

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, April 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 1:02 p.m.

2) ROLL CALL

City of Moorhead: Mayor Shelly Carlson
Council Member Chuck Hendrickson
Clay County: Commissioner Kevin Campbell
Commissioner Jenny Mongeau

Others Present or on Microsoft Teams:

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

Attorneys, Kathryn McNamara, Chris McShan, Katie Schmidt, and Lukas Andrud, Ohnstad Twichell Law

Eric Dodds and Dean Vetter, AE2S

Dale Ahlsten and Scott Stenger, ProSource

Katie Laidley and Ken Helvey, SRF Consulting

Stephen Larson and Sarah Hellem, 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 Mayor Carlson seconded, to approve the minutes from March 28, 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 95.4% complete with a 0.5 % increase from last month. The upstream mitigation area (UMA) footprint is at 48% complete with a 4.9% decrease from last month due to adding parcels for Christine and Wolverton. The Property Acquisition Progress by Location was briefly discussed and The Property Acquisition Progress by MCCJPA is 57.2% complete with an increase of 9.3% from last month, and the Drayton Dam being 100% complete. The

Southern Embankment & Associated Infrastructure is at 71.1%, the Upstream Mitigation Area is at 43.2%, the Upstream Mitigation Area – Wolverton is 7.1% complete, and the Environmental Monitoring Easements remain at 79%, with no change. Notices have been sent to the property owners in the Wolverton area and are looking at a landowner meeting on May 7, 2024. 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 94.9% of the owner groups complete for the Construction Footprint and 48.5% for the UMA Footprint.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. In the last month, successfully completed the necessity hearing for property rights on 29 parcels/11 owners in MN. In the last month, successfully closed on 12 parcels/5 landowner groups. Completed the Right of Way Certifications for SE-4 and SE-5. Obtained Right of Entry on 32 of the 56 Chritine Easement parcels. Initiated Right of Way acquisition process with Wolverton property owners. There is a meeting set up with those landowners and the Buffalo Red River Watershed District on May 27, 2024. Finalized platting the Diversion Channel lands in Harwood and Berlin Townships. Completed staking of farmable areas along the Southern Embankment and OHB project limits. And continuing farmland leases for 2024.

Commissioner Campbell referred to page 12 of the packet and asked if the Southern Embankment & Associated Infrastructure meant SE-4 and SE-5. Mr. Dodds stated that was correct and while we have completed the necessity hearings, which gives us ownership of those properties, we haven't necessarily completed all the steps and acquisitions. That is why it doesn't reflect 100% complete, there is a valuation issue that is still in the court system.

b. MN Litigation Update

Chris McShane, Ohnstad Twichell, stated we had necessity hearings for 4 different pending eminent domain actions, and they were all successful. The judges have entered orders stating that the right of way and property rights have transferred to either Clay County or Moorhead. Now we're in the stage of appointing commissioners for the just compensation component of those actions. Several individuals have expressed willingness to serve as a Just Compensation Commissioner and now we're working with landowners to consent to who we've identified. There is a deadline of 30 days after the orders were entered to identify those persons. After appointing the Commissioners, the next step is to have the eminent domain commissioners take an oath, then have a site viewing of these properties and then have a final hearing where both parties can present evidence regarding the just compensation. If either party has an issue with the decision, they can make an appeal to the District Court. If so, it would then be a traditional civil jury trial action, but the hope is to avoid this.

Mr. McShane referenced the packet and briefly discussed the MN Litigation Actions Summary Sheet and stated there are only 3 properties that are in eminent domain that we do not have a court order for, none of those properties are on the Southern Embankment. Every property on the Southern Embankment has an order from the court conveying those property interests to Moorhead or Clay County. We do have other properties where eminent domain has been authorized by Clay County or Moorhead, but we have not necessarily started all of those actions. Some of those have deadlines as late as the beginning of April for landowners to indicate their intentions, especially properties who have the opportunity for litigation. We've been in touch with these landowners, but we haven't filed yet. As they file, the MN Litigation Actions Summary will be updated so that the Board understands the status of those properties.

Mr. McShane stated the other update would be that we are engaged in mediation, as we were finally able to get a mediator in place. Mediation for a MN property took place yesterday, this property isn't even in eminent domain yet, and the mediation was successful.

Commissioner Campbell asked about the described properties that are not part of the Southern Embankment footprint. Mr. McShane stated those would be just flowage easements. The properties that are in eminent domain right now that we're seeking flowage easements for are the 3 remaining Clay County properties, everything else is down in Wilkin County.

Commissioner Campbell asked if there are other properties that have residential structures on them, that have not closed yet, that are outside the footprint of reach 4 and 5. Mr. McShane confirmed that was correct, there are several properties, primarily in Wilkin County, where we have some sort of structure. We're not required to move or mitigate the actual structure on all of those properties. But each of those properties has not only a dwelling, but usually some level of out buildings as well. Mr. Dodds stated that there are roughly less than 12 of these residential properties.

c. Solar Garden Release Letter

Paul Barthel, Diversion Authority, stated a flowage easement was needed on the Blilie property that's located on the southwest corner of County Road 50 and Highway 75 in Wilkin County. It was discovered that they had a pre-existing lease with Novel Energy Solutions, for a solar farm. Through this, we worked with Novel to allow them to continue to develop their plans for the solar garden at that location. From an engineering perspective, the elevation of the solar panels would be above the 500-foot level flood elevation and then we asked that they raise the elevation of the transformer above the level of a 100-year event. The release letter is a liability, which discusses how once the infrastructure is placed on the property, if damages occur, they cannot state it was caused by the MCCJPA.

Mr. McShane stated this is one of those properties that the City of Moorhead had gone into eminent domain action with, and that order came in after this agreement was proposed, so this agreement will need to be approved by MCCJPA and also the City of Moorhead as well. Therefore, we'll have to go back to Novel and add the City of Moorhead to the release as they hold the property rights. Mr. Barthel stated this was also presented at the Diversion Authority Finance Committee, as they will be the long-term operator of the project.

Commissioner Campbell asked if this was informational or if action was needed on this item. Mr. McShane stated it would be best to take action to approve this just in case, but ultimately, Moorhead is the entity who will need to approve and sign, as they hold that flowage easement.

Mayor Carlson stated at the Diversion Authority Finance Committee meeting, the only question that arose was about having some type of structure on the property but Mr. Barthel adequately clarified that this was an existing contract that was in zone 4 and there were no questions after that. Commissioner Campbell asked if zone 4 was under a no build, or if things can still be constructed, and if so, if someone wanted to do this, they could, as long as it was at the correct elevation. Mr. Barthel confirmed that was correct, you can still

construct things in zone 4, but there are requirements within the flowage easement for additional buildings, and it cannot be a habitable structure.

Commissioner Mongeau mentioned wanting a standard practice for these types of items so when they're brought to the Planning Commission, there is consistency on how to appropriately evaluate these situations, going forward. Commissioner Campbell agreed and reminded the Board that this property is in Wilkin County, not Clay County. Mr. Barthel stated one significant difference is zone 1 is on the north side of the County line in Clay County, which has more restrictions in comparison to zone 4, which is south of the county line in Wilkin County. Mr. Dodds stated yes, there are more restrictions in zone 1, however, it's clear to point out that what they're talking about is utilities, a power pole essentially, and that is not classified as a structure. Our flowage easement restrictions are restrictive of structures, therefore, we can certainly work with utility and encourage them to build down to the proper elevations, it's unknown if our flowage easement necessarily has the ability to restrict utilities, in a flowage easement zone.

Council Member Hendrickson asked when this property fell into zone 4, if this was a pre-existing lease which was entered into on July 25, 2020. Mr. McShane stated it wouldn't have fallen into zone 4 until March of 2024, when the flowage easement was acquired. Prior to this, there was no zone 4 that applied. Council Member Hendrickson asked if Novel are active in that area and if they will see things like this more often. Commissioner Mongeau stated there were several applications for solar farms with Novel about 4 or 5 years ago, but with the connectivity costs through Xcel, which is required, exceeds over \$1 million for some of these, so there are few of them, County wide that have dried up due to this issue. Therefore, there hasn't been any new applications as of late. Mr. Barthel stated as the project gets closer to being finished, we might start seeing more of these types of solar/wind farms.

Mayor Carlson asked if Mr. McShane would be contacting the City of Moorhead to get this item on the City Council agenda. Mr. McShane confirmed he would, and prior to doing so, he needs to get it changed through Novel first, which is taking some time.

Commissioner Mongeau Moved, and Council Member Hendrickson seconded, to approve the release agreement. Motion carried.

7) LAND AGENT REPORTS

Scott Stenger, ProSource, stated almost everything has been acquired and closed on. Now they are currently working on some smaller issues such as access and drainage issues. Owners are now starting to ask questions about planting crops and when construction will start, and how that will impact them in the future. Mr. Stenger stated that Dean Vetter, AE2S, has been very helpful in explaining engineering plans/designs so that can be easily translated to the landowners.

Katie Laidley, SRF Consulting, stated they are working on negotiations with all landowners and helping with relocations that are still out there. They are assisting legal with mediations that are coming up as well as getting ready for the Wolverton landowner meeting.

Dale Ahlsten, ProSource, stated we're also at the stage of preparing for the coming construction, so there are issues that are coming up regarding crop damages, and observed access.

8) PROPERTY MANAGEMENT

a. 2024 Farmland Leases

Madeline Daudt, Diversion Authority, referenced the packet and discussed the variation of rate of acres. The \$165 is what the Board approved in October for the farmland leases of 2024. The \$155 rate is for the small grain restrictions that we put in construction areas. The \$225 rate is for organic farming. And you'll see specifically for the Blilie lease on OIN 1650N, the rate is \$1.00, per the agreement that was approved last month.

Commissioner Mongeau stated she would prefer to handle the leases in January or February rather than in the spring. Ms. Daudt agreed and stated there might be a different process next year. Commissioner Mongeau asked if the leases run from January 1 – January 1. Ms. Daudt confirmed that was correct. Commissioner Campbell agreed and stated moving forward, we should try to improve on this and give these tenants a better opportunity to make decisions.

Commissioner Campbell asked if some of these leases are based on acquisition agreements, and will they continue year after year, or are they only valid for a certain period of time. Ms. Daudt stated as the project moves forward, if they're outside of the channel, they'll go to the access lands policy, therefore, we'll see less and less every year. Mr. Dodds, stated for a couple years now, we've been doing year by year leases (one-year leases). As we get construction started in MN now with SE-4, perhaps that does give us some consideration for long-term.

Jodi Smith, Diversion Authority, stated we went through these this past fall and we try to get through a lot of them prior to the end of December and with the moving targets that were noted, it's been a little more difficult to get these to you this year. The ones that are in the footprint of the project, the N parcels, originally, we were not going to lease those out, so the project footprint then is handed over to the USACE at this point in time. And typically, what happens when we hand the property over to the USACE and we certify the real estate, we no longer maintain that real estate, it would be up to the USACE contractor to maintain that real estate. In communication with the USACE and concerns of the contractor, they'll be getting out there in June or early July, and there were concerns of weed management control issues, and so we had to get in agreement with the USACE that we could go ahead and lease the property that has already been handed over to the contractors. Ms. Smith stated we do look at certain parcels to see if it's worth us going ahead and pushing them through the access lands policy. About half of these farmland leases have the N behind them, meaning we will not be leasing these out next year, they will be underneath the construction footprint. The others we'll continue to work on and there are some that will also be shifted over to the forest mitigation project. Therefore, there will be fewer and fewer of them coming up for rent.

Mayor Carlson moved, and Commissioner Mongeau seconded, to approve farmland leases for OINs 257N, 1811, 1834, 1783N, 235Y1, 253N, 253Y3, 1650N, 1850N, 247N, 1850X2, 254Y, 256Y1, 256N, 256Y2, 253Y2, 255N, and 255X. Motion carried.

b. Weed Control Agreement

Mr. McShane stated the Weed Control Agreements are for properties where the project has acquired the ROW for SE-4. The SE-4 contract is expected to be awarded early summer and we're not exactly sure where the contractor is going to start. The expectation is for them to start on the north end and move south, but we're not certain. Most of the properties that were acquired through eminent

domain are on the south end of SE-4, so as property is owned by Moorhead or Clay County, we need to control the weeds. During the term of this agreement, the licensee may enter upon the licensed premises solely for the purpose of maintaining a weed management program. The licensee may utilize weed control remediation solutions such as normal farming practices, spraying, mowing, burning, plowing, or other weed control actions to carry out its weed management program.

If the licensee engages in normal farming practices on the premises, they must plant small grains on the licensed premises, if the Owner damages the small grain crops on the licensed premises prior to the term date or the extension date, then the Owner will pay crop damage to the licensee for the damaged small grain crops.

Mr. McShane stated these agreements are for informational purposes only, as ultimately, they need to be signed by Clay County or the City of Moorhead. No action is required on these agreements from the MCCJPA.

9) REIMBURSEMENTS

a. OIN 1665 Dobis-Buth Reimbursement Request

Ms. Laidley stated the Board previously approved a partial payment for this home and this is the remaining balance for the closing costs.

Mayor Carlson moved, and Commissioner Mongeau seconded, to approve the reimbursement request for OIN 1665 in the amount of \$1,863.00. Motion Carried.

Commissioner Mongeau wanted to provide the Board with an update regarding legislation and stated for the record that we do have a HF and a SF companion for the entire Minnesota ask for the cost that will be incurred for the Diversion Project. It would be HF5332 and SF5411 and Representatives Joy, Keil and Keeler have signed on to the HF and Senator Kupec is carrying it in the Senate.

10) ADJOURN

The meeting adjourned at 1:44 p.m.

Stephen Larson, MCCJPA Secretary