

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, March 21, 2018
3:00 p.m.**

Present: Clay County Commission Representatives Kevin Campbell and Jenny Mongeau; Moorhead City Engineer Bob Zimmerman; Fargo Division Engineer Nathan Boerboom; Moorhead Mayor Del Rae Williams; Oxbow Mayor Jim Nyhof; Fargo City Administrator Bruce Grubb; Cass County Commission Representative Mary Scherling; Cass County Joint Water Resource District Representative (CCJWRD) Rodger Olson; Fargo City Commissioner John Strand.

Others present: AE2S Program Manager Eric Dodds.

Absent: Cass County Commission Representative Chad Peterson.

The meeting was called to order by Ms. Scherling.

Agenda Review

Mr. Zimmerman moved to approve the agenda. Second by Mr. Olson. All the members present voted aye and the motion was declared carried.

Minutes Approved

Mr. Olson moved the minutes from the December 10, 2017 meeting be approved. Second by Mr. Campbell. All the members present voted aye and the motion was declared carried.

Mr. Peterson joined the meeting.

Updated Property Acquisition Schedule

Mr. Dodds said the updated acquisition schedule is included in the updated mitigation plan.

In response to a question from Ms. Scherling asking if representatives of the Land Management Committee had reached out to newly-affected property owners, Mr. Dodds said there has been contact with several residential property owners in the Stanley Township area and other property owners, including one who has a horse barn on County Road 16.

Ms. Scherling said to be sure all the townships are aware of what is going on as she does not want someone who is considering retirement or someone who wants to put their house on the market does not know about possible changes with the Diversion project that could affect them.

Mr. Dodds said the updated mitigation plan was part of the new permit submitted to the Minnesota Department of Natural Resources (MDNR) and the schedule is important as the Committee works towards getting land ready for construction. He said the mitigation plan and proposed acquisition schedule is synced with the U.S. Army Corps of Engineers' schedule regarding the southern embankment, pending funding and permits. He said the channel is broken into three phases and what is proposed is to have acquisitions for Phase 1 completed by March 2019 and Phase 2 by July 2019. He said Phase 3 acquisitions have not yet started; however, Phase 3 has a finalized date of February 2020. He said these dates will be consistent in the P3 agreement, and the schedule is all pending a green light from the MDNR. He said in the features constructed by the Corps, there is a breakdown of how the Corps anticipates constructing or designing features of the southern embankment and the acquisition schedule dates line up with what the Corps has proposed. He said this is more of an awareness item right now and there are many complexities built into the updated plan. He said a related item in the updated plan is there was some talk prior to last fall of who will be the acquiring entity in Moorhead. He said he did not know if it would be the City of Moorhead or Clay County or if a joint entity would be formed. He said that is something the Committee should start to work on.

In response to a question from Ms. Scherling about the newly impacted areas in the northern area of Cass County due to the revised 37-foot rule and at what point will it be decided who is in and who is out, Mr. Dodds said that information will not be known until updates to the hydraulic models are completed.

Ms. Scherling said she does not want to surprise people. She said there were some people who felt they were going to be protected and now they are not and they may not even know due to the fact that it is not obvious on the map. She said the sooner that information is known the better, assuming Plan B gets the green light. Mr. Olson said there is going to be micro-siting of the alignment, therefore if there is even a possibility a property will be affected, property owners need to be forewarned and should plan accordingly.

Mr. Boerboom said micro-siting would be complete in the next few weeks, which will involve shifting some things a few hundred feet at most, not by miles. He said the priority is to look for opportunities to avoid impacting homes. He said he does not expect wholesale changes to what is on the map today.

Mr. Dodds said land acquisitions stopped out of sensitivity to MN concerns on the project and the appearance of plowing forward. Land acquisitions did not stop specifically due to the injunction. He said a wish list of activities was submitted to MDNR after the new permit application, and the wish list included asking to start some things due to long lead times and contracts that are on hold. He said the permit process needs to go forward; however, perhaps another avenue with the MDNR is some of these wish list items that are not construction-related can start or continue, as those items are not hinging directly with the permit.

Mayor Williams said the wish list mailed to the MDNR included the rationale for the items on the list. She said the MDNR will look to their new team to answer those questions, as they will be the ones most involved in the project.

Mr. Zimmerman said dates were included in the updated mitigation plan due to the fact that if dates were omitted, the plan would be viewed as incomplete. He said the updated mitigation plan is a draft stating this is a vision of what the Committee wants to do, along with the wish list the mayor referenced. He said a list of questions about the permitting process was submitted and as the Committee engages with the MDNR permitting team, some of those questions will be addressed.

In response to a comment from Mr. Campbell, stating phased permitting is the only way to meet the requirements of the MDNR, Mr. Zimmerman said the first two questions on the wish list sent to the MDNR had to do with phased permitting.

In response to a question from Mr. Nyhof about the injunction, Mr. Dodds said if there is a permit decision that means Plan B is the new project and that will render the old project nonexistent. He said the injunction was against the old project; therefore, it could be an avenue to submit to a judge that the old project is gone and the new project is permitted, therefore would the judge consider lifting the injunction.

Commissioner Strand said he is concerned that there is an assumption the Diversion Authority is moving ahead before it can. He said the focus right now should be on in-town protection. He said there is a plan if there is a permit; however, he advises caution and public relations are important.

Mr. Peterson said it is good that timelines are being established and depending on political powers, the dates are indeterminate. He said it does show just how long this project is actually going to take.

Updated Mitigation Plan

Mr. Dodds said Version 1 of the mitigation plan was submitted a couple of years ago with the original permit application. He said the mitigation plan was always a living document and it was known that there would be updates. Therefore, he said, with the submittal of Plan B, it was time to do an update of the mitigation plan. He said with Volume 2, there was quite a bit of review and better processes. He said the MDNR commented previously that flowage easements were not necessarily mitigation and while the Committee may or may not agree, the title of the document was changed to cover more than just mitigation: it also includes plans to acquire property rights. He said Volume 2 includes the process for acquiring land in North Dakota and Minnesota and other details such as appraisal reviews, review forms, presenting offers, negotiations and maps of impacted parcels. He said it has been suggested that early acquisition of property would be allowed rather than waiting until it is scheduled if a property owner is interested in selling. He said with the embankment change in Minnesota, there is a significant reduction in impacted organic land. He said with the previous plan, 3,000 acres of organic land would have been impacted and now only about 300 acres are impacted. Another section of Volume 2 deals with disposal of excess property, he said, specifically if property owners want to sell an entire parcel for estate planning or tax

purposes. One of the biggest sections of Volume 2, he said, is how to treat property in the upstream mitigation areas where there are both structures that need to be acquired and land with flowage easements. He said structures are split into five categories: Category 1 deals with structures in the floodway, which has not been defined due to Plan B and will be defined through the Conditional Letter of Map Revision (CLOMR) process this fall; however, those structures will have to be removed according to the Federal Emergency Management Agency (FEMA) rules. Category 2 deals with structures that have more than two feet of water at the structure, and these are required to be removed or taken out. Category 3 are structures with between 2 feet to half a foot of impact, and those are likely need to be acquired but there will be discussion as to if those structures can be kept, elevate them or do some dry floodproofing if it is not residential. He said FEMA will consider the options. He said there are many nuances in Category 3 and before any policy decisions are made, the Committee may want to know how many properties are in each of these categories. Category 4, he said, are structures with less than half a foot and those elevations will need to be field verified. He said once elevations are known to be accurate, the Committee will follow the same path as Category 3. Category 5 is structures that have very minimal impact, he said, and the Corps is responsible for doing a takings analysis, and deciding what type of mitigation is needed, if any. He said the State of North Dakota and the State of Minnesota will require the Diversion Authority to get property rights to the maximum elevation of the spillway, which is determined to be 923.5 feet. He said everything below 923.5 feet would need a flowage easement. He said there will be a base rate for flowage easement rates that will apply to all areas.

Mr. Boerboom said in the 923.5-foot area, development would be allowed as long as it met local flood plain ordinances and there is a distinction that no development would be allowed in the floodway.

In response to a question from Ms. Scherling asking what the MDNR said was inadequate in the first application and what was changed in the second application, Mr. Dodds said he does not know how thoroughly the MDNR read the first mitigation plan; however, he said the first mitigation plan was not submitted early enough. He said there were some comments in the permit denial that "Topic X" was not addressed and there was also a lot of attention on environmental impacts such as biota, geomorphology and ongoing monitoring. He said the team took a hard look at all of it and addressed those topics with the help of the Corps. He said it was conveyed to the MDNR this is not a take it or leave it approach and input from the MDNR is wanted.

Ms. Scherling said the new mitigation plan is a living document and when work with individual landowners is done, there will be unique situations. She said the updated mitigation plan is very impressive.

Mr. Dodds said a new section of the mitigation plan is a dispute resolution board. He said the North Dakota State Water Commission had a model of the board set up regarding discharges from the Devils Lake outlet for people along the Sheyenne River. He said if there was a problem property owners could file a dispute with the dispute resolution board, which was an independent panel. He said if there is someone impacted by the project, there is now a mechanism to file a dispute claim. This should

be viewed as a good intention of the Diversion Authority, he said, and that the Diversion Authority is not just closing the book and will not burden property owners with attorney fees.

Mr. Nyhof said Oxbow relocations required 40 lots, then it was recognized there were more lots, therefore those lots were added through the Corps rules for residents in the staging area. He asked if there are new candidates, does the Committee want to make that offer available for the new lots, Mr. Olson said Plan B is going to impact 15 or 20 more people, so it would be a good idea to have enough lots.

Mr. Strand said before the injunction, there was communication with leaders of the Native American communities; however, there has been an absence of Native Americans signing on to the new plan. He advised that the Committee talk to Native American leaders about the impact of cultural sites with the new plan.

In response to a question from Ms. Scherling asking when talks with cemetery boards will start, Mr. Dodds said as soon as there is some positive news from the MDNR. He said there have been meetings with many jurisdictions, civic organizations and farm groups who know there is a revised project.

Flowage Easement Valuation Plan

Mr. Dodds said he had a meeting with Crown Appraisal and is confident the Land Management Committee has a good team.

In response to a question from Mr. Campbell asking if the Diversion Authority is considering buying property instead of flowage easements, Mr. Dodds said that is a consideration; however, that means spending more money up front. He said if that is what the property owner wants, the Diversion Authority could buy the property, but it would be a lot of acreage.

In response to a question from Ms. Mongeau asking about topics in the new mitigation plan dealing with railroads and adding there needs to be a conversation at some point with the railroads, Mr. Dodds said that part of the design work, the time frames and Memorandums of Understanding are fairly well along and are separate, much like with the North Dakota Department of Transportation. He said there are also MOUs for township roads, small utilities and gas pipelines. He said those are attorney issues and attorneys will address some long-term mitigation features.

CCJWRD Update

Mr. Olson said there has been no purchasing activity; however, some things were closed.

Other Business

Rocky Schneider, AE2S Public Affairs Strategist, showed the Committee a new map on the FM Diversion website. He said micro siting is not yet done; therefore, some things on the map are subject to change.

Mr. Peterson moved the meeting be adjourned. Second by Mr. Campbell. All members voted aye and the motion was declared carried.

The meeting adjourned at 4:02 p.m.

The next meeting will be April 25, 2018 at 3:00 p.m.