

**DIVERSION AUTHORITY
Land Management Committee
Thursday, October 11, 2012
2:00 p.m.
City Commission Room
Fargo City Hall**

Committee Members Present: Fargo Mayor Dennis Walaker, Oxbow Mayor Jim Nyhof, Cass County Commissioner Darrell Vanyo, Clay County Commissioner Jon Evert, Cass County Joint Water Resource District Representative Rodger Olson, Fargo City Administrator Pat Zavoral, Cass County Administrator Keith Berndt, Moorhead City Administrator Michael Redlinger, Clay County Administrator Brian Berg, Fargo Director of Engineering Mark Bittner, Moorhead City Engineer Bob Zimmerman, Tom Waters - CH2M (ex-officio).

Others present: U.S. Army Corps of Engineers Project Managers Brett Coleman and Terry Williams, USACE District Commander Colonel Michael Price, USACE Realty Specialist Ron Silver, Eric Dodds – AE2S, Jon Diebel – CH2M, Lee Beauvais – Moore Engineering, Mark Lambrecht – AE2S, Fargo City Engineer - April Walker.

Mayor Walaker called the meeting to order and welcomed Colonel Price.

Approve September 13, 2012 Minutes

Darrell Vanyo moved the minutes from the September 13, 2012 meeting be approved as written. Rodger Olson seconded the motion. All the members voted aye and the motion was declared carried.

Property Management Firm Selected

Jon Diebel said of the two firms that responded to the Request for Quotes (RFQ), Coldwell Banker First Realty has been identified by the Early Acquisition Subcommittee as the top firm because of their long history and experience with single family property management. He said the management fee proposed is 9% of the rent plus half the first month's rent, and he and Nancy Morris are working on the agreement.

Brian Berg moved Coldwell Banker be selected as the property management firm for Diversion Authority acquired residential properties. Mayor Nyhof seconded the motion. All the members voted aye and the motion was declared carried.

Hayden Heights Early Acquisition

Jon Diebel stated it was authorized at the last meeting of the Diversion Authority to proceed with the acquisition of lots in Hayden Heights. He said the development consists of 30 vacant lots and one single family home, with twenty-one of the lots owned by the City of West Fargo through tax forfeiture. There have been further discussions with West Fargo, he said, and a contingent agreement has been drafted subject to the approval of the Diversion Authority. He said the Finance Committee approved the purchase of the twenty-one lots that are vacant and to delay the purchase of the nine privately owned properties.

Darrell Vanyo moved to approve the purchase of twenty-one vacant tax forfeited lots from the City of West Fargo in the Hayden Heights Subdivision and to delay the

purchase of the privately owned vacant lots and single family home until a decision on the westerly alignment of the diversion channel is finalized. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

Update on Hardship Properties

Jon Diebel said the three hardship appraisals in Oxbow have been completed, reviewed by the Corps and delivered to the property owners within the last 3 days. With a positive response, he said, sale contracts will be brought to the Committee soon. He said in addition to the sale price, some relocation benefits will be offered and negotiated with the homeowners in accordance with the relocation benefits for real estate. He said he is working with Nancy Morris on purchase sale agreements.

Agricultural Policy Subcommittee Update

Jon Diebel said the Agricultural Policy Subcommittee recognized key issues and endorsed two documents related to the local drainage plan and local transportation plan. He said this is a first summary provided for consideration and other issues will be addressed and brought to this committee later for recommendations to the Diversion Authority

Rodger Olson said farmers are concerned with the ability to access the diversion through legal drains, and because it is not known what might be needed in the future, they would like to keep the water resource districts in an advisory role when it comes to drainage issues. He said access to fields and road accessibility after the water is gone are concerns as far as transportation planning. Bridge issues have been addressed, he said, and bridges will be wider than the initial recommendation.

Mark Bittner said the summaries are guidance documents to use as a basis to move ahead with project design.

Jon Evert moved the recommendations of the Agricultural Policy Subcommittee be received and filed. Mark Bittner seconded the motion. All the members voted aye and the motion was declared carried.

Discussion on Shortfall in Revenues Due to Devaluation of Oxbow Properties

Mayor Walaker said it seems premature to take action on the Kindred School District shortfall due to Oxbow properties' devaluation because property taxes are not due until year end. He said two options could be taken, either approve and move the topic to the Authority or postpone a decision.

Rodger Olson said the 20% reduction in value has already been taken by the State and while he does not know how it was arrived at, he feels some responsibility for the Authority to at least make the school district whole.

Mayor Nyhof said he sees the State's action as a single-year commitment and the school district is impacted because of the project. It is not appropriate that he or members of the Cass County Commission vote on the issue, he said, because the county took a firm stand against reducing values.

Darrell Vanyo said he understands both sides and could agree to delay action; however, he is not in favor of the Authority paying the Kindred School District. He said he stands

by the action Cass County took when denying the valuation reduction. This affects taxes collected for the Kindred School Budget, he said, and is a \$53,000 loss this school year. This could only be for this one year, he said, but nothing would stop them, and possibly others, from seeking devaluation again.

Mark Bittner said he did not see that this entity should be responsible and urged caution about setting a precedent. He said it is not known yet what the project will look like and he said he supports the view of Cass County.

Tom Waters said a decision whether to award compensation, and if so, how much, will need to be made. He said he will prepare the pros and cons.

Mark Bittner moved to delay action until December. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

USACE Answer to Questions from September Meeting

Brett Coleman said the question arose at the last meeting about the value of the Oxbow Golf Course. He said a value of \$7 million was assigned in the feasibility cost estimate. Also, there was confusion about the 90 day review period for acquisitions, he said, which could have been from the start of the appraisals to the signed agreement or the time between an offer to acquire and time to move out. In any case, he said, the bottom line is that it does not take 90 days.

In response to a question from Mayor Nyhof about why Corps representatives were in Oxbow appraising the Country Club, Real Estate Specialist Ron Silver said that he is in the area as part of the real estate team for Reach 2, as well as in conjunction with another project. He said he works closely with the review appraiser who will be in the area next week and they had talked about Oxbow which is why he wanted to take a look. He said he was not sent by anyone to look at the golf course.

ROE Team Update

Lee Beauvais said some expiring rights-of-entry are being renewed and access for biotic surveys is being finalized for next year. He said as a whole there is not a huge effort in rights-of-entry right now; however, that could change if the alignment changes.

Cultural Resources Easement Acquisition Status

Lee Beauvais said the Corps team is beginning Phase 2 Cultural Surveys involving easements with seven landowners of 12 parcels. He said one landowner is denying access and action may have to be forced. Of nine instrumentation sites, he said, three are on Cass County deeded right-of-ways. Five of the other six landowners have agreed to access and a discussion is scheduled with the sixth.

Other business

In answer to a question from Mayor Nyhof about whether Oxbow's position on the possible ring dike option mattered now that Bakke/Hickson said no to it, both Mayor Walaker and Darrell Vanyo stressed that it is important for the City of Oxbow to weigh in.

Pat Zavoral said it is important to the Kindred School District that Oxbow be maintained as a community. He said there are many reasons why ring dikes should be seriously considered, and they have been used up and down the valley.

Keith Berndt said he heard secondhand that the rationale for opposition of the ring dikes was because the height is over 10 feet. He said he observed many of the protected areas in Fargo have dikes much higher.

Mayor Walaker said this area has the best soil to build dikes. He said he is pleased the Corps sees that ring dikes could be a solution.

Mayor Nyhof said it is too early to say no to a possible solution. He said a task order issued previously indicated he submitted a proposal for a ring dike, and he wants it noted that at that time it was purely conceptual and the intent was to explore options. He said it is unfair to be critiqued now on a task order presented during that exploratory stage.

Tom Waters said at the time of that task order, there were meetings held with upstream communities relaying a plan to buy out property. The ring dike concept was looked at, but only contingent on whether water depths could be reduced, he said, and only recently did it become a more viable concept.

Mayor Walaker said it is important that people understand there is a difference between preliminary plans and the actual design.

Mark Bittner said Winnipeg is a good example of why ring dike efforts should be focused on.

Colonel Price said ring dike options were not explored at the time of the feasibility study because of the decision at the time by Oxbow/Bakke/Hickson that it was "all or nothing" as far as protection. He said now that the discussion indicates it may no longer be "all or nothing" the Corps could be open to explore it. He said the Corps will wait for a decision from the Authority on Oxbow, asking the Corps to explore ring dikes as a mitigation option. He said that would then reopen the EIS Process because something is being built and things are impacted. He said the Corps perspective is always nonstructural options, or buyout options, first.

In response to a question from Pat Zavoral about whether he would like the Diversion Authority to make a decision on the ring dike option for Oxbow, or if Oxbow should work it through, Mayor Nyhof said it would be best to work it through for themselves.

Roger Olson said he understands that if a ring dike were built, Oxbow could actually have better protection than Fargo-Moorhead in a 100 year flood event.

Tom Waters said part of the discussion at the Diversion Board of Authority Meeting today will be about ring dikes.

The next meeting will be Thursday, November 8, 2012 at 2:00 p.m.

The meeting adjourned at 3:04 p.m.