

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.)

§ 156-93.3. Extension of boundaries.

The boundaries of a drainage district may be extended upon compliance with the requirements and procedures as follows:

- (1) The request for extension shall be made by the board of commissioners of the district, in the form of a petition in the name of the drainage district, to the clerk of the superior court of the county wherein the district was originally organized. The proceeding may be ex parte or adversary.
- (2) The area proposed to be included within the boundaries of the district must be either:
- a. Located upstream and adjacent to the existing boundary of the district and must have as its only source of drainage either:
 - 1. The canals of the district; or
 - 2. Natural or artificial drain ways which empty into or are benefited by the canals of the district; and
 - 3. Must be within the watershed of the existing district; or
 - b. Adjacent to the existing boundary of the district and have a common outfall with the existing district.
- (3) a. In the event the area meets the requirements of (2)a, it shall only be necessary for the petition to be filed by the board of commissioners of the district.
- b. In the event the area meets the requirement of (2)b of this section, the owners of fifty percent (50%) or more of the land area which it is

proposed to include or forty percent (40%) or more of the resident landowners who will be benefited within such area, must join with and be petitioners with the commissioners of the existing district, asking for the extension of boundaries and inclusion of land within the existing district.

Should the area proposed to be included within the boundary of the enlarged district embrace one or more existing drainage districts, the commissioners of any such district or districts may join in a petition to the court asking for the extension of boundaries of the existing district.

The joinder in the petition by the commissioners of such drainage district in the name of the district shall have the effect of including in the petition all of the land within said existing drainage district to the same extent as if the petition had been signed individually by each landowner of the district. The total acreage in such district or districts shall be included as land in the petition in determining whether or not the requirements under this section have been complied with.

- (4) Upon filing of the petition for extension of the boundaries, the clerk of the superior court shall appoint a board of viewers with the same composition and qualifications as is required by G.S. 156-59. The board of viewers shall examine the area proposed to be included within the boundaries of the district to determine whether or not, in their opinion, it is feasible and equitable to include said area within the boundaries of the district, and report their finding to the court. The report must be made within 30 days after the appointment of said board of viewers. The time for filing said report may be extended by the clerk upon a showing of a meritorious cause for the extension.
- (5) If the board of viewers shall report that the proposed extension of boundary is not feasible or equitable, the petition shall be dismissed and shall not be submitted again until after six months from date of dismissal.
- (6)
 - a. If the board of viewers shall report that the proposed extension of boundary is feasible and equitable, then the clerk of the superior court shall order the board of viewers to make a further and detailed report which shall include a map of the area that is proposed to be annexed which shall show:
 1. Boundaries of the existing district;
 2. Boundaries of the proposed extension;
 3. A general location of each individual tract of land which will be benefited.
 - b. In the event no additional work is proposed, the board of viewers shall report the following:
 1. The allocation of benefits derived from the existing canals, structures or other improvements, between the existing district and the area to be included within the boundaries of the existing district, which shall be a percentage figure and shall be the major factor for the determination of the requirements set forth in the succeeding paragraphs 2 and 3;

2. The amount of money, if any, which the owners of the land to be included within the district should pay for the use of the canals, structures or other improvements of the district;
 3. The percent of the cost of maintenance and operating expenses which the owners of the land to be included, should pay;
 4. Classification of the additional lands as to benefits derived from the existing canals, structures or other improvements of the district which shall be in accordance with the provisions of G.S. 156-71. The area of the existing district shall not be classified, unless directed by the clerk of the superior court;
 5. The names and addresses of the landowners within the areas proposed to be included insofar as may be determined from the tax records of the county;
 6. Such other information as may be appropriate or as may be directed by the clerk of the superior court.
- c. In the event additional work is proposed, the report of the board of viewers shall also contain the information required in G.S. 156-93.2, as it applies to the final report of the board of viewers.
- (7) The board of viewers shall file their detailed or final report within 60 days after their appointment. The time for filing of said report may be extended by the clerk upon a showing of meritorious cause for the extension.
 - (8) Upon the filing of said report those landowners in the area to be included who are not parties to the proceedings and who do not desire to sign the petition, shall be made parties defendant. Summons shall be served upon the defendants in the manner required for special proceedings. There shall be attached to and served with the summons, in lieu of a copy of the petition or final report, a statement which shall set forth (i) the purpose of the proceedings and (ii) that the report of the board of viewers is on file in the office of the clerk of the superior court and may be examined by persons interested.
 - (9) The attorney for, or the commissioners of, the district shall use due diligence to give notice to every landowner within the area proposed to be included, who has not signed the petition asking for such extension of boundaries and/or the proposed improvements.

The filing of a certificate by the attorney for, or the commissioners of, the district that due diligence has been used to notify each of said defendant landowners shown by the report of the board of viewers, either by personal service or by publication, shall be sufficient showing of compliance with this provision. The certificate shall contain the names of such landowners served personally, the date of service and the names of those served by publication and the date of service by publication.
 - (10) Upon filing of said certificate the clerk shall fix a time and place for a hearing upon said report, which date shall be no less than 20 days after filing of said certificate.
 - (11) 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 in the district and in the area to be included;
 3. The notice shall be posted at least 20 days prior to the said hearing;
 4. Publication in a newspaper with general circulation within the area once a week for three successive weeks;
 5. Mailing a copy of the notice to those persons for whom an address is shown in the certificate filed by the attorney for, or commissioners of, the district.
- b. Contents:
1. The notice shall state the time and place for the hearing;
 2. Describe in general terms the area proposed to be included and work proposed, if any;
 3. That the court will consider and adjudicate the report of the board of viewers.
- (12) At the date set for hearing any landowner may appear in person or by counsel and file his objection 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 objection filed thereto and make such changes as are necessary to render substantial and equal justice to all of the landowners and the existing district.
- (13) The clerk shall, after making adjustments in the report of the board of viewers, if any, determine:
- a. If the area(s) of land sought to be included, or any part thereof, is, or will be, benefited by the canals, structures or other improvements of the district.
 - b. If such area(s) should equitably be included within the boundary of the district because of the benefits received or to be received from the district.
 - c. If the requirements of the preceding subdivision (3)b, if applicable, are met.
- If the clerk shall determine that all of the three preceding requirements are met, he shall direct that the area(s) of land to be included within the boundaries of the district, in accordance with the provisions of the report of the board of viewers, as approved.
- (14) If the clerk shall determine either:
- a. That no part of the area proposed to be included is or will be benefited by the canals, structures or other improvements of the district and equitably should not be included within the boundaries of the district; or
 - b. That the requirements of the preceding subdivision (3)a or b, whichever is applicable, have not been complied with; he shall dismiss the proceeding.
- (15) Any landowner, party petitioner, or the drainage district may, within 10 days after the entry of an 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.

- (16) The duties and powers of the board of commissioners as to those lands included within the district by the current proceedings shall be the same as to those in the original proceeding. (1961, c. 614, s. 1; 1965, c. 1143, s. 4; 1969, c. 192, s. 3; cc. 440, 1002; 1999-216, s. 22.)

§ 156-93.4. Coordination of proceedings under §§ 156-93.2 and 156-93.3.

In the event a proceeding shall be instituted as provided for in G.S. 156-93.2 and shall also include the extension of boundaries, as provided for in G.S. 156-93.3, the provisions of G.S. 156-93.2 and 156-93.3 shall be coordinated and if there shall be any conflict as to procedure, that provided for in G.S. 156-93.3 shall be followed. (1961, c. 614, s. 1.)

§ 156-93.5. Assessments and bonds for improvement, renovation, enlargement and extension.

The board of drainage commissioners shall, for the purposes set forth in this Article, levy the necessary assessments and may issue bonds or other debentures for the purpose of providing funds for the construction or acquisition of any of the improvements or works authorized by this Article. The time and manner of levying assessments and the issuance of bonds or other debentures and the terms thereof shall be the same as provided for in Article 8 of Subchapter III. (1961, c. 614, s. 1.)

§ 156-93.6. Rights-of-way and easements for existing districts.

All drainage districts heretofore created shall be deemed to own an easement or right-of-way in and to those lands upon which there are existing canals and spoil banks.

Whenever the proposed repairs, maintenance or other improvements make it necessary for the drainage district to acquire additional land for easements or right-of-way, the procedure to secure the same shall be in accordance with G.S. 156-70.1. (1961, c. 614, s. 1.)

§ 156-93.7. Existing districts may act together to extend boundaries within watershed.

If there shall be more than one drainage district in a drainage basin, or watershed, the board of drainage commissioners of any of the districts may initiate or join separately or collectively with the commissioners of one or more of other drainage districts, in the drainage basin or watershed, and/or with the owners of land within the drainage basin, whose lands are not included within an existing drainage district in a petition to the court, asking for the creation of a larger drainage district, or the extension of boundaries of one of the existing districts.

The joinder in the petition by the commissioners of an existing drainage district, acting in the name of the district, shall have the effect of including all of the land assessed within the drainage district, in the petition asking for the creation of the larger drainage district or the extension of boundaries of an existing district. The total area of assessed land, within the existing drainage district shall be included, as land in the petition, in determining whether or not the requirement of G.S. 156-93.3 (3) b have been fulfilled.

The provisions of this section shall apply in proceedings provided for in G.S. 156-93.2 and 156-93.3. (1961, c. 614, s. 1; 1965, c. 1143, s. 5.)