

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, March 28, 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 (arrived at 1:01)
Clay County: Commissioner Kevin Campbell
Commissioner Jenny Mongeau (arrived at 1:06)
BRRWD: Member Gerald Van Amburg

Others Present or on Microsoft Teams:

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

Sarah Hellem 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 Member Van Amburg seconded, to approve the minutes from January 25, 2024. Motion carried.

Mayor Carlson moved, and Council Member Seljevoll seconded, to approve the minutes from the Special Meeting minutes from February 27, 2024. 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 packet and discussed the property acquisition progress. The construction footprint is 94.9% complete with a 0.5 % increase from last month. The upstream mitigation area (UMA) footprint is at 53% complete with a 0.2% increase from last month. This does not include parcels affected by the Christine or Wolverton ring levee projects. The Property Acquisition Progress by Location was briefly discussed and The Property Acquisition Progress by MCCJPA is 47.9% complete, up 1.6% from last month. The Southern Embankment & Associated Infrastructure is at 64.4%, the Upstream Mitigation Area is at 39.6%, and the Environmental Monitoring Easements are at 79%, up 2.5%. 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 94.0% 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 15 parcels/5 landowners. 9 parcels/3 landowner groups that are pending to close in March. On the North Dakota side we are working to obtain Right of Entry on 30 of the 56 Christine Easement parcels (54%). We have been working with the Buffalo Red River design group on the Wolverton project and are aiming to have a landowner meeting for April 2024. We approved farmland leases for 2024 and the WebMap application was upgraded.

b. MN Litigation Update

Chris McShane, Ohnstad Twichell, gave a brief update on the litigation for eminent domain properties and thanked Commissioner Campbell and Mayor Carlson with the Public Purpose and Necessity hearing on all four of the currently pending actions. There was a successful result on all four of those and we're currently in the process of getting the deposits made for each of those actions. One of the interesting things that came out of those hearings was the counsel for the landowners did not want the funds deposited with the court, which is fine, there is a statutory option of either paying it directly to the landowner or paying it to the court. What the landowners want is to be paid as directly to them as possible. Therefore, we'll make those deposits with the trust account for their attorneys. Both orders in Clay County have been entered. The Wilkin County orders are estimated to be entered today, but nothing has come through at this time.

Discussed ensued regarding the statutory requirements for making the deposit with the landowner rather than with the courts.

Mr. McShane further discussed the orders and stated it requires that we identify commissioners for the just compensation component of the eminent domain process within the next 30 days. These people need to be local people who are familiar with the real estate market in this area.

Mayor Carlson asked about the ramifications of directly transferring the money to the landowners versus through the courts. Mr. McShane stated the money would be in an interest-bearing account with the court, and that interest rate would be towards the low end of what a normal savings account would be, as opposed to if it's actually in the possession of the landowners, they would have full use of that. It's not entirely clear as to what the impact is going forward with respect to, if the landowner accepts the money, whether that would eliminate some of their arguments and ability to appeal. North Dakota has a specific statute that states if a landowner accepts the money, they waive their right to appeal. Minnesota

does not have this same statute, although the same concepts should apply. There is a 60 day appeal period from the day the order was entered but if they have the money and have use of it they can't take benefit of the order and appeal the order at the same time.

Commissioner Campbell stated the amount that the landowners would receive is the minimum amount based on the offer, therefore, everything that we deposit to them, they are entitled to have.

Mr. McShane stated one of the benefits of a deposit in the court or a payment to the landowners is it cuts off our claim for interest on those amounts.

Commissioner Campbell pointed out that there was a lot of last-minute work happening to resolve certain closings. Mr. McShane stated there were 7 different landowner groups that legal action had started and 4 of those were resolved and closed prior to the hearings. Commissioner Campbell mentioned that this has been shown in Mr. Dodds reports about land acquisitions and that the negotiations never stop, and we do try to do everything that we can in regards to working with those landowners.

7) LAND AGENT REPORTS

Dale Ahlsten, ProSource, said we're wrapping up loose ends, and closing out the additional acquisitions, and assisting with miscellaneous information and communication needs in the project management area. We're also working to audit and backup files, assisting legal counsel in this next phase, and process with backup documents and communications.

Scott Stenger, ProSource, stated he didn't have much to add, but met with landowners cleaning up some documentation, and we'll continue moving forward with that.

Kate Laidley, SRF Consulting, stated they continue to work with landowners wherever they can and try to move things forward. Some are still held up with attorneys, but for the most part, we're still reaching out and trying to get those negotiations completed and wrapped up, and keeping those communication lines still open.

8) ACQUISITION/APPROVALS

a. OIN 7215 Forest Mitigation Parcel Acquisition

Jodi Smith, Diversion Authority, stated this is a recommendation to acquire a new parcel, OIN 7215. This parcel is outside of the footprint of the project but it is necessary so it can meet our obligation for Forest Mitigation. There is an obligation for us to go ahead and provide 31 acres of forest land in MN. By acquiring this property and planting trees on it, we would have acquired enough property that we can deed restrict and use for Forest Mitigation. This is an obligation under condition 44 of our permit. Ms. Smith referenced the map in the packet and stated the entire tillable acreage would be planted with trees and then in future, we would deed restrict it.

Ms. Smith stated the Dean Vetter, AE2S, has been working with the property owner to get the purchase agreement prepared and negotiated so we can close as soon as possible.

Commissioner Campbell asked who the owner of this property was. Ms. Smith stated Bob Schmidt.

Mayor Carlson asked if this would completely fulfill the requirements for the DNR. Ms. Smith stated that it does and that she doesn't know the timing of the contract but she is pushing to have all the land in Minnesota that's been reserved for forest mitigation to be planted next summer.

Council Member Hendrickson asked if there was a standard number of credits needed for forest mitigation. Ms. Smith stated where you see the forested land, we get credit for what is already planted but it's not a 1 to 1 ratio, and then we'll get 'extra credit' for what we do plant on the land that is not currently forest. When the USACE runs this through the system, it comes out to 31.74 acres/credits, and we need 31 acres, so we'll have a little over that amount. Within the contract, the USACE will provide the maintenance for 5 years, after 5 years it will be handed over to us and then there will be some long-term monitoring obligations that need to be met.

Mayor Carlson moved, and Commissioner Mongeau seconded, to approve OIN 7215 Forest Mitigation Parcel Acquisition in the amount of \$300,000. Motion carried.

b. OIN 1305 Mortenson Negotiation Summary

Ms. Laidley stated this is an updated Replacement Housing Differential Payment (RHDP) for OIN 1305. This property owner did have an old RHDP from 1.5 years ago and the updated one is being brought forth for approval. With this updated RHDP of the comparable homes that are currently on the market will bring the max RHDP up to \$124,900.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve the updated RHDP for OIN 1305 in the amount of \$124,900. Motion carried.

9) EXECUTIVE SESSION

Closed Executive Session pursuant to Minn. Stat. § 13D.05 Subd 3(b) and 3(c)(3) for the purpose of meeting with counsel regarding an update and direction regarding settlement negotiations for the acquisition of OINs 1836, 1839, 1650, 1815 and 1829.

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve to go into Executive Session at 1:28 p.m. Motion carried.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve to come out of Executive Session at 2:09 p.m. Motion carried.

Council Member Hendrickson moved, and Member Van Amburg seconded, to approve the reimbursement of attorneys fees not to exceed \$11,500 and that the Blilie family will lease the farmland being acquired for \$1.00 in 2024, only. Motion Carried.

10) PROPERTY MANAGEMENT

a. 2024 Farmland Leases

Ms. Smith stated this is a recommendation to approve the farmland leases for OINs 1840N, 1791N, 1633N, 1638N, 1638Y, 249X, 249N, 249X2, 251Y, 251N. The rate is at the restricted

greens rate of \$155 per acre. Ms. Smith stated OINs 1840N, 1791N, 1633N, 1638N, 251N and 249N are all within the footprint of SE-4

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve the 2024 farmland leases. Motion Carried.

b. Lease Termination Letters

Madeline Daudt, Diversion Authority, stated there are two lease termination letters, one for OIN 250 and one for OIN 1665. These leases are up in August 2024, and it's requested to send these letters stating as such. Most purchase agreements are a 90 day notice and we are giving them a 6 month notice.

Mayor Carlson moved, and Council Member Hendrickson seconded, to approve sending Lease Termination letters for OIN 250 and OIN 1665, on behalf of the MCCJPA. Motion Carried.

11) ADJOURN

The meeting adjourned at 2:14 p.m.

Stephen Larson, MCCJPA Secretary