

## SUMMARY OF OHIO PETITION DITCH LAW<sup>1</sup>

### Initiation of Petition

- “ Any landowner (including a private or public corporation, board of township trustees, board of education, mayor or legislative authority, director of any department, office or institution of the state, and the trustees of any state, county, or municipal public institution) can file a petition with the clerk of the board of county commissioners to construct an “improvement.”
- “ The petition must:
  - State the proposed benefits;
  - State that it will be conducive to the public welfare,
  - Include a description of the type of work (“improvement”) petitioned for; i.e. “may ask to locate, clean, remove obstructions from, construct, reconstruct, straighten, deepen, widen, alter, box, tile, fill, wall, or arch any ditch, drain, watercourse, floodway, creek, run, or river or to change the course, location, or terminus thereof, or may construct a levee, wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for control of water.” (herein referred to as “project”)
  - State that all costs of engineering, construction and future maintenance will be assessed to the benefiting parcels of land.
- “ Petitioner must also file a \$500 bond plus \$2 for each parcel of land in excess of 200 parcels

### Notice and Hearing

- “ After filing petition, clerk gives notice to the county commissioners and the county engineer, which then must view the proposed project
- “ Within 10-90 days the board must hold its first hearing.
- “ The clerk must mail a legal notice of the first hearing to all owners in watershed. The notice will also indicate that all costs of engineering, construction and future maintenance will be assessed to the owners.
- “ The clerk also must publish a legal notice in one newspaper of general circulation in the area, stating the nature and location of the project and the date, time and location of the view and first hearing.
- “ Owners opposed to the project may file remonstrances against the granting of the improvement and state their reasons. The applications for remonstrances may be filed with the clerk of the board of county commissioners at any time before a final order is made confirming the assessments and finalizing the contracts for the construction of the project.

### Preliminary report

- “ Upon notification of the petition, the county engineer must prepare a preliminary estimate of the cost of the project.

---

<sup>1</sup> This document is intended to summarize the Ohio Revised Code sections pertaining to Ohio’s Petition Ditch Laws (ORC 6131, 6133, 6135, 6137) so that the public can better understand the legal process involved in initiating and implementing a petition ditch project. This document is not an official legal review or opinion and should not substitute for formal legal advice or counsel.

- “ The engineer must also file a preliminary report at the first hearing. This report must include the preliminary estimate of costs, comments on the feasibility and a statement of his or her opinion as to whether benefits from the project are likely to exceed the estimated cost. The report is also to include “all factors apparent to the engineer, both favorable and unfavorable” to the proposed improvement, so that the petitioners may be informed as to what is involved.
- “ The engineer may submit an alternate proposal to the project as proposed by the petitioners.
- “ The county commissioners may require the county engineer to file any additional preliminary reports, of whatever nature, that the board believes will help to decide whether or not to approve the petition project.
- “ The costs incurred by the engineer in making the preliminary reports may be paid from the bond if the petition is dismissed at the first hearing, with any excess being paid by county funds.

#### View and First Hearing

- “ View: The county commissioners and the county engineer must meet near the proposed project location and “hear the proof offered at that time by any owner affected by the proposed improvement.” They must “go over and along the line” of the proposed project and each branch, lateral, or spur mentioned in the petition. This process may take several days.
- “ Hearing: At the first hearing, the commissioners must hear the preliminary report and hear any evidence offered by any owner for or against the project.
- “ The first hearing may be continued for more than one day in order for all interested owners have an opportunity to be heard.
- “ At the first hearing, if the commissioners find that the project is not necessary, not conducive to the public welfare or finds that the costs are more than the benefits, the board shall dismiss the petition.
- “ This may be appealed within 21 days to the county court of common pleas. If no appeal is filed, the petitioner must pay for all the costs incurred in the proceedings; the bond is then released.

#### Approving the petition

- “ The commissioners may approve the petition if they find that the project is necessary, conducive to the public welfare, and is “reasonably certain” that the costs are less than the benefits. The order is effective on the day of the hearing.
- “ When deciding whether to approve the petition, the board “shall give consideration to the protection of environmentally significant areas when those areas could be adversely affected by the construction”.
- “ The board may decide to change the terminus or route of the project if it finds that it is necessary to accomplish the purpose of the project.
- “ Upon approval of the petition, the board must order the county auditor to transfer up to 25% of the preliminary estimate from the county general revenue fund to the general drainage improvement fund. Once transferred, the county engineer must prepare the reports, plans and schedules (which may be extended “from time to time by the board.”)

- “ If the board approves the project and the project is being undertaken through joint efforts with any federal or state agency, and the federal or state rules are in conflict with Ohio ditch law, the board may adopt the federal or state rules.

#### Duties of the county engineer

- “ After the project is approved and certified by the county commissioners, the engineer must make the necessary survey and plans for the project including maps, profiles of the cuttings and gradient, estimated cost of the construction, publication of notices and other expenses. The engineer will also recommend a maintenance district.
- “ The cost of one year of maintenance shall be added to the cost of construction and is credited to the maintenance fund.
- “ The engineer must establish benchmarks at intervals of not less than one mile apart for the original level of the project can be established. The plan of the work proposed to be done will show the grade, depth, excavation proposed, location of the permanent bench marks, etc.
- “ As soon as the maps, profiles and plans are completed, the engineer shall send copies to ODNR, ODOT (if a state highway is affected) and the Conservancy District if it is within the district.
- “ ODNR (& ODOT or Conservancy District, if applicable) must then review the plans and submit a report within 30 days “indicating approval, or in case that approval cannot be given, a report with recommendations” for use of best management practices.
- “ The engineer must give ODNR’s recommendations or approval to the county commissioners, who shall take notice and shall authorize the engineer to make any changes or alterations that they find necessary or desirable.
- “ The engineer must then prepare specifications for the project construction, including the width of temporary easement for construction. The specs “shall provide for the spreading and leveling of spoil banks and shall provide for erosion and sediment control through the establishment of a sod or seeded strip not fewer than four feet nor more than 15 feet wide, measured at right angles to the top of the ditch bank, on both sides of the ditch, except where suitable vegetative cover exists. The strip or other such controls shall be considered a part of the permanent improvement. Sod or seeded strips established and maintained in excess of four feet shall be compensated for by their removal from the taxable valuation of the property of which they are a part.”
- “ The engineer must add estimates for inspection work and, with the help of the prosecuting attorney, prepare forms for contracts and bid guarantees with bidders.
- “ The engineer is required to make an itemized bill of the costs and expenses incurred during this entire process and file them with the clerk of the board of county commissioners upon completion.

#### Assessments According to Benefits

- “ The county engineer shall estimate the costs and benefits to public corporations and any state property for the assessments.
- “ None of the assessments can be less than \$10.

- “ In determining the estimated drainage assessments, the county engineer must give primary consideration to the potential increase in productivity of the land drained, and the quantity of drainage contributed, the relative location of the property to the project, value of the project to the watershed, and benefits.
- “ The engineer must also estimate the value of the land or other property needed to be taken or damaged by the construction and maintenance of the ditch project and create a schedule of damages which then become part of the total cost of construction of the project
- “ Each tract of land in the watershed must be assessed in the proportion that it is benefited.

#### Notice of filing of schedules & assessments

- “ Once the county engineer completes the reports, plans and assessments, they are filed with the commissioners, who then must schedule a final hearing within 25-90 days upon receipt of all materials.
- “ Once the date of the final hearing is set, the clerk must send owners the assessment (or damages) to owners by certified mail, return receipt requested, or by first –class mail in a five-day return envelope with “legal notice” on the envelope. The mailing will also include information on the final hearing and information that all claims for compensation or damages must be filed with the clerk before the final hearing.
- “ The clerk must also run a legal notice in at least one newspaper with general circulation in the area, which states the name, location and nature of the project and the date, time and location of the final hearing (if sent by first class mail, then notice must be published twice). The notice must be no less than 13 days before the final hearing.

#### Owner may file exceptions to assessment or compensation

- “ It is presumed that the owner accepts the assessments unless owners file an exception with the clerk of the board of county commissioners. All exceptions or claims siting damages must describe the land which would be taken or damaged and reasons why they should be compensated.
- “ In claims for compensation or damages, the prosecuting attorney will represent the county (and may appeal excessive compensation to the county court of common pleas). If it affects the state, the attorney general shall represent the state.

#### Final hearing/hearing on compensation or damages

- “ The commissioners shall hear claims for compensation or damages from the project at the final hearing.
- “ The board may also hear applications for changes in the nature, kind or extent of the work proposed. If the board finds that such changes will better accomplish the purpose of the project, it may allow for such a change. If a change is made or if damages increase the cost of the project, the final hearing shall be continued until a revised total cost estimate can be made.
- “ After hearing all of the evidence, and reviewing all the plans, if the board finds that the costs are equal to or greater than the benefits, or the improvement is

not necessary, or that it would not be conducive to the public welfare, the board shall dismiss the petition.

- .. In determining whether or not to approve the project, the board must consider the cost of construction, effect on the land, appropriateness of the outlet, benefits to public welfare, land, public corporations or the government, and any other matters
- .. If the petition is dismissed, all costs for the proceedings, including the engineer's costs to create the surveys, plans, and reports *may* be distributed to the watershed landowners in the same ratio as proposed in the original assessments OR they may be paid from county funds.
- .. If the petition is not dismissed, the board will hear testimony for or against the assessments, which can amend or correct the assessments.
- .. At the final hearing, the commissioners shall determine date, time and place for the county engineer to receive bids.

#### Appeals

- .. Any owner may appeal to the county court of common pleas within 21 days of the approval of the project. The appeal may address any one or more of the following questions:
  - o Is the improvement necessary?
  - o Will the improvement be conducive to the public welfare?
  - o Is the cost greater than the benefits?
  - o Is the route, termini, or mode of construction the best to accomplish the purpose of the improvement?
  - o Are the assessments levied according to benefits?
  - o Is the award for compensation for damages just?
- .. The appellant must file an appeal bond with surety to pay all costs on appeal if the decision is sustained on a hearing or trial. The amount of the appeal bond shall be not less than \$500 plus \$2 for each parcel of land in excess of 200 parcels.
- .. There are a number of other details regarding appeals contained in ORC § 6131.29 – 6131.36

#### Bid

- .. Laws on bidding are contained in §6131.37 – 6131.42

#### Completion of work/other points

- .. After the completion of the project, the commissioners shall have the auditor compare the estimated costs with the final costs.
- .. The contract to complete the work may be extended by the commissioners with approval by the county engineer.
- .. All work will be done under the supervision and inspection of the county engineer
- .. The county engineer has authority to order landowners to remove obstructions in order to complete the project.
- .. Owners may apply to the county engineer to furnish the work and material in lieu of a special assessment

- “ If necessary, the county commissioners may levy upon the grand duplicate of the county a tax not to exceed five-tenths of one mill on the dollar to pay for the county’s assessment for the project. Other tax levies are explained in ORC § 6131.53 – 6131.54.
- “ The county commissioners must maintain a permanent file of all the documents related to the petition process.
- “ Projects involving a ditch, drain, or watercourse which have been established and used for seven years or more, are then considered to be a public watercourse.
- “ If a county commissioner petitions or owns land in a petitioned watershed, the judge of the court of common pleas must appoint a “disinterested freeholder” who is not related by blood or affinity to the commissioner.
- “ If the county commissioners petition land for drainage improvements, they are not required to post a bond.

#### Group ditches/public watercourses established by agreement

- “ One or more landowners that want to jointly construct and pay for a project that will benefit only their land may enter into a written agreement for the construction of the project. The plan must be approved by a professional engineer and reviewed by the county engineer who will prepare maintenance assessments which include his costs in reviewing and preparing the assessments.
- “ This section of the code does not include projects which involve or change stream channels that may be made by ODOT or other public agencies at their own expense.

#### Vacation of ditch or drain

- “ Landowners may use the same petition process used to initiate ditch projects to also vacate them.

#### Joint boards

- “ If a project involves land in more than one county, the proceedings must be conducted by a joint board of county commissioners. The petition is filed in the county where the majority of the proposed improvement is located. All decisions of the joint board are made by a vote of the majority of the total number of commissioners. The ODNR director serves as an ex officio member of the joint board. ODNR does not vote unless there is a tie. In this case, the board adjourns for 30 days before ODNR casts the tie-breaking vote.
- “ The engineer in the county where petition was filed will do the field work and create the plans, estimates, etc, but must be signed and approved by the engineers in all the other counties involved. If there is disagreement, separate plans can be filed and paid for by each respective county.
- “ The hearing procedures for joint boards more or less mirror those for single county projects. See ORC §6133.04 – 6135.19

#### Maintenance funds

- “ Each county must establish and maintain a maintenance fund for the repair, upkeep and permanent maintenance of each project.

- “ The maintenance fund is maintained, as needed, by assessments levied upon all landowners in the watershed not more than once annually based on the estimated benefits for construction of the project. The maintenance fund can at no time have an unencumbered balance greater than 20% of all construction costs of the project. The minimum assessment is \$2.
- “ The maintenance assessment, certified by the commissioners and auditor, is made upon the “substantial completion” of a project and on or before July 1 of each year. It is placed on the next succeeding tax duplicate to be collected and paid with other special assessment.
- “ Commissioners are authorized to combine projects within the same watershed into a drainage maintenance district.
- “ If the board or joint board receives a written complaint from any landowners, receives a recommendation from the county engineer, or observes on their own that the project is in need of repair or maintenance, it (or the county engineer) shall make an inspection of its condition. If they find there is a need for maintenance, it can be done by force account or by bidding out the contract.
- “ Whenever a landowner of any lands assessed for a project authorized prior to August 23, 1957, files a written complaint seeking repair, the county engineer must inspect the project within 60 days with the landowner. The commissioners may authorize to make up to \$4000 in repairs and establish a drainage repair fund.

#### Other engineer duties

- “ The county engineer is charged with the supervision of the repair and maintenance of all county and joint county ditches, drains, watercourses, and other drainage improvements within the county constructed under this section of the Revised Code.
- “ The engineer is to make an inspection of the projects on or before June 1 of each year and report the conditions to the commissioners and an estimate of the amount needed to repair and maintain them.
- “ Any number of landowners along a ditch, drain, watercourse, or other drainage improvement may form an advisory committee in order to notify the county engineer of the need for any repair and maintenance work. The engineer shall consider these recommendations.
- “ The auditor keeps records which show the total amount of money expended from the drainage maintenance funds on each drainage improvement and maintenance district.
- “ The auditor also creates a rotary fund for the purchase of equipment, materials, and labor related to the general maintenance of watercourses. The engineer then sets a rental rate for equipment purchased with this fund.
- “ In preparing plans for repair and maintenance of open ditches, the engineer shall provide for “necessary clearing of tree and brush growth, removal of silt bars, spreading and leveling of spoil banks, and the preservation of a sod or seeded strip.”

#### Reduction of Assessments/Other law regarding assessments

- .. Any owner may apply for a reduction in the maintenance assessment because of work he or she proposes (clearing brush, removing silt or debris, etc.).
- .. Landowners using best management practices to reduce runoff, erosion and sedimentation certified by the board of supervisors of the soil and water conservation service may qualify for up to a 50% reduction in assessments.
- .. After six annual maintenance fund assessments have been made, the commissioners will review the assessment fund and may increase or decrease the respective benefit apportionments to reflect changes in the benefits occurred during the six years. The board will review this every six years.
- .. As soon as the commissioners change the permanent base of maintenance assessments of any owner, the board will send legal notice to landowners stating the amount of the present assessment and the proposed new assessment and the date of a hearing on the change.
- .. Commissioners may also levy equalization assessments to landowners who were not assessed for the construction of the project, but now receives substantial benefits from it.
- .. In lieu of the permanent assessment base, commissioners may levy assessments on landowners according to tax value for the ditch maintenance fund. Increases or reductions of the assessments are made at the regular 6-year reappraisal of property in the county.

#### Ditch maintenance

- .. Maintenance workers are authorized to go on adjoining or abutting lands within the permanent easement in order to operate machinery or other equipment.
- .. The permanent easement for open ditches shall be not more than 25 feet from the top of the bank measured at right angles, and “wherever practical the area so used shall be on one side of the ditch only.”
- .. When a county engineer determines that an emergency situation involving ditch maintenance exists, the easement can be temporarily extended to 75 feet from the top of the bank. The maximum width for closed ditches is not to exceed 80 feet from the center line of the project. The permanent easement for all other projects will be specified by the county engineer.
- .. If crops or damaged beyond the permanent easement, the owner will be granted damages equal to market value.
- .. When inspecting drainage channels, the county engineer shall note any and all apparent violations of ORC §6111.01 to 6111.04 as they relate to the pollution of drainage channels and refer potential violations in writing to the county board of health. The county board of health must then investigate the violation and pursue it to its legal conclusion.

#### SWCD

- .. Soil and water conservation districts may assist in the planning, construction and maintenance of projects (with approval of commissioners).