

Minnesota Public Drainage Manual – Chapter 2 – VII

Administration and Legal Considerations - Appeals and Other Litigation

Summary

A drainage authority's actions under the drainage code are administrative. A drainage authority processing a petition for a proposed drainage project or repair acts in a quasi-judicial manner – the drainage authority receives evidence, draws conclusions, and makes orders. Typically, judicial review of quasi-judicial decisions made by an administrative body, like drainage authorities, is invoked by writ of certiorari to the court of appeals. However, the legislature provided for appeals to the district court from a final order of the drainage authority for any party adversely affected by the establishment of a drainage ditch or assessment relating to a drainage proceeding.

The drainage code bifurcates the appeal process by separating appeals relating to the establishment of a project and appeals relating to the benefits and damages resulting from the project. Establishment appeals are tried before the court, while benefits and damages appeals are tried to a jury. The filing of an establishment appeal stays any proceedings in a benefits and damages appeal until the initial establishment question is resolved.

The following types of appeals for judicial review are outlined within this section:

- Appeals of orders establishing a drainage system (section **A.1**);
- Appeals of the benefits assessed and damages awarded (section **A.2**);
- Tax assessment appeals (section **B**);
- Extraordinary remedies such as injunctions, mandamus, and writs of certiorari (section **C**); and
- Crimes related to drainage systems and penalties (section **D**).

Introduction

A drainage authority's actions under the drainage code are administrative. A drainage authority processing a petition for a proposed drainage project or repair acts in a quasi-judicial manner—the drainage authority receives evidence, draws conclusions, and makes orders. Drainage authorities investigate disputed claims and issue decisions or orders that are binding on the status or the condition of affected property in the same way that courts do judicially.⁸²⁹

Judicial review of quasi-judicial decisions made by an administrative body, like drainage authorities, is typically invoked by writ of certiorari to the court of appeals.⁸³⁰ A writ of certiorari is a request for an appellate level court, like the court of appeals, to review the record of evidence created by the administrative body. The reviewing court, rather than making its own conclusions from the record of evidence submitted to the administrative body, determines whether the administrative body's determination was reasonable based on the information it had. This is a common element of administrative law. However, this type of limited review can be overcome if a legislative statute gives the county district court jurisdiction or authority to review the proceedings of the administrative body or to review all available, credible evidence to reach the court's own conclusion.

FOOTNOTES

⁸²⁹ See *Amundson v. Cnty. of Roseau*, 1998 WL 436900 at *2 (Minn. Ct. App. Aug. 4, 1988) (citing *Mahnerd v. Canfield*, 211 N.W.2d 177, 179-80 (Minn. 1973)).

⁸³⁰ See *Amundson v. Cnty. of Roseau*, 1998 WL 436900 at *2 (Minn. Ct. App. Aug. 4, 1988) (citing *Deitz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992)).

A. Drainage Code Appeals

The drainage code provides for two appeals statutes— Minn. Stat. §§ [103E.095](#) and [103E.091](#)—which give jurisdiction to review the proceedings of the drainage authority and to review all available, credible evidence to reach the court’s own conclusions in a drainage proceeding.⁸³¹ Issues covered under the scope of Minn. Stat. §§ [103E.095](#) and [103E.091](#) are not subject to the limited review by the court of appeals; rather, as this section will discuss, these issues are tried de novo, meaning, appellants are permitted to introduce new evidence challenging the findings adopted by the drainage authority.⁸³²

[Minn. Stat. § 103E.095](#) permits the county district court to review a drainage authority’s decision whether to establish a drainage system or its decision to dismiss pending proceedings to establish a drainage system.⁸³³

[Minn. Stat. § 103E.091](#) permits a jury in a county district court trial to review the drainage authority’s determination of benefits and damages.⁸³⁴

Sometimes, an appellant may wish to challenge both the validity of the order establishing a drainage project and, if unsuccessful in overturning the validity of the establishment order, may also desire to appeal the benefits awarded and damages ordered. If an appeal of a drainage authority order is filed under both [Minn. Stat. § 103E.095](#) (the establishment appeal) and [Minn. Stat. § 103E.091](#) (the benefits and damages appeal), the trial of the establishment decision proceeds first and the trial on the benefits and damages is stayed until the first appeal is resolved.⁸³⁵ This is the necessary order because if appellants convince the court to alter the configuration of the drainage system during the establishment appeal, the benefits and damages are likely to change as well.

When an order of the drainage authority is appealed, the drainage authority may defend its order and in situations where the order appealed establishes a drainage project requested by petition, the petitioners may notice an appearance in the case and join the drainage authority in defense of its order.⁸³⁶

1. Establishment Appeal (Minn. Stat. § 103E.095)

Under [Minn. Stat. § 103E.095](#), a party may appeal an order made by the drainage authority that:

1. Dismisses drainage proceedings;⁸³⁷
2. Establishes a drainage project;⁸³⁸
3. Refuses to establish a drainage project;⁸³⁹ or
4. Determines whether the environmental, land use, and multipurpose water management requirements and criteria of [Minn. Stat. § 103E.015, subd. 1](#) are met.⁸⁴⁰

Final orders issued in the following drainage proceedings may be appealed under [Minn. Stat. § 103E.095](#):

- A new drainage system;

- An improvement of a drainage system;
- An improvement of an outlet; or
- A lateral.⁸⁴¹

Note: The authors of this Section are aware of at least one instance in which the Minnesota Court of Appeals dismissed an appeal of a drainage authority's order which denied a petition for partial abandonment of a drainage system. In its order, the Court of Appeals reasoned that Minn. Stat. § 103E.095's reference to "dismiss drainage proceedings" should not be read so narrowly as to only apply when the drainage authority's "dismissal" is of drainage "proceedings" that result in the construction of a project or structure.⁸⁴² It is the author's position that the distinction between a proceeding to establish a drainage system or structure and a proceeding within the drainage code that does not result in the establishment or refusal to establish a drainage system or structure is important to the analysis of the drainage authority's role as a quasi-judicial versus legislative body. Drainage proceedings that result in an order to establish or a refusal to establish a drainage system or structure are entitled to de novo review at trial. Drainage proceedings in which the drainage authority acts in its role as the custodian of the vested property rights of all within the drainage system should be reviewed on the record before the drainage authority board, not de novo. However, because there is recent precedence in the Court of Appeals utilizing appeals to the district courts of orders that do not establish drainage projects or structures, it is recommended that appellants file appeals in both district court and the court of appeals. Until further clarity is provided, this is the best method of preserving a party's appeal rights. While the purpose of this section will be to discuss the types of judicial proceedings available to review certain grievances, the standards of review applicable, and to a limited extent, the procedures involved, it is recommended that one consult with an attorney experienced in public drainage proceedings when considering filing an appeal or seeking judicial review of a public drainage authority's actions.

Parties with Right to Appeal

Minn. Stat. § 103E.095, subd. 1 states, "A party may appeal an order made by the board that dismisses drainage proceedings or establishes or refuses to establish a drainage project to the district court of the county where the drainage proceedings are pending." The right of appeal in drainage proceedings is purely statutory—the legislature may give or withhold that right at its discretion.⁸⁴³

Unless a party is assessed benefits or damages, they are not parties to the proceedings and may not bring an appeal under §§ **103E.095** and **103E.091**. For example, a landowner downstream of an improvement to a drainage system or downstream of a new lateral or new drainage system that will outlet into an existing drainage system, is not a party with the right to appeal and order establishing the improvement or new drainage system.⁸⁴⁴ That does not mean that the downstream landowner is without a remedy at law if he or she contends that the existing drainage system downstream of the improvement or new drainage system will be inadequate to handle the increased flow of water. The downstream landowner may bring an injunction against the drainage authority for proceeding with an improvement that interferes with an existing drainage system.⁸⁴⁵ The downstream landowner may also bring a petition for improvement of the existing drainage system.⁸⁴⁶

When an order establishing a drainage project or repair is appealed, the drainage authority and the petitioners are parties interested in defending the drainage authority's order. As stated previously, the petitioners, who are often owners of property assessed benefits, are a party to the drainage proceedings. However, there is no requirement that the petitioners hire an attorney to represent them

in the proceedings before the drainage authority. The Minnesota Legislature revised the appeals statute in 1985 to clarify that the drainage authority, too, is a party to the drainage proceedings with the right to participate in defending its order on appeal.⁸⁴⁷

Serving and Filing the Establishment Appeal

To appeal under [Minn. Stat. § 103E.095](#), the appellant must serve notice of the appeal to the county auditor within 30 days after the drainage authority's order is filed.⁸⁴⁸

The Establishment Trial

An appeal under [Minn. Stat. § 103E.095](#) is tried by the court without a jury.⁸⁴⁹ The court conducts a trial de novo, meaning, appellants are permitted to introduce new evidence challenging the findings of the drainage authority in its order, even if that evidence was not first presented and reviewed by the drainage authority in the drainage proceedings.⁸⁵⁰

However, the findings of the drainage authority enjoy the legal presumption that they are valid evidence of the matters stated in the findings.⁸⁵¹ It is the appellant's burden to establish that the order appealed is arbitrary, unlawful, or not supported by the evidence.⁸⁵²

During the trial, appellants may demonstrate that the engineer's cost estimates are arbitrary and unreasonable, but appellants may not attempt to invalidate the final order during the establishment trial by demonstrating that the total benefits have been overestimated and therefore the project costs will exceed the project benefits.⁸⁵³ Those arguments must be reserved for the trial on benefits and damages under [Minn. Stat. § 103E.091](#).

On appeal, the court may determine that the drainage authority did not establish jurisdiction, review the engineer's determination that the project is feasible, inquire into the adequacy of the outlet, affirm the order of the board as lawful and reasonable, or remand the matter to the drainage authority for further proceedings.⁸⁵⁴

i. Appeal of Dismissal of Drainage Proceedings

Dismissal by the Drainage Authority

After conducting the preliminary hearing, the drainage authority must dismiss the petition if it makes any of the following findings:

1. That the proposed drainage project is not feasible;
2. That the adverse environmental impact is greater than the public benefit and utility after considering the environmental, land use, and multipurpose water management criteria in [Minn. Stat. § 103E.015, subd. 1](#), and the engineer has not reported a plan to make the proposed drainage project feasible and acceptable;
3. The proposed drainage project is not of public benefit or utility; or
4. The outlet is not adequate.⁸⁵⁵

If the public drainage authority dismisses a petition during the preliminary hearing, the order dismissing the petition is appealable to the district court of the county where the drainage proceedings are pending under [Minn. Stat. § 103E.095](#)⁸⁵⁶. In contrast, if the public drainage authority orders a detailed survey after conducting the preliminary hearing, its decision to proceed with the detailed survey is not appealable.⁸⁵⁷

After conducting the final hearing, the drainage authority must dismiss the petition if it makes any of the following findings:

1. That the benefits of the proposed drainage project are less than the total cost, including damages awarded;
2. That the proposed 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](#).⁸⁵⁸

An order dismissing at the final hearing is appealable to the district court of the county in which the drainage proceedings are pending under [Minn. Stat. § 103E.095](#).⁸⁵⁹

Voluntary Dismissal

A petition may also be dismissed by voluntary action of the petitioners.⁸⁶⁰ Voluntary dismissal by petitioners, while seeming to be simple on its face, can be problematic. It is discussed here because a voluntary dismissal is judicially reviewable.

Dismissal by petition may occur at any time prior to the establishment of the project by an action of a majority of the petitioners who own at least 60 percent of the area owned by all of the petitioners as described in the petition.⁸⁶¹ Two requirements must be met: (1) a majority of the petitioners signing the establishment petition must sign the voluntary dismissal petition; and (2) the property owned by the petitioners for dismissal must equate at least 60 percent of the total area owned by all of the petitioners on the establishment petition.⁸⁶²

Neither the drainage authority nor an existing public drainage system should pay the costs incurred in processing a petition for a project that is later petitioned for dismissal. Therefore, the public drainage code provides that the petition for dismissal may only be granted after the drainage authority is paid for the cost of the proceedings.⁸⁶³

ii. Appeal of Order Establishing a Drainage Project

The order establishing a drainage project, which comes out of the final hearing, is appealable to district court in the county where the proceedings are pending under Minn. Stat. § 103E.095.⁸⁶⁴ It is the only affirmative order in the entire process that is appealable.

2. Benefits and Damages Appeal (Minn. Stat. § 103E.091)

Under [Minn. Stat. § 103E.091](#), a party may appeal to the district court from a recorded order of a drainage authority made in a drainage proceeding that determines:

1. The amount of benefits;
2. The amount of damages; or
3. Fees or expenses allowed.

Serving and Filing the Benefits and Damages Appeal

The notice of appeal must state the particular benefits or damages appealed and the basis for the appeal.⁸⁶⁵

Notice of the appeal must be served to the county auditor within 30 days after the order to be appealed is filed.⁸⁶⁶ While the drainage code only speaks to service of the appeal on the county auditor, if the

drainage authority is a watershed district, the county auditor should forward a copy of the notice of appeal to the watershed district secretary.

A party may appeal the amount of benefits or damages affecting property not owned by them; however, notice of the appeal must be served to the owner or occupant of property included in the appeal or to the attorney representing the property owner in the proceedings.⁸⁶⁷

Within 30 days after the notice is filed with the county auditor, the auditor must file the original notice with the court administrator of the district court.⁸⁶⁸

The Benefits and Damages Trial

In the case of an appeal from an order determining benefits, damages, fees, or expenses, the parties are entitled to a jury trial unless a jury is waived.⁸⁶⁹

The trial may, at the request of the person appealing, be held in the district court in the county where the affected land is located, even though the order appealed from is filed in the office of the auditor of another county or with the secretary of a watershed district.⁸⁷⁰ The court administrator of the district court where the appeal is first filed shall transfer the papers and documents on file in that court administrator's office to the court administrator where the trial is to be held.⁸⁷¹ After a determination on appeal, the court administrator of the district court that tried the case certifies the order or verdict to the court administrator of the district court in the county where the drainage proceedings were filed.⁸⁷²

The court administrator of the district court where the appeal is filed must file a certified copy of the final determination of the appeal with the auditor of the affected counties or with the secretary of the watershed district.⁸⁷³ Such judicial determination stands in the place thereafter of the original determination made by the drainage authority.⁸⁷⁴

The public drainage code states that an appeal involving benefits, damages, and expenses is to be given precedence over all other civil court matters except an appeal from an order establishing.⁸⁷⁵ If the person appealing loses the appeal, the court may order the person appealing to pay all costs of the trial.⁸⁷⁶ Costs do not include attorney's fees.

i. Appeals of Benefits and Damages

If the appellant proves that the benefits assessed to others should be lowered or the damages payable to others should be increased to the extent that the benefits of the project no longer exceed the estimated costs and damages, the trial court must dismiss the petition.⁸⁷⁷ However, the court does have discretion to remand proceedings to the drainage authority in order to cure defects.⁸⁷⁸

The trial on benefits and damages is also de novo; therefore, defects in the viewers' methodologies and processes cannot invalidate an establishment order because even major defects may be cured by the drainage authority on appeal at trial.⁸⁷⁹ The case is not reviewed on the record made in the drainage proceedings. There is no record other than the findings.

Benefits and damages are determined as of the establishment order and not using land values at the time of trial.⁸⁸⁰

The landowner has the burden of showing that the viewers' report and assessment are incorrect.⁸⁸¹ Absent evidence to the contrary, the viewers' report and assessment will be presumed correct.⁸⁸²

ii. Appeals of Fees or Expenses Allowed

Drainage authorities pay fees and expenses of the engineer, the viewers, its attorney, and other administrative fees as they are incurred or at the conclusion of the final hearing. A party challenging the propriety of the drainage authority's payment of fees and costs must file an appeal within thirty days of the drainage authority's order approving the advance payment.⁸⁸³

iii. Redetermination of Benefits

An order redetermining the benefits and damages on a public drainage system is regarded, for purposes of appeal, as a final order, that is appealable to the district court of the county where the proceedings are pending under [Minn. Stat. § 103E.091](#).

iv. Post-Establishment Modification

If the lowest bid for a contract came in at more than 30 percent above the engineer's estimated costs or if the lowest bid plus damages exceeds the benefits, the drainage authority may, on petition of an interested landowner, reopen the establishment order to have the engineer's detailed report and the viewers' report reconsidered.⁸⁸⁴ After holding a hearing on the petition, the drainage authority may either reject the petition and refuse to reopen the matter, or the drainage authority may grant the petition and reopen the matter for the purpose of ordering the viewers' report and the engineer's final report to be reconsidered.⁸⁸⁵

Reconsideration of the engineer's final report may call for modification of plans and specifications to reduce the cost of the project.⁸⁸⁶ After the engineer and viewers have resubmitted their amended reports, the drainage authority may adopt amended findings and order if one or more bids does not exceed the revised engineer's estimate by more than 30 percent.⁸⁸⁷

The public drainage code grants a party the right to appeal the amended establishment order under [Minn. Stat. § 103E.091, subd. 1](#).⁸⁸⁸ That statute is limited to appealing the amount of benefits, the amount of damages, fees or expenses allowed, or, whether the environmental, land use, and multipurpose water management requirements and criteria of [Minn. Stat. § 103E.015, subd. 1](#), are met.⁸⁸⁹

The statute for post-establishment modification does not grant a right to appeal the amended establishment order to district court under [Minn. Stat. § 103E.095](#).

v. Repair Assessment Order

In proceeding to repair a drainage system, if an engineer determines or is made aware that land drains into the system which has not been assessed, the engineer must report this to the drainage authority.⁸⁹⁰ The drainage authority then notifies the property owners whose lands are alleged to be draining into the system without having been assessed.⁸⁹¹ A hearing is held to allow the landowners to confirm or deny that their property drains into the system in question.⁸⁹² If the drainage authority is not convinced that the newly identified landowners do not receive benefits, viewers are appointed.⁸⁹³

The viewers then submit a viewers' report to the drainage authority and another hearing is held.⁸⁹⁴ Following that hearing, the drainage authority makes an order identifying the property and

determining the amount of benefits allocable to that land from the original construction of the system.⁸⁹⁵ It is from that order that a landowner may appeal.⁸⁹⁶ It is an appeal from an order determining benefits and damages under [Minn. Stat. § 103E.091](#). The statute does not permit an appeal under [Minn. Stat. § 103E.095](#); challenging the validity of the order itself, therefore, must be appealed to the court of appeals via writ of certiorari.

FOOTNOTES

⁸³¹ See Minn. Stat. §§ 103E.091 & 103E.095 (2015).

⁸³² See, e.g., *Schultz v. Chippewa Cnty.*, 57 N.W.2d 158, 164 (Minn. 1953) (holding that on appeal to district court from a drainage authority's order dismissing petition for establishment of a public drainage system, trial is de novo for all intents and purposes); *In re Cnty. Ditch No. 1-A of Yellow Medicine Cnty.* 47 N.W.2d 592, 594–95 (Minn. 1951) (holding that the district court, on appeal of an order of a public drainage authority to establish a ditch, is authorized to hear the matter de novo and to receive new evidence if the court desires and to then determine from the entire record whether the order can be sustained), overruled on other grounds, 98 N.W.2d 241, 242.

⁸³³ See Minn. Stat. § 103E.095 (2015).

⁸³⁴ See Minn. Stat. § 103E.091 (2015).

⁸³⁵ Minn. Stat. § 103E.095, subd. 3 (2015); *Titrud v. Achterkirch*, 213 N.W.2d 408, 411 (Minn. 1973).

⁸³⁶ See Minn. Stat. § 103E.095, subd. 1 (2015) (“After notice of the appeal is served, the appeal may be brought to trial by the appellant or the drainage authority after notifying the other party at least ten days before the trial date.”). Prior to 1985, the appeals statute stated that only a party “aggrieved” by an order of the drainage authority may appeal. See Minn. Stat. §§ 106.631, subd. 4 (1984) (“Any party aggrieved thereby may appeal to the district court of the county where the proceedings are pending from any order made by the county board dismissing the petition for any drainage system or establishing or refusing to establish any drainage system.” (emphasis added)) & 106.631, subd. 5 (1984) (“Any party aggrieved by a final order or judgment rendered on appeal to the district court, or by the order made in any judicial ditch proceeding dismissing the petition or establishing or refusing to establish any judicial ditch, may appeal as in other civil cases.” (emphasis added)). Under the pre-1985 appeals statute, the Minnesota Supreme Court held that the county drainage authority is not an aggrieved party—“The county was not an appellant to the district court, nor was it a party to that proceeding, and has no interest in the litigation. Its sole role in the proceeding has been that of the tribunal before which the initial determination was made.” *In re Petition of Abel*, 92 N.W.2d 800, 802 (Minn. 1958). In 1985, Minn. Stat. Chapter 106 was recodified as Minn. Stat. Chapter 106A. See 1985 Minn. Laws ch. 172. In the recodification, the text of the appeals statute was changed to eliminate reference to an “aggrieved” party and to include reference to “the drainage authority” as a party to the appeal. See 1985 Minn. Laws ch. 172, § 19 (codified as Minn. Stat. § 106A.095, subd. 1 (1985)) (“A party may appeal an order made by the board . . . After notice of the appeal is served, the appeal may be brought to trial by the appellant or by the drainage authority after notifying the other party at least ten days before the trial date.” (emphasis added)).

⁸³⁷ A “drainage proceeding” is limited to “a procedure under [the drainage code] for or related to drainage that begins with filing a petition and ends by dismissal or establishment of a drainage project.” Minn. Stat. § 103E.005, subd. 22 (2015).

⁸³⁸ A “drainage project” means a “new drainage system, an improvement of a drainage system, an improvement of an outlet, or a lateral.” Minn. Stat. § 103E.005, subd. 11 (2015).

⁸³⁹ Minn. Stat. § 103E.095, subd. 1 (2015).

⁸⁴⁰ Minn. Stat. § 103E.091, subd. 1(4) (2015). This provision was included in the benefits and damages portion of the appeal statute (Minn. Stat. § 103E.091) as a result of an error made by the statutory codifiers when the public drainage code was reorganized. The original appeals statute assigned all appeals other than those related to challenging the benefits and damages ordered by the drainage authority to the establishment appeal. Compare Minn. Stat. § 106.631, subd. 4 (1984), with Minn. Stat. § 106.631, subd. 2 (1984). The legislature repealed Minn. Stat., Chapter 106 and reenacted it as Chapter 106A in 1985; again, the legislature repealed Minn. Stat., Chapter 106A and reenacted it as Chapter 103E in 1990. See 1985 Minn. Laws Ch. 172, § 133; 1985 Minn. Laws Ch. 172 §§ 1–92; 1990 Minn. Laws Ch. 391, art. 10, § 4; 1990 Minn. Laws Ch. 391, art. 5. In both 1985 and 1990 the legislature expressly stated that the repeals and reenactments were passed for clarification and reorganization purposes only and that there was no intent to alter the drainage code’s meaning. See 1985 Minn. Laws Ch. 172, § 132; 1990 Minn. Laws Ch. 391, art. 10, § 1. Therefore, it is generally accepted among drainage lawyers that the courts should consider environmental and land use findings along with other feasibility and engineering issues during the establishment appeal and not during the benefits and damages appeal. See Legislative history of appeal provisions § 8:8 Minnesota Practice Series, Eileen M. Roberts et al., (2015 ed.).

⁸⁴¹ See Minn. Stat. § 103E.095, subd. 1 (2015) (limiting the scope of appeal to orders that dismiss drainage “proceedings” or establish or refuse to establish a “drainage project.”); Minn. Stat. § 103E.005, subs. 22 & 12 (2015) (defining a “proceeding” and a “drainage project”).

⁸⁴² *In re Denial of a Petition for Partial Abandonment of a Portion of Cnty. Ditch #24*, Order dated June 9, 2015 (Court File No.

A15-0638).

⁸⁴³ *Rekedall v. Redwood Cnty.*, 102 N.W.2d 682, 688 (Minn. 1960).

⁸⁴⁴ *Rekedall v. Redwood Cnty.*, 102 N.W.2d 682, 689 (Minn. 1960).

⁸⁴⁵ *Rekedall v. Redwood Cnty.*, 102 N.W.2d 682, 689 (Minn. 1960).

⁸⁴⁶ See Minn. Stat. §§ 103E.215 (improvement of drainage system) & 103E.221 (improvement of outlets); *Rekedall v. Redwood Cnty.*, 102 N.W.2d 682, 689 (Minn. 1960).

⁸⁴⁷ Compare Minn. Stat. § 106.631, subd. 4 (1985) (“Any party aggrieved thereby may appeal to the district court of the county where the proceedings are pending from any order made by the county board dismissing the petition for any drainage system or establishing or refusing to establish any drainage system.” (emphasis added) & *Petition of Abel*, 92 N.W.2d 800, 802 (Minn. 1958) (“In no sense can it be said that [the drainage authority] is an aggrieved party in this case.”), with 1985 Minn. Laws ch. 172, Sec. 19 (codified as Minn. Stat. § 106A.095, subd. 1 (1985)) (“A party may appeal an order made by the board that dismisses drainage proceedings or establishes or refuses to establish a drainage system to the district court of the county where the drainage proceedings are pending. The appellant must serve notice of the appeal to the auditor within 30 days after the order is filed. After notice of the appeal is served, the appeal may be brought to trial by the appellant or **by the drainage authority** after notifying the other party at least ten days before the trial date.”).

⁸⁴⁸ Minn. Stat. § 103E.095, subd. 1 (2015).

⁸⁴⁹ Minn. Stat. § 103E.095, subd. 2 (2015).

⁸⁵⁰ See, e.g., *Schultz v. Chippewa Cnty.*, 57 N.W.2d 158, 164 (Minn. 1953) (holding that on appeal to district court from a drainage authority’s order dismissing petition for establishment of a public drainage system, trial is de novo for all intents and purposes); *In re Cnty. Ditch No. 1-A of Yellow Medicine Cnty.* 47 N.W.2d 592, 594–95 (Minn. 1951) (holding that the district court, on appeal of an order of a public drainage authority to establish a ditch, is authorized to hear the matter de novo and to receive new evidence if the court desires and to then determine from the entire record whether the order can be sustained), overruled on other grounds, 98 N.W.2d 241, 242.

⁸⁵¹ Minn. Stat. § 103E.095, subd. 2 (2015).

⁸⁵² Minn. Stat. § 103E.095, subd. 2 (2015).

⁸⁵³ See, e.g., *Titrud v. Achterkirch*, 213 N.W.2d 408, 412 (Minn. 1973) (holding that appellant’s argument that the costs on a drainage project exceeded the benefits was “prematurely raised on this appeal.”); *Oelke v. Faribault Cnty.*, 110 N.W.2d 145, 149 (Minn. 1961) (“If the method adopted by the viewers resulted in an arbitrary and unequal assessment as to particular property, the owner has the right to appeal and have the jury pass upon the merits of his claim under Minnesota Statutes, section 103E.091.”); *State ex rel. Great N. Ry. Co. v. Dist. Ct. of Sixteenth Judicial Dist.*, 36 N.W.2d 336, 339 (Minn. 1949) (holding that errors made in the viewers’ report do not go toward the validity or lawfulness of the order establishing a drainage project or making an assessment).

⁸⁵⁴ See *Petition of Jacobson*, 48 N.W.2d 441, 444 (Minn. 1951).

⁸⁵⁵ Minn. Stat. § 103E.261, subd. 4(a) (2015).

⁸⁵⁶ Minn. Stat. § 103E.095, subd. 1 (2015).

⁸⁵⁷ See Minn. Stat. § 103E.261, subd. 7(b) (2015) (“The findings and order of the drainage authority at the preliminary hearing are conclusive only for the signatures and legal requirements of the petition, the nature and extent of the proposed plan, and the need for a detailed survey, and only for the persons or parties shown by the preliminary survey report as likely to be affected by the proposed drainage project.”).

⁸⁵⁸ Minn. Stat. § 103E.341, subd. 1 (2015).

⁸⁵⁹ Minn. Stat. § 103E.095, subd. 1 (2015).

⁸⁶⁰ Minn. Stat. § 103E.231, subd. 1 (2015).

⁸⁶¹ Minn. Stat. § 103E.231, subd. 1 (2015).

⁸⁶² See Minn. Stat. § 103E.231, subd. 1 (2015).

⁸⁶³ Minn. Stat. § 103E.231, subd. 1(b) (2015).

⁸⁶⁴ See Minn. Stat. §§ 103E.095 & 103E.091 (2015).

⁸⁶⁵ Minn. Stat. § 103E.091, subd. 2(b) (2015).

⁸⁶⁶ Minn. Stat. § 103E.091, subd. 2 (2015).

⁸⁶⁷ Minn. Stat. § 103E.091, subd. 2(a) (2015).

⁸⁶⁸ Minn. Stat. § 103E.091, subd. 2(b) (2015).

⁸⁶⁹ Minn. Stat. § 103E.091, subd. 4(a) (2015).

⁸⁷⁰ Minn. Stat. § 103E.091, subd. 4(b) (2015).

⁸⁷¹ Minn. Stat. § 103E.091, subd. 4(b) (2015).

⁸⁷² Minn. Stat. § 103E.091, subd. 4(b) (2015).

⁸⁷³ Minn. Stat. § 103E.091, subd. 4(d) (2015).

⁸⁷⁴ Minn. Stat. § 103E.091, subd. 5 (2015).

⁸⁷⁵ Minn. Stat. § 103E.091, subd. 4(c) (2015).

⁸⁷⁶ Minn. Stat. § 103E.091, subd. 4(c) (2015).

⁸⁷⁷ *Hagen v. Martin Cnty.*, 91 N.W. 2d 657, 660 (Minn. 1958).

⁸⁷⁸ See *Pestka v. Cnty. of Blue Earth*, 654 N.W.2d 153, 158 (Minn. Ct. App 2002) (affirming increase in benefits after remand from benefits trial).

⁸⁷⁹ *Black v. Nw. Nat'l Bank of Minneapolis*, 167 N.W.2d 147, 150 (Minn. 1969).

⁸⁸⁰ See *In the Matter of Branch A-38 of Joint Ditch No. 204 of Martin & Faribault Cntys.*, 406 N.W.2d 524, 525 (Minn. 1987).

⁸⁸¹ *State v. Nelson*, 133 N.W. 1010, 1012 (Minn. 1912).

⁸⁸² *State v. Nelson*, 133 N.W. 1010, 1012 (Minn. 1912).

⁸⁸³ Minn. Stat. § 103E.091, subd. 3 (2015); *Cnty. of Rice v. La Croix*, 220 N.W. 157, 159 (Minn. 1928) (holding that orders to advance expenses and costs are binding unless appealed within the statutory period).

⁸⁸⁴ Minn. Stat. § 103E.511, subd. 1 (2015).

⁸⁸⁵ Minn. Stat. § 103E.511, subd. 5 (2015).

⁸⁸⁶ See Minn. Stat. § 103E.511, subd. 5(b)(2)–(3) (2015).

⁸⁸⁷ Minn. Stat. § 103E.511, subd. 5(f) (2015).

⁸⁸⁸ Minn. Stat. § 103E.511, subd. 5(f) (2015).

⁸⁸⁹ Minn. Stat. § 103E.091, subd. 1 (2015).

⁸⁹⁰ Minn. Stat. § 103E.741, subd. 1 (2015).

⁸⁹¹ Minn. Stat. § 103E.741, subd. 1 (2015).

⁸⁹² Minn. Stat. § 103E.741, subds. 1–2 (2015).

⁸⁹³ Minn. Stat. § 103E.741, subd. 2 (2015).

⁸⁹⁴ Minn. Stat. § 103E.741, subds. 2–3 (2015).

⁸⁹⁵ Minn. Stat. § 103E.741, subd. 3 (2015).

⁸⁹⁶ Minn. Stat. § 103E.741, subd. 4 (2015).

B. Tax Assessment Appeals

When a public drainage authority orders a repair, regardless of whether the repair is initiated by the drainage authority or initiated by a petition of an individual or an entity interested in or affected by the drainage system, the order for repair does not dismiss a drainage proceeding, establish a drainage project, or refuse to establish a drainage project, nor does the order determine the amount of benefits or damages or fees or expenses allowed. Thus, the two appeals provisions of the drainage code, [Minn. Stat. § 103E.091](#) and [103E.095](#), do not expressly provide a means of appeal for a claim that the drainage authority has ordered a repair without jurisdiction.

In at least one instance, the Minnesota Supreme Court permitted landowners challenging the procedures used by the drainage authority to order and assess repair costs to bring their claim as part of a tax appeal under [Minn. Stat. § 278.01](#).⁸⁹⁷

FOOTNOTES

⁸⁹⁷ See *Swenson v. Norman Cnty.*, 210 N.W.2d 242 (Minn. 1973). The Swenson case arrived at the Supreme Court on appeal of a decision by the District Court brought as an objection to real property taxes made under Minn. Stat., Chapter 278. *Id.* at 242. The drainage authority did raise the objection to bringing a claim under chapter 278 and, without discussion on the issue, the Supreme Court dismissed the landowner's tax appeal on the merits of their objections. See *id.*

C. Extraordinary Remedies

Injunctive relief, writs of mandamus, and certiorari are extraordinary legal remedies which may apply to the actions, or lack thereof, of public drainage authorities but only in those circumstances where the drainage code does not provide for a statutory right of appeal and there is no other adequate remedy at law.

1. Injunctions

An injunction is an order from the court that either compels a party to take a specific action or refrain from a specific act. An injunction is referred to by the courts as an “equitable remedy,” rather than a

“remedy at law.” A party is entitled to a remedy at law if the party meets all of the procedural and substantive requirements of a statute. There is no entitlement to an “equitable remedy,” however, a successful claimant can obtain an equitable remedy from a court if there is no adequate remedy at law and the court determines that the particular circumstances of the case warrant extraordinary action.

If the drainage code or another applicable statute, like the property tax objection statute in [Minn. Stat. 278](#) for example, provide an opportunity for a party to obtain judicial review of an allegedly unlawful action, then the courts will not grant an action for injunctive relief as an alternative to utilizing the appeals statute.⁸⁹⁸

2. Mandamus

The purpose of an action for mandamus is to require a lower tribunal, board, or official to act in a matter in which it has no discretion. Where the statute requires the drainage authority to take certain action, a writ of mandamus (i.e., a court order) can be obtained from the district court requiring the drainage authority to act.

Such an action takes the form of a lawsuit in the district court. The merits of the proceeding are usually determined on motion early in the proceedings. If the case is tried on its merits, it is tried to the court and not to a jury.

Mandamus, like other extraordinary remedies, is not available where the drainage code provides an adequate remedy at law. For example, landowners are prohibited from bringing a petition for writ of mandamus in district court, seeking to compel the drainage authority to maintain a public drainage system, because any interested landowner may petition the drainage authority to repair a public drainage system under [Minn. Stat. § 103E.715](#).⁸⁹⁹

3. Writ of Certiorari

There are numerous decisions made by a drainage authority for which the drainage code does not expressly provide statutorily for review. The functions of a county or watershed district board, however, are quasi-judicial.⁹⁰⁰ Absent an adequate method of review or legal remedy within the drainage code, judicial review of the quasi-judicial decisions of the board must be invoked by writ of certiorari.⁹⁰¹

Certiorari may be used to review only final determinations of rights, and not anticipated wrongs.⁹⁰²

The scope of review by certiorari is more limited than in a statutory appeal. Review by certiorari is not de novo. The court can only reverse an erroneous decision of the drainage authority and remand it for purposes of proceeding under correct theory. Findings of fact may be interfered with only if they are arbitrary, capricious, or unreasonable.⁹⁰³ Questions of law appearing on the face of the record only may be reviewed.⁹⁰⁴

FOOTNOTES

⁸⁹⁸ See *Larson v. Freeborn Cnty.*, 126 N.W.2d 771, 772–73 (Minn. 1964) (holding that after completion of drainage system work, property owners affected by the drainage system proceedings could not obtain an injunction against collection of assessments levied to meet the construction expenses and were limited to statutory procedures for judicial review) (citations omitted).

⁸⁹⁹ *Zaluckyj v. Rice Creek Watershed Dist.*, 639 N.W.2d 70, 75 (Minn. Ct. App. 2002) (holding that the repair petition procedures under Minn. Stat. § 103E.715 were available to landowners and that the repair proceedings were not futile because there was no requirement that the drainage authority conduct a cost-versus-benefit analysis when granting a petition for repair that the drainage authority determines “is necessary for the best interests of the affected property owners.” (citing Minn. Stat. § 103E.715, subd. 4(a)(1))).

⁹⁰⁰ *State v. Truax*, 166 N.W. 339, 340 (Minn. 1918).

⁹⁰¹ Minn. Stat. § 606.06 (2015); *Dietz v. Dodge Cnty.*, 487 N.W.2d 237, 239 (Minn. 1992).

⁹⁰² *State ex rel. Mosloski v. Martin Cnty.*, 80 N.W.2d 637, 639 (Minn. 1957).

⁹⁰³ *Ellerbrock v. Bd. of Educ.*, 269 N.W.2d 858 (Minn. 1978).

⁹⁰⁴ *Ellerbrock v. Bd. of Educ.*, 269 N.W.2d 858 (Minn. 1978).

D. Crimes Related to Drainage Systems and Penalties

The drainage code has one section in it calling for criminal penalties for certain acts. These would be misdemeanors and would include such things as the unauthorized use of a public system as an outlet, the intentional obstruction of a drainage system, knowingly planting trees over a public drain tile without permission, or willfully changing the location or altering engineer's markings or stakes.⁹⁰⁵

Only the most aggravated of situations should be prosecuted as crimes. The unauthorized use of an outlet may be dealt with in several ways within the drainage code without resorting to criminal action. The obstruction of a drainage system or the altering of engineer's markings or stakes is another matter. If malicious intent can be shown, vis-a-vis accidental or negligent conduct, such actions are readily prosecutable and should be prosecuted. The county attorney, acting in a prosecutorial capacity, should prosecute the case. In so doing, the county attorney officially represents the State of Minnesota. The drainage authority, as the trustee of the drainage system for the benefit of all assessed landowners is, in effect, the victim.

FOOTNOTES

⁹⁰⁵ See Minn. Stat. § 103E.081 (2015).