SPECIAL MEETING
Moorhead - Clay County Joint Powers Authority (MCCJPA)

Tuesday, February 27, 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
Clay County:	Commissioner Kevin Campbell
	Commissioner Jenny Mongeau
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
Ken Helvey and Katie Laidley, SRF Consulting
Stephen Larson and Sarah Hellem, Clay County staff

3) APPROVAL OF AGENDA

Member Van Amburg moved, and Commissioner Mongeau seconded, to approve the agenda. Motion carried.

4) REIMBURSEMENT REQUEST

a. OIN 1665 Dobis-Buth Reimbursement Request

Ken Helvey, SRF Consulting, discussed the Uniform Act, and one of the reimbursements that a relocated individual is entitled to is Mortgage Interest Differential Payment (MIDP). The reimbursement on OIN 1665 is a calculation of that process. The old interest rate versus the new interest rate and the remaining months are reviewed, and then an additional down payment is given so their principal payment each month is the same as their old one, which results in $86,351.88. Dobis-Buth have additional closing costs due to the mortgage on their new house, which are one time closing costs. These are costs that are eligible for reimbursement under Minnesota Statute and the Uniform Act.

Mayor Carlson moved, and Council Member Hendrickson seconded, to approve OIN 1665 Dobis-Buth Reimbursement Request in the amount of $88,497.88. Motion carried.

b. OIN 251X Dahlstrom Reimbursement Request

Dale Ahlsten, ProSource, stated this reimbursement is for the additional temporary construction easement on OIN 251 Dahlstrom Trust. Part of the land that was purchased from this Trust was to create a drainage feature to assist water to reach the river, in the assessment by the USACE, there was an area on this private property that could also use drainage repair. Therefore, just over four acres was requested for a temporary construction easement from the Dahlstroms for this repair for the course of five years.

Member VanAmburg moved, and Commissioner Mongeau seconded, to approve OIN 251X Dahlstrom Reimbursement Request in the amount of $5,175.00. Motion carried.

5) NEGOTIATIONS

a. Option Agreements

Eric Dodds, AE2S, discussed the preliminary designs that took place years ago for SE-4 and how they had been working with land agents to see if they could strike up a deal with property owners based on that preliminary design. In the packet there are settlements related to the three option agreements that were approved a while ago. All three are now based off the final design for the embankment. The final design has changed some compared to the preliminary design.

When properties were purchased under the preliminary design we recognized and informed the property owners that there was a chance that the final design would change. Therefore, in the option agreement there were considerations for how we might address these changes. Some of the changes are fairly straight forward while some are complex with the addition of the up-and-over on 150th Avenue, which is the road between OIN 1630 and OIN 1840. These option agreements have been presented to the property owners. It's recommended to approve all three of these settlement agreements.

I. OIN 1840

Mr. Dodds referred to the map and stated what was previously purchased from the property owner was a straight North-South rectangular piece of land on the very eastern side of OIN 1840, right along Highway 75. Now with the proposed up-and-over on 150th Avenue, the embankment needs to be pulled further west, away from the intersection to allow for sight distances, which results not only in additional land but also a diagonal taking on OIN 1840. In this situation, because additional property needs to be acquired, the negotiated settlement amount on this parcel is $405,000.00. As part of this, there are 1.5 acres that the property owner will purchase back.

Mayor Carlson moved, and Council Member Hendrickson seconded, to approve the settlement agreement in the amount of $405,000.00 for OIN 1840 to acquire the necessary property rights based on final Right-of-Way needs for SE-4, including the flowage easement. Motion carried.

II. OIN 1630

Mr. Dodds discussed previously purchasing a diagonal piece of land through this parcel. A flowage easement was purchased on the west side and purchased the land under the embankment. With the final design and the road raise, it pushed the embankment further west. The resulting taking is very similar in size in terms of acreage, but it's located differently on the parcel. A $0 dollar settlement is being recommended. We would get all property rights that are needed for the project and the property owner does get some land back on the dry side. Currently the field access to this parcel is on the east side of the embankment and there isn't a field access on the west. Therefore, we're obligated to provide a new field access to the property owner. Estimates were received, and it would cost about $15,000.00. The property owner asked about details on the culvert and those things would be handled under a reimbursement process. Because of the timeframe, it was asked that the property owner take that work upon themselves, as it would be a more streamlined process compared to if a government entity did it.

Commissioner Campbell asked if there would be a 'not to exceed' number for the estimate. Mr. Dodds stated they're comfortable with the estimated amount of $15,000.00, but the property owner has questions about it. If it does exceed that amount, this can be revisited again at another board meeting. Commissioner Campbell feels it would be appropriate to have verbiage stating, 'not to exceed' and if that does in fact happen, it will need to be brought back to the Board.

Mr. Van Amburg asked If there is a possibility of a culvert be made available for our use. Mr. Dodds stated we would have to purchase a culvert just like the property owner would.

Commissioner Mongeau moved, and Mayor Carlson seconded, to approve the settlement agreement in the amount of $0.00 on OIN 1630 to acquire the necessary property rights based on final Right-of-Way needs for SE-4 including the flowage easement, the return of the excess acres no longer needed for SE-4, and providing a field access road that's not to exceed $15,000.00, from 150th Avenue south on the West side of the embankment that will accommodate modern farming equipment. Motion carried.

III. OIN 257

Mr. Dodds stated there is still land that needs to be acquired on OIN 257. The final design had overlapping parts, so the property owner agreed to follow what was spelled out in the option agreement, they're going to buy back the pieces that we don't need and we're going to purchase the parts from him that we do need based on the final design.

Scott Stenger, ProSource, stated the property owner needs to provide just under $4,000, which is the differential. A lease agreement is being worked on for the owner in order for him to farm this land, this is the one outstanding document that is needed. No Board action is needed for this item.

Mr. Dodds stated that Dean Vetter, AE2S, shared the agreement which was for $3,927.50.

Commissioner Campbell confirmed that no action is needed on OIN 257. Mr. Dodd stated that was correct. OIN 257 is following the exact terms of the option agreement.

Commissioner Campbell asked if the other two option agreements give us the necessary land needs, we would need for the proposed access road that will be on the west side. Mr. Dodds confirmed that was correct. The final right-of-way needs that were received by the United Stated Army Corps of Engineers (USACE) in February included off real estate for the up-and-over as well as the field access road.

Mr. Vetter stated that there were going to be some crop restrictions on SE-4, but the owner asked that there not be these restrictions on these 5 acres and subject to crop damages if that occurs. Commissioner Campbell asked if this was a request for something that wasn't in the original agreement. Jodi Smith, Diversion Authority, stated that was correct and thinks it would be best to take action on this.

Mayor Carlson moved, and Member Van Amburg seconded, to approve that the property owner will have the right to lease back OIN 257 N in 2024 and farm straight through with no crop restrictions and subject to crop damages if they occur. Motion carried.

6) APPRAISALS

a. Deposit of Appraised Values

Mr. Dodds stated on September 28, 2023, the board approved the last written offer amounts for the impacted landowners in the upper mitigation area (UMA) that have not reached a settlement. Eminent domain filings on these properties then took place in late November and December. As part of the litigation process, a necessity hearing will be held at the end of March. Following these hearings, and depending on the outcome of said hearings, deposits will be deposited with the court. The appraised values of the property interests being acquired will be the basis for these deposits.

Chris McShane, Ohnstad Twichell Law, stated they are moving forward with eminent domain on certain properties in both Clay and Wilkin Counties. Minnesota Statute section 117.042 talks about the process to take possession, and what that process is, is that we give notice on the intent to take possession, 90 days prior to the possession date. There will then be a hearing on necessity and the Judge needs to order that that necessity has been met and then we have to deposit the amount of the appraisals. Clay County would make the deposits for the Clay County properties and the City of Moorhead would make the deposits for the Wilkin County properties. What is before the Board today are the appraised amounts for the individual properties that are going through eminent domain that touches SE-4 or SE-5. What we want to be sure happens is that Clay County and the City of Moorhead are reimbursed for these deposits.

Commissioner Campbell asked if the action today was for the Clay County properties. Mr. McShane stated the action need is for both the Clay County properties and the Wilkin County properties. The goal is to approve that when these deposits are made by Clay County for the Clay County properties and by the City of Moorhead for the Wilkin County properties, they will be reimbursed in accordance with the agreement between the two entities. John Shockley, Ohnstad Twichell Law, confirmed that was correct.

Commissioner Mongeau asked why the totals were not included in the spreadsheet, as that would be needed to make a proper motion. Mr. Dodds stated the totals could certainly be provided. Mr. McShane stated there are several properties on this list that they hope to settle before the hearing.

Commissioner Campbell stated that the purpose of MCCJPA is to reassure that each of these parcels, as individually described, would be reimbursed, should Clay County or the City of Moorhead have to advance those payments. And as stated, the total amount might be irrelevant if some of these properties are settled before the hearing.

Ms. Smith stated the total for the Wilkin County properties is $610,170.00 and $8,060,313.00 for the Clay County properties.

Commissioner Mongeau understands that the total could fluctuate and requested that there be a 'to not exceed' amount when making a motion. Mr. McShane stated the amounts that need to be deposited are the appraised amounts, which come from the appraisals that were approved over the past 1.5 years, but does not include the last written offers, which were more than these amounts. But the statute states the amount deposited must be the appraised amount. The goal is to identify this, as both Clay County and the City of Moorhead will see these amounts under your separate perspective boards. It's also good to have the amounts separated out by parcel so as things get settled, they can be checked off the list, and prevent a deposit from being made. Ms. Smith asked if it would be appropriate to include the list of properties in the minutes. Mr. McShane stated that would be appropriate.

Commissioner Mongeau stated she's seeking full transparency as Clay County has been at the Capital talking about how funds in this area are being utilized, that it wouldn't hurt for the totals to be included within the spreadsheet and the minutes. Mr. Dodds stated they will produce a version of the spreadsheet for the minutes, that includes the totals.

Mayor Carlson asked which properties were close to closing. Ms. Smith stated all the Wilkin County properties are moving forward. For Clay County, OIN 1842, OIN 1876, OIN 1678, OIN 1839, OIN 1815, OIN 1829, OIN 1836, OIN 1650, OIN 1850 and OIN 255 are moving forward. The remaining properties are going through the eminent domain process. Commissioner Campbell asked if those properties are settled, then those deposits will not be required. Mr. McShane stated if those properties close before the end of March, then no, those deposits will not be made. Ms. Smith stated that we guaranteed the USACE that we will certify real estate by April 1, 2024, so they can issue the contract on SE-4. SE-5 consists of a majority of Wilkin properties, but there are a couple properties that are attached to SE-4. If we don't meet that deadline, then there will be some repercussions as far as the USACE being able to issue a contract. There's also some utility relocations, which the utility team has a task order ready to go out and issue on April 15, 2024.

Commissioner Campbell stated he's curious on what the reimbursement timeframe would be for these deposits, as $8 million is a significant amount, and asked if there is an opportunity to discuss this with the Diversion Authority on an early reimbursement, subject to final closure. Mr. Shockley stated this could be authorized at the next Diversion Authority Board meeting, which is in mid-March. This is something that can be looked into with the staff and then will be brought forward to the finance committee and the Diversion Authority Board. Commissioner Campbell stated that would be helpful.

Mayor Carlson asked for a brief timeline for the eminent domain process. Mr. McShane stated we need to certify the right-of-way by April 1, 2024, which is a Monday. In order to do this, we either needed to have closed on all the necessary property for SE-4 and SE-5 or we need to have taken possession through the court system for those properties. To take possession of the necessary property rights, we need to have gone through a process which included starting a petition, giving a 90-day notice of intent to take possession of the property, and then making a motion for immediate possession and then have a hearing. At that hearing, a ruling from a judge is needed that says we've met necessity and then need to deposit the amounts of the appraisals that have been approved for the property rights that are being acquired, so the order of the judge combined with the deposits will translate into possession. That possession will be transferred on March 31, 2024. This will not end the eminent domain process; it shifts to how much is now owed to the property owners. The next is to appoint a three-member panel, which are called Commissioners, and that panel needs to be knowledgeable on real estate values within the county. They will do a site visit to the properties where property rights are being acquired and then there will be a hearing. After that hearing the panel will make a written determination of just compensation. If there are no objections, that amount is paid. If there are objections, either party can make an appeal to the District Court and move forward with a jury trial.

Mayor Carlson asked how long it would take for the panel to be selected. Mr. McShane stated it's expected for a panel to be appointed anywhere between 45 to 60 days after the April 1, 2024, date. It is anticipated the Commissioner hearing process will be done between 12-18 months after the April 1, 2024 timeframe for these properties.

Mr. Van Amburg asked who appoints the panel. Mr. McShane stated the panel is made by the court, but the landowners also try to agree with who that will be. The panel can consist of but not limited to, up to one attorney, appraisers, real estate agents, or auctioneers. Developers might also qualify.

Clay County Deposit Amounts

OIN	Property Owner	PIN	Appraised Value
1845	MARKJ &BARBARAASKEGAARD	15.017.2100	$430,000
1842	THERESAJ B NELSON GSTTRUST	15.020.0300	$1,078,705
1876	THERESAJ B NELSON GSTTRUST	15.020.4500	$269,688
1678	THERESAJ B NELSON GSTTRUST	15.020.1770	$196,962
1794	WILLEMRICHARD ALLEN	15.030.4100	$438,285
1861	RICHARD ALLEN WILLEM	15.029.2000	$989,000
1795	RICHARD &JUDITH WILLEM&C/O ERNESTWILLEM	15.030.4101	$460,000
1830	RICHARD ALLEN WILLEM	15.031.3700	$18,865
1839	TODD A&JANE MBLILIE	15.019.1000	$430,700
1815	TODD BLILIE	15.035.3700	$200
1829	TODD BLILIE	15.033.4700	$200
1836	TODD BLILIE	15.018.4800	$291,830
1650	TODD A&JANE MBLILIE	15.017.1300	$417,000
1820	CAROLMLARSON RLT	15.033.3000	$1,820.75
1822	LARRYNESS	15.032.4000	$530,228
1670	LARRYWNESS	15.032.3000	$692,772
1796	JUDITH NESS	15.029.3000	$295,040

1826	LARRY&JUDITH NESS	15.031.4002	$647,866
1824	LARRYNESS	15.031.4000	$192,392
5061	MATTHEWAND RACHELNESS	15.032.1300	$75,790
1671	MATTHEWAND RACHELNESS	15.032.2000	$355,840
1672	MATTHEWAND RACHELNESS	15.031.1800	$120,065
1833	NESS FAMILYFARMLLP	15.032.3300	$118,000
1827	NESS FAMILYFARMLLP	15.031.4001	$24,990
			$8,076,239

Wilkin County Deposit Amounts

OIN	Property Owner	PIN	Appraised Value
1261	LUTHER &SHELLYBLILIE ETAL	22-005-0310	$73,000
1269	LUTHER &SHELLYBLILIE ETAL	22-005-0205	see 1261
1270	MARKJ &BARBARAASKEGAARD	22-005-0200	$201,172
9152	MARKJ &BARBARAASKEGAARD	22-005-0305	$5,828
1272	MATTHEWL&RACHELNESS	22-005-0100	$500
1250	PAUL&JAMES QUINNILD	22-006-0300	$90,000
1257	DANIELJ &JAYNE MOLSGAARD	22-006-0200	$108,000
1276	GARY&NANCYISRAELSON	22-008-0200	$11,530
1277	GARY&NANCYISRAELSON	22-008-0100	$12,544
8356	GARY&NANCYISRAELSON	22-003-0100	$500
1315	JAMES ANESS	22-017-0700	$93,880
1317	JAMES ANESS	22-017-0800	$7,576
1316	JAMES ANESS	22-018-0300	$5,940
			$610,470

Commissioner Mongeau moved, and Mayor Carlson seconded, to recommend to Clay County and the City of Moorhead that they make the necessary deposits as submitted in the record, with the potential of being $610,470.00 from the City of Moorhead for Wilkin County properties and with the described properties being up to $8,076,239.00 for Clay County, and a request on behalf of the City of Moorhead and Clay County, that those reimbursements would come from the Diversion Authority at the most recent opportunity. Motion carried.

Commissioner Campbell asked if a specific timeframe as to when those deposits should be made. Mr. McShane stated the preference would be the last week of March 2024. Mr. McShane suggested getting on the agenda for the next board meetings for both Clay County and the City of Moorhead for approval of these deposits.

Commissioner Campbell asked if we could take the necessary steps to get this before the Diversion Authority Finance Committee and get the reimbursement approved as soon as possible. Ms. Smith and Mr. Shockley stated the reimbursement of these funds is something they can work through internally.

Stephen Larson, Clay County, has been in correspondence with County Auditor-Treasurer Lori

Johnson and she mentioned the County would be able to cover this amount but would be losing $27,000 a month in interest if these funds are sitting out there that long.

10) ADJOURN

The meeting adjourned at 1:48 p.m.

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Stephen Larson, MCCJPA Secretary