

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, May 24, 2017
3:00 p.m.**

Present: Cass County Commission Representative Mary Scherling; Clay County Commission Representative Kevin Campbell; Clay County Commission Representative Jenny Mongeau; Fargo City Commissioner John Strand; Fargo Division Engineer Nathan Boerboom; Fargo City Administrator Bruce Grubb; Cass County Commission Representative Chad Peterson; Oxbow Mayor Jim Nyhof; Cass County Joint Water Resource District Representative Rodger Olson (via conference call).

Others present: Eric Dodds - AE2S; Mark Brodshaug – CCJWRD; Cass County Engineer Jason Benson.

Absent: Moorhead Mayor Del Rae Williams; Moorhead City Council Representative Heidi Durand; Moorhead City Engineer Bob Zimmerman.

The meeting was called to order by Chair Mary Scherling.

Agenda Review

Mr. Peterson moved the order of the agenda be approved. Ms. Mongeau seconded the motion. All the members present voted aye and the motion was declared carried.

Minutes Approved

Mr. Boerboom moved the minutes from the April 26, 2017 meeting be approved. Mr. Peterson seconded the motion. All the members present voted aye and the motion was declared carried.

Property Acquisition Report

Mr. Dodds said there have been a handful of appraisals and purchase agreements completed in the last month. He said there is a small area south of I-94 and an area south of Horace originally part of Phase 3; however, following discussions and feedback with P3 proposers and working team, a request was made to advance those areas into Phase 2. He said that will allow those lands to be acquired sooner and tie in better with construction milestones. A Land Acquisition Directive will be presented to the Finance Committee today to approve those areas, he said, and while Phase 2 has grown a bit and Phase 3 has shrunk, in the end it is the same land needed. Some excess farmlands were acquired through voluntary acquisitions when the design was not complete, he said, with those land assets valued at an estimated \$5.7 million. As far as disposal of unneeded land, he said, the general idea is that the Diversion Authority does not need to be in the business of owning farmland, although if other opportunities such as recreation use are there, that would be a consideration before disposal.

In response to a question from Ms. Scherling about how to avoid the long detour in the intake area on County 17 because the bypass is not done, Mr. Dodds agreed this needs to be avoided in the future. He said there were debates and decisions made about the timing of the bypass. The bypass will be constructed later this summer, he said; however, the situation exists where the Corps contractor will be shutting off the road as early as next week resulting in a six-mile detour.

Mr. Benson pointed out this is one of the most complex areas of the whole project. He said it is the interface of the Corps project and P3 Diversion component at the inlet control structure and multiple activities will be happening over the next several years. He said Ames Construction, the inlet control structure contractor, has concerns with the significant amount of dirt to be moved. They have to cut into about a 1,000-foot section of County Road 17, remove it down anywhere from 6-8 feet to 16-20 feet, with the deepest point about 28 feet, and then slope it back at a 7 to 1 slope, he said. This is a significant amount of excavation, he said, and that dirt is needed for other components which makes this all very complex. Building an alternate temporary bypass is not realistic, he said. Plans will continue to complete the permanent bypass in late September/early October, he said, and while the timing will not satisfy all the ag producers, it should help those in that region in time for the corn/bean harvest.

Mr. Boerboom pointed out that County Road 17 will not be the only one that will be detoured and it looks like more outreach will be important.

Mr. Brodshaug said Federal government, permit issues and the stop and start decision-making process have been a problem with land acquisition and there have been varying decisions on what will be done in any given year. Going forward, he said, there needs to be more time built in between when the design is complete to the point where it is known what needs to be purchased and the start of construction. He said a longer window is needed for acquisitions as problems result when that time gets compressed.

In response to a question from Mr. Peterson about whether the addition of the Phase 2 plus designation means work will be mobilized in that area prior to the channel being dug, Mr. Dodds said from an acquisition standpoint the work to acquire those lands will happen sooner than would have otherwise. He said from a construction standpoint, the contractors want the ability to work in different locations. He said for example, if there is a wet spring and work cannot be done in the Argusville/Harwood area, the contractor may not be able to work in Phase 1 of the project and if some of the Phase 2 lands are accelerated, there would be an opportunity to work in another area in such an event.

Mr. Strand said some members have been contacted about property that had gone through the West Fargo City Commission where the owner is building a home or farmstead right in the middle of where the diversion will be.

Mr. Dodds said that property is at the intersection of Phase 2 and 3 and as soon as the permit became known, contact was immediately made with the property owner and his attorney. He said while West Fargo may not have preferred to issue a building permit, they had no reason or authority to reject or decline it. He said it is an awkward situation where the owner seems to be knowingly choosing to build within the footprint of the

project. He said the owner's intentions are not known; however, obviously it would be preferred to buy him out now rather than later. He said this property is on an opportunistic property land acquisition directive to be discussed at the Finance Committee meeting.

Mr. Campbell said for the interest of public dollars, a public project that is going through needs to have a process that does not allow someone to take advantage of it. Clay County makes use of overlays, he said, where certain things cannot go on in specified areas and that is something that may be good to consider here. A \$10,000.00-30,000.00 purchase of some acreage should not become the purchase of a three-quarter of a million dollar home, he said.

Mr. Peterson said perhaps something as simple as a Memorandum of Understanding could be put in place to put some teeth in a decision denying building permits.

Mr. Campbell said in reality an MOU is not enough. West Fargo issued a permit because they had no reason not to, he said. He said he suggests an overlay that states there is a government entity protecting this area from a certain type of development for a certain reason. Something similar could happen in any one of the properties along the 36-mile channel, he said. There is nothing in the record to say one cannot build there other than a map of a potential project, he said, so this may not be the first time this happens.

Ms. Scherling said it is important to be proactive and she would like the program management team to research this and bring it back to the committee.

Mr. Dodds said Phase 2 property owners have been contacted. He said with the CLOMAR (Conditional Letter of Map Revision) anticipated to be approved in June by FEMA, an outreach effort is underway to get the maps and letters ready to reach out to property owners on the rest of the channel, southern embankment owners and all of the staging area. Notification the CLOMAR is approved would be a first step in property acquisition defining the impact area and those people are invited to participate in one-on-one type meetings with Diversion representatives.

CCJWRD Update

Mr. Brodshaug said there is an agreement on the last home buyout in Oxbow that is needed for the levee construction. He said that homeowner will be moving out this summer which allows for continuing the permitted east levee work. He said an assessment hearing will be held June 6th at the Fargodome. He said there was some change in legislation in North Dakota for the quick take policy for water resource districts, that would add a step that involves the County Commission. He said that change takes effect later this summer and currently things are operating under the old laws while recognizing there is a new process. County Commissioners have been invited to the CCJWRD board meeting as an informational step in figuring out a process as the new law takes effect, he said.

Biotic and Geomorphic Monitoring Surveys and Rights of Entry in Minnesota

Mr. Dodds said the handout is a summary of the biotic and geomorphic monitoring program. He said these are surveys to establish a baseline condition for biotic information in river streams in the area, as well as geomorphic conditions. He said the idea is to

establish the baseline conditions before the project operates and continue to monitor conditions over time. To do that, he said, the Corps needs access to certain properties on river ways and water corridors to conduct surveys. There has been pretty good success voluntarily with these rights of entry in North Dakota, he said, although the court process had to be used for a few recently for the Corps process to begin this summer. He said the Corps recommendation was to concentrate on North Dakota for the first go-around; however, upon reviewing the list of Minnesota properties it was recognized a good portion of those parcels were owned by the City of Moorhead or Clay County. He said coordination was done with representatives from Moorhead and Clay County to get approval for access to those city- and county-owned sites. There were discussions with Clay County about the fact that these rights will also be requested from private owners in Clay County, he said, and he asked whether that should be done now or continue to wait.

Mr. Campbell said part of the concern is at what point it potentially goes against what has been stated by the State of Minnesota in the legal process that is out there. Land acquisitions, or anything in Minnesota, have been purposefully avoided, he said. He said the question was raised that if there are landowners that want information, why isn't it being shared, he said, and that is due to being fearful of crossing that line. He said perhaps a potential way to do it is to reach out and say, yes, there is some information you may want to know about your property, and if they voluntarily ask for information, it can be shared. He said no money was paid for any easements on city or county land; it comes down to what is done with the private landowner and violating any potential Minnesota rules. He said if landowners want to know what the plans for their property are, they should be allowed to know that.

Mr. Dodds said he had discussions with attorneys at Ohnstad Twitchell, who have been working on behalf of CCJWRD and they felt the CCJWRD could make the requests on a voluntary basis. In addition, he said, litigation counsel at Dorsey was contacted and they gave a green light to proceed if the policy makers were willing to go ahead with contacting property owners. This is only about voluntary requests, he said, nobody is being asked to force a right of entry. He said if this group is OK with doing this, the question would be if it would be the CCJWRD board that would be the requestor since they have the procedure in place to make requests, or does Clay County want to play a role? He said he could draft a sample letter and sample packet.

Mr. Campbell said as far as who the requestor is, it may be best to bring something to the Clay County Board suggesting a way to make contact with folks.

Mr. Peterson said he feels the requestor should be Clay County. He said with the support of the CCJWRD, Clay County needs to be in charge of it. It would be better if it comes from their local elected officials, and it is valid symbolism, he said.

Mr. Brodshaug said there have been many questions in the last couple of months from people in the staging area looking for early buyouts. He said on the Clay County side too, people likely want buyouts on their own time schedules rather than a construction schedule. He said he would encourage a look at early voluntary acquisitions on the Clay County side.

Mr. Campbell said he would not want to get into the position of soliciting early acquisitions as an option, not knowing if it is crossing the line.

Mr. Peterson said he agrees it would be best not to have that talk yet. He said he thinks it is silly that information cannot be volunteered if asked and struggles not telling people information. He said known information should be shared with those impacted.

In response to a question from Ms. Mongeau as to if it is a green light if people want their property acquired, Mr. Campbell said it should be considered the same as under the Hardship Policy. He said if property owners in Clay County independently get additional information they want through this voluntary process and they decide they do not want to wait, then it seems appropriate to give them those same opportunities that Cass County landowners have. The process has to be generated by property owners, he said. As long as legal counsel says yes, under that circumstance they do not feel Minnesota law is being violated, then everything that can be done, should be done to make the property owner's life easier.

Mr. Peterson agreed and said he does not want to solicit buying land; however, if landowners come forward, whether for a medical hardship or other life choice, and they come without being asked, that is a different scenario.

Mr. Strand suggested citizens be told if they want information they could go up the ladder to their own leadership, such as the DNR and state leaders. He said those affected should let them know they are being put in a precarious situation due to the lawsuits and lack of permits.

Mr. Dodds said anything being done now in Minnesota is voluntary. He said property owners have reached out, and under those circumstances it can be clearly explained that it is the Diversion Authority that has to buy these properties and they have assigned that role to the CCJWRD Board, which has the ability to buy property in Minnesota on a voluntary basis. He said the Minnesota entity that may end up buying land in Minnesota has not been established yet and for the sake of timing, the CCJWRD continues to do those acquisitions, even the voluntary ones in Minnesota.

Flowage Easement Valuation Proposal

Mr. Dodds said the proposal from Crown Appraisals, Inc. is a draft for awareness, not action. He said there continues to be questions from people in the staging area about the value of a flowage easement and while there have been estimates over time, the question needs answers. He said with the CLOMAR model to be approved sometime in June, a path is being laid out to establish the value of flowage easements. He said Crown Appraisals, Inc. has been used on the Diversion channel and has a good reputation in the rural community and has developed the proposal to establish a value of flowage easements for the project. He said there is a healthy fee; however, the appraiser feels their report from this study would be sufficient to use to actually acquire the easements. In the absence of this report, he said, the path has been to get appraisals on every individual property, which would probably cost more than \$2 million in appraisal fees. He said in order to give Crown Appraisals the green light, the CLOMAR model needs to be approved and NDSU's Ag Econ Department will need to update their study based on the

latest hydraulic model. He said the Corps has the proposal for their review and it has been in front of the attorneys so some variations may be expected.

In response to a question from Ms. Scherling on the treatment of individual variances, Mr. Dodds said this will be specific to farmland, not structures. He said they are proposing a foundational report that combines the methodology, background research, actuarial analysis, statistics, sales history, etc., and then for each quarter-section a before and after value will be produced along with a summary report specific to that quarter-section.

In response to a question from Ms. Scherling about the large price tag, Mr. Dodds said he has been getting feedback from Steve Herzog who was referred by the Corps as an independent adviser on flowage easements and other appraisal issues and he expects Mr. Herzog will comment on the scope and fees. He said in his knowledge of the appraisal community and who is best suited to do this, he feels confident Crown Appraisals will do a good job.

Mr. Peterson said he takes the proposal as a cost not to exceed \$750,000.00, thus an hourly rate at some undetermined value deemed as fair. It does not say flat fee, he said.

Mr. Brodshaug said this is more of a professional service than a contract and Crown Appraisals has a lot of credibility in the staging area. He said if it were opened up to a big search and the work was awarded to some big firm from Minneapolis, for example, they would not be seen as credible to the property owners as a home-based firm.

Mr. Strand said as a general rule, he always values competitive bidding or RFP processes. As far as easements, he said, he would like to see the long-term effect of easements on land value in the future included in the formula. In addition, he said, not being able to build outbuildings could affect operations and what is the degree of value to that.

Mr. Dodds said loss of development rights will absolutely be considered.

Ms. Mongeau said she has heard a need to maintain a consistent level of how people are treated throughout the project. She said she feels Crown Appraisals has a great track record and rapport in Clay County. They are one of the few in the Midwest that do this type work, she stated.

Mr. Campbell said the process sounds right and he said it is important all the criteria for the federal government is being met.

Use and Access of Project Owned Lands

Mr. Dodds said there is a good handle on Diversion Authority owned farmland with it being turned over to Pifer's for farmland management. For other lands, he said, with natural features or recreational issues, work has started to put proposals together, he said, and whatever gets developed will be brought back to this committee.

Ms. Scherling said Cass County turned over a big section of flood lots to Fargo Parks and bow hunting had been allowed; however, it created a lot of problems for neighbors. She said problems with mudding on the land were experienced too.

Mr. Campbell said he would recommend Mr. Dodds visit with Bruce Albright about the experiences in Clay County with hunting issues on buyout land.

Other Business

There was no other business.

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

The meeting adjourned at 4:00 p.m.

The next meeting will be June 21, 2017 at 3:00 p.m.