority shall make findings and shall direct, by order, that the petitioners' property be removed from the drainage system if the drainage authority determines:

(1) that the waters from the petitioners' property have been diverted from the drainage system, or that the property cannot significantly or regularly use the drainage system;

(2) that the property is not benefited by the drainage system; and

(3) that removing the property from the drainage system will not prejudice the property owners and property remaining in the system.

#### Subd. 4. Effect of removing property from drainage system.

The property that has been removed from the drainage system is not affected by the drainage system at any later proceeding for the repair or improvement of the drainage system and a drainage lien or assessment for repairs or improvements may not be made against the property that has been removed on or after the date of the order.

#### Subd. 5. Liens and assessments on property removed from a drainage system.

An order under this section does not release the property from a drainage lien filed on account of the drainage system before the date of the order. An order under this section does not release the property from any assessment or a drainage lien filed on or after the date of the order for costs incurred on account of the drainage system before the date of the order.

#### History:

1990 c 391 art 5 s 102; 2010 c 298 s 8





17-Up Ditch 35

SEP 13 2012



17-Down A Ditch 35

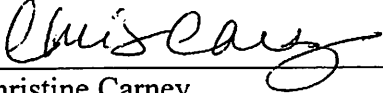
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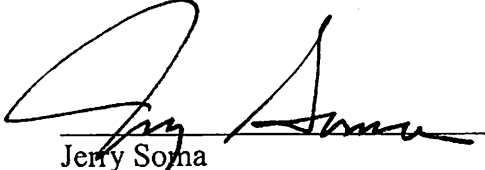




## PUBLIC NOTICE

**NOTICE IS HEREBY GIVEN**, pursuant to Minn. Stat. §103E.075, that the Anoka County has determined that the drainage system known as County Ditch 35 and its five branches, located in the City of Columbus and Linwood Township, has been obstructed. The County Board of Commissioners will hold a public hearing on this matter on **July 25, 2013 at 10:00 a.m.** in Room 710 of the Anoka County Government Center, 2100 Third Avenue, Anoka, Minnesota 55303. Pursuant to Minn. Stat. §103E.075, if the board determines that the drainage system has been obstructed, the board shall direct the responsible party to remove the obstruction unless the responsible party shows the board why the obstruction should not be removed. The board shall hear all interested parties and, if removal of the obstruction is ordered, the board will set a reasonable time for removal of the obstruction(s). If the obstruction is not removed within the prescribed time, the board shall have the obstruction removed and the County shall make a statement of the removal cost. The statement must be filed in the county recorder's office as a lien on the property where the obstruction is located or against the responsible party. The lien may be enforced against the party by civil action.

  
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Christine Carney  
Assistant Anoka County Attorney

  
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Jerry Soma  
Anoka County Administrator