

Article 7B.

Improvement, Renovation, Enlargement and Extension of Canals, Structures and Boundaries.

**§ 156-93.2. Proceedings for improvement, renovation and extension of canals, structures and equipment.**

The board of commissioners may construct, renovate, improve, enlarge and extend the drainage systems and water-retardant structures and any equipment of the district, by complying with the following provisions:

- (1) The commissioners shall file with the clerk of the superior court in the county in which the district was organized, a petition which sets forth the need for the improvements requested and a general description of the proposed improvements.
- (2) Upon the filing of the petition, the clerk shall then appoint a board of viewers with the same composition and qualifications as is required by G.S. 156-59. He shall direct the board of viewers to consider the proposals of the board of commissioners and report to him (i) whether or not the improvement proposed will benefit the lands sought to be benefited and (ii) whether or not the proposed improvement is practicable.

The board of viewers shall make their report to the clerk within 30 days after their appointment unless the time shall be extended by the court upon the showing of a meritorious cause for the extension.

- (3)
  - a. If the board of viewers shall report (i) that none of the improvement proposed will benefit the lands sought to be benefited, or (ii) that it is not practicable, the petition of the board of commissioners shall be dismissed and shall not be submitted again within six months thereafter.
  - b. If the board of viewers shall report (i) that part or all the improvement proposed will benefit the lands sought to be benefited and (ii) the proposed improvement is practicable, then the clerk shall fix a time and place for a hearing upon said report. The said hearing shall be no less than 20, nor more than 30, days after the filing of said report.
- (4) Notice of said hearing shall be given as follows:
  - a. Posting and publication:
    1. Posting at the courthouse door of the county in which the proceeding is pending;
    2. Posting at five conspicuous places within the district;
    3. The notice shall be posted at least 20 days prior to said hearing;
    4. Publication in a newspaper with general circulation within the area once a week for three successive weeks.
  - b. Contents:
    1. The notice shall state the time and place for the hearing;
    2. Describe in general terms the improvements proposed;
    3. That the court will consider and adjudicate the report of the board of viewers.
- (5) At the date appointed for the hearing the clerk shall hear and determine any objections that may be offered to the said report. The clerk may make such modifications and changes which tend to increase the benefits of the proposed work or improvement.

- (6) a. If the clerk shall adjudicate that (i) none of the improvements proposed will benefit any of the lands sought to be benefited or (ii) that none of the improvements are practicable, he shall dismiss the proceedings and the petition shall not be submitted again within six months thereafter.
- b. If the clerk shall approve the said report, he shall then direct the board of viewers to prepare a further and detailed report which shall include the following:
  1. Specific plans and profiles together with estimates of the cost of the work recommended by the said board of viewers and an estimate of all other costs including those incurred by the board of viewers;
  2. If directed by the clerk, a new property map of the district which shall show thereon the general location of each tract of land which will be benefited by the proposed work;
  3. A statement showing the classification of benefits to be received by the several tracts of lands. This classification shall be determined and shown in the same manner as is provided for in G.S. 156-71. The board of viewers may adopt the original classification. Only those lands to be benefited by the proposed work shall be classified for assessment.

The board of viewers shall have, insofar as applicable, the same powers and duties as relate to the final report as are required and provided in Article 5 by G.S. 156-69, 156-70, 156-70.1 and 156-71.

The board of viewers shall make their report to the clerk within 60 days after their appointment. The clerk may extend this time upon the showing of meritorious cause for the extension.

The expense of the board of viewers, their assistants, and all costs incurred by them shall be paid from any surplus funds of the district, as defined in this Subchapter, or if such are not sufficient, by the same means of financing as are available for such purposes when the district is originally organized. The estimate of the expenditures shall be shown in its report and all amounts of money expended shall be reimbursed when funds are available.

- (7) Upon the filing of the said report, the clerk shall fix a time and a place for a hearing thereupon.
- (8) The notice of the hearing upon said report shall be given in the same manner as required for the notice of the proposed work as required by the preceding subdivision (4) which relates to the preliminary hearing.

Also, a notice of said hearing shall be mailed at least 10 days prior to the hearing, to those landowners as their names appear upon the statement of classification of benefits filed with the report of the board of viewers and whose names and addresses are shown on the tax scrolls of the county wherein their land is situated. The attorneys for, or commissioners of, the district shall use due diligence to determine the said names and addresses from the tax scrolls.

The filing with the clerk of the superior court of a certificate by the attorney for, or the commissioners of, the district, that due diligence has been used to obtain the names and addresses from the tax scrolls and that notice has been mailed to those persons at the address shown, shall be

sufficient showing that this provision has been complied with. The certificate shall state the names, addresses and dates to whom such notice was mailed.

- (9) At the date set for the hearing any landowner may appear in person, or by counsel, and file his objections in writing to the report of the board of viewers. It shall be the duty of the clerk to carefully review the report of the board of viewers and the objections filed thereto and make such changes as are necessary to render substantial and equal justice to all landowners in the district.

If the clerk shall adjudicate that the benefits which will accrue to the lands affected are greater than the cost of the improvements, the report of the board of viewers shall be confirmed. The clerk shall then direct the commissioners of the district to proceed with the improvements as approved.

If, however, the clerk finds that the cost of the improvements is greater than the resulting benefits that will accrue to the lands affected, the clerk shall dismiss the proceedings.

- (10) Any landowner, party petitioner, or the drainage district may, within 10 days after the entry of the order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. The procedures for taking appeal under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. All of the terms and provisions of G.S. 156-75 apply to the appeal. (1961, c. 614, s. 1; 1969, c. 192, s. 2; 1999-216, s. 21.)