

# **Moorhead - Clay County Joint Powers Authority (MCCJPA)**

Thursday, June 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 – Teams at: 220 South Broadway Ave  
Rochester, MN 55904  
Council Member Larry Seljevoid  
Clay County: Commissioner Kevin Campbell  
Commissioner Mongeau – arrived in person at 1:02 p.m.  
BRRWD: Member Gerald Van Amburg – Teams at: 4518 5<sup>th</sup> St South  
Moorhead, MN 56560

Others Present or on Microsoft Teams:

Madeline Daudt, Land Specialist, and Jessica Warren, Compliance Specialist, Diversion Authority  
Attorneys, Chris McShane, 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 Seljevoid seconded, to approve the agenda. Motion carried.**

### **4) APPROVAL OF MINUTES**

**Council Member Seljevoid moved, and Mayor Carlson and seconded, to approve the minutes from May 23, 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 referenced the map, stating green is good, meaning we've acquired everything we need to. Blue means we're in negotiations and orange means we have filed eminent domain actions. There are a few yellow parcels near Christine

and Wolverton where appraisals are pending.

Mr. Dodds further discussed the property acquisition progress stating the construction footprint is 96.3% complete with a 0.9% increase from last month. The upstream mitigation area (UMA) footprint is at 49.6% complete with a 0.5% increase from last month. The Property Acquisition Progress by Location was briefly discussed with the Stormwater Diversion Channel being 100% complete and Oxbow-Hickson-Bakke at 97.4% complete. The Property Acquisition Progress by MCCJPA is 58.7% complete with a 1.5% increase from last month, with the Drayton Dam being 100% complete. The Southern Embankment & Associated Infrastructure remains at 71.1%, with no change, the Upstream Mitigation Area is at 44.4% complete with a 1.2% increase from last month, the Upstream Mitigation Area – Wolverton remains at 7.1%, with no change, and the Environmental Monitoring Easements is at 82.5% complete with a 3.5% increase 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 with 96.3% of the owner groups complete for the Construction Footprint and 50.3% for the UMA Footprint.

The key activities are to continue negotiating settlement agreements for existing eminent domain actions. The final two Diversion Channel parcels have closed and been acquired. In the last month, successfully closed on 3 parcels/2 landowner groups associated with SE-2B, which finalized acquisitions for SE-2B. In the last month, successfully closed 4 parcels/2 owners in the UMA. Starting the release of temporary construction easements for SE-1. And the USACE bid and awarded a forest mitigation contract. Due to a subsequent bid protest, a stop work order was required and issued. USACE and the MFDA staff discussed the resultant lack of weed control on associated parcels and determined that the most expedient remedy was to handle it under the MFDA's existing mowing and weed control contract.

**b. MN Litigation Update**

Chris McShane, Ohnstad Twichell, discussed the updates for the Minnesota litigation and stated the eminent domain Commissioners have been appointed for most of the eminent domain actions. We did start a new eminent domain action in Clay County and the hearing that is scheduled for later this summer, updates to come. The hope is to file the remaining eminent domain actions in Wilkin County in the next day or so. There is no hearing date set yet, but we'll let you know when that happens.

Commissioner Campbell asked if there was a formal hearing date scheduled. Mr. McShane stated there was one we requested a hearing date for, but it hasn't been set. Once we know more that information will be passed along, as it is for Clay County.

Mayor Carlson asked when we'll hear something regarding the hearings that took place back in March. Mr. McShane stated those were successful hearings and the Right-of-Way has now transferred to either Clay County or the City of Moorhead, depending on which county it was in, and the appeal period ran through May, so construction will start on SE-4 in the middle of the summer or shortly after that. The next step for those is to have a valuation hearing, where the Commissioners will view the properties and then a hearing will be set. There isn't a rush for this as we have the property rights, and the landowners have received payment for our appraisals. Sometimes landowners push to have this done sooner, and others don't, and sometimes we would push to have this done sooner as well. There is some strategy that goes into that of whether you want the Commissioners to go and view the property while there is

ongoing work being done or if you'd prefer them to see it once it's completed. Each side will have their own strategy on that.

**7) LAND AGENT REPORT**

Scott Stenger, ProSource, discussed meeting with landowners and working on relocations and getting claims completed, as well as access agreements for farmers. Landowners are still working with us, but they're ready to settle and be done with this process.

Ken Helvey, SRF Consulting, stated they're waiting for the Wolverton appraisals. We continue to work with landowners and representatives to try and make deals.

Commissioner Campbell asked in the Wolverton area, are there any that we need to buy out, or are we just acquiring land to build levees. Mr. Dodds stated there are no necessary buyouts for the flowage easements that we need to acquire. There are some structures that are affected by the levee, and we've asked the Buffalo Red River Watershed District to take the lead on those situations, our team will then provide some back-end support to them. For our purpose, there is no structure buyouts.

Commissioner Mongeau stated she was approached by the Kragerud's, who discussed being aware of other purchases that had happened in that area, and they were questioning whether or not they could raise their property. Commissioner Mongeau asked if this option had been eliminated as a possibility during the negotiations, or if it was still on the table, as the Kragerud's are interested in that possibility. Mr. Dodds stated to his understanding, there's a portion of their property that is outside of zone 1, where they could elevate a new structure, and that he believes that has been conveyed to the property owners. Mr. McShane stated there was a proposal to raise their structure where it currently sits, the Kragerud's rejected that option during negotiations which took place roughly 1.5 years ago. We did mediate with the Kragerud's, which was successful, and again, at that time, they rejected the option to raise the property. There is other land where there is the possibility to build a new structure on with certain elevation requirements. It's unknown if they own all of that property themselves or if they own that with their family. It was our understanding, during mediation, that they were intending to rebuild in that spot. Mr. McShane stated that he had a conversation this morning with their attorney about finalizing the settlement agreement and the attorney had asked for some additional time for the Kragerud's to remain in their existing home and indicated that they had no intentions in rebuilding or in any way stay in that location.

Commissioner Mongeau stated the Nesses reached out about eviction notice in a year and asked Mr. Dodds to discuss more on that topic. Mr. Dodds referenced the packet and stated there are a number of these parcels in Clay County where the necessity hearing has been completed, which means that Clay County technically has ownership of those parcels and property rights. In situations where there are occupied structures, we have sent them a notice stating that they will need to vacate and move all of their personal property out of those structures by April 2025. The April date was identified in the court order, which both sides have signed off on and the attorneys should have conveyed that to the property owners. Letters have been sent to the property owners through their attorneys, giving them a 10-month notice. The plan is to send another notice around the 6-month mark, and then the 90-day window as well. Mr. Dodds stated we are visiting with the

Ness family this afternoon and that we have an obligation to remove the structures and personal property out of harms way, and those are obligations that the project needs to complete in order to be operational. We have utilities to remove and get discounted, so we're going to be flexible where we can, but we need to start setting that tone.

Commissioner Campbell stated that the timeframe that was chosen was included in the court order, which was to follow the timeline of the project, so we can be ready by 2027.

## **8) NEGOTIATIONS/ACQUISITION REVIEW**

### **a. OIN 1305 Mortenson Acquisition Summary**

Katie Laidley, SRF, stated this acquisition summary is for Michele Mortenson and she is asking for a cash payment of \$375,100.00. Ms. Mortenson is planning on rebuilding her residence on her current location, to the flowage easement standards, and she is ready to move forward with this closing if it's approved.

Commissioner Campbell asked for more details on how this compares to the last written offer. Ms. Laidley stated Ms. Mortenson has a mortgage that she's required to pay off with this payment, so that brings her cash payment down substantially. And because the rebuilding on her residence needs to be up to the flowage easement standards, she will need to bring in more dirt. Commissioner Campbell asked isn't that what the Replacement Housing Differential Payment (RHDP) is for. Ms. Laidley stated Ms. Mortenson can use that, however, with the mortgage and the dirt build up, there won't be enough funds to cover those costs.

**Commissioner Mongeau moved, and Council Member Seljevold seconded, to approve the settlement amount for OIN 1305 consisting of \$375,100 cash payment for the flowage easement. Motion carried.**

### **b. OIN 251X and OIN 9170 Driveway/Approach Agreement and Permanent Access Agreement**

Mr. Dodds referenced the packet and stated the field access on OIN 251X will no longer exist in the northeast corner of the field due to the SE-4 project. What we're with this agreement is to provide some funds to the property owner so he can build field access approaches off that driveway into OIN 9170. MCCJPA owns the OIN 9170 parcel which includes a driveway that intersects the OIN 251X field. The cost estimate along with the insurance provision is \$9,500.00.

Commissioner Campbell asked if OIN 251x runs on both sides of the OIN 9170 driveway. Mr. Dodds confirmed that was correct, and it's the same landowner, same tenant. Commissioner Campbell asked if there would be any issues with drainage. Mr. Dodds stated there is a natural high point in the driveway right where the culvert is being proposed, so we're anticipating minimal drainage impacts.

**Member Van Amburg moved, and Commissioner Mongeau seconded, to approve the Driveway/Approach Agreement, authorize completing the work, and approve the Permanent Access Agreement. Motion carried.**

## **9) PROPERTY MANAGEMENT**

### **a. OIN 7215 Haying Agreement**

Madeline Daudt, Diversion Authority, discussed as stated last month this was originally going to be a farmland lease, however, the previous owner didn't plant any crop that was feasible for a farmland lease, but had already planted grass for haying and weed control purposes. The previous owner is willing to take on maintenance of this parcel through a haying agreement until USACE is ready to plant trees on the parcel.

**Mayor Carlson moved, and Council member Seljevold seconded, to approve the Haying Agreement for OIN 7215. Motion carried.**

**10) CONTRACTING ACTIONS**

**a. MCCJPA Contracting Actions**

Jessica Warren, Diversion Authority, brought forth one contracting action to close out ProSource Task Order 1 Amendment 4. Last month the MCCJPA approved their new Task Order 2 to move towards a more transitional scope including relocation and other things as these properties close out.

**Mayor Carlson moved, and Council Member Seljevold seconded, to approve the ProSource Task Order 1 Amendment 4. Motion Carried.**

**11) ADJOURN**

The meeting adjourned at 1:32 p.m.

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Stephen Larson, MCCJPA Secretary