

# Metro Flood Diversion Authority Land Management Committee Meeting Minutes

**3:00 PM – October 25, 2023**

City of Fargo Commission Chambers

A meeting of the Metro Flood Diversion Authority Land Management Committee was held on October 25, 2023. The following members were present: Mary Scherling, Cass County Commissioner; Kevin Campbell, Clay County Commissioner; Rodger Olson, Cass County Joint Water Resource District; Nathan Boerboom, Fargo Division Engineer; Chuck Hendrickson, Moorhead City Council; Duane Breitling, Cass County Commissioner; Jenny Mongeau, Clay County Commissioner; Kory Peterson, Mayor, City of Horace; Arlette Preston, Fargo City Commissioner and Bob Zimmerman, Moorhead City Engineer.

Member(s) absent: Mike Redlinger, Administrator, City of Fargo.

## **1. INTRODUCTION**

Mrs. Scherling called the meeting to order at 2:30 PM. Roll call was taken, and a quorum was present.

## **2. APPROVE MEETING MINUTES FROM THE SEPTEMBER 2023 MEETING**

### **MOTION PASSED**

**Mr. Breitling moved to approve the minutes from September 27, 2023, and Mr. Campbell seconded the motion. On a voice vote, the motion carried.**

## **3. APPROVE ORDER OF AGENDA**

### **MOTION PASSED**

**Mr. Peterson moved to approve the agenda as presented and Mr. Boerboom seconded the motion. On a voice vote, the motion carried.**

## **4. BNSF RAILWAY & CHS ELEVATOR EXCESS LAND**

Ms. Smith introduced the BNSF rail and CHS elevator excess land discussion.

In accordance with and pursuant to prior policy direction from the Diversion Authority Board, the Metro Flood Diversion Authority (MFDA) and the Cass County Joint Water Resource District (CCJWRD) recently completed the acquisition of the CHS Elevator and underlying property rights, Red River Valley & Western Railroad operating rights, and a portion of BNSF Railway right of way near Horace, ND. These purchases were part of an effort to abandon the rail line and avoid constructing an additional rail bridge across the FM Area Diversion Storm Water Diversion Channel (SWDCAI). This process required that the MFDA and the CCJWRD acquire the entire abandoned rail corridor right of way from BNSF Railway, the estimated cost savings would be greater than \$6 million due to eliminating the construction of a rail bridge.

BNSF Railway is currently following North Dakota Century Code Chapter 49-09, which outlines the statutory process for abandoned railroad right of way sales to priority purchasers. If the priority purchasers choose not to purchase the rail corridor, the MFDA and CCJWRD are obligated, through an agreement with BNSF

Railway, to purchase any remaining right of way. The attached map shows highlighted in green and yellow the right of way that has been purchased by the MFDA and CCJWRD. The orange highlighted corridor represents the portion of the corridor where private parties have the priority to purchase the right of way. The blue highlighted corridor represents the portion of the corridor that the City of Horace has the priority to purchase the right of way (next priority purchaser for this area would be the adjoining landowner).

The MFDA purchase price of the CHS Elevator was \$3,040,000, which was not an appraised value of the property but was agreed between the MFDA and CHS to replace the elevator’s storage capacity by compensating CHS to build additional capacity at another one of CHS’s existing facilities. The purchase of the CHS Elevator was a condition by CHS to abandon use of the rail line (CHS was the sole customer on the rail line) which facilitated the abandonment of the rail line by RRVWR. The purchase price of the associated rail line and associated land (excluding the elevator) was \$1,085,377 for 8.61 acres. This purchase price was based on an appraised value and per BNSF requirements, it included a 15% railroad corridor enhancement factor.

The City of Horace’s 2045 Comprehensive Plan identifies the city’s desire to construct a public trail along this rail corridor, as it plays “a critical role in connecting the most heavily programmed areas of the park system.” In 2023 the City of Horace approved moving forward with developing a conditional agreement with the MFDA and the CCJWRD that if the City of Horace purchased its priority portion of rail corridor (highlighted in blue on the attached map), then the MFDA and the CCJWRD would deed the CHS Elevator and associated rail corridor to the City of Horace for \$2.00.

The MFDA staff has reviewed the potential cost savings if the CHS elevator and associated rail corridor were deeded to the City of Horace.

Annual Expenses

Maintenance (mowing and weed spraying @ \$150/acre four times per year)	\$ 5,166
CHS Elevator & rail corridor Maintenance (staff time est. at \$115/month)	\$ 1,380
Utilities (utility bills average \$380/month)	\$ 4,560
Estimated annual taxes and special assessments	\$ 10,000

One-Time Expenses

Removal of ballast (required if it does not become a trail corridor)	\$ 35,000
Elevator Structures Demolition (estimated cost)	\$ 150,000 - 400,000

Acquisition Expenses

Right of Way (blue highlighted corridor in the attached map)	\$ 352,000
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In addition to the cost savings noted above, the City of Horace would also assume responsibility for any and all environmental remediation that would be determined necessary for both the rail corridor and the elevator site. The cost associated with this was not included within the cost savings because it is unknown what level of environmental remediation will be required by the North Dakota Department of Environmental Quality or the United States EPA or other applicable regulatory agency. The City of Horace would also assume the responsibility of taking over and maintaining existing leases on the property, which includes the Horace Fire Department.

Per the Policy on the Disposition and Management of Comprehensive Project Lands (Policy), land that is no longer needed, not expected to be needed in the future for the Comprehensive Project and declared “Excess Land” by the Executive Director may be made available for sale, lease, or exchange in accordance with the Policy. Additionally, when a Member Entity proposes to the Authority to sell Excess Land, Member Entities should observe the following guiding principle stated in the Policy: 1.5.1. Refrain from selling land at less than Market Value.

MFDA staff have estimated the value of the land underlying the elevator in the range of \$1,219,680 (based on 3.5 acres at \$8 per square foot) to \$1,829,520 (based on 3.5 acres at \$12 per square foot). Demolition costs of the elevator are estimated to be between \$150,000 and \$400,000.

On October 10, 2023, the MFDA Planning Committee directed legal counsel to draft an agreement with the City of Horace that would deed the CHS Elevator and associated rail corridor to the City of Horace for public use. Provided, that if the City of Horace sells the property for development, the agreement would require the City of Horace to share the net profits with the MFDA 50/50. Any reasonable costs incurred by the City in making the property marketable, including but not limited to, inspections, environmental remediation, demolition, listing the Purchase Property, title work, surveys, and any other related costs, will be deducted from the gross profit derived from the sale to a third party before calculating the net profit payment. As part of the agreement, the City of Horace (in lieu of the MFDA) would purchase the ROW corridor shown in blue in Exhibit A for a purchase price of \$352,000.

To facilitate a negotiated agreement with the City of Horace, the MFDA Board would need to either:

1. approve an exception to Section 1.5.1 and Section 5 of the Policy to allow for the City of Horace to be deeded the land without:
  - a. allowing for a sale less than market value and,
  - b. not allowing preference to member entities, the prior landowner, the adjacent landowners or conducting a public sale, or
2. make an exception to Section 4.2 of the Policy, which states:

*It is the Authority’s intent that the sale of Excess Lands, subject to the preferences set forth herein, shall be done via public sale or in the case of Excess Land that is located inside of the geographical boundaries and extraterritorial zoning jurisdiction of the City of Fargo and the City of Moorhead, by listing Excess Land with a licensed real estate agent or through a public RFP process such that there is transparent and abundant opportunity for all buyers to purchase the property.*

The CHS elevator and rail corridor (as highlighted green and yellow on Exhibit A), are within the zoning jurisdiction of the City of Horace. Listing the excess land with a licensed real estate agent or through a public RFP process, as required in Section 4.2 of the Policy, would provide opportunity for all buyers to purchase the property (including the City of Horace) which would preclude a negotiated agreement with the City.

After lengthy dialogue, the following motions were made:

**MOTION FAILED**

**Ms. Mongeau moved to auction the property or retain a realtor to assist with the sale. Mr. Olson seconded the motion and on a roll call vote, the motion failed in a tie with five yays and five nays.**

**MOTION FAILED**

**Mr. Breitling moved to defer doing anything until the status of the budget is known at the end of construction in 2027, at which time, the request would be revisited. Motion failed due to the lack of a second.**

**MOTION FAILED**

Mr. Boerboom made a motion to table and defer until the next meeting to allow DA staff time to determine if the land involved is truly developable land. Mr. Campbell seconded the motion. Roll call was not taken, motion cancelled.

**MOTION FAILED**

Ms. Mongeau made a motion that the land policy be followed with no deviation, and Mr. Breitling seconded the motion.

Mr. Campbell made a motion to table Ms. Mongeau's motion and Ms. Preston seconded the motion. A decision was tabled, and dialogue will resume at the next meeting. **MOTION TABLED UNTIL THE NOVEMBER METING.**

**5. OTHER BUSINESS**

There was no additional business to discuss.

**6. NEXT MEETING**

To be determined.

**7. ADJOURNMENT**

The meeting adjourned at 3:59 PM.