

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, June 21, 2017
3:00 p.m.**

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

Others present: Eric Dodds - AE2S; City of Fargo Director of Engineering Mark Bittner.

Absent: Fargo City Administrator Bruce Grubb; Cass County Commission Representative Chad Peterson; Moorhead City Council Representative Heidi Durand; Clay County Commission Representative Jenny Mongeau; and Moorhead Mayor Del Rae Williams.

The meeting was called to order by Chair Mary Scherling.

Agenda Review

Mr. Strand motioned to approve the agenda. Second by Mr. Nyhof. All the members voted aye and the motion was declared carried.

Minutes Approved

Mr. Campbell moved the minutes from the May 24, 2017 meeting be approved. Second by Mr. Zimmerman. All the members voted aye and the motion was declared carried.

Property Acquisition Report

Mr. Dodds said one change in the report is area 2 Plus or also known as 2B and is now just Phase 2. He said moving forward, the acquisitions for the Diversion Channel areas will be described only as Phase 1, Phase 2 and Phase 3. As of last week, he said, there has been acquisition progress with a few property owners; however, there are a few critical acquisitions from a timing standpoint in Cass County and the CCJWRD is going to be asked to make some tough decisions. He said using eminent domain on one of the critical properties, which encompasses eight different parcels in the Phase 1 area, can be avoided as negotiations seem to be fruitful. On Phase 2, which is generally north of I-94 and a few parcels just south of I-94, background appraisal work is being done; however, there have been no appraisal reports or any offers made yet.

In response to a question from Ms. Scherling about prioritizing acquisitions and if the Diversion inlet control structures would be first, Mr. Dodds said those have been acquired through quick take eminent domain. He said that we are anxious to get through the court process so the value is known, which is a priority.

In response to a question from Ms. Scherling as to if it would be Phase 1 after the court process or is there something else the Corps needs before it gets into Phase 1, Mr. Dodds said there are some nuances. He said three parcels were taken through quick take. He said near the County Road 16-17 roundabout there is another parcel, which is adjacent to the inlet parcels. He said the Board made the same offer to that property owner that was made to other inlet property owners; however, the owner has not accepted the offer. He said the property owner is waiting to see what happens with the court process. He said that we will probably be asking the CCJWD to make some tough decision to authorize an eminent domain filing on the property. He said the Board does not take it lightly; however, in that location there is such a debate with all involved about what the property is worth. He said one appraiser said the property might be right for development in 40 years, another appraiser said 10 years and others say yesterday. He said all of this information affects the value. He said the Board has to be conscious with taxpayer funds. He said there are different opinions and he is anxious to get through the court system to figure it out.

In response to a question from Ms. Scherling regarding the other three properties acquired for the roundabout and if those properties are in negotiation and has there been progress, Mr. Dodds said the other three properties were initially part of the complete road alignment that is now Phase 2 of the channel. He said there has been some shuffling and appraisals are done. He said it is critical due to the timing of cultural mitigation sites. There are several sites along the channel identified, he said, and different phases of cultural mitigation need to occur prior to construction. He said there are two sites in particular where archaeologists have identified some artifacts. He said a dig needs to occur this summer to clear the site and describe all the artifacts prior to potential construction of the channel next year.

In response to a question from Ms. Scherling about archaeologists and historical preservation, Mr. Dodds said the Corps and the State Historical Preservation office are unearthing artifacts, documenting and recording them and applying a few different methods. There is potential sensitivity, he said, and the Corps has a group of archaeologists to address this.

Mr. Boerboom said the Corps has been working with the North Dakota State Historical Preservation Office.

Mr. Dodds said south of the Maple River, there is another parcel where the Board has struck a deal in the 11th hour and had asked the CCJWRD for authorization to proceed with quick take; however, the Board might not have to exercise that option if the Board and property owner can come to terms.

In response to a question from Mr. Strand as to if cemeteries qualify as historical sites, Mr. Dodds says it depends on the age and other details of the cemetery and the Corps did some studies and some have cultural significance.

In response to a question from Mr. Strand as to if Native burial sites qualify as historically significant, are the other cemeteries not as qualified, Mr. Dodds said he is

not an expert. He said he does not know the details; however, he trusts the Corps and historical preservation groups know what they are doing.

Mr. Campbell brought up future prioritizing and said after Major General Ed Jackson's recent visit, there was some urging by local engineers to stay ahead of the design of the Wild Rice control structure, which would alleviate some problems Cass County had. He said if the Corps is going to start the Wild Rice project in 2018, the design information is critical and he would like to know when and where it would go so property issues can start.

Ms. Scherling said it is a heavier burden in Cass County when there has to be a quick take. She said the Board does not want to run up against the wall and if there is enough time for negotiations, the issue can stay out of court. She said her best advice is to identify who the Board needs to talk to as soon as possible and start talking early to those citizens and property owners.

Mr. Dodds said there are two concerns he has brought to the attention of the Corps. He said he drafted a letter to the Corps and about the new quick take summary. He said when the Board is committed to buy property, it takes a minimum of eight months to finalize. He said the letter to the Corps is asking to get the design done early and he said he will share a copy of a letter with the committee. He said the deadline for Phase 1 is April 2018, the deadline for Phase 2 is August 2018 and the deadline for Phase 3 is April 2019. He said the Corps will bring the design work limits for the entire southern embankment in October 2017 and once they do, the Board will be off to the races and he feels like there are several steps lined up and the Board is geared up to attack it.

Mr. Campbell said what is important is funding. He said he would not like the scenario of if the Board wants to acquire property without adversity, especially with critical property in the Wild Rice project, the Board wants to take advantage of the opportunity. He said he would not want the Board to get there and not have any land dollars.

In response to a question from Ms. Scherling about flowage easements and are those the last thing to worry about, Mr. Dodds said flowage easements will take a minimum of four years to acquire. He said the Board intended to start valuing flowage easements the middle of next year to get them acquired by mid-2022. He said it is a four-year process and the easements would be done prior to operation of the project and prior to operation of the southern embankment. He said that is the goal and the Board is optimistic. He said the Board will be done with the all of the footprint parcel acquisitions before the flowage easements are done.

In response to a question from Ms. Scherling as to if one group of appraisers can do all of the flowage easements for consistency, Mr. Dodds said that proposal was discussed and that approach is recommended; however, questions remain on what the staff level would be, assign it to one of the current appraisers or is a Request for Quotes required. He said he thinks there is a need to have a broad understanding of the process and there is value in consistency.

Ms. Scherling said in dealing with the Federal Emergency Management Agency (FEMA), she said it was learned quickly a property owner would want a particular appraiser due to the fact neighbors talk to each other and would compare appraisals and this appraiser gave this neighbor a better appraisal. Therefore, she said, she likes the idea of someone looking at the whole picture and then drilling down into each individual property.

Mr. Dodds said with the environmental monitoring areas, these are rights of entry the Board has been acquiring to allow biotic and geomorphic monitoring. He said the Board has acquired nearly all the property rights for the Corps contract and actions are under way. He said some court actions were required; however, they have been favorable. In Richland County, he said, some court hearings are coming up in July.

CCJWRD Update

Mr. Olson said about 170 people attended the assessment meeting and about 40 comments were presented. He said it was interesting that most of the questions from those attending concerned their property and what the Diversion Authority would be putting on it, not about if this were the right project to protect them from a flood. He said that was a good indicator the message is out there, this is a project and it will protect the area. Their other concerns, he said, were their property is already protected at a higher level, therefore why are they being assessed 70 percent or 100 percent. He said the Board should look at some of these islands. He said there was also a comment from a large landowner in the area who does not live in North Dakota, yet has a significant investment in Cass County, and he was very concerned.

Mr. Dodds said the committee that helped decide the methodology of the assessment district met monthly for more than two years; however, there have been staff changes and the CCJWRD should get the committee together again and re-engage the discussion. He said the CCJWRD has support and backing from its partners.

Ms. Scherling said re-engaging the committee is a good idea as Commissioners are getting the phone calls. She said valid points were brought up at the assessment meeting and the Board wants to do this right. She said there are some unique areas; however, not everyone is going to be happy no matter what the Board does.

North Dakota State University Ag Study Update

Mr. Dodds said the original study done a few years ago was developed to understand the risks on ag production from the Diversion projects. He said NDSU did a nice job with the hydraulic model; however, the results are dated and now there is an updated hydraulic model blessed by FEMA through the Conditional Letter of Map Revision (CLOMR) process, it is time to update the study. He said an updated study will be a key data source for flowage easement valuations, which the Board needs to get started on sooner than later. He said NDSU's proposal is just under \$100,000.00. With that, he said, NDSU will take a massive amount of data from the hydraulic modeling team, take it back to the statistical model they established for the first study, tweak a few things due to the fact boundaries have changed, update some of the agronomic data as there are now two or three more years of yield and other farm information and just make sure

they have the latest and best information. The study, he said, will be something the Board can lean on for valuations.

In response to a question from Ms. Scherling as to any changes the public has suggested and is the Board taking everything into consideration, Mr. Dodds said one question from producers is the dry-down period after a flood. He said it is 10 days; however, that was challenged in ag circles, so NDSU re-evaluated and afterwards still felt 10 days was a good dry-down period. He said there are going to be holes poked in this study; however, the Board is comfortable with NDSU's assumption. He said the Board does not want to proceed blindly. He said the initial study looked at historical data as to when floods occur in comparison to regional planting dates. He said most floods occur prior to regional planting, March through April; however, other weather factors affect the dry-down period and there are variables.

In response to a question from Mr. Strand about summer flooding, Mr. Dodds said a summer event could result in crop loss caused by rain and crop insurance would likely cover those losses.

Mr. Campbell said the updated CLOMR information reconfirms the science of the project. He said it is wise for the Board to get the study updated.

Mr. Campbell moved that the NDSU proposal be presented the Diversion Authority Finance Committee at 4 p.m. today, June 17, 2017 for approval. Second by Mr. Zimmerman. All the members voted aye and the motion was declared carried.

Other Business

In response to a question from Mr. Bittner about appraisals of flowage easement versus buying the property and is there a certain tripping point if the value of a flowage easement nears the value of just buying the property, Mr. Dodds said the Board has not made any decisions. He said the Board needs to think of those scenarios to proceed with valuations and there will be a lot of discussion on flowage. He said it seems flowage easements might not be as impactful and costly as people think. He said the value of flowage easements is not going to be close to the value of property. If the Board does get a flowage easement that is as much as the land, the Board should just acquire the land. He said there will be a legal question; however, if all the Board needs is an easement, do we have the ability to force an acquisition of the land?

In response to a question from Mr. Bittner as to if buying the land is something the Board is prepared to offer, Mr. Dodds said if there is a property owner who has land in the staging area and they want to sell it the Board will buy it, attach the easement and if it is farmland, sell it. He said if it is land with natural resources, perhaps there is some public use of that land. He said this could create market data. He said he is drafting a letter to the Corps about the eight-month process and will also be asking for more flexibility and cutting red tape in the administrative processes in acquiring land. He said the Corps has asked the Board to submit in writing the Board's request for more flexibility and to lift the limit on appraisal waivers. He said if a property owner who approaches the Board is willing sell and get it over with early and the price is reasonable, the Board wants the flexibility to make a deal. He said the offer needs to be

fair; however, in those situations the Board wants the flexibility to acquire property without an appraisal just to satisfy the Corps. He said there are 1,500 parcels to acquire. He said there are many questions about voluntary acquisitions; however, given the rigorous process, it is six months minimum to acquire something which is unacceptable.

In response to a question from Ms. Scherling about the number of appraisers, Mr. Dodds said the Board has to go through reviews and it takes time. He said if the Board had more flexibility and can come up with a reasonable deal, the Board still has to be conscious with taxpayer dollars. He said the Board is not asking for a blank check and he does not want to set a precedent. He said a residential appraisal runs \$5,000.000 to \$6,000.000, a land agent has to be hired for another several thousand dollars, then there are attorney fees. He said sometimes it is \$15,000.00 in soft costs just to acquire something.

Ms. Scherling said when home buyouts were happening in the City of Fargo, the City would take the assessed value of the land rather than the appraised value and add a standard percentage. She said with residential homes that might another tool.

Mr. Campbell said the City of Moorhead flood control projects were not based on a homeowner's personal appraisal, it was the City's land value plus a percentage. He said with the 25-plus parcels purchased for the new law enforcement center in Moorhead, it was also land value plus a percentage. He said he thinks the request is reasonable and the Board is going to be reasonable and fair. The alternative can be much costlier to the taxpayer.

In response to a question from Mr. Strand about the Minnesota Department of Natural Resources, Mr. Dodds said they are all sitting on the edge of their seats until the court hearing in mid-July; however, the United States has a good court system and the Board is hopeful.

Ms. Scherling said no matter what, the Board has to move forward.

Mr. Campbell moved the meeting be adjourned. Mr. Strand seconded the motion. All the members present voted aye and the motion was declared carried.

The meeting adjourned at 3:47 p.m.

The next meeting will be July 26, 2017 at 3:00 p.m.