

Moorhead - Clay County Joint Powers Authority (MCCJPA)

Thursday, February 20, 2020, 1:08 p.m.
Clay County Courthouse, Conference Room B

MINUTES

1) CALL TO ORDER

The meeting was called to order by Chair Judd at 1:00 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 - Absent

Others Present: Joel Paulsen, Executive Director - FM Diversion; Attorneys John T. Shockley and Chris McShane, Ohnstad Twichell Law Firm; Eric Dodds and Jessica Warren, AE2S; Stephen Larson, Clay County Administrator; Chris Volkers, Moorhead City Manager; Pat Roberts, ProSource; Ken Helvey, HMG-SRF; Andy Pomroy, Fredrikson and Byron; Scott Blilie, citizen; and Colleen Eck, Clay County staff.

3) APPROVAL OF AGENDA

Motion made by Commissioner Weyland, seconded by Council Member Hendrickson, to approve the agenda. Motion carried.

4) APPROVAL OF MINUTES

Motion made by Commissioner Campbell, seconded by Commissioner Weyland, to approve the minutes from January 23, 2020. Motion carried.

5) PROJECT UPDATES

a. MN Legislative Update

Andy G. Pomroy, Senior Government Relations Specialist for Fredrikson and Byron, P.A., appeared before the MCCJPA Board and provided the "Capital Investment Presentation for FM Diversion." Mr. Pomroy communicated upcoming key dates in the 2020 bonding process. The February 2020 Budget and Economic Forecast will be released on the February 27, 2020 and the last day to pass a bill is on May 17, 2020. He stated that Governor Walz released his recommendation of \$20 million for 2020, 2022, and 2024 for DNR Flood Hazard Mitigation. The total requests in MN for DNR Flood Hazard Mitigation total \$86 million. The requests include HF1828 (Lien) and

SF1603 (Eken) for \$39 million for Moorhead. The bonding bill goes to the House first and then to the Senate and needs a three-fifths vote for adoption. In forecasting the size of the 2020 bonding bill, officials look at debt capacity guidelines, historical precedent, and current dynamics. For projects with GO bonds to be eligible the project must be in Minnesota and publicly owned; be a capital and permanent improvement (or at least through the life of the bond); and have a four-year clock to encumber the costs. Commissioner Campbell added that they will continue to encourage members of the House and Senate as well as the Governor to increase the funding for mitigation.

Mr. Dodds stated that half the funds needed are for property acquisitions. The land appraisals will be done as soon as the final footprint is in place. The U.S. Army Corps of Engineers (USACE) is updating the Property Rights Acquisition and Mitigation Plan (Version 5). The contested case hearing is scheduled for June 8, 2020.

b. Property Acquisition Status Report

Mr. Dodds referred the MCCJPA Board to the property acquisition status report on page 15 of the packet. He noted the majority of the properties are located on the ND side. He went onto pages 20 and 21 for the properties in the southern embankment and the upstream mitigation area. The right of entry agreements in Clay County are for design surveys and/or biotic and geomorphic surveying.

6) RIGHTS OF ENTRY

a. Status Update

Attorney Chris McShane informed the MCCJPA Board that he filed an action for rights of entry in Clay County Court last Monday. Judge Rosenfeldt was assigned to the case today. After the court action is completed, they will be ready to serve summons for right-of-way for 13 of the landowners. Half of those landowners have not been personally served yet. They have made the process difficult by not answering the door or rolling up a car window to avoid service. They will continue efforts to serve them, possibly catching them in transit.

b. Environmental Monitoring Easement for City of Moorhead

Mr. Dodds referred to page 32 of the packet for the Environmental Monitoring Easement for the USACE on the City of Moorhead's flood buyout properties. The properties were pointed out on page 39 of the packet. Following approval by the MCCJPA Board, a resolution will be brought before Moorhead City Council for their approval.

Motion made by Council Member Carlson, seconded by Commissioner Campbell, to request an easement from the City of Moorhead for Biotic and Geomorphic Surveying for the properties listed. Motion carried.

c. Resolution of Necessity for Parcels in Wilkin County

Mr. Dodds presented a Resolution of Necessity for parcels located in Wilkin County, Minnesota. He stated that the Resolution seeks approval to ask the City of Moorhead for their assistance in obtaining rights of entry for properties in Wilkin County. Attorney McShane stated the City of Moorhead has the right to use eminent domain whether or not a property is in or out of Moorhead. The County is limited to eminent domain in Clay County only. This action is the precursor to an eminent domain action. The USACE will be asked to attend the City Council meeting to provide information on this request. There are nine property owners who have refused or have not responded to their attempts to secure right of entry. Council Member Carlson noted she expects that City Council members may ask why Buffalo-Red River Watershed District (BRRWD) was not asked first to assist in this matter. Mayor Judd agreed that it may be prudent to check with BRRWD before going to the City of Moorhead. Attorney McShane offered to check with BRRWD to see if they would assist with these rights of entry in Wilkin County. Mr. Dodds stated they need to be very clear that the USACE will want easements on all these properties.

Motion made by Council Member Carlson, seconded by Commissioner Campbell, to execute Resolution 2020-1 requesting the City of Moorhead to utilize court action to acquire right of entry easements for a list of Wilkin County properties. The BRRWD will be asked first if they would be willing to assist in gaining right of entry easements for properties in Wilkin County. If they do not agree to assist, the request will go to the City of Moorhead. Motion carried.

d. Monument Reimbursement

Mr. Dodds referred the MCCJPA Board to the list of 112 monuments to be placed on the Clay County side of the river. He noted as part of the Biotic and Geomorphic surveying along the waterways, USACE will place the monuments. He stated the landowners can be present, so they know the location of the monument(s). The proposed compensation for the monuments is the same as Cass County, at \$250 per monument.

Motion made by Commissioner Campbell, seconded by Commissioner Weyland, to approve compensation of \$250 per monument in Clay

County with a total of \$28,000 in payments to the landowners. Motion carried.

7) ACQUISITION

a. OIN 254 Wagenmann Property Acquisition

Mr. Dodds provided background information on the Wagenmann property that will be impacted by construction of the southern embankment of the Comprehensive Project. The Wagenmann's requested early acquisition of the property, prior to the formation of the MCCJPA. Following an appraisal and discussion of an allowance for replacement housing, a sale price was reached. Pat Roberts from ProSource stated a replacement housing study was conducted in July 2019. The house on this property will eventually be removed.

Motion made by Commissioner Weyland, seconded by Council Member Hendrickson, to approve just compensation of \$423,000 and replacement housing allowance of \$45,000 for the Wagenmann property (OIN 254). Motion carried.

b. OIN 1847 Handlos Acquisition

Mr. Dodds went over the provisions and requested action that was amended for purchase of the Handlos property (OIN 1847).

Motion made by Commissioner Campbell, seconded by Commissioner Weyland, to approve a purchase agreement of \$335,000 plus 10% (\$368,500) for the Handlos property (OIN 1847); and miscellaneous contingency claims up to \$31,500 if needed for fencing, shelter, and bringing water to the horses. Motion carried.

8) LAND AGENT REPORTS

Mr. Roberts and Mr. Helvey had nothing additional to report.

9) RELOCATION BENEFITS

No report.

10) CONTRACT ACTIONS

No report.

11) PROPERTY MANAGEMENT

a. **OIN 1790 1811 Farmland Lease Agreement**

The farmland lease agreement 2020 is for two organic farming properties: OIN 1790 consists of 152.2 acres and OIN 1811 consists of 124.3 acres. The tenant is Lynn Brakke and the lease agreement is for \$195/acre which is the same amount in the 2017-2019 lease agreement. The lease is paid through Pifer's Land Management.

Motion made by Council Member Hendrickson, seconded by Council Member Carlson, to approve the farmland lease agreement for \$195/acre (OIN 1790 and 1811) with a condition to be added to the lease for the land to be maintained as organic land. Motion carried.

b. **Acquired Property Insurance**

Clay County Administrator Larson has been conferring with the County's Insurance (MCIT) about adding liability insurance to the acquired properties but has not received a dollar amount yet. He will report back when he has a cost.

12) OTHER BUSINESS

Mr. Dodds noted he had an inquiry from a property owner about requesting cash, rather than a check, for a right of entry payment. The consensus was to continue issuing checks and not set a precedent for others.

Executive Director Paulsen extended appreciation to Mr. Dodds for combining all the valuations for properties on both sides of the river. He noted it is valuable information for the all of the Diversion Project related boards.

Motion made by Commissioner Weyland, seconded by Commissioner Campbell, to adjourn the meeting at 2:45 p.m.

Stephen Larson, MCCJPA Secretary