

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, September 26, 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 – arrived at 1:33 p.m.

Council Member Chuck Hendrickson

Council Member Larry Seljevoll

Clay County: Commissioner Kevin Campbell

Commissioner Jenny Mongeau

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, Chris McShane, Kathryn McNamara and Lukas Andrud, Ohnstad Twichell Law

Eric Dodds and Dean Vetter, AE2S

Dale Ahlsten, Scott Stenger, ProSource

Katie Laidley and Ken Helvey, SRF Consulting

Stephen Larson and Sarah Hellem, Clay County staff

Bob Zimmerman, City of Moorhead

Doug Johnson, DKJ Appraisal

Chandler Dick, C3 Media

3) APPROVAL OF AGENDA

Commissioner Campbell stated there has been a request to move item 12 before item 7.

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

4) APPROVAL OF MINUTES

Council Member Hendrickson moved, and Council Member Seljevoll seconded, to approve the minutes from August 22, 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 map stating green is good. The orange parcels are in eminent domain, the blue parcels indicate negotiations are still ongoing, the yellow parcels down by Wolverton are being appraised.

Mr. Dodds discussed the property acquisition progress stating the construction footprint is 97% complete with no change from the previous month. The only thing missing is there are two parcels on the North Dakota side that we've reached an agreement on, and they will be closing soon. The other portion of the missing 3% is property where we've acquired the land rights via eminent domain action in Minnesota, but we have not yet settled on value, so they're not technically 100% complete, which is why it's not reflected in the pie chart. Commissioner Campbell asked if this would impact the project completion date. Mr. Dodds stated no, the SE-4 contract has been awarded and will begin any day now, so we're free to proceed with construction on those properties. Chris McShane, Ohnstad Twichell, stated all the property rights need to be acquired, before the project can be operational, which we have acquired the property, it's just the just compensation component that is not done yet.

Mr. Dodds continued discussing the Property Acquisition Progress by MCCJPA is 59.9% complete, an increase of 0.8% from last month. The Southern Embankment & Associated Infrastructure remains at 71.1%, with no change, the Upstream Mitigation Area is 47% complete, an increase of 1.9% from last month, the UMA – Wolverton remains at 7.1%, with no change, and the Environmental Monitoring Easements remain at 82.5%, with no change. The Landowner Overview was discussed which shows owner groups and parcels broken down for the construction and UMA footprint with 96.6% of the owner groups complete for the Construction Footprint and 54.1% 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 5 parcels/5 owners. Continuing the process of disposing of excess lands – 28 parcels/313.37 acres have been approved as excess lands. 10 parcels/188.66 acres are moving through the policy and 18 parcels/124.71 acres have been sold or pending closing. And for Minnesota properties, vacate dates for owners of occupied structures are April 1, 2025 for Clay County and June 1, 2025, for Wilkin County.

b. MN Litigation Action Update

Mr. McShane stated pages 16 and 17 of the packet indicates that we are in eminent domain with many properties in Minnesota, both in Clay and Wilkin counties. The status is that we have obtained the right-of-way necessary for all the footprint properties in Minnesota, SE-4 and SE-5, where the Courts have awarded an order saying that the right-of-way has been transferred to the project, but not yet setting a just compensation amount. The next step is to have a Commissioner hearing where the just compensation amount is set, and either party can appeal to the Commissioner's ruling of what that compensation amount could be. Commissioners have been appointed in Clay County, for the first two actions. Those Commissioners have been sworn in and are waiting to complete property inspections. We'd like to coordinate as many property inspections as possible, so the Commissioners can make good use of their time. To do that, we're trying to get them appointed in Wilkin County as well, as some properties cross the county line. For the landowners in Wilkin County, once we've acquired the right-of-way, we'd just be waiting for a Commissioner to be appointed. All but one landowner group in Wilkin County have stipulated to the same Commissioners, unfortunately one of the Commissioners is an attorney that has represented those landowners so we're trying to find a substitute Commissioner for that. Once a substitute Commissioner is appointed, those property inspections will take place. For the spots in the Southern Embankment where there is actually a fee taking, a survey will be conducted to mark the property for the Commissioners. Actions are pending in Wilkin County, and we've

been working on getting service on those property owners. We have landowners that are spread over 7 different states, multiple different counties across Minnesota, and unfortunately some that have passed away that are still showing up on record/title. We have a status conference set for Monday where we'll meet with the judge to update that the service has been completed on 90% of these landowners. Publishing will come next, followed by a hearing date.

c. LAND AGENT REPORTS

Katie Laidley, SRF Consulting, stated they are still working with landowners that aren't represented and helping with relocations, working with representation on the landowners that are represented, and helping out during mediation when needed.

Dale Ahlsten, ProSource, stated they continue to work with owners as they get to a point in their attorney representation, where we're allowed to work with them. We've been working on relocations, Rural Impact Mitigation Program (RIMP), and supporting condemnation and relocations.

7) APPRAISAL REVIEW

a. OIN 8795 Goulet Appraisal Review

Doug Johnson, DKJ Appraisal, stated OIN 8795 is a 1.72-acre rural residential site with a house and a two-car attached garage, 0.082 acres of flowage easement is being acquired on this property. Brian Field with Crown Appraisals Inc. completed these appraisals, and he indicated the before value was \$375,000.00, the after value was \$369,041.00. The difference for compensation and damages to the property is \$5,959.00. Mr. Field did that with the figuring of that the land value was damaged at 12.5% because of the flowage easement.

Council Member Hendrickson moved, and Council Member Seljevold seconded, to approve the appraisal review for OIN 8795 in the amount of \$5,959.00. Motion Carried.

b. OIN 8796 8797 Olthoff Appraisal Review

Mr. Johnson stated this property is a 0.82-acre rural residential site with a house and a garage. Mr. Field completed this appraisal as well and came in with an estimated before value of \$300,000.00, which consisted of \$80,000.00 value of the site and \$220,000.00 for the building. Mr. Field looked at the acquisition and again came up with a 12.5% degradation of value only to the land, the buildings are not affected.

Member Van Amburg moved, and Council Member Seljevold seconded, to approve the appraisal review for OIN 8796 and 8797 in the amount of \$5,854.00. Motion Carried.

8) ACQUISITION

a. OIN 1267 Blilie DRAFT RIMP Loan

Mr. Dodds stated during last month's meeting we brought forward the first step in the Rural Impact Mitigation Program (RIMP) approval process which is the step of eligibility. The Board did approve that this property is eligible for RIMP, which is based on it being an active farm/business in the impact area that is being displaced by the project. The next step is to prepare the RIMP loan report, which has been drafted. Typically, we'd offer that RIMP loan report to the property owner and use that in negotiations. There was some discussion about potentially building a ring levee for this property, however the owners wanted to see what the

RIMP loan report was before they made a formal decision. Today, we'd like the blessing to present the RIMP loan to the property owner and advance those discussions and hopefully reach a settlement.

Commissioner Campbell was happy that this was brought forward and stated the RIMP program is a significant program for some of the landowners and the fact that the Board is being made aware that this is in draft form, is good, and it lets us know that the process is still moving forward.

b. OIN 251X Amended Proposal for Farming Access

Dean, AE2S, stated the access on OIN 251X that is being constructed was proposed at \$9,500. It was later discovered that a metal culvert is required by Clay County, the existing estimate was based on a plastic culvert. The new proposal is set for \$10,265.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve OIN 251X Amended Proposal for farming access. Motion Carried.

9) CLOSED EXECUTIVE SESSION

a. Closed Executive Session pursuant to Minn. Stat. § 13D.05 subd. 3(b) and 3(c)(3) for attorney consultation regarding the purchase of property interests/settlement negotiations for the property identified as OIN 8528.

b. Closed Executive Session pursuant to Minn. Stat. § 13D.05 subd. 3(b) and 3(c)(3) for attorney consultation regarding the purchase of property interests/settlement negotiations for the property identified as OIN 1318.

Mr. McShane stated we can go into an executive session for both of these items at the same time because both items have the same reason for executive session which is Minn. Stat. § 13D.05 subd. 3(b) and 3(c)(3) for attorney consultation regarding the purchase of property interests/settlement negotiations for the property identified.

Council Member Seljevold moved, and Council Member Hendrickson seconded, to go into closed session at 1:21 p.m. Motion Carried.

Commissioner Mongeau moved, and Council Member Seljevold seconded, to come out of closed session at 1:40 p.m. Motion Carried.

10) ACTION ON NEGOTIATION SUMMARY FOR OIN 8528

Mr. McShane stated for the record, it's 1:40 p.m. on September 26, 2024.

Commissioner Campbell asked for there to be a briefing on the negotiation summary.

Mr. McShane stated this is the Leach Negotiation Summary for OIN 8528, which reads Andrew and Lisa Leech (Leech) will convey a flowage easement on OIN 8528, containing approximately 5 acres, as defined by survey. Leech will be allowed to continue to occupy and use the residence and outbuildings on OIN 8528 until November 1, 2025. MCCJPA will convey to Leech fee simple ownership of OIN 8527, subject to the exception and reservation of a flowage easement, as defined by survey. MCCJPA will pay Leech \$750,000.00, inclusive of the replacement housing differential payment (RHDP), as just compensation for the flowage easement on OIN 8528.

Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Leech, the parties will execute and file

a stipulation to dismiss the eminent domain action, Civ. No 84-CV-24-284 with respect to Leech and flowage easement acquired from Leech. The MCCJPA will pay Leech reasonable attorneys' fees not to exceed \$42,485.30

Commissioner Campbell stated based on the reports from Mr. Dodds and Jodi Smith, Diversion Authority, we believe that this is consistent with other lands that we've dealt with in similar fashion.

Council Member Seljevold moved, and Council Member Hendrickson seconded, to approve the proposed settlement for OIN 8528. Motion carried.

11) ACTION ON NEGOTIATION SUMMARY FOR OIN 1318

Ken Helvey, SRF Consulting, discussed the negotiation summary for OIN 1318 for \$140,000.00. That total is reflective of \$95,000 for the land easement and \$45,000 for mitigating the structures to be allowed to remain in place. Additionally, the owners are also requesting \$1,000.00 for attorney's fees to review the documentation. The owners have also agreed to convey the necessary easement on the property owned by Nils Hanson (OIN 9157) for the last written offer amount of \$10,000. No additional board action is needed on this parcel as the Last Written Offer has already been approved.

Member Van Amburg moved, and Council Member Seljevold seconded, to approve the negotiation summary for OIN 8528. Motion carried.

12) LAND MANAGEMENT

a. OIN 1793 Livdahl Haying Agreement

Madeline Daudt, Diversion Authority, stated OIN 1793 was demolished on a work package in 2023 and is now a vacant lot. In order to maintain a lot this size we are bringing to the board a haying agreement to hay, weed and mow the area. The licensee would be responsible for ditch mowing as well, this agreement is at no cost to the board. This agreement would be set to expire 12/31/2025

Commissioner Mongeau moved, and Council Member Seljevold seconded, to approve the Haying Agreement for OIN 1793. Motion carried.

13) ADJOURN

The meeting was adjourned at 1:47 p.m.

Stephen Larson, MCCJPA Secretary