

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, September 28, 2023, 1:00 p.m.

Clay County Courthouse, Third Floor Meeting Rooms

In Person Meeting with Microsoft Teams Option Available

MINUTES

1) CALL TO ORDER

The meeting was called to order by Chair Campbell at 1:00 p.m.

2) ROLL CALL

City of Moorhead: Mayor Shelly Carlson

Mayor Carlson was present online but did not participate in any discussion or voting actions until she reached her posted address at 1:15 p.m.

Council Member Chuck Hendrickson

Council Member Larry Seljevoll

Clay County: Commissioner Kevin Campbell

Commissioner Jenny Mongeau

BRRWD: Member Gerald Van Amburg

Member Van Amburg attended online but did participate in any discussion or voting actions due to his address not being posted.

Others Present or on Microsoft Teams:

Joel Paulson, Executive Director, Jodi Smith, Lands & Compliance Director, and Madeline

Gorghuber, Land Specialist, Diversion Authority

Attorneys John Shockley, Chris McShane, Lukas Andrud, Kathryn McNamara, and Katie Schmidt, Ohnstad Twichell Law

Eric Dodds and Dean Vetter, AE2S

Scott Stenger and Dale Ahlsten, ProSource

Stephen Larson and Jacqueline Finck, Clay County staff

Bob Zimmerman, Moorhead Engineer

Paul Barthel, Jacobs

3) APPROVAL OF AGENDA

Council Member Seljevoll moved, and Commissioner Mongeau seconded, to approve the updated agenda with the agenda addition, OIN 1633 Amble Negotiation Summary. Motion carried.

4) APPROVAL OF MINUTES

Council Member Hendrickson moved, and Council Member Seljevoll seconded, to approve the minutes from August 24, 2023. Motion carried.

5) CITIZENS TO BE HEARD

There were no citizens to be heard.

6) **PROJECT UPDATES**

a. Property Acquisition Status Report

Jodi Smith, Diversion Authority, referred to the Property Acquisition Status Report and maps showing acquired properties, properties that are in negotiations, and properties that are in eminent domain. The construction footprint is 92% complete with a 3.7% increase from last month and the upstream mitigation area (UMA) footprint is 43.9% complete with a 2.4% increase. Ms. Smith referenced the pie charts and discussed the percentage completion for property acquisition progress by location. The Property Acquisition Progress by MCCJPA is at 39.3% complete with an almost 2% increase. Many of the Southern Embankment appraisals were sent out in July and there are a lot of negotiation summaries on the agenda today that will hopefully be approved.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. In the last month, successfully closed 10 parcels and agreements signed on 24 parcels. Last Written Offer letters are being prepared for MN parcels to maintain construction schedule and submitted the first plat on project lands for the Diversion Channel to Cass County Planning Commission.

b. Lands Budget Update

Ms. Smith gave a Lands Budget update and referenced the table stating that we're about \$43 million underspent. That number is based on the timing of closings and stated by the end of September or October there will be about \$20 million in closings. Ms. Smith stated that the budget update table is based on the end of the second quarter (June 2023), and it takes approximately 60 days for a closing to show up on the books. The closings that will occur this month and next month won't show up until around December. Ms. Smith stated that another update of the Lands Budget can be given at the end of the 1st quarter of 2024, which will reflect the closing occurring in the next month. Looking at the Diversion Channel and associated infrastructure, we are approximately \$24.5 million underspent for the project. Ms. Smith stated that due to some land exchanges, there is some money owed to the Diversion Authority so there will be approximately \$25 million underspent. The money is needed for the Southern Embankment and the Upstream Mitigation Area. The Southern Embankment and Associated Infrastructure is sitting at about \$9.5 million underspent and we're going to need approximately \$16 million for acquisitions in the Southern Embankment. So, the excess funds for the Diversion Channel and associated infrastructure will go to the Southern Embankment and associated infrastructure funds and the remaining will go to the Upstream Mitigation Area. Ms. Smith stated that as of today she is comfortable with where the budget sits and stated that this does apply any of our contingency to this.

7) **Land Agent Reports**

Scott Stenger, ProSource, thanked the board for being accommodating with these closings. We will be working in the field working on some mitigation. As Ms. Ahlsten mentioned when we brought this replacement housing site today, it's hopefully just a backup. We've been working a year and a half on the ring levee. The last notices have helped bring more landowners forward asking to settle. Next month we will have more negotiations to bring to board seeking approval. Mr. Stenger talked with Ken Helve and said that they're seeing the same thing. We're continuing to pick up the phone and working with landowners.

Commissioner Campbell thanked the land agents for their hard work and that this board is willing to add these last-minute negotiation agenda additions to be accommodating and are willing to have special meetings if needed as well.

8) Acquisition Reviews/RHDP

a. Revised Offers of Just Compensation

Eric Dodds, AE2S, stated this item is regarding two different property owners. The initial appraisals were approved by the board about a month ago. As the appraisals were reviewed, it was noted that the value of the structures was omitted from the just compensation amount. The value of the structures was identified in the appraisals but because there was contemplation on whether or not the structures could be mitigated in place as opposed to buying them out, there was a little bit of confusion. After further review it was decided that these revised offers of just compensation needed to come back to the Board for approval. For OIN 1237, the revised opinion of just compensation is \$270,659. The six different parcels owned by Timothy Ness have a revised opinion of just compensation in the amount of \$698,259. These revised amounts have been communicated with the property owners and they do have copies of the appraisals.

Council Member Hendrickson asked Mr. Dodds for an additional explanation. Mr. Dodds stated that both these properties have older houses and a couple of different outbuildings. These properties are in Zone 4A which requires us to mitigate to the probably maximum flood (PMF) which is several feet higher than the 100-year floodplain. The existing structures are above the 100-year floodplain even with the project, so there was some hope that the structures could be mitigated without having to remove them. Cost estimates were provided to the appraisers to mitigate the structures and as they assessed they concluded that the value of the structures is less than it would be to mitigate them. So, the increase is due to including the value of the structures.

Commissioner Mongeau moved, and Council Member Seljevoll seconded, to approve the revised opinion of just compensation for OIN 1237 in the amount of \$270,659 and \$698,259 for OIN 1238 1239 1249 1258 1259 1260. Motion carried.

b. OIN 1240 7109 9119 Barton Negotiation Summary

Dale Ahlsten, ProSource, stated the first negotiation summary is for Dustin and Jake Barton. They own property in Wilkin County and have 53 acres impacted by flowage easement in zone 4 and an environmental monitoring easement. The three parcels contain 15.5 acres of tillable land with the balance being improved woods used for hunting. The property is located on the Red River and is approximately 20 miles south of Moorhead. Initial discussions with the Bartons occurred in 2021 but not all of the valuations for the three parcels were available at that time. Valuations for OIN 7109 and 9119 became available in 2023 so the agricultural portion for OIN 1240 was updated since land value market increased since fall 2021. The Property owners felt their hunting land was worth more because of investment and maintenance of the hunting land. They are looking to settle for \$56,000.

Commissioner Mongeau moved, and Council Member Seljevoll seconded, to approve the negotiation summary for OIN 1240 7109 9119 in the amount of \$56,000. Motion carried.

c. OIN 1783 Blessingsbe Negotiation Summary

Ms. Ahlsten stated the property owner is Blessingsbe, LLLP. The property is located by the Southern Embankment Reach 4 (SE-4) and is adjacent to and on the west side of Highway 75, just south of the CW Coop. Ms. Ahlsten has been in contact with this owner for some time. The appraisal came out at \$8,604 per acre but the landowner felt that it is too low based on comparable sales. The owner thought \$10,000 per acre was more accurate but was agreeable to \$9,000 per acre. Based on current land value, \$9,000 per acre seemed to be an accurate price. Additionally, the owner felt that the 5% damages to the remainder parcel was too low. The owner commented that her property taxes went up 20%. After additional research and working with the lands team, \$390,000 was agreed up by the owner.

Commissioner Mongeau moved, and Council Member Seljevold seconded, to approve the negotiation summary for OIN 1783 in the amount of \$390,000. Motion carried.

d. OIN 1267 Blilie Max RHDP

Ms. Ahlsten stated this property is just south of the Wilkin County line right off Highway 75. It is a 10-acre homestead and is owned by Kelly and Stephanie Blilie. Kelly is a local plumber and has an excavation company that is ran out of this site and has expressed he does not want to move. The team has been working hard on a mitigation plan that includes a ring levee around his property, but felt it was appropriate to prepare if there were to be a relocation of their homestead only. If the owners had to move or were willing to move, Kelly would prefer to keep the buildings onsite intact and those could be flood proof mitigated. It would be the residential home that poses a potential problem if the ring levee would not be successful. The comparable properties were located relatively close to where they live since he would have to travel back to the buildings for his business. The most appropriate comparable property is on the market for \$719,900. A carve-out was not applied to this property because Kelly wanted to keep the land and the buildings. The appraisal found the value of the dwelling alone to have a minimum compensation value of \$395,000, leaving the maximum differential payment of \$324,900. This will be presented to the Blilie family.

Commissioner Campbell stated that he talked Jodi prior to the meeting and discussed this process and stated that it has been the practice to use this method for all the land agents. Ms. Ahlsten stated that is correct. Commissioner Campbell stated that the \$719,000 is the comparable price of a house that is on the market but is not the actual appraised price and that the land agents are using their professional expertise to determine if the appropriate comparable is close. There was additional discussion on choosing which house would be most comparable. Ms. Smith clarified that yes the land agents would use their knowledge in knowing if a house price has been inflated. Additional discussion occurred on how they go about choosing the most comparable house.

Council Member Seljevold moved, and Council Member Hendrickson seconded, to approve the maximum replacement housing differential payment for OIN 1267 in the amount of \$324,900. Motion carried.

e. OIN 1253 1262 7203 Kragerud Negotiation Summary

Mr. Dodds stated this is a negotiation summary for the Kragerud property which contains three parcels, OIN 1253, 1262, 7203. These parcels were appraised for \$78,576 and the

property owner pointed out that there was a significant increase in their property land tax value and came back with a large increase for a counteroffer. The owner requested \$108,292 for the purchase of the three parcels to obtain the flowage easements.

Council Member Hendrickson asked what percentage of tax values were in Wilkin County. Mr. Dodds referenced page 32 of the packet and states that there was a 50+% increase from 2022 to 2024. Council Member Hendrickson asked if that was county-wide. Mr. Dodds stated that he wasn't sure but mentioned other properties having similar percentage increases too.

Commissioner Mongeau stated that it correlates why ag land values are going up and that counties are assessing what market sales are. Commissioner Campbell stated it's possible that it's regional. Ms. Ahlsten stated that with the assessors, this frequently happens where we can see the wide swings. It happened back in '07 and '08 and is not an unusual occurrence.

Council Member Hendrickson moved, and Council Member Seljevoll seconded, to approve the negotiation summary for OIN 1253 1262 7203 in the amount of \$108,292. Motion carried.

f. OIN 1254 1263 7202 Anders & Carol RT Negotiation Summary

Mr. Dodds stated that this is a similar situation to the previous property discussed. The property is three parcels, OIN 1254 1263 7202, in Wilkin County. One is farmland and the other two are along the river corridor. The original appraised value of \$113,454 and the property owner's initial counteroffer was \$175,337. The negotiated amount was \$150,815.

Council Member Hendrickson moved, and Commissioner Mongeau seconded, to approve the negotiation summary for OIN 1254 1263 7202 in the amount of \$150,815. Motion carried.

g. OIN 1832 Bye Negotiation Summary

Ms. Ahlsten stated that there is one parcel, OIN 1832, that is impacted by SE-5 roadway re-development. The property is agricultural, and the owner had concerns for drainage. Mr. Bye is agreeable to the offered compensation, however, is also seeking reimbursement for his review attorneys' expenses in the amount of \$2,500, with the total offer being \$12,070.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve the negotiation summary for OIN 1832 in the amount of \$12,070. Motion carried.

h. Agenda Addition: OIN 1633 Amble Negotiation Summary

Ms. Ahlsten stated that she has been in contact with Emmy Amble for a couple of years and settled early on for OIN 1638. Ms. Amble sold the flowage easement rights last year but wanted to withhold the selling the real estate portion for SE-4 until this year. From the Army Corps of Engineers design there was discovery of a farm field access road on the left side of the embankment. That was something that Ms. Amble was not in favor of but over time grew into the idea of the access road. Currently the land prices have increased and Ms. Amble feels there should be an adjustment to the closing amount. The parcel is a 78-acre agricultural parcel and is seeking \$9,000 per acre. The proposed settlement was \$216,000 but there was an error, and the final design footprint was smaller than the preliminary. The new proposed

amount for settlement is \$210,000 for OIN 1633. Ms. Ahlsten talked with Ms. Amble and she was agreeable to the decreased amount.

Commissioner Mongeau moved, and Council Member Seljevold seconded, to approve the negotiation summary for OIN 1633 in the amount of \$210,000. Motion carried.

i. Last Written Offers

j. Executive Session – “Closed Executive Session pursuant to Minn. Stat. § 13D.05 subd. 3(b) for consultation with litigation counsel regarding litigation strategy for anticipated eminent domain actions to be undertaken by the member entities, and Minn. Stat. § 13D.05 subd. 3(c)(3) for consultation regarding the purchase price for property interests for the properties identified in the attached Exhibit A.”

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve closing the meeting to go into Executive Session at 1:50 p.m. Motion carried.

Council Member Seljevold moved, and Council Member Hendrickson seconded, to approve opening the meeting to come out of Executive Session at 2:27 p.m. Motion carried.

Commissioner Campbell stated from the Executive Session, there are two actions that need to take place.

Chris McShane, Ohnstad Twichell Law, stated the first is Resolution 2023-02 which is a Resolution by the Moorhead-Clay County Joint Powers Authority to Request that Clay County Utilize Court Action to Acquire Right-of-Way and Real Property Interests.

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve Resolution 2023-02. Motion carried.

RESOLUTION 2023-02

**RESOLUTION BY THE MOORHEAD-CLAY COUNTY JOINT POWERS
AUTHORITY TO REQUEST THAT CLAY COUNTY UTILIZE COURT
ACTION TO ACQUIRE RIGHT-OF-WAY AND REAL PROPERTY INTERESTS**

WHEREAS, the United States Army Corps of Engineers (“USACE”); the Metro Flood Diversion Authority (the “Diversion Authority”); the City of Fargo, North Dakota; and the City of Moorhead, Minnesota, are the federal and non-federal sponsors of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”); and

WHEREAS, the member entities of the Diversion Authority consist of the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District; and

WHEREAS, USACE, in conjunction with the local sponsors, will be constructing Southern Embankment Reach No. 4 (“SE-4”) and Southern Embankment Reach No. 5 (“SE-5”), which are necessary components of the Comprehensive Project; and

WHEREAS, another necessary component of the Comprehensive Project is the Upstream Mitigation Area (the “UMA”); and

WHEREAS, it is necessary to acquire certain real property interests for the construction, operation, and maintenance of SE-4, SE-5, and UMA, and portions of the real properties included in Exhibit A (the “Properties”) have been identified as necessary; and

WHEREAS, the Moorhead-Clay County Joint Powers Authority (“MCCJPA”) is the Minnesota entity formed for the purpose of seeking and obtaining the right-of-way to real property and real property interests in parcels in Minnesota necessary for purposes of constructing, operating, and maintaining the Comprehensive Project; and

WHEREAS, MCCJPA commissioned and approved appraisals for each of the Properties, and land agents have attempted to negotiate with all of the landowners of the Properties based upon such appraisals; and

WHEREAS, as of today’s date, landowners of the Properties have not signed the Purchase Agreements transferring the right-of-way to real property and real property interests necessary for purposes of construction, operation, and maintenance of SE-4, SE-5, and the UMA of the Comprehensive Project to MCCJPA; and

WHEREAS, the Minnesota Land Acquisition Joint Powers Agreement indicates MCCJPA will notify the Diversion Authority if negotiations are unsuccessful, and the member entities of MCCJPA – the County and the City of Moorhead – will be responsible for acquiring the necessary property through court action.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Moorhead-Clay County Joint Powers Authority as follows:

1. Notification. MCCJPA hereby notifies the Diversion Authority that the negotiations to acquire the right-of-way to real property and real property interests identified in Exhibit A have been unsuccessful.
2. Court Action. MCCJPA hereby requests that Clay County acquire the right-of-way to real property and real property interests identified in Exhibit A for purposes of constructing, operating, and maintaining SE-4, SE-5, and UMA components of the Comprehensive Project.

Mr. McShane stated the second is Resolution 2023-03 which is a Resolution by the Moorhead-Clay County Joint Powers Authority to Request that the City of Moorhead Utilize Court Action to Acquire Right-of-Way and Real Property Interests.

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve Resolution 2023-03. Motion carried.

RESOLUTION 2023-03

RESOLUTION BY THE MOORHEAD-CLAY COUNTY JOINT POWERS AUTHORITY TO REQUEST THAT THE CITY OF MOORHEAD UTILIZE COURT ACTION TO ACQUIRE RIGHT-OF-WAY AND REAL PROPERTY INTERESTS

WHEREAS, the United States Army Corps of Engineers (“USACE”); the Metro Flood Diversion Authority (the “Diversion Authority”); the City of Fargo, North Dakota; and the City of Moorhead, Minnesota, are the federal and non-federal sponsors of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Comprehensive Project”); and

WHEREAS, the member entities of the Diversion Authority consist of the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District; and

WHEREAS, USACE, in conjunction with the local sponsors, will be constructing Southern Embankment Reach No. 4 (“SE-4”) and Southern Embankment Reach No. 5 (“SE-5”), which are necessary components of the Comprehensive Project; and

WHEREAS, another necessary component of the Comprehensive Project is the Upstream Mitigation Area (the “UMA”); and

WHEREAS, it is necessary to acquire certain real property interests for the construction, operation, and maintenance of SE-4, SE-5, and the UMA, and portions of the real properties included in Exhibit A (the “Properties”) have been identified as necessary; and

WHEREAS, the Moorhead-Clay County Joint Powers Authority (“MCCJPA”) is the Minnesota entity formed for the purpose of seeking and obtaining the right-of-way to real property and real property interests in parcels in Minnesota necessary for purposes of constructing, operating, and maintaining the Comprehensive Project; and

WHEREAS, MCCJPA commissioned and approved appraisals for each of the Properties, and land agents have attempted to negotiate with all of the landowners of the Properties based upon such appraisals; and

WHEREAS, as of today’s date, landowners of the Properties have not signed the Purchase Agreements transferring the right-of-way to real property and real property interests necessary for purposes of construction, operation, and maintenance of SE-4, SE-5, and the UMA of the Comprehensive Project to MCCJPA; and

WHEREAS, the Minnesota Land Acquisition Joint Powers Agreement indicates MCCJPA will notify the Diversion Authority if negotiations are unsuccessful, and the member entities of MCCJPA – Clay County and the City – will be responsible for acquiring the necessary property through court action.

NOW, THEREFORE, BE IT RESOLVED by the Board of the Moorhead-Clay County Joint Powers Authority as follows:

1. Notification. MCCJPA hereby notifies the Diversion Authority that the negotiations to acquire the right-of-way to real property and real property interests identified in Exhibit A have been unsuccessful.
2. Court Action. MCCJPA hereby requests that the City of Moorhead acquire the right-of-way to real property and real property interests identified in Exhibit A for purposes of constructing, operating, and maintaining the SE-4, SE-5, and UMA components of the Comprehensive Project.

9) Property Management

Madeline Gorghuber, Diversion Authority, stated she is bringing forth an access agreement for OIN 1834 with Schmidt & Sons. Schmidt & Sons has had many contracts with the Diversion Authority in removing structures. With the uptick in acquisitions and the need to relocate utilities, we’re seeing a bottleneck effect for properties that need to be removed at once. Bob Schmidt has asked to use OIN 1834 to store structures until they can go to their final destination. The agreement will be based on a month-to-month basis. The Diversion Authority found out that Mr. Schmidt was storing structures on other properties that are project-owned so we’re wanting to make sure there are no liability issues. Mr. Schmidt is responsible for maintaining the lot and

needs to restore the area after the agreement is terminated. Ms. Gorghuber stated that this is not limited to just Schmidt & Sons and that if other contractors need to use this lot in the future, it will be available. Ms. Gorghuber also referred to the map showing the area that Mr. Schmidt would be using to store the structures.

Commissioner Mongeau asked if the moving and storing of structures require an interim permit with the Planning Commission. Commissioner Mongeau recalls doing something similar in Oakport township with Mr. Schmidt for moving and storing houses. Commissioner Campbell stated that we could probably do a motion that is contingent upon meeting Clay County Planning & Zoning requirements.

Lukas Andrud, Ohnstad Twichell Law, stated that it would be Mr. Schmidt's obligation to obtain that.

Council Member Seljevoid moved, and Council Member Hendrickson seconded, to approve the access agreement for OIN 1834 with Schmidt and Sons, Inc. contingent up meeting the Clay County Planning & Zoning requirements. Motion carried.

10) Adjourn

The meeting adjourned at 2:37 p.m.

Stephen Larson, MCCJPA Secretary