

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, January 25, 2024, 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
	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 John Shockley, Kathryn McNamara, Chris McShane and Lukas Andrud, Ohnstad Twichell Law

Eric Dodds and Dean Vetter, AE2S

Dale Ahlsten and Scott Stenger, ProSource

Katie Laidley, SRF Consulting

Stephen Larson and Jacqueline Finck, Clay County staff

Bob Zimmerman, City of Moorhead

3) APPROVAL OF AGENDA

Mayor Carlson moved, and Council Member Hendrickson seconded, to approve the agenda. Motion carried.

4) APPROVAL OF MINUTES

Council Member Hendrickson moved, and Council Member Seljevoll seconded, to approve the minutes from December 14, 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 MN Litigation Actions Summary Sheet showing acquisition status and will update each month to share eminent domain actions. The construction footprint is 93.7% complete with a 1.0 % increase from last month. The upstream mitigation area (UMA) footprint is at 51.7% complete with a 1.3% increase from last month. The Property Acquisition Progress by MCCJPA is 43.6% complete, up 0.8% from last month. The Southern

Embankment & Associated Infrastructure is approaching almost 50% and the Upstream Mitigation Area is at 37.6%. The Drayton Dam Mitigation continues to be at 100% and there was a slight increase for the Environmental Monitoring Easements. Mr. Dodds referred to the Landowner Overview in the packet that shows owner groups and parcels broken down for the construction and UMA footprint with 92.0% of the owner groups complete for the Construction Footprint and 54.4% for the UMA Footprint.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. In the last month, successfully closed on 13 parcels/8 landowners. There were 18 parcels that were closed in January, some of them are now anticipated to close in February. There will be additional closings scheduled in December. On the North Dakota side, there have been former landowners interested in purchasing Excess Lands. Lastly, started to work through farmland leases for 2024.

b. Wolverton Project Update

Mr. Dodds referred to the memo in the packet regarding the Wolverton Project and that there is some good progress being made. The Buffalo Red River Watershed District (BRRWD) is working on designing and developing the ring levee around Wolverton. With the progress being made, we've been coordinating with them on the property side. The BRRWD will be buying land for the footprint of the ring levee and outside of that MCCJPA has approximately a dozen properties to secure flowage easements on. So, property acquisitions will need to be made in the future for the project.

Mayor Carlson asked, from Member Van Amburg's perspective, how things are going with Wolverton. Member Van Amburg stated that everything is going well and has been pretty smooth. Commissioner Campbell asked if they are aware of the timeline that we're up against for this project and Member Van Amburg stated yes, they do. Jodi Smith, Diversion Authority, mentioned that they do have a monthly meeting with the BRRWD to coordinate efforts so that everyone is aware of the schedule. Commissioner Campbell further asked about the schedule and property acquisitions. Mr. Dodds stated that on their end, they have not had any conversations with landowners, but the BRRWD has had preliminary discussions with landowners.

c. Litigation Update

Chris McShane, Ohnstad Twichell, stated that they have completed the actions needed for filing for Eminent Domain for properties for SE-4 and SE-5 in both Clay County and Wilkin County. Hearings were scheduled in Clay County for February 16th and 27th, 2024. The judge notified us recently that she will be unavailable on February 16th, 2023 and that she will notify us of a rescheduled date. It looks like the rescheduled date will be towards the end of March. Mr. McShane stated that they have reached out to Wilkin County to set up hearing dates but has been a little bit of a challenge since they are not in the same Judicial District. Commissioner Campbell stated that he planned on going to those hearings and asked Mr. McShane to update him with the rescheduled date. Mr. McShane also stated they would reach out for the Wilkin County hearings assuming it would be a City of Moorhead representative.

Council Member Hendrickson referenced the MN Litigation Actions Summary Sheet and wondered how the legal representation for MCCJPA is divided out. Mr. McShane stated if the Ohnstad Twichell Law Firm has any conflict with the landowner or the tenant then Ohnstad

Twitchell Law Firm cannot represent Clay County or the City of Moorhead.

Mayor Carlson asked for clarification regarding the difference between eminent domain and eminent domain authorize. Mr. McShane stated that for any property touching SE-4 or SE-5 are what have been filed for eminent domain actions and have included any property that those owners have in the UMA. There are some properties that have been eminent domain authorized and some that are in open settlement with loose ends that are needing tied up or some additional information needed. The remaining properties will probably be broken up into a couple different eminent domain actions so we can narrow down issues.

Mayor Carlson asked Mr. McShane or Ms. Smith to explain the process and how it works as far as the final offer and what that means as far as if a judge makes the determination if it's over or under certain percentages. Mr. McShane stated that the last written offers that were discussed at Board meetings for MCCJPA, Clay County, and the City of Moorhead are a statutory step in Minnesota because it limits the exposure for payment of attorney's fees and costs. There is a statute in Minnesota which requires payment terms of fees and costs if it is a taking of more than \$25,000 and there is a shall and a may of attorney's fees. So, if it's more than 40% higher than what the last written offer is that the attorney's fees shall be paid. If it's 25% – 40% higher than the last written offers, then the attorney's fees may be rewarded, but if it's below that then the attorney's fees are off the table.

d. Tree Cutting Contract Discussion

Mr. Dodds referred to the packet and stated that the US Army Corps of Engineers (USACE) will be releasing construction contracts for SE-4 and eventually SE-5. There are a number of trees that are in the footprint of those contracts and because of a bat and endangered species issue, the cutting of trees is limited to a certain time window. The USACE has contracted with a tree cutting company to remove the trees in the referenced area on the map so that the construction itself is not delayed. The tree cutting will happen before April 1st since that is the deadline for the endangered species. Madeline will be reaching out to the tenants on these properties giving them a heads up that this will be happening as well. Mr. Dodds referenced the red areas on the map showing the properties that have not yet been secured, so the tree cutting on those properties will be deferred to a later date. The USACE doesn't plan on awarding the tree cutting contract for SE-5 until early 2025.

Commissioner Campbell asked if some of the trees will be within the county right-of-way (ROW). Mr. Dodds stated that there will be some and thinks it would be just a couple of parcels.

Ms. Smith stated that the Board did approve an agreement with Luther Blilie. He has requested to remove trees himself and relocate them to another property. He also only has until April 14th to complete the removal due to the Endangered Species Act.

7) NEGOTIATIONS

a. OIN 1783X Belssingsbe Access Easement

Mr. Dodds stated that MCCJPA has already approved an acquisition summary for the property rights needed on OIN 1783 and has been working with the property owners and their lenders on closing. The lender has expressed concern about access to the field during construction. There will be a field road after construction, but their concern is during the actual construction. Mr. Dodds referenced the map showing the pathway of the future road would

be. What is being asked from the Board today is an access easement on that pathway for the benefit of the tenants of OIN 1783 so they will be able to access the field during construction. The feeling is that this is needed so we can close on this property. Lukas Andrud, Ohnstad Twichell, stated that the one provision of the easement is that the exact location of the future access road shifts as the easement terminates. Mr. Andrud also stated that there is an amendment to the Purchase Agreement for the Board to consider as well.

Mayor Carlson moved, and Member Van Amburg seconded, to approve the Access Easement and amendment to the Purchase Agreement. Motion carried.

b. OINs 1240 7109 9119 Barton Negotiation Summary

Mr. Dodds stated that the Board has approved a settlement with the Bartons who own these three different parcels. A Flowage Easement is needed for these parcels. As we have been working on the closing for these properties, the owner has concerns regarding access to the farmable area on OIN 1240 and that the project would further erode that access pathway. The settlement that was reached was prior to sending last written offers. Since this issue was brought up, they asked if the flowage easement could be modified providing them some future guarantees regarding erosion and access. After discussing with legal counsel, modifying the standard format for flowage easement was not something we wanted to do. So, the Last Written Offer amount of \$65,000 was offered and asked if that would satisfy their concerns, to which they agreed. Mr. Dodds stated that they are now requesting the Board to approve the settlement amount of \$65,000.

Dale Ahlsten, ProSource, referenced the map and stated southwest of OIN 9119 is where that access occurs, and it is right against the Red River. As mentioned, there are concerns there will be accelerated erosion due to the project.

Council Member Hendrickson moved, and Council Member Seljevoll seconded, to approve OINs 1240 7109 9119 Barton Negotiation Summary in the amount of \$65,000.

8) LAND AGENT REPORTS

Ms. Ahlsten stated that there are three owners that are needing changes and additions to the acquisition in the southern embankment and so we're working with those owners on the adjustments. There will be something soon for the board regarding those. There are two closings happening next week and OIN 1783 with the access agreement should be closing in the next few months.

Katie Laidley, SRF Consulting, stated they're continuing to communicate with landowners and reaching out to attorneys to get additional deals completed. The Last Written Offers have brought a few additional landowners forward for closing and are working with Ohnstad Twichell on the Eminent Domain cases.

Scott Stenger, ProSource, stated between Ms. Ahlsten and Ms. Laidley, they covered the updates. We're continuing to work with landowners and as Ms. Ahlsten stated we're making some changes and additions to acquisitions to complete the settlements.

Commissioner Campbell reminded everyone of the dates that he and Steve will be gone and unavailable to sign for closings.

9) CONTRACTING ACTIONS

Jessica Warren, Diversion Authority, stated that there are four contracts that need Board approval.

a. DKJ Appraisal LLC Agreement

Ms. Warren stated that John Albrecht was the review appraiser for years and he did not renew his license for 2024 so we are bringing forward a new agreement with DKJ Appraisal LLC forward. The review appraiser's role is to look over the appraisal reports to make sure they meet all the applicable federal, state, and local laws.

b. Crown Task Order 4 Amendment 2

Ms. Warren stated the Crown Task Order 4 Amendment 3 is adding five appraisal services located in the Wolverton area and extending the task order completion date. This task order was created for the UMA.

c. SRF Task Order 1 Amendment 2

Ms. Warren stated the SRF Task Order 1 Amendment 2 to add budget for an additional Wolverton parcel.

d. Prosource Task Order 1 Amendment 3

Ms. Warren stated the last Task Order is ProSource Task Order 1 Amendment 2 to add additional budget to complete the property acquisition work assigned to them. The cost is based on an estimated amount that we think it will take to close.

Mayor Carlson moved, and Council Member Seljevold seconded, to approve the DKJ Appraisal LLC Agreement, Crown Task Order 4 Amendment 2, SRF Task Order 1 Amendment 2, and Prosource Task Order 1 Amendment 3. Motion carried.

10) ADJOURN

Mr. Dodds reminded the Board and those attending the meeting that February's meeting got moved to February 15, 2024.

The meeting adjourned at 1:34 p.m.

Stephen Larson, MCCJPA Secretary