

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, May 16, 2018
3:00 p.m.**

Present: Clay County Commission Representative Kevin Campbell, Moorhead City Engineer Bob Zimmerman, Fargo Division Engineer Nathan Boerboom, Fargo City Administrator Bruce Grubb Cass County Commission Representative Mary Scherling.

Others present: AE2S Program Manager Eric Dodds, Property Owners Lori Anderson and Chad Carlson

Absent: Cass County Commission Representative Chad Peterson, Clay County Commission Representative Jenny Mongeau, Moorhead Mayor Del Rae Williams, Oxbow Mayor Jim Nyhof, CCJWRD Representative Rodger Olson, Fargo Commissioner John Strand.

The meeting was called to order by Chair Mary Scherling.

Agenda Review

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

Minutes Approved

Mr. Zimmerman moved the minutes from the March 21, 2018 meeting be approved. Second by Mr. Grubb. All the members present voted aye and the motion was declared carried.

Opportunistic Property Acquisitions Discussion:

Mr. Dodds reviewed the opportunistic property acquisition philosophy. Work on property acquisitions has been put on hold for a variety of reasons, he said, and prior to getting a green light to resume acquisitions, discussions and deliberations are ongoing about whether it is possible to proceed with certain types of property acquisitions in a limited basis. He said the document in the meeting packet tries to categorize these properties, specifically the opportunistic acquisition properties and the map shows parcels where property owners have reached out asking to proceed with the acquisition of their property. Those property owners have indicated they would like to continue the process that had been started or begin the process of getting the acquisition going. He pointed out two categories - active sellers who have their property for sale, and willing sellers desiring a buyout whose property is directly impacted or not impacted but near the project. He asked the question whether those properties that come up for sale and are impacted by the project, should a purchase be attempted from an active seller? It likely should, he said, and there may even be a duty to consider buying those properties so someone else does not purchase them, not knowing about the project. He said some properties near the project may also warrant discussion about value to the project, such as litigation purposes, land trade, replacement land, etc. Regarding properties that are on the fringe of the impact area, it may be best to sit idle for a bit until more is known about the project impacts, he said. Prior to the injunction, he said, it was felt there was a project so the

term opportunistic then was really more an early acquisition. He said there were a dozen or so property owners in the staging area and upstream who reached out and asked about acquisition since they knew the project would get to them eventually. He said there has been an uptick in these calls/requests lately and not all are upstream, some are along the channel where there were active negotiations.

Ms. Scherling said not knowing for sure what the plan is, apparently federal guidelines have to be followed and the Diversion Authority cannot just purchase a home that is on the market, federal guidelines say they must go a step beyond and get them replacement housing, which could add considerable cost.

Mr. Dodds said Lori Anderson is here, she owns rural residential property and a horse stable in northern Richland County along the Red River. About a year ago, he said, recognizing the project was impacting her property, she contacted the Diversion Authority because she was tired of being in limbo.

Ms. Anderson said her property is a stable/horse boarding business, which she intends to sell. She said the process started a year ago when an appraisal was done and then the injunction happened when they were a few weeks out from an agreement. She said it is stressful living in limbo and the situation has affected her business. She listed it for sale more than three years ago; however, following the appraisal she took it off the market and has not relisted it. She is waiting to see what happens, she said, and it is frustrating and stressful to wait and wonder, and not be able to move on.

Mr. Dodds said property owner Chad Carlson is also in attendance. Mr. Carlson's property is a tree farm business by the river, north of Oxbow, he said, and a tree farm is not an annual crop. He said its complexities are similar to that of organic farming and an appraisal has not been started.

Mr. Carlson said his small family-run business has a staff of 15 and is trying to expand; however, with so many unknowns it is impossible to have a 5 to 10 year plan, or even a one-year plan. He said he does not want to leave his property, and being at a standstill is a heavy weight and burden.

In response to a question from Ms. Scherling on how long it would take to start over and get his business to the place he is at now, Mr. Carlson said he has trees in the ground that are just now ready for sale that have been there 20 years. Buyers want decent size trees, he said, and the fastest growing trees in the area take a minimum of three years to attain a size to be sold and soil types and other factors affect growth. He has had the property for nine years, he said, and it is all fenced in for deer control, etc. Although he has looked for replacement land, it is hard to put the time and energy in when it feels futile, he said. By the time he would be bought out, a prospective property could be off the market, he said, and it is difficult to get ones hopes up.

Mr. Campbell thanked the property owners for coming and apologized that they are in such a position of uncertainty. He said the entire community has been in a period of uncertainty for some time. He said it seems that these requests would not have anything to do right now with the waters in Minnesota, it has more to do with the risk of the Diversion Authority moving forward with purchase. The MDNR may be taking a friendlier approach, he said, and it seems they basically have said that as long as it does not impact the waters

of Minnesota they may be okay with proceeding. He said perhaps the discussion needs to be on some of the abilities for the Diversion Authority to move forward.

Ms. Scherling said she agrees with moving ahead with acquisitions like this and those actively on the market. It may be an opportunity for trade with somebody, and it makes sense; however, there are unknowns and she would want to be mindful to not get ahead of ourselves and to be sure the DNR is okay with this, understanding that the Upstream Coalition will oppose every possible thing. She said even though the Diversion Authority is trying to treat property owners fairly, that is a roadblock and there will be criticism. She said a way to try to smooth that road would be helpful and having Ms. Anderson and Mr. Carlson here today is a positive thing for the group to hear.

Mr. Campbell commented that the plan Mr. Dodds is putting forward is a good one and the breakdown in category is good. This is all under a federal project, which may or may not add additional costs, he said; however, if there is opportunity and a property is in an area where we know for certain the project will impede, it almost becomes a duty to do it. He said the alternative is that it could get sold to someone else who may not be willing to sell which could lead to even larger costs.

Ms. Scherling said she is seeking confirmation from this group to go forward with this through the legal channels, making sure to get the judge's blessing and the sooner the better.

Mr. Dodds said the attorneys felt they could work out a plan for this. The injunction is against construction, he said, and the attorneys may not be compelled to bring this to the judge. He said he would suggest guidance be taken from the legal team as far as what avenues of legal approval are appropriate. Once the scope of the DNR's environmental review is known, he said, and if it is focused on Plan B as presented, then there may be a good path to do that. He said it may be appropriate to get through the scoping process before proceeding with these acquisitions. If we work through the legal teams, he said, support from Mayor Del Rae Williams may be needed to reach out to the policy level people at the DNR. Coordination could be done from both sides to try to move this forward, he said.

Mr. Zimmerman said the struggle with all of this is the uncertain scope of the DNR's environmental review, and it is not likely that the scoping documents will give clear indication of what will they will allow. He said he supports asking questions; however, it needs to be made clear that this is in response to property owners who are in a difficult position coming forward, and not something the Diversion Authority is actively promoting.

Mr. Campbell moved to recommend to the Diversion Authority that the Opportunistic Acquisition Philosophy be approved pending legal team review and coordination with MDNR as soon as is reasonable. Second by Mr. Zimmerman. There was unanimous approval by everyone present.

Plan of Action for Oxbow Lots

Mr. Dodds said last month the Diversion Authority was presented a Memorandum of Understanding (MOU) Amendment for the Oxbow MOU. He said the document in the packet outlines the anticipated procedure for how things related to vacant lots will be worked through. He said some outreach has been done and there is increasing awareness and a letter has been written for property owners and townships to be certain

they are abundantly aware of Plan B. He said there should be more certainty about the project this fall and more specific outreach can be scheduled. Between now and then, he said, the expectation is that more and more property owners will be in contact.

Ms. Scherling said this has been brought to the Diversion Authority and is on the upcoming Cass County Commission agenda, and will be on Clay County's agenda shortly as well. She said if something is changed, the entities have to agree.

Mr. Grubb said Assistant City Attorney Mike Redlinger is also bringing it to the Fargo City Commission at their upcoming meeting.

Land Acquisition Directives (LAD)

Mr. Dodds said it has been awhile since land acquisition directives have been discussed, these go to the Finance Committee as a procedural step. He said some are related to the opportunistic category and will not be advanced immediately; however, it would be good to get the LAD processed. He gave an outline of LAD-00027- the Brand land; LAD-00038 - Leonie Rheault Ag Land/Residence; and LAD-00055 - a list of 392 Bio-Geo impacted parcels that need easements for monitoring.

Mr. Boerboom said the main thing this year is completing the Bio-Geo survey work that the Corps identified as needed for those easement areas, with easement acquisitions beginning next year.

Flowage Easement Study Update

Mr. Dodds said he visited with Crown Appraisals and they have compiled a local sales database of 1,600-2,000 local sales, both near and a distance from the river. He said they have worked to update productivity of the soil for a common baseline. They compiled transitional development land adjacent to Fargo-Moorhead, and they have been looking at historical flood data and overlaying that information on the sales database.

In response to a question from Ms. Scherling about what happens with Phase 2, Mr. Dodds said it will be based on the final hydraulic model, which is anticipated after the new CLOMR. He said that the CLOMR approval is when FEMA blesses the hydraulic model. Then it will be necessary for NDSU to update their ag impacts study, he said.

CCJWRD Update

Rodger Olson was not in attendance so there was no CCJWRD update.

Chair Scherling declared the meeting adjourned.

The meeting adjourned at 3:52 p.m.

The next meeting will be June 27, 2018.