

**DIVERSION AUTHORITY
Land Management Committee
Thursday, January 10, 2013
2:00 p.m.
City Commission Room
Fargo City Hall**

Committee Members Present: Fargo Mayor Dennis Walaker, Oxbow Mayor Jim Nyhof, Cass County Commission Representative Darrell Vanyo, Clay County Commission Representative Jon Evert, Fargo City Administrator Pat Zavoral, Cass County Administrator Keith Berndt, Moorhead City Administrator Michael Redlinger, Clay County Administrator Brian Berg, Director of Engineering Mark Bittner, Moorhead City Engineer Bob Zimmerman, City Engineer April Walker (alternate), Tom O'Hara, CH2M.

Others Present: U.S. Army Corps of Engineers Project Managers Brett Coleman and Terry Williams, Eric Dodds – AE2S, Lyndon Pease – Moore Engineering,

Mayor Walaker called the meeting to order.

Approve December 13, 2012 Minutes

Darrell Vanyo moved the minutes of the December 13, 2012 meeting be approved as written. Mark Bittner seconded the motion. All the members voted aye and the motion was declared carried.

Hardship Acquisition/Property Rental Status

Eric Dodds said inspections on the two acquired properties found some items that needed to be done to make the properties rentable. He said the property management firm is working through those items. A second appraisal will be conducted on the third property within the next week or two, he said.

Oxbow/Hickson/Bakke Ring Levee Community Meeting Report

Tom O'Hara said a public meeting on January 8th on the Oxbow/Hickson/Bakke ring levee was well attended by more than 200 people and more than 60 individual property owner meetings have taken place as well. Discussion focused mainly on the decision process, land valuations, and impacts on the Bakke and Hickson communities, he said, and about funds being used for the golf course. Aaron Snyder of the Corps answered the golf course funding questions well, he said, by stating that this is a federal project and every property impacted during a federal project goes through federal guidelines and the loss is compensated if the project goes forward. Participants were given an opportunity to complete a voluntary survey on their positions and identify additional questions, he said.

Terry Williams said notes and survey results from participants, as well as those received by mail, will be synopsisized and shared with participants to capture their thoughts for use in the write-up and eventual decision making. She said Bakke residents have expressed concerns about how they will be heard on the levee issue and how decisions will be made.

Some mistrust and anger has developed as the project has evolved and changes have been made, Jon Evert said, and some people outside of Oxbow feel left out.

Keith Berndt stated he felt the tone was more positive in the individual meetings than at the public meeting. He said he is hopeful Bakke can organize more as a group and come forward with their concerns.

Mark Bittner said people are starting to get serious about wanting answers and information needs to continue getting out to the public. He said there are also rural farmsteads and homes that need an individualized approach.

Darrell Vanyo said individual meetings can lead to better feedback than public meetings where not everyone is willing to speak out. He said he has not heard anything from Bakke other than the initial “no” response for a ring levee and they need to somehow come forward if their response differs from that. He said the Diversion Authority is not going to step in and dictate how decisions are made. He posed the question whether it would help communication to offer them a place at this table, at least during this process.

This has always been an open meeting, Mayor Walaker stated. If Bakke residents do not have information, he said, it could be that their needs were not recognized or they did not realize the scope. He said this item should be discussed further following the individual meetings.

Pat Zavoral said, in the past, when the City of Fargo was working to extend a sewer line to Oxbow, it became necessary to go door-to-door in the Bakke area to be certain the individuals understood the process. He said individual meetings may be necessary and perhaps someone will come forward to represent the neighborhood.

Tom O’Hara said the next decision point will be next month, and that decision will be just to leave the levee concept in the plan.

Jim Nyhof said he has heard interest from landowners who may be displaced in the staging area about having an opportunity to purchase land in a ring levee-protected area, which is a good sign of marketability returning to the community. He said Oxbow will likely make their decision before May.

Oxbow Levee Community Conditions Memorandum of Understanding

Tom O’Hara said a decision paper will come before the Board today to address the City of Oxbow’s request and conditions to construct a ring levee to protect properties from floodwater. During discussions, he said, the City of Oxbow requested a Memorandum of Understanding (MOU) be developed to clearly capture what both sides are agreeing to. He said the draft MOU speaks to the intent of the parties to continue to work toward an acceptable solution.

Pat Zavoral said the concepts in the MOU are being presented today for approval and the details can be worked out during the process. Property acquisition will be in two forms, he said; purchasing property in the right-of-way and where the levee would go.

He said homeowners in the staging area outside of Oxbow may also seek to purchase property inside Oxbow to be protected, so the size of the footprint for redevelopment still needs to be determined. He said once property is purchased, Oxbow will be given credit based on engineering estimates as to what the infrastructure costs will be to accommodate those homes, such as water, sewer, streets, curb, gutter, street lights and other necessary amenities. As far as the Country Club, he said, there would be the purchase of the property, the clubhouse, property and affected holes and Oxbow would be credited an amount to relocate it to a protected area. He said the Diversion Authority will have a contract with Oxbow, and in turn, Oxbow will contract with a developer. The cost of the construction of the levee, the buyouts and the infrastructure will all be part of the cost of the diversion, he said, and will not be costs borne by Oxbow. It is suggested a special assessment be put in place as a backstop for any shortfalls in the sales tax, he said, but will not be used. He said there will be a maintenance special assessment and Oxbow has agreed to that.

It is important that the engineering is accurate enough to prevent Oxbow from unforeseen costs, said Jim Nyhof, and that the MOU is negotiable as the project develops.

Mark Bittner pointed out that some items will be included above what the Corps will give credit for. He said those items will need to be quantified and this MOU document is intended to say the Authority agrees.

Darrell Vanyo moved the Land Management Committee adopt the concepts outlined in the draft Memorandum of Understanding between the Diversion Authority and City of Oxbow. Jim Nyhof seconded the motion. All the members voted aye and the motion was declared carried.

Flowage Easement Request for Proposals

Eric Dodds said the draft Request for Proposals (RFP) for the Economic Evaluation of Temporary Water Retention Easement Values is for issuance to the University of Minnesota and the North Dakota State University Research Departments with the idea of engaging their agricultural economist researchers to help define a process for determining the value of a flowage easement in the staging area. He said this is well in advance of when flowage easement purchases are needed; however, there is value in defining a process that is backed up by third-party researchers. He said determining a value would help alleviate some uncertainty. This has been discussed at the Agricultural Subcommittee meetings, he said, and at their last meeting the Subcommittee agreed to move it forward for approval. The RFP asks the researchers to define a value, he said, although this committee may want the primary intent to be defining a process.

In response to a question from Mark Bittner whether this may be more of a legal or appraisal issue, Eric Dodds said he has discussed this RFP in concept with John Albrecht of the Corps Real Estate Division, who thought it would be a valuable process. He said Mr. Albrecht will likely review the RFP before it is finalized. The appraisal process for determining flowage easements is somewhat subjective, he said.

In response to a question from Mark Bittner about whether the Corps has experience with this and could research it, Brett Coleman said the Corps has acquired easements and free title to land for other projects. He said something Mr. Albrecht would have to consider is that laws could vary depending on the state. The Corps would require the local sponsors to acquire the interest in the real estate, he said.

Tom O'Hara stated his team would look into the questions raised in this discussion and report at the February meeting.

Assessment District Update

Eric Dodds said the Cass County Joint Board has mailed letters to Cass County, the City of Fargo and the City of West Fargo seeking their representatives for the Diversion Project Assessment Committee. The Committee's first meeting will be January 25th, he said.

Right of Entry Status Update

Lyndon Pease said all access has been obtained in the Diversion construction area around Reaches 4 and 5 where some transportation improvements will be done. He said topographic surveyors are working there now and that design will go on throughout this next year. Geotechnical borings are occurring throughout the diversion area, he said, mainly on the north end of the project in the Reach 1 area, with additional borings soon in Reach 4 and 5. The Houston/Moore Group is conducting borings in the downtown Fargo area for the in-town levees, he said, with additional access needed on some properties for geotechnical, topographic and utility surveys. He stated access for downtown levee work will be ongoing. He said easements for instrumentation sites to monitor groundwater activity near the diversion have also been obtained.

Cultural Resources Easement Acquisition Status

Terry Williams said areas in Reach 1 around the Cass County 30 outlet have been identified as a fire hearth site having significant artifacts. She said the small area of land will require mitigation and will involve excavating and cataloging. This is best to do after the land is acquired permanently, she said.

Other business

In response to a question from Jon Evert about flood insurance requirements for a home in the staging area, Keith Berndt said if there were an individual home/farmstead levee constructed, that levee would be built to FEMA standards and the area within that levee would be outside of the floodplain. He said flood insurance would not be required, but would be encouraged.

The next meeting will be Thursday, February 14, 2013 at 2:00 p.m.

The meeting was adjourned at 3:08 p.m.