

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, December 14, 2023, 2:00 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 2:02 p.m.

2) ROLL CALL

City of Moorhead: Council Member Chuck Hendrickson
Council Member Larry Seljevold (4021 2½ St S, Moorhead, MN)
Clay County: Commissioner Kevin Campbell
Commissioner Mongeau

Others Present or on Microsoft Teams:

Jodi Smith, Lands & Compliance Director, Madeline Daudt, Land Specialist, and Jessica Warren, Compliance Specialist, Diversion Authority

Attorneys Katie Schmidt and Lukas Andrud, Ohnstad Twichell Law

Eric Dodds and Dean Vetter, AE2S

Dale Ahlsten, ProSource

Katie Laidley and Ken Helvey, SRF Consulting

Stephen Larson and Jacqueline Finck, Clay County staff

Bob Zimmerman, City of Moorhead

Peggy Harter, Jacobs

3) APPROVAL OF AGENDA

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve the agenda with the agenda addition, Blilie Negotiation Summary. Motion carried.

4) APPROVAL OF MINUTES

Council Member Hendrickson moved, and Commissioner Mongeau seconded, to approve the minutes from November 16, 2023. Motion carried.

5) CITIZENS TO BE HEARD

There were no citizens to be heard.

6) PROJECT UPDATES

a. Clara Cemetery Update

Peggy Harter, Jacobs, gave an update on the Clara Cemetery Flood Protection Project. Ms. Harter stated the original plan was to build a levee around the cemetery for protection against a 500-year flood since the MFDA didn't think a flowage easement was going to be able to be obtained across the cemetery. Additional research was completed and found out that the person who owned the property underlying the Clara Cemetery had been deceased for quite some time. The MFDA then worked with Comstock Lutheran Church, who has the Board

members that oversee the Clara Cemetery, to file Quiet Title Action for the church to become owners of the property. The hearing took place in November of 2023 and the judge found everything in order and the judgement has been signed, so Comstock Lutheran Church is the current owner of the property underlying the Clara Cemetery. The church was then able to apply a flowage easement across the cemetery allowing for a levee to be constructed to protect against a 100-year flood event. Ms. Harter referred to Exhibit A showing the preferred Clara Cemetery levee. A ground penetrating radar (GPR) was completed at the cemetery, and they don't believe there are any unmarked graves in the cemetery that would be impacted by this alignment. Ms. Harter stated that Clay County has approved a Memorandum of Understanding (MOU) that approved this levee alternative, and an MOU with Holy Cross Township is close to being approved as well. A draft agreement has been sent to Comstock Lutheran Church and are waiting for any comments regarding the agreement before it's approved. A preliminary landscape concept has also been shared with the Comstock Lutheran Church and showed the options for native plantings. All the existing trees at the cemetery were dead and have been removed. Ms. Harter summarized the next steps for the Clara Cemetery.

Commissioner Campbell asked if there is a single access point into the Clara Cemetery that will be off 150th. Ms. Harter stated, yes. Commissioner Campbell stated that there was mention of having access from Co. Rd. 59. Ms. Harter stated that because of the levee being on the east side of Co. Rd. 59, it was decided access from that roadway would be hard to get a decent grade into the cemetery. There were a couple options given to the Church Board and they preferred this one because it was a less steep grade.

Ms. Harter gave an update on the City of Wolverton Flood Protection Project. Ms. Harter stated the exhibits have not changed for the Wolverton and Georgetown projects from when the MOU was approved by the MFDA and the Buffalo Red River Watershed District (BRRWD). The Wolverton Project is at 70% design and has completed the preliminary internal drainage study. BRRWD has been in coordination with landowners, the City of Wolverton, BNSF, and MnDOT and will be working on coordination with Wilkin County and the US Army Corps of Engineers (USACE). They are getting some preliminary cost estimates based on their design levels and is estimated at \$9 million for construction. Ms. Harter went over a brief timeline for the project.

Commissioner Mongeau stated she recalls that some of the land on the east side of the project is in Reinvest in Minnesota (RIM) type easement or conservation land and asked if any of that type of land is being protected by this levee. Eric Dodds, AE2S, stated that from a real estate standpoint, we don't know yet. Mr. Dodds stated that he is familiar with those types of programs and the BRRWD is involved to some degree. The BRRWD is leading the ring levee project and there were some other easements that the BRRWD had to work with. Further discussion ensued regarding the easements, development, and levee protection.

Ms. Harter stated that the City of Georgetown Flood Protection Project is a very similar update. They're at the same percentage of design and same timeline for acquisitions as the Wolverton Project. There is still some additional coordination occurring with the preliminary cost estimated to be \$3 million for construction. The levee design has not changed since signing the MOU. The permitting process is currently going through MnDOT District 4 for the Georgetown Flood Protection project and the TH 75 Road Raise.

Council Member Hendrickson asked about the TH 75 Road Raise project. Ms. Harter stated that she currently only has the conceptual plan sheets and doesn't know the elevation heights for the Georgetown project yet. Once they get the alignment surveyed, they will be sending some profile sheets for the project.

b. MN Litigation Status

Mr. Dodds referred to the MN Litigation Actions Summary Sheet showing acquisition status and will update each month to share eminent domain actions. Mr. Dodds went through the additional information provided on the Summary Sheet.

Katie Laidley, SRF Consulting, referred to the Clay County necessity hearings that are scheduled for SE-4 and SE-5 and will be filing the Wilkin County ones hopefully next week once the utility reviews are complete. Next steps would be to complete the UMA parcels and are hoping to certify SE-4 and SE-5 in March.

Commissioner Campbell clarified that all MCCJPA Board action has taken place for eminent domain for parcels in Clay County and Wilkin County with the City of Moorhead. Ms. Laidley said that is correct.

Council Member Hendrickson stated he appreciates this Summary Sheet and asked to see an updated sheet with any changes moving forward. Mr. Dodds stated that the plan is to update the board at the monthly meetings with the summary sheet but if there is some mass activity, they can update more frequently as well.

c. Property Acquisition Status Report

Mr. Dodds referred to the Property Acquisition Status Report and maps showing parcel and flowage easement status. The construction footprint is 92.7% complete with a 0.5% increase from last month. The upstream mitigation area (UMA) footprint is at 50.4% complete with a 4.5% increase from last month. The Property Acquisition Progress by MCCJPA is 42.8% complete, up 1.3% from last month. Mr. Dodds referred to the Landowner Overview in the packet that shows owner groups and parcels broken down for the construction and UMA footprint.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. In the last month, successfully closed on 10 parcels/1 landowner. There were another 10 parcels that were closed in November but are waiting for the final paperwork. There will be additional closings scheduled in December. The last written offer deadline passed in Minnesota and eight landowners accepting the offers so far.

The Executive Director did authorize declaring three sets of land as excess and have been following the Diversion Authority's policy on Disposition and Management of Comprehensive Lands. One grouping was secured by Cass County which were strips of land existing next to County highways. The second set are strips of land in SE-1 and are being offered back to the former property owners. The third piece is a parcel on the north end of the channel. An appraisal is being completed and will be finalized in January.

d. 2024 Board Meeting Calendar

Madeline Daudt, Diversion Authority, requested approval of the 2024 Board Meeting calendar which is consistent with previous years.

Council Member Hendrickson moved, and Commissioner Mongeau seconded, to approve the 2024 Board Meeting Calendar. Motion carried.

7) LAND AGENT REPORTS

Ms. Laidley stated that they're continuing to work with the landowners and are continuing communication with the eminent domain filings. Some owners have legal representation, and some are trying to come up with negotiations to get to a settlement.

Dale Ahlsten, ProSource, stated that they're wrapping up acquisition and trying to get landowners towards settlement. There are a few closings happening tomorrow. There were additional closings scheduled but some things came up and are now going to be pushed to January.

Commissioner Campbell thanked and praised the land agents for their hard work.

8) CONTRACTING ACTIONS

a. Pifer's-MCCJPA TO1-A4

Jessica Warren, Diversion Authority, requested approval of Pifer's – MCCJPA Task Order 1 – Amendment 4. This is the yearly task order amendment for Pifer's and has a list of all the identification numbers and the names of who they will be working with.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve the Pifer's-MCCJPA TO1-A4. Motion carried.

9) NEGOTIATION SUMMARY

a. Blilie Negotiation Summary

Jodi Smith, Diversion Authority, met with the Blilies to go over some of their concerns and questions. Looking back at their original appraisals, it looks like a majority of their property was completed back in December of 2021. The board approved an appraisal waiver for their properties along SE-5 not quite as long ago. Ms. Ahlsten has been working with them for a couple of years now. The property was originally appraised for approximately \$1.2 million. The Clara Cemetery project will impact the Blilie property. Staff have gone out to their property and have worked to minimize the impact, however there isn't a finalized agreed upon plan yet. When there isn't a plan finalized, we assume the greatest take when negotiating, which will be the full three acres. The amount of acreage is probably closer to one acre, but the plans are not finalized. The last written offer was \$1,540,000, the offer was rejected, then in October, consistent with the approved Last Written Offers, the owner was offered \$1,544,000. The Blilies are interested in a parcel of land that is adjacent to land that they own and are interested in exchanging. So, the discussion that was had today were reducing the amount that they get in cash for just compensation in exchange for the land. The overall compensation then would be transferring all the necessary property rights to us for fee simple interest for approximately 30.18 acres and a temporary construction easement over approximately 3.31 acres, and a flowage easement over approximately 360.28 acres, subject to final survey. In return they will get \$1.54 million in cash settlement to offset the land they would like. Ms. Smith did mention that a special meeting may need to be called for an executive session depending on what questions the Board may have.

Commissioner Campbell asked if the Blilies agreed to what has been brought up and discussed today. Ms. Smith stated, yes, they have. Commissioner Campbell wanted to clarify that we will only be taking what is needed for the Clara Cemetery project, which is up to three acres but will mostly likely be less, but then compensating for the three acres. Mr. Smith stated that is correct.

Commissioner Mongeau mentioned adding initials with the last names when it comes to property owners that have the same last name for clarification.

Commissioners Mongeau and Campell both wanted to clarify that this offer is within parameters that we have done before and if similar situations have occurred on the North Dakota side, to be sure everything is consistent. Ms. Smith stated that this negotiation is being addressed the same and is consistent with how properties have been handled on the North Dakota side.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve that the owner will convey to the MCCJPA the property rights necessary for the FM Area Diversion Project, which will include fee simple interest over approximately 30.18 acres and a temporary construction easement over approximately 3.31 acres and a flowage easement over approximately 360.28 acres, subject to final survey; the MCCJPA will pay the owner \$1.54 million upon closing of the real estate transaction contemplated under the party's settlement agreement for the property rights conveyed by the owner, as outlined above; and the MCCJPA will convey to the owner fee simple ownership of approximately 37.12 acres regarding OIN 9234 subject to the flowage easement. Motion carried.

10) ADJOURN

The meeting adjourned at 2:52 p.m.

Stephen Larson, MCCJPA Secretary