

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, May 22, 2025, 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: Council Member Chuck Hendrickson

Council Member Lisa Borgen

Clay County: Commissioner Kevin Campbell

Commissioner Jenny Mongeau

Others Present or on Microsoft Teams:

Madeline Daudt, Land Specialist, Jason Benson, Executive Director, Jodi Smith, Diversion Authority

Attorneys, John Shockley, Chris McShane, Ohnstad Twichell Law

Eric Dodds, Dean Vetter, AE2S

Dale Ahlsten and Scott Stenger, ProSource

Katie Laidley, SRF Consulting

Bob Zimmerman, City of Moorhead

Doug Johnson, DKJ Appraisals LLC

Stephen Larson and Sarah Hellem, Clay County staff

Rob Stefonowicz, Larkin Hoffman

3) APPROVAL OF AGENDA

Council Member Borgen moved, and Council Member Hendrickson seconded, to approve the agenda. Motion carried.

4) APPROVAL OF MINUTES

Council Member Hendrickson moved, and Commissioner Mongeau seconded, to approve the minutes from March 27, 2025. 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 pertaining to the MCCJPA Acquisition Status and stated property rights have been attained on 163 parcels; 57 parcels are pending value; 2 parcels have a flowage easement signed; 11 parcels are in eminent domain; 2 parcels have a railroad agreement pending; 6 parcels are eminent domain authorized; and 9 parcels are in negotiation. The property acquisition progress was discussed with the construction footprint is 98.4% complete, with no change from last month. The upstream mitigation area (UMA) footprint is at 59.3% complete, with an increase of 0.8% from last month. The Property Acquisition Progress by Location was briefly discussed with the

Southern Embankment being 95.3% complete, with no change from last month, UMA being 59.3% complete, with an increase of 0.8% from last month, and the Environmental Monitoring Easement being 77.6% complete, with no change from last month. The Drayton Dam, In-Town Levees, Stormwater Diversion Channel, and Oxbow Hickson-Bakke are 100% complete. The Property Acquisition Progress by MCCJPA is 67.6% complete, an increase of 0.7% from last month. The Southern Embankment & Associated Infrastructure is 80% complete, with no change from last month, the Upstream Mitigation Area is 57.8% complete, with an increase of 1.5% from last month, the UMA – Wolverton remains at 7.1%, with no change, and the Environmental Monitoring Easements is 83.8% complete, with no change from last month. The Landowner Overview was discussed which shows owner groups and parcels broken down for the construction and UMA footprint with 98% of the owner groups complete for the Construction Footprint and 61.6% 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/3 owners, in the UMA. Completing appraisal reports for the Christine area flowage easements and Horace Mobility Improvements. Continuing the process of disposing of excess lands – 43 parcels/739.92 acres have been approved as excess lands, 12 parcels/265.85 acres are moving through the policy, and 31 parcels/474.07 acres have been sold or pending closing. Continuing efforts to dispose of the abandoned Rail Corridor in Horace, ND. Completed Plats of Diversion Channel lands in five (5) of the seven (7) Townships. Clay County has an administration platting process.

The Land Agent Reports for the Minnesota side of the project include providing relocation advisory and claim preparation services to people that are moving. Providing final walk-through assistance as needed. Processing RIMP reimbursement requests. Assisting with mediations and settlement negotiations. And conducting negotiations for Wolverton flowage easements.

Council member Borgen asked what the definition of excess lands was. Mr. Dodds stated back in 2021, the Diversion Authority created a policy called excess lands. From a practical standpoint, when land was acquired for the project, a number of landowners asked if full sections could be bought, rather than just the specific part that was needed for the project. So, the decision was made that if there was a willing seller, then the Diversion Authority would be a willing buyer. Therefore, more land was purchased than was needed and over the time of acquiring the land from others, that was used for trade material, and since then, those trade deals have exhausted themselves. Therefore, the policy states that those asset lands would be reviewed and if they were deemed fit, the asset lands would be declared as excess land parcels. From there, there is a sequence of steps on who has priority of the excess lands. Member entities of the Diversion Authority (Clay County, Cass County, Fargo, Moorhead) have first priority. If they don't want to buy that excess land, it goes to the former owner of the land and if they too don't want to buy it, it goes to the adjacent landowners, and if they don't want to buy it, the land would go for public sale.

b. MN Litigation Action Update

Chris McShane, Ohnstad Twichell, stated there was a status conference on Monday with Judge Doll in Wilkin County. At the conference, Judge Doll stated she signed orders to appoint Commissioners for all of the Wilkin County actions. This means that Commissioners have been selected and appointed, they just need to go through the process of being sworn in. We're hoping that after being sworn in, and the Commissioners make the trip from Breckenridge to Moorhead, they can view several of the properties, so we can move forward with Commissioner hearings in late summer or early winter. There are 2 actions that have not

started yet, the Miller and Norden projects. The Miller property had a title issue that has recently been resolved, and the Norden property will be discussed later in this meeting regarding a new appraisal.

Commissioner Campbell asked if the Commissioners still have access to the original appraisals that were completed. Mr. McShane stated the Eminent Domain Commissioners will do a viewing of the property and then they will have a Commissioners hearing. At that hearing both sides can present evidence, which is normally the appraiser of the condemning authority as well as the appraiser of the landowner. At that time, a new appraisal is needed that is effective the day of the taking. So we're in the process of working with our appraisers to get those new appraisals and once we have those, they will be presented at the Commissioners hearing.

7) ACQUISITION

a. Ness Updated Settlement Agreement

Mr. Dodds stated the Board did approve of this a couple of months ago, and it's for the Tim Ness properties. It was identified that the total dollar amount of \$1.3 million stays the same, but it inadvertently put the escrow amount at \$300,000 when the intention was \$200,000 which is more consistent with the amounts we've held in escrow for other property owners that plan to complete their own structure mitigation.

Mr. Dodds stated to clean up the title on this property, Mr. Ness is working on a quiet title action, which he's committed to doing. However, we've told him we'd hold an additional \$10,000 into an escrow account until he fully completes the quiet title action.

Council Member Borgen moved, and Commissioner Mongeau seconded, to approve the proposed settlement for OINs 1238, 1239, 1249, 1258, 1259, 1260, 1271, 1298, 1299, 1308, and 1309, to include \$200,000 and \$10,000 in escrow. Motion Carried.

8) RIMP

a. OIN 7102 Ihland RIMP Application

Mr. Dodds provided some background information about the Rural Impact Mitigation Program (RIMP) and stated it's a forgivable loan to cover gap between market value and replacement value. To be eligible, you need to be in the area where you're being displaced, have an active farm or business that would be displaced, and need to relocate within the local 6 county area. Mr. Dodds further discussed the application and eligibility process.

Mr. Dodds stated this is a RIMP loan eligibility application for OIN 7102. A portion of the farmstead is within the flowage easement obtained by MCCJPA. Two commercial buildings will have to be removed/mitigated. The property owners meet the eligibility definition for the RIMP program. Mr. Dodds stated if this is approved today, we will work with the property owners to come up with replacement cost for the displaced structures, and use that in the negotiation steps.

Commissioner Campbell stated anyone that is in the footprint would be eligible for this, whether they're in Clay or Wilkin County. Mr. Dodds confirmed that was correct and stated it's for any landowner whose business or farmstead is impacted, displaced, or partially displaced.

Commissioner Mongeau moved, and Council Member Borgen seconded, to approve the RIMP application for OIN 7102. Motion Carried.

9) APPRAISALS

a. UMA Appraisal Review

Doug Johnson, DKJ Appraisal LLC, stated there is this one property, OIN 1307 - Kyle Norden, that is up for an appraisal review. The just compensation is \$87,259.

Mr. Dodds stated he believes this will be the last appraisal report. This has been in the works for some time, and we had an original appraisal report on this property that included more of a full take, but after some clarification from county officials indicating that some of the structures could remain, there were questions about access to the property, resulting in an updated appraisal.

Council Member Borgen moved, and Council Member Hendrickson seconded, to approve the appraised value for OIN 1307 for Just Compensation in the amount of \$87,259. Motion Carried.

10) PROPERTY MANAGEMENT

a. OIN 1252 Kragerud Lease Termination Letter

Madeline Daudt, Diversion Authority, stated this is a lease termination for OIN 1252 Kragerud. Upon proof of delivery of this letter all tenants will have more than the 30-day requirement to vacate the property.

Commissioner Campbell asked if all parties were aware of this lease termination. Ms. Daudt stated yes.

Council Member Hendrickson moved, and Council Member Borgen seconded, to approve sending the lease termination letter to OIN 1252. Motion Carried.

b. OIN 1879Y Rental Agreement

Ms. Daudt stated OIN 1879Y has been left vacant since February 2024. The property is not within construction limits so we don't technically need to demo the house, there's just some setbacks from the road. The SE-5 contractor reached out to the lands team inquiring about renting the property as a job site office. The agreement includes rent of \$500/month and maintenance. Upon approval, the lands team will remove this property from JT Lawns scope of work this summer, and transfer over utilities. This lease will terminate December 30th, 2026, unless earlier terminated with a 30-day notice.

Commissioner Mongeau moved, and Council Member Hendrickson seconded, to approve the lease for OIN 1879Y. Motion Carried.

11) 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 5177 and OIN 1324.

Mr. McShane stated if there's not anyone in the room or online that would be impacted by this, it's not necessarily required to go into an executive session. From the negotiation standpoint, these next two items are fairly straight forward. However, it is at the Boards discretion on how to proceed.

Commissioner Campbell discussed seeing people online and not knowing who they are as they show up as initials. Mr. McShane provided the names of the individuals who were in attendance online.

b. Action on property interests/settlement negotiations for OIN 5177

Mr. McShane stated this is a settlement negotiation for OIN 5177, Deutscher. On this parcel there is flowage easement that impacts predominantly trees, it doesn't touch any of the buildings or the access road. So the impacts were relatively minor. However, there is a significant amount of acreage that is impacted by the flowage easement. The last written offer was made and we went into Eminent Domain. We heard very little from the landowner and their counsel, until about three weeks ago. We received some information from the landowner's attorney which included a summary of what their expected appraisal would be. So, the last written offer had been \$65,000 and the appraiser indicated that his opinion of value would be \$109,000. After this, further clarification/documentation was asked to be provided because the appraisal summary is not an appraisal. Therefore, a small adjustment was made to the last written offer in the amount of \$70,000.

Jodi Smith stated the last written offer was based on \$9,000 per acre value. An estimate was ran because many of the settlements are being estimated at \$10,000 per acre. If we had bumped up that last written offer up to \$10,000 per acre it would result in \$67,500. Therefore, again as Mr. McShane noted, we went back to the landowners with \$70,000, \$5,000 above the approved last written offer, in an attempt to sell, and it was accepted.

Commissioner Campbell stated what is to be approved is the negotiation summary of \$70,000 and reasonable attorney's fees not to exceed \$17,000. Ms. Smith stated that was correct. Commissioner Campbell asked if that was the total negotiated settlement. Ms. Smith stated that was correct. Ms. Smith also indicated there is no structure mitigation on this either.

Council Member Hendrickson asked what the chance was in coming close to the \$17,000 in attorneys' fees. Mr. McShane stated there has been 4 or 5 different hearings that the court has requested and a fair amount of back and forth involving lenders in that court action. And invoices are requested in order to track time entries, to ensure they're being appropriately tracked for this property. Council Member Hendrickson questioned this property being called to court on 4 different occasions. Mr. McShane stated there is more involved in this Wilkin County case than any of the other Eminent Domain cases we've had on the Minnesota side. They did have an appraiser look at this and the summary that was received was quite long, so there was a good amount of time spent on this. So, whether the \$17,000 is for attorneys' fees versus appraisal, that's unknown. However, there is a statutory requirement to pay for the appraisal if they submit the actual appraisal more than 7 days before the Commissioners hearing.

The recommend action would be to approve the proposed settlement for OIN 5177: *Leroy V. Deutscher and Linda Deutscher ("Deutscher") will convey the flowage easements described in the Petition over approximately 10.4 acres on OIN 5177. The MCCJPA will pay Deutscher a total of \$70,000. Any funds paid to Deutscher by the City of Moorhead prior to closing the real estate transactions contemplated under the parties' agreement for the property rights conveyed by Deutscher as outlined above related to Civ. No. 84-CV-24-284 (Wilkin County District Court) in the amount of \$36,400, will be credited toward the total amount of \$70,000. Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Deutscher, the parties will cause a stipulation to dismiss to be executed and filed in the eminent domain action, Civ. No. 84-CV-24-284 with respect to Deutscher and the property described in the flowage easement; and the District will reimburse Deutscher for reasonable attorneys' fees not to exceed \$17,000.*

Council Member Hendrickson moved, and Council Member Borgen seconded, to approve the proposed settlement for OIN 5177 as presented. Motion Carried.

c. Action on property interests/settlement negotiations for OIN 1324

Mr. McShane stated this is for the Hitt property, OIN 1324, there is a house and decent amount of woods between the house and the street. This is a similar situation where there was a figure that was suggested by the client owner's appraiser which was provided to counsel a few months ago. That number was based upon an argument that there were two building sites on that piece of property. Based on the picture there is a driveway that leads up to the house, there's also a driveway where the north/south line it, and the appraisers argument was that that's the second building site, in the before condition, and after the flowage easement is in place, that three would not be a building site there. We worked with AE2S and got some elevation issues figured out, there's also an issue with respect to the County ordinances for setback, and the setback from the center line of the County highway is 150 feet, but that eats up a decent part of the property, and the property close to the river is not particularly usable as it slopes down the river. So that explanation was given to the landowners and their appraiser stating there's no way that there is two building sites and provided them a map indicating that there's really not much area, other than where the house is, that was buildable before the taking, so there's not really much of a change. The landowner when to the County to get a variance from the 150 foot set back and Wilkin County granted that variance for a horse barn and the exact location of that is still up in the air, but it did show that the County was flexible with their setback.

Mr. McShane stated the landowners pushed an initial offer of \$150,000. The last written offer that was made on this property was \$70,000. The landowner has since agreed to \$75,000 plus attorneys fees and cost in the amount of \$30,000.

Mr. McShane indicated that there is a bank involved in this negotiation and due to that the amount, that has been approved for the deposit is \$38,200 and the City of Moorhead has authorized that payment to the Court Administrator.

Commissioner Campbell asked when it comes to the distribution of funds, is the \$38,200 going to be paid by the City of Moorhead or by Clay County. Mr. McShane stated the payment has been authorized by the City of Moorhead, but it hasn't been paid. After this meeting, discussion will take place with the defense attorney and discuss moving ahead with a closing rather than splitting the payments up between the two entities.

Mr. McShane stated the recommended action would be to approve the proposed settlement for OIN 1324: *Joshua Hitt and Karli Hitt and their lenders ("Hitt") will convey flowage easements over approximately 10.9 acres on OINs 1324. The MCCIPA will pay Hitt a total of \$75,000. Any funds paid to Hitt by the City of Moorhead prior to closing the real estate transactions contemplated under the parties' agreement for the property rights conveyed by Hitt as outlined above related to Civ. No. 84-CV-24-284 (Wilkin County District Court) in the amount of \$38,200, will be credited toward the total amount of \$75,000. Following the closing of the real estate transaction contemplated under the parties' settlement agreement, and following payment to Hitt, the parties will cause a stipulation to dismiss to be executed and filed in the eminent domain action, Civ. No. 84-CV-24-284 with respect to Hitt and the property described in the flowage easement; and the District will reimburse Hitt for reasonable attorneys' fees not to exceed \$30,000.*

Council Member Borgen moved, and Council Member Hendrickson seconded, to approve the proposed settlement for OIN 1324 as presented. Motion Carried.

12) ADJOURN

Commissioner Campbell discussed that there is an issue with the June meeting date. Ms. Daudt stated she will coordinate with Clay County staff to figure out an alternate date.

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

Stephen Larson, MCCJPA Secretary