

DIVERSION AUTHORITY
Land Management Committee
Thursday, December 13, 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, Fargo Director of Engineering Mark Bittner, Fargo City Engineer April Walker, Moorhead City Engineer Bob Zimmerman, Tom O'Hara - CH2M.

Others present: U.S. Army Corps of Engineers Project Manager Terry Williams, Lee Beauvais - Moore Engineering, Eric Dodds - AE2S, Mark Lambrecht - AE2S, Dirk Draper - CH2M.

Approve November 8, 2012 Minutes

Rodger Olson moved the minutes of the November 8, 2012 meeting be approved as written. Darrell Vanyo seconded the motion. All the members voted aye and the motion was declared carried.

Hardship Acquisition Status

Eric Dodds said two hardship acquisitions have been closed on and the Diversion Authority now owns both. He said the property management firm of Coldwell Banker First Realty is working on getting them rented and the third property will be appraised in January.

Oxbow/Hickson/Bakke Ring Levee Information Update

Dirk Draper said public meetings will be held to present the initial responses to Oxbow/Hickson/Bakke residents January 8th and landowner meetings will be held on January 9th and 10th.

Tom O'Hara shared a summary of demands presented to the Corps and the Flood Diversion Authority by the City of Oxbow. He said there will be a more detailed sheet of the demands and responses in the January Board packet, as well as finalized recommendations for items requiring specific Board of Authority confirmation. He said the Diversion Authority could potentially be responsible for either betterments or additional related actions.

In response to a question from Pat Zavoral about whether the opportunity to protect Oxbow exists even if Bakke and Hickson choose not to have a ring levee, Terry Williams said it could be possible to dike around Oxbow, leaving Bakke and Hickson as buyouts. She said there may be room between Hickson and Oxbow to allow for that protection, although it would be tight and may require raising US Highway 81. The Corps would have to look at it further to verify, she said.

Mayor Nyhof said there is a lift station across US Highway 81 to consider if the highway is raised. He said coming to a resolution on some of the items would be helpful prior to the January 8th meeting. The Oxbow City Council meets next week and will review counteroffers, he said.

Tom O'Hara said some of the responses, such as special assessment districts, could take some time.

In response to a question from Mayor Walaker about having meetings prior to design when the process is not to that point, Ms. Williams said theoretical designs will be presented that are technically feasible. She said detailed designs will come after the Environmental Assessment (EA) and the decision whether to go forward has been made.

In response to a question from Mayor Nyhof about whether eminent domain could play in, Terry Williams said, yes, the Corps could do that.

Dirk Draper said Task Order No. 13 Amendment 1 will come before the Board today for additional studies to look at options for in-town levees and upstream storage areas. He said the task order is for the Houston Moore Group, with work beginning now through September 30, 2013 at a cost of \$150,000.00 for the additional services. The work will include Oxbow, Hickson and Bakke, he said, as well as evaluating Comstock, Christine, Wolverton, and individual structures where the staging depth is less than one foot.

Mark Bittner said some of the work for possible ring levees has been done and there is only a need to fill in some of the gaps in the studies. He said further upstream nonstructural studies being conducted by the Corps to deal with those areas beyond the impacts of this project are also important. He asked Terry Williams for periodic reports from the Corps on the status of those studies.

Mitigation Policy Development

Eric Dodds said it is known there will be some mitigation required for this project and there has been discussion lately about a ring levee around Oxbow/Hickson/Bakke. He said one question is whether the Diversion Authority is willing to construct a ring levee early, even in advance of authorization. The alternative is for buyouts if the communities are not agreeable to a ring levee, he stated, which would fall into the timeline of when the project is needed, and in the case of staging and storage it would be late in the process.

Keith Berndt said a big concern expressed by landowners is being in limbo. He stated an advantage of the ring dike is that it could mean early construction and reduce uncertainty.

In response to a question from Rodger Olson about farmsteads being looked at as part of the process so landowners know which can be saved, Eric Dodds said that is part of Task Order No. 13 going before the Authority for additional studies.

In response to a question from Mark Bittner about whether property acquisition could be done upfront if a ring dike option is not done, Pat Zavoral said that, excluding hardship cases, buyouts will not happen until after authorization. He said the option of the ring levee is being moved ahead because a decision is needed to do the Environmental Assessment (EA). He said that does not mean a levee would be constructed immediately after the environmental statement; however, it could be and it would show a willingness to move ahead with the levee outside of federal action. He said the Corps wants a decision to be made by February for the EA so authorization can move ahead.

Darrell Vanyo said the Finance Committee supports going forward as soon as possible if the levee is selected, and if not, buyouts would follow the normal course of the Corps' process.

He said the Finance Committee did not favor owning property; however, moving forward with the levee was totally different.

Keith Berndt moved, in order to provide early protection and reduce uncertainty for communities and property owners in the staging area, the Land Management Committee supports the Diversion Authority's willingness to fund mitigation measures like ring levees and all supporting infrastructure early in the project timeline, even prior to authorization, and if a community or property owner decides not to accept early protection offered, property acquisition will follow federal guidelines and timelines which currently calls for acquisition no earlier than 2018 for property in the staging area. Bob Zimmerman seconded the motion. All the members voted aye and the motion was declared carried.

Discussion of Property Tax Shortfall to Kindred School District

Eric Dodds said the Kindred Public School District asked for \$73,153.00 in reimbursement for a shortfall in revenues they claim were lost as a result of devaluation of properties in Oxbow due to the proposed diversion project. The \$73,153.00 figure used as a tax revenue loss is incorrect, he said, because it was based on estimated taxable value provided in July, not the final taxable value determined in October. Actual reduction in tax revenue due to devaluation of Oxbow properties is \$51,417.00, he said; however, there was not an actual tax revenue reduction due to the District levying the dollars and the County computing the mill levy to raise the dollars the District requested. He said the School District did not see an actual tax revenue reduction in 2012. The result of the devaluation of the Oxbow properties was a tax shift in which the property owners in Oxbow paid less, he said, and the rest of the property owners in the Kindred Public School District paid more to offset the lower taxes in Oxbow.

Darrell Vanyo requested authorization to send a letter to the Kindred Public School District informing them that since there was no shortfall, there would be no reimbursement for lost revenue.

Mark Bittner moved Mr. Vanyo be authorized to send a letter to the Kindred Public School District indicating there will not be a reimbursement as requested. Keith Berndt seconded the motion. All the members voted aye and the motion was declared carried.

Local Drainage and Transportation Outreach

Mark Lambrecht said representatives spoke at the Cass County Township Officers' Association Meeting on November 29th. He said it was a valuable outreach activity with presentations highlighting the status of the project and local drainage and transportation planning aspects. He said a similar meeting is being considered for residents in the Argusville and Harwood areas, likely in March, following the release of the final detail design documents for Reach 1.

Real Estate Cost Estimate Status

Dirk Draper said work continues on refining the cost estimates and said progress is being made on internal review for consistency and accuracy.

Assessment District Update

Eric Dodds said the Diversion Authority will be asked at the upcoming meeting to formally authorize the Cass County Joint Water Resource District to be responsible for developing an assessment district for the North Dakota local cost share and for creating an Assessment Committee with broad representation from all the benefiting properties. He said bond

financing is likely at some point and there are many advantages to an assessment backed bond as opposed to a sales tax backed bond. He said it is expected that the sales tax revenues will be able to cover the assessment payments. An assessment district will provide lower interest rates, better financing terms and enable a more effective use of the sales tax dollars, he said.

Rodger Olson moved to support the authorization of the Cass County Joint Water Resource District to be responsible for developing an assessment district and for creation of an Assessment Committee. Mayor Nyhof seconded the motion. All the members voted aye and the motion was declared carried.

Bank of North Dakota Refinance Information

Darrell Vanyo said he had a conversation with Chief Lending Officer Bob Humann of the Bank of North Dakota (BND) regarding loans for refinancing and of new mortgages, and whether the BND could or would get involved. Mr. Vanyo said, as he understands it, when appraisal firms write up fact sheets and state Oxbow's situation, a lender would have to go to a secondary market to get the best interest rate. BND understands the situation better than secondary market lenders across the country would, he said. Assuming everything else was okay with the applicant's finances, Mr. Humann indicated the Bank could be competitive in finance rates for someone who is finding it difficult to refinance or buy, he said.

Mayor Nyhof said marketability of Oxbow is a concern, along with available financing to potential qualified buyers. He said he is initiating discussions with the Governor and would like to see the BND program adjusted and the \$275,000.00 lending cap increased. He said support from this committee and the Diversion Authority would be appreciated.

Darrell Vanyo moved the Land Management Committee support and request the State of North Dakota and the Bank of North Dakota to raise the maximum loan amount. Rodger Olson seconded the motion. All the members voted aye and the motion was declared carried.

Right of Entry (ROE) Status Update and Cultural Resources Easement Acquisition Status

Lee Beauvais said work has been underway for a couple months to gain access to parcels in the Rush/Lower Rush River areas for issues that are part of the overall transportation plan. He said access has been obtained for most; however, there are two ROE hearings this week to gain access to the others. He said access has been acquired for eight of the nine instrumentation sites for the Corps. The ninth landowner had given verbal agreement but has since changed his mind, he said, and following a last attempt, it will go to the next step. Letters have gone out to several landowners in downtown Fargo to gain ROE for the flow through town study that is just getting started, he said.

The next meeting will be Thursday, January 10, 2013 at 2:00 p.m.

The meeting was adjourned at 2:58 p.m.