

CLAY COUNTY PLANNING COMMISSION MINUTES
7:00 PM TUESDAY, JANUARY 28, 2025
THIRD FLOOR BOARD ROOM, CLAY COUNTY COURTHOUSE

Members Present: Joel Hildebrandt, Sebastian McDougall, Dave Steichen, Laura Johnson, Brad Eldred, Ashley Heng, Kurt Skjerven, Ezra Baer (for Commissioner Jenny Mongeau)

Members Absent: Brent Berg, Curt Stubstad

Others Present: Matt Jacobson, Brian Melton, Darren Brooke, Justin Sorum, Erika Franck, Rita Rueckert, Eric Dodds, Kevin Martin, Matthew Raisl, Carol Wickenheiser

ROLL CALL:

Attendance was recorded by and the meeting was called to order at 7:00 PM.

APPROVAL OF AGENDA:

On motion by Laura Johnson, seconded by Kurt Skjerven, and unanimously carried, the Agenda was approved.

APPROVAL OF DECEMBER 17TH, 2024:

On Motion by Ezra Baer, seconded by Brad Eldred, and unanimously carried, the December 17th, 2024 Minutes were approved.

CITIZENS TO BE HEARD:

There were no citizens wanting to speak about any items not on the Agenda.

FARGO-MOORHEAD DIVERSION UPDATE: ERIC DODDS AE2S:

Eric Dodds of AE2S presented an update on the Fargo-Moorhead Diversion Project. The project is to reduce the flood risk in the Fargo-Moorhead area. The project is proposed for protection to 37 feet through town with a 100-year flood and fight a 500-year flood that would pass a 43-foot river stage through town.

The project is approximately 61% complete at this time. The P3 work is work related to the channel that is at about 56% complete. Federal work involves the southern embankment and is about 68% completed. And the in-town levy work is approximately 80% complete. The following statistics were provided relative to the project:

- 316,000 hours on P3 machinery
- 80 Tb of data collected from drone surveys
- 28M cubic yards (cy) of material excavated
- 24 miles of piling driven
- 23,000 cy of concrete poured

- 3,508 trees planted
- 1,077 acres of native grasses planted
- 800 boulders placed at the Drayton Dam area
- 850,000 cy of material excavated for the southern embankment and OHB Levee
- 42,000 cy of concrete poured at the Red River structure
- 16 miles of piling driven at RRS
- 6 stormwater lift stations worked on

The Southern Embankment is the area most related to Clay County and is located south of Horace. It is about 22 miles long, and encompasses 3 control structures: Diversion Inlet Structure, the Wild Rice Structure and the Red River Structure. There will be crossings at I-29, County and Township crossings at 130th, 140th, 150th and 160th (the Comstock road).

Photos were shared of the Diversion Inlet Structure (99% completed), the Wild Rice River Structure (98% completed) and the Red River Structure, which is the largest of the three (approximately 70% completed).

Property Acquisition for the construction footprint is 98.4% complete. There are some final valuations pending. All property rights have been secured at this time. The UMA (Upstream Mitigation Area) is at 57.8% complete.

Property Rights Acquisition by MCCJPA (PRAM) is on its 6th version which has been reviewed by the MN Department of Natural Resources (DNR) and issues brought up by the MN DNR are currently being addressed to finalize this 6th version. Property rights have been attained on 160 parcels; there are 60 properties pending value.

Condition #45 from the MN DNR is a recommendation for Limitation of Upstream and Downstream Development. "DNR recommends that local governmental units adopt requirements that no development be allowed within one quarter mile of the dam or along river channels". Affected Governmental Units would be Pleasant Township and Stanley Township in North Dakota, Cass County, city of Fargo, city of West Fargo, city of Horace, city of Moorhead, Clay County. The Fargo-Moorhead Diversion Project Authority does not have planning and zoning ability to enact and enforce ordinances.

A map was shared showing the 100-year floodplain with the project and one-quarter mile buffer from the Southern Embankment, and another map showed the 100-year, 500-year and PMF (Probable Maximum Flood) areas with the project.

Director Jacobson asked if any other jurisdictions have adopted any zoning restrictions. Mr. Dodds stated that Pleasant Township in North Dakota has adopted a restriction of 350-450 foot setback of non-residential structures. Other high-level discussions have occurred with City of Fargo staff, and they have jurisdiction of a small portion on the North Dakota side.

Dave Steichen asked how much water would be held from the top of the embankment for a 100-year flood and for a 500-year flood. Mr. Dodds indicated the top of the embankment is at about 928.5 feet, under a PMF flood there would be about 5 feet of freeboard. At a 500-year flood would be 922.5 feet and the 100-year flood is 921.5 (7 feet of freeboard).

Director Jacobson pointed out that ultimately the concern would be the dam safety. Mr. Dodds stated that DNR made their recommendation based on any potential of a dam breach which is why

they included the quarter-mile recommended. Joel Hildebrandt inquired about a previously permitted solar farm in the Diversion area and Director Jacobson advised that the permit was required to have the solar arrays at a specific height. Mr. Dodds indicated a solar developer is building a solar array in Wilkin County and they were able to coordinate the height of the solar panels to keep them out of any water depths.

Director Jacobson inquired about what the County needs to address on the wet side of the project. Mr. Dodds advised that the flowage easements in Clay County are classified as Zone 1, the most restrictive flowage easement and prohibits any existing structures or any development.

Director Jacobson inquired if this information provided by Mr. Dodds is something that the Planning Commission would like to discuss and/or address. Acting Chair Joel Hildebrandt advised that this is a discussion that should happen sooner rather than later. Director Jacobson proposed putting together what is currently within the development and how further development would look and options for that.

PUBLIC HEARINGS:

CLAY COUNTY LAND DEVELOPMENT ORDINANCE UPDATE

The Planning Commission will review and discuss draft Chapters 5-8 of the Clay County Land Development Ordinance Update. Members of the public are encouraged to provide comment during the public hearing or by contacting the Planning Office by phone: 218-299-5005 or email: planning@claycountymn.gov prior to the public hearing. Draft Chapters 5-8, in addition to Draft Chapters 1-4, will be available for review online at <https://claycountymn.gov/1805/Land-Development-Code-Update>.

On motion by Ashley Heng, seconded by Sebastian McDougall, and unanimously carried, the Planning Commission opened the public hearing.

Director Matt Jacobson advised that the December meeting reviewed Chapters 1 through 4 and asked if there was anything anyone wished to discuss further. He reminded the Planning Commission the State will need to review the Flood Plain and Shoreland Ordinance changes. He does not anticipate any issues with this review as the changes made were to align Clay County better with the State standards. The Feedlot chapter will also need review by the State but, again, the changes made were to better align with the State standards.

One of the bigger changes is the impact to accessory dwelling standards.

There was discussion regarding whether the next Public Hearing on the Ordinance update should be at the February or March meeting and it was determined that the March meeting would be the best option.

The following key changes were discussed:

Chapter 5: Development Standards

1. Removed provision for setback averaging as it can perpetuate nonconforming structures (still applies in Shoreland zoning for setbacks from the Ordinary High-Water Level (OHWL)).
Acting Chair Hildebrandt indicated that he would like to see setback averaging eliminated.
2. Combined all density, lot and setback standards for base zoning districts into one table.
3. Set front yard setback standards equal to roadway setback. Clarified the roadway setbacks apply to more than just the front yard.

4. Removed requirement that 20,000 sq. ft of lot needs to be above the Base Flood Elevation (BFE).
5. Set new dimensional, size standards for Highway Commercial, Limited Highway Commercial, and Agricultural Service Center District (previously had no standards).
6. Minor clarifying language revisions to County Roadway Access Standards (Based on input from the Clay County Highway Tracking Committee).
7. Updates to parking and loading area standards. Gives Planning Commission more authority to require a parking study.
8. More detailed sign standards. Address purpose statement emphasizing the intent is not to regulate content or messaging. Adds new off-premise sign standards.
Director Jacobson advised that there are also changes to the setback of the placement of signs.
9. New section requiring a detailed site plan for all permit applications.
Director Jacobson pointed out that the following information should be included on the site plan:

Chapter 6: Subdivisions

1. Changed terminology: minor subdivisions now called administrative subdivisions.
2. Clarified that major subdivision platting process required for all non-agricultural or residential subdivisions.
3. Updates to major subdivision process for congruence with MN Statutes 505 (Plats) and 519B (Common Interest Communities).
Director Jacobson added discussion regarding Township approval and maintenance agreement required for platting of new public right-of-way and asked if the Township preapproval should be required. Commissioner Baer felt that the Townships would likely appreciate being allowed the notice and information.

Chapter 7: Administration and Procedures

1. Planning Commission has authority to make EIS (Environmental Impact Statements) needs decisions and EIS (Environmental Impact Study) adequacy decisions.
2. Changes to appeal process. For Use Permit decisions made by Planning Commission, applicant can appeal to the Board of Commissioners, all other parties appeal to District Court.
Director Jacobson emphasized that if an Applicant wishes to appeal a decision made by the Board of Adjustment, they appeal would need to be made directly through District Court.
3. New section established right to appear, clarifies appeal process and review bodies.
4. More specific enforcement actions for violations (e.g. administrative penalties and fines). Three violations of conditions of use permit result in Planning Commission hearing to revoke permit.
There was discussion regarding the process of assessing penalties/fines. Acting Chair Hildebrandt inquired who determines each strike and if this would be a determination by staff or by the Planning Commission.

Chapter 8: Definitions

1. This chapter is still a work in progress.
2. Definitions specific to Floodplain, Shoreland, Feedlot and Renewable Energy contained within those sections.
Commissioner Baer asked that definitions of shelter belt and wind break be included.

Director Jacobson pointed out that every term that is capitalized throughout the document is found within the Definitions chapter. Commissioner Baer pointed out this should be included to advise any readers of the situation so it doesn't appear that there are grammatical errors.

Director Jacobson confirmed that the next Public Hearing and review will be at the March 2025 Planning Commission meeting.

Ashley Heng asked how many violations are received each month within the office. Director Jacobson stated that it changes based on the season. Ms. Heng asked if the Planning Commission could get a monthly update on pending violations. There was discussion regarding putting this information in the meeting packets or given as an update at each meeting. Director Jacobson offered to include Building Permit updates as well.

Matt Raisl of Moorhead Township had a few questions regarding Chapters 1 through 4. He asked for a definition of "accessory dwelling unit". Director Jacobson read the definition and also discussed the standards for an accessory dwelling unit. Mr. Raisl also pointed out that it is proposed that smaller structures are not going to be required to have a building permit and he asked how to enforce the required setbacks. Director Jacobson confirmed that the Ordinance does state that they would need to meet all required setbacks.

On motion by Ezra Baer, seconded by Ashley Heng, and unanimously carried, the Planning Commission closed the public hearing.

UNFINISHED BUSINESS:

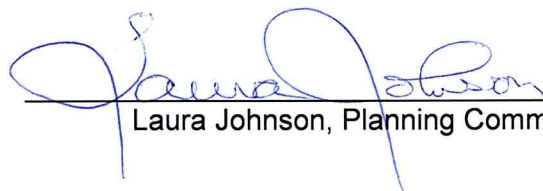
None.

NEW BUSINESS:

- ELECTION OF OFFICERS – February 18, 2025
- END OF 1ST TERM – February 2025 for Brad Eldred

ADJOURNMENT:

On motion by Sebastian McDougall, seconded by Ashley Heng, and unanimously approved, the meeting adjourned at 8:26 PM.



Laura Johnson, Planning Commission Secretary