

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0725**

In the Matter of the Obstruction of Renville County Ditch 59.

**Filed February 3, 2025
Reversed; motion denied
Bentley, Judge**

Renville County Board of Commissioners

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Considered and decided by Worke, Presiding Judge; Bentley, Judge; and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

BENTLEY, Judge

Respondent Renville County Board of Commissioners (the county board), in its capacity as the drainage authority over a drainage system known as Renville County Ditch 59 (CD 59), approved an improvement project for CD 59 that requires access to a drainage tile system underlying a portion of a state highway, Trunk Highway 71 (TH 71).

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

There are two ways to access the tile system—by digging an open trench through the highway or by “jacking and boring” under the highway. The latter method is significantly more expensive, but, absent special permission, it is the only method permitted by state highway laws. The issue on appeal is whether the Minnesota Department of Transportation (MnDOT) must pay for that difference in cost, which depends on whether TH 71 is an “obstruction” to the drainage system as that term is used in Minnesota Statutes section 103E.075, subdivision 1 (2024).

Contrary to the drainage authority’s determination, we conclude that TH 71 does not meet the definition of an obstruction under the statute, applying our precedential decision in *Minch v. Buffalo-Red River Watershed District*, 723 N.W.2d 483 (Minn. App. 2006). Because the drainage authority’s decision was based on an erroneous view of the law and there is no other legal basis to assess costs associated with this project against MnDOT’s property, we reverse. We also deny the motion of relator Commissioner of Transportation for MnDOT (the commissioner) to supplement the record on appeal as unnecessary to our determination.

FACTS

This appeal involves an application of Minnesota’s drainage code, contained in Minnesota Statutes sections 103E.005 to 103E.812 (2024), to the facts of this case. To provide helpful context for the facts and procedural history, we begin with a brief overview of the relevant statutory framework. We then summarize the circumstances giving rise to this case.

A. Relevant Statutory Background

The drainage code “governs the proceedings by which new drainage systems are constructed and existing ditches are maintained by drainage authorities such as county boards or watershed districts.” *Minch*, 723 N.W.2d at 487. A drainage authority is “the board or joint county drainage authority having jurisdiction over a drainage system or project” and has the power to establish and improve drainage systems within its jurisdiction. Minn. Stat. §§ 103E.005, subd. 9, .011, subds. 1, 4 (2024). A “drainage system,” in turn, is “a system of ditch or tile, or both, to drain property, including laterals, improvements, and improvements of outlets, established and constructed by a drainage authority.” Minn. Stat. § 103E.005, subd. 12 (2024).

Typically, properties that benefit from drainage improvement projects are assessed for the improvements in an amount based on “the benefits determined for the improvement.” Minn. Stat. § 103E.215, subd. 5 (2024). The drainage authority also identifies and compensates for properties damaged by the project. *See id.* But, as relevant here, a separate provision of the code provides that a person or public authority responsible for an “obstruction” to the drainage system must, in most cases, remove it:

If the board determines that a drainage system has been obstructed, including by the installation of bridges or culverts of insufficient hydraulic capacity, the board shall notify the person or public authority responsible for the obstruction as soon as possible and direct the responsible party to remove the obstruction or show the board why the obstruction should not be removed.

Minn. Stat. § 103E.075, subd. 1 (2024). If the board determines that a drainage system has been obstructed, it must first provide an opportunity for the parties to appear at a hearing,

and then it “shall order the obstruction removed by the responsible party within a reasonable time set in the order.” *Id.*, subd. 3. It follows that, “[i]f the obstruction is not removed by the prescribed time, the board shall have the obstruction removed and the auditor shall make a statement of the removal cost.” *Id.*

Any improvement project on a drainage system that exists “across or along” a trunk highway must comport with rules prescribed by the commissioner. Minn. Stat. § 161.45, subd. 1 (2024). MnDOT itself was created to “to provide an integrated transportation system of . . . highways.” Minn. Stat. § 174.01, subd. 1 (2024). The commissioner is tasked with carrying out article XIV, section 2 of the Minnesota Constitution, which provides that the state may “construct, improve and maintain the trunk highway system.” Minn. Stat. § 161.20, subds. 1-2(a)(1) (2024) (citing Minn. Const. art XIV, § 2). That includes TH 71.

Relevant here, MnDOT’s rules provide that an improvement project must comport with certain permit requirements and procedures for work performed “across, along, upon, or under the right-of-way of trunk highways.” Minn. R. 8810.3200, subp. 1 (2023); *see also* Minn. R. 8810.3100-.3600 (2023).¹ More specifically, crossings of trunk highways shall be made using a jack-and-bore method, unless another method is allowed for in the construction permit. Minn. R. 8810.3600. The jack-and-bore method reaches the existing tile system that underlies the highway, and allows for replacement of those tiles, using a boring technique that avoids cutting through the highway itself. An alternative method,

¹ The administrative rules apply to “utilities,” which the rules provide “shall mean and include . . . ditches.” Minn. R. 8810.3100, subp. 4.

known as the “open cut” method, involves cutting an open trench through the highway to access the tile system below.

B. Facts and Procedural History

In 2016, landowners petitioned the county board, as the drainage authority for CD 59, to increase CD 59’s drainage capacity. The proposed improvement project included replacing the drainage tiles on a portion of CD 59 that crosses underneath TH 71. That portion of CD 59 is known as Branch C.

The drainage authority accepted the petition; appointed an engineer to prepare a preliminary report setting forth the engineer’s research findings, surveys, and analysis for the improvement project; and, in February 2018, held a preliminary hearing on the improvement project. At the hearing, the drainage authority ordered preparation of a final engineer’s report and appointed “viewers” to determine the benefit and damage from the project. The viewers considered the benefit and damage to the relevant portion of TH 71 and determined that MnDOT’s property would receive “\$0.00” in improvement benefits from the project but also suffer no damage.

The final engineer’s report, filed in September 2023, stated that “[t]he TH 71 crossing will be made by boring and jacking methods.” But an amendment to that report, dated February 5, 2024, added information about the costs of that method as compared to the open-cut method. Providing context for the amendment, the report summarized the county’s view that TH 71 constituted an obstruction to CD 59:

Renville County conducted a review of historical data and found that, County Ditch 59 Branch C was constructed in 1921. Renville County also determined that T.H. 71 was constructed

in 1926 after the construction of County Ditch 59 Branch C, and is therefore an obstruction to the system. So in that regard, the Minnesota Department of Transportation . . . Highway Authority is the cause of the increased costs of accessing the drainage system right-of way.

The amended report then stated that “[t]he net effect of [MnDOT] causing an obstruction on the system is \$190,100,” which reflected the difference in cost between use of the jack-and-bore method (\$203,600) and the open-cut method (\$13,500).

In a notice dated February 6, 2024, the drainage authority informed MnDOT that TH 71 “is obstructing the Drainage Authority’s access to improve CD 59 pursuant to Minnesota Statutes, chapter 103E.” The drainage authority directed MnDOT to remove the obstruction by allowing use of the open-cut method, or MnDOT would “be assessed for the increased costs of jack and boring the tile underneath TH 71.” The notice also informed MnDOT that it could appear at a hearing to show cause “why the obstruction should not be removed and the open cut of TH 71 be allowed.”

On March 5, 2024, the drainage authority held the obstruction hearing, at which a MnDOT representative appeared and made two relevant comments. First, “MnDOT will not allow nor support an open-cut excavation of [TH] 71 due to the obvious public impacts that that presents[.]”² Second, the MnDOT representative expressed that the agency “does not view the trunk highway as an obstruction under . . . Minnesota Statute Section 103E.” MnDOT did not provide written comments or present documentary evidence at the hearing.

² Because the drainage authority would have needed MnDOT’s permission to proceed by the open-cut method, this statement reaffirmed that the project would have to proceed with the jack-and-bore method. *See* Minn. R. 8810.3600.

An attorney for the drainage authority then noted that the purpose of the hearing was “to allow MnDOT the opportunity to show that either the roadway is not obstructing access to the tile system or to show that MnDOT has obtained some sort of interest in the drainage system right-of-way that is first in time and superior to MnDOT’s interest in [TH] 71.” According to the drainage authority’s attorney, “it [did not] appear that . . . MnDOT ha[d] done that.” The drainage authority then unanimously adopted an order concluding that “MnDOT has obstructed the Drainage Authority’s access to the portions of CD 59 required to be improved,” causing the drainage system “to incur additional costs for the proposed improvements to CD 59 by the requirement to jack and bore the improved tile beneath CD 59.” The order directed that MnDOT be charged “the additional costs incurred by the CD 59 drainage system to jack and bore tile beneath the portion of TH 71 that is obstructing the Drainage Authority[’s] access to CD 59.”

The commissioner sought certiorari review. The commissioner also filed a motion to supplement the record, which we address briefly at the end of our decision.

DECISION

On certiorari appeal, appellate courts review a local authority’s order for issues “affecting the jurisdiction of [the local authority], the regularity of its proceedings, and . . . whether [its] order or determination . . . was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.” *Eneh v. Minn. Dep’t of Health*, 906 N.W.2d 611, 614 (Minn. App. 2018) (quotation omitted). Appellate courts review matters of statutory interpretation, including a district court’s interpretation of the drainage code, de novo. *Agra Res. Coop v. Freeborn Cnty. Bd. of*

Comm'rs, 682 N.W.2d 681, 686 (Minn. App. 2004); *see also Minn. Dep't of Nat. Res. v. Chippewa/Swift Joint Bd. of Comm'rs*, 925 N.W.2d 244, 247 (Minn. 2019) (“[W]e review matters of statutory construction de novo.”).

As established at oral argument, both parties agree that the issue on appeal turns on a narrow question of statutory interpretation: whether TH 71 constitutes an “obstruction” under section 103E.075. We interpreted the meaning of that term, as it appears in that statutory provision, in *Minch v. Buffalo-Red River Watershed District*, 723 N.W.2d 483. In *Minch*, a watershed district had an easement over a ditch on private land and had approved a project that would result in increased drainage through that ditch. 723 N.W.2d at 485. Because the watershed district had concerns that the accumulation of soil and silt in the private ditch would impede the increased drainage flow, it ordered the landowner to clean the soil and silt from the ditch, at his own expense. *Id.* at 486.

In that context, we recognized that watershed districts, like drainage authorities, “lack general police powers and must therefore achieve their purposes through an enumerated power.” *Id.* at 487. And, to invoke its authority under section 103E.075, the watershed district was required to determine that the sand and silt constituted an “obstruction,” as that term is used in that section, before assessing costs to the property. *Id.* at 489. We then noted that “[t]he term ‘obstruct’ means ‘to block or fill (a passage) with obstacles or an obstacle.’” *Id.* at 490 (citing *The American Heritage Dictionary of the English Language* 1214 (4th ed. 2000)). And with respect to section 103E.075, we held that “the legislature intended to limit the type of obstructions the responsible party can be ordered to remove to obstacles that are artificial in nature or man-made, that are constructed

or installed, *and that block or impede the normal flow* of the drainage system.” *Id.* (emphasis added). We did “not discern a legislative intent to extend the scope of this particular subdivision to obstructions that occur naturally or gradually over a long period of time.” *Id.*

The undisputed facts in this case establish that TH 71 does not meet the definition of an obstruction for purposes of section 103E.075, as outlined in *Minch*, because it does not “block or impede the normal flow of the drainage system.” *Id.* TH 71 and CD 59 have operated in tandem for nearly a century. There is no evidence in the record that TH 71 has at any time since it was established in 1926 blocked or impeded the normal flow of CD 59, or that the presence of the highway otherwise contributed to the need for the improvement project.

The drainage authority acknowledges that TH 71 does not obstruct the normal flow of CD 59. Instead, the drainage authority promotes a much broader conception of “obstruction” than we discerned in *Minch*. We find that argument unpersuasive. The drainage authority first attempts to sidestep *Minch* by arguing that our definition of “obstruction” discussed above is dicta. It is not. In *Minch*, we concluded that “neither the watershed district nor the district court determined whether the siltation obstruction in the . . . ditch constituted an obstruction within the meaning of Minn. Stat. § 103E.075.” *Id.* at 491. Accordingly, we remanded the case to the district court to make that determination

in light of our interpretation of the statutory language. *Id.*³ Our interpretation of section 103E.075 was key to the holding of the case and is not merely dicta.

The drainage authority’s second argument can be summarized as follows: the issue is not whether the highway obstructs the natural flow of the ditch itself, but whether TH 71 obstructs *access* to the ditch in a similar manner that was available at the time the ditch was created. Because the relevant tract of CD 59 was created in 1921 and TH 71 was established in 1926, the drainage authority maintains that the placement of the highway made it more difficult and expensive to access CD 59. As the drainage authority put it in its order, MnDOT could remove the alleged obstruction (i.e., the highway) by “allow[ing] the Drainage Authority and its agents to open cut TH 71 to conduct the improvement.”

The drainage authority’s definition of obstruction—that it includes objects that make it costlier to access the drainage system but do not block the flow of the system—is at odds with the statutory language. For example, the statute provides that, “[i]f the [drainage authority] determines that a drainage system has been obstructed, . . . [it] shall notify the person or public authority responsible for the obstruction *as soon as possible*.”

³ In *Minch*, we distinguished between two types of obstructions identified in the drainage code: an obstruction caused by a “responsible party,” which a watershed district or drainage authority can order the responsible party to remove, under Minn. Stat. § 103E.075 (the provision at issue here); and an obstruction caused by other circumstances that call for “repairs,” which the watershed district or drainage authority may undertake at its own expense or by way of an assessment against the property or properties that benefit from the repair, under Minn. Stat. § 103E.705. Under the repair procedures in section 103E.705, a watershed district or drainage authority may “restore the ‘effectiveness of a drainage system,’” which “includes routine operations necessary ‘to remove obstructions and maintain the efficiency of a drainage system.’” *Minch*, 723 N.W.2d at 490 (quoting Minn. Stat. § 103E.701, subd. 1 (2004)). The district court on remand was tasked with determining which of these two provisions applied to the facts of that case. *See id.* at 491.

Minn. Stat. § 103E.075, subd. 1 (emphasis added). In *Minch*, we said this language indicates that the legislature intended to allow drainage authorities to order removal of obstructions that are “constructed or installed in a relatively short period of time, [which] permits the identification of the responsible party, rather than an obstruction that occurs naturally or gradually over a long period of time.” 723 N.W.2d at 490. Here, the fact that the highway has existed in its current position since 1926 without being identified as an obstruction leads us to conclude that TH 71 is not the kind of obstruction covered by section 103E.075.

The drainage authority’s position is also at odds with the statutory remedy for an obstruction: removal. Minn. Stat. § 103E.075, subd. 1 (stating the drainage authority “shall . . . direct the responsible party to remove the obstruction or show the [drainage authority] why the obstruction should not be removed”). The drainage authority does not seek removal here; rather, it seeks temporary access via the open-cut method or to have MnDOT pay for the more expensive jack-and-bore method. These types of remedies are not provided for in the statute. And, more fundamentally, the drainage authority’s position results in the predicament that, when the improvement project is complete, TH 71 will “obstruct” access to CD 59 in the same way it does today. It is unlikely that the legislature intended that result when it authorized the drainage authority to order removal of obstructions as soon as possible upon detection, at the responsible party’s expense. *See* Minn. Stat. § 103E.075.

The drainage authority’s reliance on easement law also does not affect our interpretation of the statute. To be sure, at the time a drainage system is established, “every

owner of land who has recovered damages or been assessed for benefits has a property right in the maintenance of the ditch in the same condition as it was when originally established.” *Fischer v. Town of Albin*, 104 N.W.2d 32, 34 (Minn. 1960) (quoting *In re Petition of Jacobson*, 48 N.W.2d 441, 444 (Minn. 1951)). And, “[s]uch a property right cannot be divested or damaged without due process of law.” *Id.* (quotation omitted). But here, the existence of TH 71 does not affect the property rights of the surrounding landowners with respect to CD 59. Both parties agree that the existence of TH 71 does not impede, block, or affect in any way the flow of water through the drainage system.

The existence of TH 71 also does not affect the surrounding landowners’ right to maintain CD 59 in the condition that it was when it was originally established or to petition to increase the drainage capacity of CD 59. In the absence of an obstruction, as that term is used in section 103E.075, the statute sets forth a process for determining how such improvement costs should be assessed. *See* Minn. Stat. § 103E.215, subd. 5 (providing that “[a]ssessments for the repair of the improvement must be based on the benefits determined for the improvement”). Because the viewers in this case determined that the relevant section of TH 71 will receive \$0 in benefits from the improvements, the statute does not authorize the drainage authority to assess MnDOT for improvement costs. *Id.*

In sum, TH 71 does not constitute an obstruction under section 103E.075 and the drainage authority’s decision was made “under an erroneous theory of law.” *Eneh*, 906 N.W.2d at 614 (quotation omitted). Because the drainage authority must “achieve [its] purposes through an enumerated power,” *Minch*, 723 N.W. at 487, and there is no other

statutory authority to assess costs of this improvement project to MnDOT, the drainage authority's obstruction order must be reversed.⁴

Before concluding, we briefly address the commissioner's motion to supplement the record with various historical records. After petitioning for review, the commissioner moved to include supplemental documents to "fill the historical gaps in the Drainage Authority's record and provide needed context to adequately consider both parties' arguments in this case." As a general rule, we may not base our decision on matters outside the record on appeal and may not consider matters not produced and received in evidence below. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988); *see also In re Block*, 727 N.W.2d 166, 176 (Minn. App. 2007) (noting "the record in a certiorari appeal consists of the papers filed, the exhibits, and transcripts" (citing Minn. R. Civ. App. P. 110.01)).

We deny the motion because we see no basis to deviate from that general rule in this case. Our decision turns on an issue of statutory interpretation. Because we reverse the drainage authority's decision based on our conclusion that TH 71 is not an obstruction within the meaning of the statute, regardless of the historical development of CD 59 and TH 71, the supplemental documents are not relevant. We therefore deny the motion.

Reversed; motion denied.

⁴ The drainage authority presents an argument that MnDOT failed to appeal the final drainage order and that order is therefore now binding and conclusive. However, MnDOT does not challenge that wholly separate final drainage order authorizing CD 59's improvements. MnDOT only appeals and argues error in the obstruction order, which is properly before this court in this certiorari appeal.