

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, January 23, 2020, 1:00 p.m.
Clay County Courthouse, Conference Room B

MINUTES

1) CALL TO ORDER

The meeting was called to order by Chair Judd at 1:01 p.m.

2) ROLL CALL

City of Moorhead: Mayor Jonathan Judd
Council Member Chuck Hendrickson
Council Member Shelly Carlson
Clay County: Commissioner Kevin Campbell
Commissioner Grant Weyland
BRRWD Board Manager Jay Leitch

Others Present: Joel Paulsen, Executive Director - FM Diversion; Attorney John T. Shockley, Ohnstad Twichell Law Firm; Eric Dodds, AE2S; Jessica Warren, AE2S; Dean Vetter, AE2S; Dr. Bob Zimmerman, Moorhead City Engineer; Stephen Larson, Clay County Administrator; Lori J. Johnson, Auditor – Treasurer; Rita Rueckert, Clay County staff; Scott Stenger, ProSource; Pat Roberts, ProSource; Lisa Kilde with HMG SRF; and Chris Volkers, Moorhead City Manager.

3) APPROVAL OF AGENDA

Commissioner Campbell moved, seconded by Commissioner Weyland, to approve the agenda. Motion carried.

4) APPROVAL OF MINUTES

Manager Leitch moved, seconded by Council Member Carlson, to approve the minutes from December 19, 2019. Motion carried.

5) PROJECT UPDATES

a. Lands Status Report

Mr. Dodds referred to Executive Director Paulsen for further updates. Executive Director Paulsen stated that they will have one-on-one meetings with the P3 development teams. They wish to ensure proper content and that there won't be any significant technical changes after the release of the next draft.

Dr. Zimmerman advised that the Governor's bonding proposal was released. It contains \$20 million for flood mitigation which the DNR had requested. The focus will be to make that figure larger. There will be a future agenda request, in cooperation with Andy Pomroy with Fredrickson & Byron, P.A. who represents the Diversion Authority and City of Moorhead's interests. Commissioner Campbell indicated it would be helpful to invite Attorney Pomroy for a meeting to discuss funding.

Mr. Dodds indicated he sent out calendar invites for all meetings through 2020. He will re-send invites where there have been issues.

- b. BRRWD Easement Update:**
No report.

6) RIGHTS OF ENTRY

- a. Design Survey Rights-of-Entry (ROE) Update:**

Ms. Warren of AE2S provided memorandums that gave a general status update for each property. The memorandums gave an overview of what each Right-of-Entry is asking for. Ms. Warren referred to page 10 where she included a list of landowners and where they currently are within the process.

Ms. Warren explained certain entries were bolded because they are for both the Southern Embankment design as well as the Biotic and Geomorphic Monitoring. This is usually the case when a property is along the river.

Commissioner Campbell confirmed the requests are not permanent at this time. Ms. Warren also confirmed that the requests are not permanent at this time and stated the Rights-of-Entry expire on December 31, 2021.

Ms. Warren indicated that during negotiations, landowners are being asked to sign Rights-of-Entry forms. She explained that the status "negotiations" means that the landowner has the form and has been contacted by the land agent.

Mr. Dodds stated there have been a few resolutions passed for the Rights-of-Entry and they are working well for those parcels in Clay County. He pointed out that there are a few parcels in Wilkin County, and the MCCJPA will need to ask the City of Moorhead for assistance in securing the rights-of-entry. Mr. Dodds stated that next month there will be a resolution before the MCCJPA

Board for parcels in Wilkin County and that they will be asking the City of Moorhead for their support to secure Rights-of-Entry.

b. Environmental Monitoring Biotic and Geomorphic Studies and ROE Update:

Ms. Warren referred to page 10 entitled “Southern Embankment Design Rights-of-Entry” which shows the number of parcels in both Minnesota and North Dakota. Minnesota will only ask for Rights-of-Entry so the parcels will only be listed on the Rights-of-Entry side. The Rights-of-Entry were requested from landowners for the U.S. Army Corps of Engineers to do Biotic and Geomorphic surveying along the Red River, Wolverton Creek, and the Buffalo River. The information can be found on Page 12 of the meeting packet.

c. Government-owned Environmental Monitoring Biotic and Geomorphic Easements:

Ms. Warren advised that easements on government owned parcels will also be requested. A handful of the parcels are owned by either Clay County or the City of Moorhead. Commissioner Campbell encouraged quick action on the county-owned parcels.

7) ACQUISITION

a. Minnesota Acquisitions Timeline:

Mr. Dodds referred to page 16 of the packet, which included a summary of the acquisition timeline to be followed in Minnesota. It will start with getting the final work limits from the designer of the project. In Minnesota, the U.S. Army Corps of Engineers are working on the design and construction of the Southern Embankment and are doing soil borings and other activity to inform the design. They will share the final work limits and this will begin a time clock on approaching the landowners for acquisition. There may be instances where landowners reach out to ask for acquisition. The steps include appraisals, which generally takes about 60-90 days. Once an appraisal is completed it will be brought to MCCJPA for approval as well as an approval of an offer to the landowner. Once the offer is made, land agents are asked to give good faith negotiation efforts for approximately 60 days. If an agreement isn't reached, the MCCJPA will be asked for a resolution to pass the acquisition of property rights to Clay County or the City of Moorhead. Once received by either Clay County or the City of Moorhead, they will send out the last written offers while following State statutes (see page 17 of packet).

Commissioner Campbell asked what options are available other than outright purchasing the property. Mr. Dodds stated options will be reviewed and that the U.S. Army Corps of Engineers will likely share their work limits mid-

2020. We could then start to buy an option on that property, which is normally 10% of value. Later down the road, we may exercise the option and pay the full property value. Commissioner Campbell felt this needed to be done at any possible opportunity. He asked Dr. Zimmerman if the monies could be refunded later if the option to purchase was initiated prior to the funds available. Dr. Zimmerman stated that there would be no funds available to reimburse for prior options.

b. OIN 1869 and OIN 1777 Kvalvog Property Acquisition:

Mr. Dodds introduced Mr. Pat Roberts from ProSource to discuss OIN 1869 and OIN 1777. The landowner requested their land be acquired. The landowner is asking for a value higher than what the land agent is comfortable with. Mr. Roberts recommends not approving acquisition at this value.

Mr. Roberts explained the landowner has strong rental income on this property which is taken into consideration for the appraisal.

Mr. Stenger of ProSource indicates he has discussed values with the appraisers. They don't want to use the rent values in their equation. If the value came from another appraiser, it wouldn't usually be used. The appraiser Mr. Stenger feels that there have been adequate sales in the same area to compare the value. He also stressed that there are other factors that may not be taken into consideration such as: what the percentage was that they loaned on; if it was tied to any other properties; or if the landowner received a good deal due to being a good customer. For these reasons, the appraiser feels that working with comparable sales is a more reliable method.

Chair Judd asked if this is a common practice in the field. Mr. Stenger indicated that they have been using the comparable sales approach when there is adequate data available for it. Acquisitions previously done in the Oxbow area would be examples of determining value without having comparable sales data. In this circumstance, there is data available for comparable sales.

Commissioner Campbell stated that Clay County values are established by using comparable sales values and wants to know how an income method would impact values. Commissioner Campbell stressed that using the income method would create higher values which would increase taxation for landowners not affected by the Diversion Project. Mr. Dodds asked if acquisitions for sales due to a project are able to be excluded. Commissioner

Campbell stated that the County Assessor would need to be brought to the meeting to explain potential impacts.

Council Member Carlson commented she felt it would be difficult to proceed with income-based evaluations because landowners can give deals or discounts for rent based on relationship to renters or timing. Commissioner Campbell added that there are factors such as the crop prices, as higher crop prices can force a higher rent income; or, lower crop prices will bring lower rent income and lower land values. Commissioner Weyland asked if this had been encountered on the North Dakota side. Mr. Dodds indicated they had not encountered it, but it is not uncommon for landowners to ask for more than the value of their property.

Mr. Dodds stated that the landowners have the right to get their own appraisal to assist them in their property evaluations and negotiations.

Executive Director Paulsen clarified that this parcel only needs an easement and not full title ownership of the land. Mr. Dodds confirmed that this particular landowner has asked for the property to be purchased but all that has been identified as necessary is easement access. Mr. Dodds advised that landowners have requested full purchase versus access rights and, generally, they have tried to accommodate these requests if they are able to agree on value. It was pointed out that the farmland in North Dakota is valued on the farm productivity index calculated by North Dakota State University whereas in Minnesota value is based on comparable market sales. Also, North Dakota farmland is largely exempt due to the farmstead tax exemption so the taxing implications of Minnesota versus North Dakota farmland is significantly different.

Executive Director Paulsen feels there is significant time available to negotiate a full easement or to pursue a legal route to achieve full easement. He added that as a matter of policy, potentially purchasing this land with a value higher than other parcels may not be an option to pursue, especially if it is a parcel that is not required; but it would be a better method to apply for parcels that are required for the project. Several of the MCCJPA members voiced their agreement of this thought.

Commissioner Campbell states that Clay County has previously offered 110% of assessed values on property acquired for other projects and it has been well received.

Clay County Administrator Larson earlier left the meeting to go speak with Assessor Nancy Gunderson. He returned and advised Assessor Gunderson states that if the property was purchased by a government agency or political subdivision, they would likely exclude that parcel from comparable sales information. In order for the value to have an impact overall, multiple properties would need to be purchased in the same area, not just one or two properties.

Attorney Shockley questioned dismissing the sale in its entirety, or to create a counter-offer. There was discussion as to what direction to give the land agent to continue and if the counter-offer should include the property in its entirety.

Mr. Dodds states that the status on the Minnesota side are subject to a few lawsuits that are hoping to be resolved later this summer. He suggested perhaps tabling these matters until the legal issues have been resolved.

Executive Director Paulsen feels the financial breakpoint of this parcel is outside of the realm of what the MCCJPA Board feels is the value and that there is no rush for acquisition of property rights for this parcel at this time. Mr. Dodds reiterated that this landowner also has a parcel on the North Dakota side that is required for acquisition and suggested a package deal put together to include both parcels. Executive Director Paulsen feels exploring a package deal may be beneficial and recommended that the land agent continue discussions with Mr. Kvalvog.

Commissioner Campbell asked Attorney Shockley if tabling this matter should be limited to a specific time period. Attorney Shockley stated the matter could be tabled to the resolution of a specific contested case. Commissioner Campbell stated that he would not be in favor or tying any tabling to a specified contested case but should rather determine some other time-specified reason.

Commissioner Weyland made a Motion to table an offer pending negotiations on other properties.

Manager Leitch brought forward the fact that the MCCJPA Board is unable to table a non-Motion and that they should proceed forward.

Attorney Shockley stated that the MCCJPA Board can be asked to deny the counter-offer. If the land agent was comfortable, they can take the matter back to the landowner. **Commissioner Weyland withdrew his previous Motion to table an offer pending negotiations on other properties.**

Commissioner Weyland moved, seconded by Manager Leitch, to deny the counter-offer as presented from the landowner. Motion carried.

It was requested the land agents go back to the landowners and continue discussions.

c. OIN 1847 Handlos Property Acquisition:

Mr. Dodds referred to page 21 of the packet. The recommended action at this time is for approval. This is a landowner who has requested acquisition. The appraised value is \$256,000. In Minnesota, there is an obligation to do a minimum compensation evaluation, comparing similar properties available on the market. This evaluation was done in November 2019 and came back with a minimum compensation value of \$335,000. The offer being presented for consideration is 10% above the minimum compensation value, or \$368,500. There is a contingency recommended as this landowner has horses that would require them to find a new spot for the horses to pasture, shelter, water and fencing, not to exceed the allowance of \$31,500 for relocation benefits. Mr. Pat Roberts has been in discussion with these landowners for quite some time.

Mr. Roberts added that he had done a relocation study and that relocation properties with this type of set-up were quite far from the location of this Handlos property. The Handlos' desire to stay close to their current location for family reasons. For this reason, the Handlos' counter-offer was \$400,000, estimating that the \$65,000 additional would give them the funds needed to retrofit another property.

Attorney Shockley explained minimum compensation evaluations were created by the Minnesota State Legislature and are required by law in circumstances when there are no comparable lands or properties nearby.

Mr. Vetter explained the horse ownership on this land requires the minimum compensation standard to be applied. He clarified the minimum compensation standard requires the resident of the land also be the landowner; minimum compensation does not apply to a renter situation.

Manager Leitch feels applying the minimum compensation standard to this property sets a dangerous precedent. Attorney Shockley explained minimum compensation is required by law. Commissioner Campbell feels there should be standard criteria to determine if minimum compensation is to be applied.

Mr. Stenger clarified that the statute is not well-defined. There is not good case law defining "community". The law is clear in stating that a landowner is

entitled to adequate reimbursement and this landowner feels he is entitled to additional money to accomplish his replacement housing.

Attorney Shockley states the minimum compensation evaluation was \$335,000. The offer being contemplated is up to \$400,000.

Executive Director Paulsen asked where the 10% over minimum compensation value originated. Mr. Dodds states that the 10% accommodation has been used as a rule of thumb.

Auditor-Treasurer Johnson stated that this was an early buyout and wondered if the “community” would change over time. Attorney Shockley states that you have to rely on what your appraiser says. He feels in an area like the City of Moorhead the community would be Moorhead; in a rural area it would be the rural community. He stressed that there is not good case law for review on this.

Chair Judd solicited thoughts on how the MCCJPA Board should proceed. Commissioner Campbell asked what the landowner currently has for value of the water, fencing and other related horse items. Attorney Shockley states if you can't find comparable property you have to use the new value and that the legislature has put this method of value in place.

Council Member Carlson asked if the recommended action is for the value plus the full \$31,500. Mr. Roberts states the original counter-offer was \$400,000. Mr. Roberts recommended using an additional 2 or 3 bids with line items for each item the landowner needs to get bids on. This would be a better opportunity to control the process of the individual costs. A line item for bids for each of the expenses of water, fencing, shelter, etc. would give a better opportunity to control the final costs.

Council Member Carlson asked how often items such as these are encountered. Mr. Roberts states this is the first one he has seen. Mr. Stenger stated that they see it on a regular basis.

Attorney Shockley states that minimum compensation is seen in commercial property, in some residential properties, or in some gas stations where the gas station isn't unique but their location is unique. Minimum compensation is fact based and it gives the landowner a basis for presenting facts that make their property unique and to assist in determining a value.

Commissioner Campbell went through the figures of appraisal valuation of \$256,000 and a minimum compensation value of \$335,000 and a contingency amount of \$31,500. He stated concern that there would be public opinion much like the sentiments after the Oxbow buyouts in North Dakota, especially if the public doesn't understand the process and requirements for determining the values.

Auditor-Treasurer Johnson asked how many owner-occupied residences are involved. Mr. Dodds feels most are owner-occupied but they do not know those exact numbers yet. Commissioner Campbell pointed out that this particular parcel is required for the footprint of the levee plan.

Executive Director Paulsen asked Mr. Dodds if landowners would be allowed to stay or if all identified properties on the list would be required to be bought out and the owners removed. Mr. Dodds states that as the DNR permit stands today, all of the approximately 24 properties would be bought out. There are some properties whose elevations may allow them to stay and the hope is to have the flexibility to allow them to stay. This parcel is in a deep area of the proposed staging area and this is why they are pursuing negotiations with this owner. He also feels that there are a large number of landowners in southern Clay County and northern Wilkin County that may be able to stay in their residences rather than mandatory buyouts.

Mr. Roberts recommended following the required minimum compensation evaluation plus 10% and reserving the contingency amount on the side for relocation expenses.

Commissioner Campbell questioned why there would be an additional 10% over the minimum compensation value, if the minimum compensation value is affirming there is similar property available at that price. He agreed with Mr. Robert's suggestion that the landowner needs to confirm the overage of expenses.

Commissioner Campbell moved, seconded by Manager Leitch, to counter-offer the minimum compensation valuation of \$335,000 and include the not-to-exceed \$31,500 for contingency items. Motion carried.

8) LAND AGENT REPORTS:

Mr. Stenger referred to the MCCJPA Board to OIN254, where the landowners wanted to move their home but were unable to locate appropriate land. They now want to do a complete buy-out and find a replacement home. Due to their age and situation

they want to combine the appraised value and the relocation monies into a single amount and proceed forward. This process has been done in North Dakota. Mr. Stenger is asking the MCCJPA Board to consider this process.

Mr. Dodds asked if there was a minimum compensation evaluation done on this property. Mr. Stenger advised there had not been one done as they initially were looking at only relocating their structures. Mr. Stenger stated if the MCCJPA Board can come to an agreement on value, he would bring it to the landowners. Mr. Dodds pointed out that there was currently no paperwork on this and Mr. Stenger indicated if the MCCJPA Board was interested in proceeding forward, he would put the paperwork together and bring it to the next meeting for approval.

Commissioner Campbell feels that each property should be identified as to its component to the overall development plan. This parcel is included in the footprint of the levee.

Mr. Stenger also referred to OIN 249. This is a 40-acre parcel that is required for the project. The landowner's attorney asked if the MCCJPA Board will stipulate that they will acquire the entire parcel. Currently only half of the parcel is required for the project. Mr. Stenger advised them that he does not feel that the MCCJPA Board will stipulate to acquire the entire parcel when only a partial piece is needed. The landowner's attorney stated that they feel if the MCCJPA Board will stipulate taking the entire property it would lower the overall price of the parcel. Attorney Shockley does not feel that it is possible to stipulate to take more of the parcel than is required; however, through the process of negotiations, more of the parcel could be included in the final acquisition. Mr. Dodds feels that the MCCJPA Board can buy more than is needed but is not able to commit to purchasing the entire parcel. Mr. Stenger states that the driveway would need to be relocated on this parcel as the landowner to the north will need a new driveway and that would give reason to acquire more land on the north side of the parcel.

Commissioner Campbell stated that there is history of purchasing additional land in certain circumstances to know that the land was available for negotiated trade in the future or to sell back to the private sector once the project is completed. He stressed the importance of making accommodations anytime there is a willing seller.

Mr. Vetter stated that there are situations where all of the parcel is not required for the project but when the appraiser looks at the remnants that are left, the remnants can be either non-accessible or non-economical and at that time the appraiser may determine a bigger acquisition than required. This situation has been encountered on the North Dakota side.

Executive Director Paulsen questioned acquiring parcels that would have no access. Attorney Shockley stated that the remnant parcel could be devalued and may require the entire parcel to be acquired. He also stated that you are not able to stipulate to whether the entire parcel is required or not, especially if the acquisition ends up being forced through eminent domain.

Commissioner Campbell feels we should advise the landowner that we have an interest in acquiring the entire parcel but we currently do not have a need to acquire it. He pointed out that sometimes it is cheaper to purchase the entire parcel upfront than having to legally fight for a smaller portion of it later.

9) RELOCATION BENEFITS

a. OIN 1251 ProSource Reimbursement Request:

A reimbursement request for \$275 was submitted for closing costs unable to be captured at the time of the settlement. The MCCJPA Board would recommend approval of these outstanding expenses.

Commissioner Campbell moved, seconded by Commissioner Weyland to pay outstanding closing costs of \$275. Motion carried.

10) CONTRACT ACTIONS

a. Task Order with Crown for Appraisal Services:

Mr. Dodds states the landowner of OIN 253 is asking for acquisition. He referred MCCJPA Board members to review the map at the end of the Task Order. The landowner has a relationship with a realtor and the realtor reached out to Cass County Commissioner Mary Scherling. They have asked to proceed with an early acquisition of the part of the parcel that is west of Wolverton Creek. This is approximately 108 acres. The portion east of Wolverton Creek is approximately 120 acres. There is only a need for the smaller portion; however, acquiring only the portion of the parcel under the levee footprint would leave the remainder orphaned inaccessible. This is the reason the landowner is requesting acquisitions of everything west of the Wolverton Creek. For this reason, the services of Crown Appraisals have been secured to create an appraisal. This has not been submitted for legal or executive review yet and Mr. Dodds is asking for conditional approval pending legal and executive approval.

Executive Director Paulsen asked Manager Leitch if the parcel would be able to be provided access over the creek. Manager Leitch stated that is possible but not very probable. Mr. Dodds feels that there may be a possibility to get access easement from 130th Avenue on the north end.

Commissioner Weyland moved, seconded by Council Member Carlson, to conditionally approve the task order pending review by Attorney Shockley and Executive Director Paulson. Motion carried.

11) PROPERTY MANAGEMENT

a. Acquired Property Insurance:

Since the MCCJPA Board is now owning properties, there has been discussion if insurance should be placed on these properties. Clay County Administrator Larson has reached out to the Minnesota Counties Insurance Trust. He indicates he has had numerous discussions with Minnesota Counties Insurance Trust and that its board is reviewing the Joint Powers Agreement. Their initial indication is that they feel this is something they can work with the MCCJPA Board.

Attorney Shockley recommended checking with the League of Minnesota Cities Insurance Trust for insurance. He is currently working with another board that has insurance provided through a private insurance company. He is working with Moorhead City Manager Volkens to determine what is available.

Mr. Dodds disclosed that the MCCJPA Board owns some properties that are not insured. Mr. Vetter stated that under the current terms with the North Dakota Insurance Reserve, they are able to give updates during acquisition process and the understanding is that any property acquired will automatically be covered until included in the next reporting period. He is hopeful to secure similar coverage for the Minnesota properties.

12) OTHER BUSINESS

a. OIN 249 and 257 Legal Expenses Cost claim:

Mr. Dodds referred pages 37-38 of the packet where a landowner is asking to swap a parcel for another organic farmland parcel currently owned by the MCCJPA Board. This land-swap request has previously been tabled. The landowner recognized he would need legal advisement and is asking for reimbursement for incurred legal fees. Mr. Dodds feels that the legal fees could be reviewed for reimbursement once the acquisition is completed.

Mr. Stenger stated this is the same landowner as discussed in Section 8 above. Mr. Stenger reviewed the legal fees item by item and feels that \$2993.50 is directly related to costs for acquisition. Mr. Dodds does not feel that these expenses were approved by the MCCJPA Board and his recommendation is that the fees be reviewed once the acquisition is

complete. Previous discussion of the MCCJPA Board indicated they felt reimbursement of these fees would be appropriate. Specific line items were negotiated regarding what fees would be appropriate pertaining to the previous discussions and what fees would not be considered. Mr. Stenger shared that the landowner's attorney recommended accepting the negotiated fee reimbursement and felt it was a very fair and generous offer by the MCCJPA Board.

Commissioner Campbell feels that, in good faith, if the fees are going to have to be paid one way or another, since the landowner proceeded and it was the MCCJPA Board that reneged, the fees should be paid. Mr. Stenger feels that paying the incurred legal fees for this landowner will be helpful for future acquisition negotiations.

Manager Leitch moved, seconded by Commissioner Campbell, to pay the negotiated legal expenses. Motion carried.

Council Member Carlson moved, and Manager Leitch seconded, to adjourn the meeting at 3:03 p.m.

Stephen Larson, MCCJPA Secretary