

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, October 26, 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: Council Member Chuck Hendrickson
Council Member Larry Seljevoll
Clay County: Commissioner Kevin Campbell
BRRWD: Member Gerald Van Amburg

Others Present or on Microsoft Teams:

Joel Paulson, Executive Director, Jodi Smith, Lands & Compliance Director, Madeline Daudt, Land Specialist, and Jessica Warren, Compliance Specialist, Diversion Authority
Attorneys Chris McShane and Katie Schmidt, Ohnstad Twichell Law
Eric Dodds and Dean Vetter, AE2S
Scott Stenger and Dale Ahlsten, ProSource
Katie Laidley and Ken Helvey, SRF Consulting
Stephen Larson and Jacqueline Finck, Clay County staff

3) APPROVAL OF AGENDA

Member Van Amburg moved, and Council Member Seljevoll seconded, to approve the agenda. Motion carried.

4) APPROVAL OF MINUTES

Council Member Seljevoll moved, and Council Member Hendrickson seconded, to approve the minutes from September 28, 2023. Motion carried.

5) CITIZENS TO BE HEARD

There were no citizens to be heard.

6) PROJECT UPDATES

a. Property Acquisition Status Report

Eric Dodds, AE2S, referred to the Property Acquisition Status Report and maps showing acquired properties, properties that are in negotiations, properties that have a purchase agreement signed, and properties that are in eminent domain. The construction footprint is 90.2% complete with a 1.2% decrease from last month. Mr. Dodds stated that the decrease is due to an accounting issue. There were previously seven properties with three owners that were counted as closed. With each of the properties there is an exchange component that hasn't been completed yet but should be in the upcoming weeks. Mr. Dodds referred to the pie charts and the percentage completion for property acquisition progress by location. The

Property Acquisition Progress by MCCJPA is just about 40% complete total, roughly 35% complete for the Southern Embankment, and about one third complete on the Upstream Mitigation Area.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. In the last month, successfully closed on 16 parcels. In the last two weeks, both Clay County and the City of Moorhead approved sending out last written offer letters for parcels in Clay and Wilkin Counties. The letters for Clay County went out last week and the Wilkin County letters are expected to go out early next week.

Commissioner Campbell asked if the land agent associated with each parcel goes out with the last written offer letters. Mr. Dodds stated that each of the landowners has been dealing with land agents for quite some time but the land agent and contact information is on each letter as well. We have heard of a landowner who has stated that they would accept the last written offer, so we're hopeful that this results in a flood of acceptance. Mr. Dodds stated that because the board has approved the last written offers, and if they get accepted, the offers don't typically come back to the Board for approval. So, we will work with legal to finalize and close on the properties and the board will see changes within the progress report. The first plat of project lands in Wiser Township for the Diversion Channel have been approved by the Cass County Commission. The Southern Embankment will eventually be platted but will be a few years down the road yet. Lastly, there were some small strips of excess lands along SE-1 southwest of Horace and along the Diversion Channel adjacent to County Highways that have been purchased. These properties have now been deemed excess and so far, three declarations have been approved.

7) LAND AGENT REPORTS

Scott Stenger, ProSource, stated that there is a lot of activity going on. Mr. Stenger stated that there is a meeting scheduled right after this meeting with a landowner that owns multiple properties looking at getting closer to a final agreement. There is a closing for Friday, October 27th. There is a meeting scheduled next week with a landowner that has a counteroffer and will look at some mitigation. Since this morning, with the last written offers being sent out, we have sent updated information to landowner's attorneys. Mr. Stenger stated that they continue to work with landowners to find common ground so there are voluntary settlements.

Katie Laidley, SRF Consulting, stated that they are continuing to communicate and work with landowners with the last written offers getting some landowners to move forward.

8) NEGOTIATIONS

a. OIN 1879 Blilie Negotiation Summary

Dale Ahlsten, ProSource, stated OIN 1879 is owned by Luther and Shelly Blilie Family Trust. This property is residential located on 180th Ave S which is the Clay-Wilkin County line. The property is a project fee purchase and temporary construction easement for Southern Embankment Reach 5 (SE-5) which is the redevelopment of 180th Ave S to improve the drainage toward Wolverton Creek that is occurring just west of Highway 75 to Wolverton Creek.

The project will need one acre of additional fee from this property as well as a temporary construction easement. This residential property sits on 3.75 acres, has a home built in 1986

with an attached garage and an additional small outbuilding. It was previously occupied by tenants but was vacated in June. The owner has had this property on the market since July and is listed for \$240,000. The one acre that is needed for the project will reduce the property to 2.75 acres of residential property. The home is considered an approved non-conforming property due to previous Clay County ordinance to widen road right-of-way by easement. The owner stated that one acre is quite a bit and has interested buyers that suggested picking up some more property from a neighboring property, but the neighbor's property is tied up for the project and the Buffalo Red River Watershed District (BRRWD). Currently BRRWD is seeking an easement on this property. The owner has not sold the easement to the BRRWD knowing the project has a need as well. The property also has 12 spruce trees that were planted for the purpose of a windbreak, therefore relocating them wouldn't be serving the same purpose so they will not be relocated.

The owner has received a waiver evaluation and giving these impacts, losing an acre and the trees, the owner suggested purchasing the entire property or purchasing additional land from neighboring property. We determined it would be in the best interest of the project and the Board to purchase the property in whole, complete what is needed for the project, and then sell once the project is completed. After talking with Mr. Blilie, he felt comfortable selling for \$210,000. He has not sold the easement to the BRRWD which was a \$24,000 offer. The Board would have the option to sell the easement to the BRRWD. This owner also has some agricultural property that is impacted on the west side by the southern embankment, but it is mostly impacted by flowage easement.

Commissioner Campbell asked for clarification where the non-conforming is located. Ms. Ahlsten stated that is in Clay County. Commissioner Campbell stated that he believes it is important to incorporate language and that it would be the Board's intent to work with the BRRWD on the easement. Jodi Smith, Diversion Authority, stated that they have been working with the BRRWD and their legal counsel regarding the flowage and construction easements and how that will impact the conservation easements, so language has been incorporated regarding that. Commissioner Campbell asked if the structure is non-conforming. Ms. Ahlsten stated that the structure is too close to the center line of the road so that is why it is in an existing non-conforming status. Commissioner Campbell stated that we would still be able to sell the property and structures once the project is completed. Ms. Ahlsten stated that yes, that is correct and that the County does not have a problem with it and the front yard will be reconfigured and be 2.75 acres rather than 3.75 acres in the end.

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve the negotiation summary purchasing the entirety of OIN 1879 in fee simple for \$210,000 with acknowledgement the current owners will not sell and easement to Buffalo Red River Watershed District prior to closing. Motion carried.

9) PROPERTY MANAGEMENT

a. 2024 Farmland Lease Rent Rates

Madeline Daudt, Diversion Authority, requested approval of the Farmland lease rental rates for 2024. Ms. Daudt stated that she has discussed with Dwight at Pifer's, who manages many of the farmland leases, and the rental rates are increasing 12-18%. Looking at the project-

specific land, they are comfortable with increasing 10-15% for crop year 2024. Ms. Daudt stated that because of the construction the parcels will be smaller and access to them may be more difficult, therefore didn't want to raise the rental rates too much. Ms. Daudt is asking the Board to approve the rental rate increase of 10% which would adjust the rate from \$150 per acre to \$165 per acre. Clay County's average is at \$140 per acre and the State of Minnesota's average is \$177 per acre.

Commissioner Campbell asked if the \$165 per acre rate is consistent with the Cass County Joint Water Resource District rates. Ms. Daudt stated that this morning the Cass County Joint Water Resource District Board approved the \$165 per acre rate.

Council Member Hendrickson asked for further clarification regarding the leases this year that will have crop restrictions due to Forest Mitigation Areas. Ms. Daudt stated that the Army Corps of Engineers will have certain areas for forest mitigation, and they are restricting it to row crops. Ms. Smith stated that the Army Corps of Engineers is looking to get a contract issued in the next couple of months and planting will occur next spring. There will be two contracts, one for the sites that are ready to be planted and one for when the property acquisitions are complete. About half of the acres for the forest mitigation areas will be planted in spring and the other half need to have a cultural survey completed in order to plant the trees. So, they're asking for those locations to have row crops which will minimize some of the damage to the crops when they go out to complete the surveying. The Army Corps of Engineers is also asking that at the end of the crop year, the land be tilled. Part of the permitting requirement is to have these forest mitigation areas. For every tree that gets cut down, two must be planted to replace it. So, there are a certain number that is required for each North Dakota and Minnesota. Council Member Hendrickson asked if the restrictions are based on a state level versus a federal level. Ms. Smith stated that it will be a deed restriction and the property will be owned in perpetuity, so it won't be able to be sold to anyone else. The restrictions will be a 99-year restriction and these areas will eventually be allocated a different color on the GIS map. Ms. Smith stated at the next meeting they could provide the Board with a map of the known forest mitigation areas. Council Member Hendrickson stated that would be nice to see. Commissioner Campbell asked if the forested areas that are owned by MCCJPA will have hunting rights on them. Ms. Smith stated that there will be, but initially there may be some restrictions when they are first planted because they're saplings. Council Member Seljevold clarified that the average rate for Clay County is \$140 per acre. Ms. Daudt stated yes, that is correct. Council Member Hendrickson stated he assumes the rates vary differently from the eastern versus the western side and that the average rate in the Red River Valley is \$165 per acre. Ms. Daudt stated yes, that is correct.

Council Member Seljevold moved, and Council Member Hendrickson seconded, to approve to increase the farmland rental rates to \$165. Motion carried.

10) CONTRACTING ACTIONS

a. Crown-MCCJPA Task Order 6 – Amendment 0

Jessica Warren, Diversion Authority, stated that this Task Order is not an amendment to Task Order 5 because it has a different scope based on litigation work such as appraisal reports based on "Date of Taking", trial preparation and trial appearances, and deposition preparation

and deposition appearance. So, this task order is to give them the scope if Crown invoice for any work on this.

Commissioner Campbell asked if these task orders and additional costs are brought to the finance committee and are incorporated into the budget. Ms. Warren referenced the second page of the Executive Director Contract Recommendation document under Additional Budget Information and stated when she prepares these documents, she has to send it to Jacobs Finance Group and they review it all.

Council Member Seljevold moved, and Member Van Ambug seconded, to approve Crown's MCCJPA Task Order 6 Amendment 0 in the amount of \$280,000. Motion carried.

10) ADJOURN

The meeting adjourned at 1:31 p.m.

Stephen Larson, MCCJPA Secretary