



Diversion Authority
Land Management Committee Meeting Minutes
3:00 P.M. - Wednesday, January 29, 2020
City of Fargo Commission Chambers
Fargo, North Dakota

Permanent, Reliable Flood Protection

These minutes are subject to approval.

The Diversion Authority Land Management Committee met Wednesday, January 29, 2020 at Fargo City Hall. The following committee members were present: Fargo Division Engineer Nathan Boerboom; Cass County Commissioners Duane Breitling and Mary Scherling; Clay County Commissioners Kevin Campbell and Jenny Mongeau (by phone); Fargo Assistant City Administrator Michael Redlinger; and Fargo City Commissioner John Strand.

The following committee members were absent: Moorhead City Council Member Chuck Hendrickson; Moorhead Mayor Jonathan Judd; Cass County Joint Water Resource District Manager Rodger Olson; Horace Mayor Kory Peterson and Moorhead City Engineer Bob Zimmerman.

Others Present: Eric Dodds, AE2S; Joel Paulsen, Diversion Authority Executive Director; and Adam Altenburg, MetroCOG.

The meeting was called to order by Ms. Scherling.

Agenda Review

Mr. Campbell moved to approve the agenda. Second by Mr. Boerboom. All the members present voted aye and the motion was declared carried.

Minutes Approved

Mr. Breitling to approve the minutes from the December 18, 2019 meeting. Second by Mr. Campbell. All the members present voted aye and the motion was declared carried.

Property Acquisition Status Report:

Mr. Dodds said the report is current as of about a week ago showing that a handful of properties have been acquired over the month and five have closed since the last meeting. He said negotiations continue with many property owners along the southern half of the channel and there have been some purchase agreements signed since the report. Property owners are getting official letters from the Cass County Joint Water Resource District (CCJWRD) Board, he said, and it will be critical to get the channel acquisitions and those for the Southern Embankment Reach 1 done in the next six months or so. He said the Corps has awarded the contract for the Wild Rice River control structure with a base package for the bid and an option package due to work still underway to acquire two parcels. He said there are purchase agreements signed with those property owners and they will close before the April 17th deadline, enabling the Corps to award their option contract for that segment of the Wild Rice River control structure project. Over the last month or more, he said, there have been negotiations with a property owner whose land is impacted by the footprint of the embankment who also owns parcels in the upstream mitigation area where flowage

easements will be needed. That property owner was approached due to the desire to have some of the property used for a haul route for the I29 road raise project, he said. A comprehensive package was proposed for acquiring all the needed land rights, he said, including flowage and temporary construction easements along the road raise and in the footprint for the southern embankment that crosses a few of the parcels. Negotiations were reached, he said, which means some flowage easements have been acquired and they were within the boundaries the Crown Appraisals report had spelled out a couple years ago.

In response to a question from Ms. Scherling asking when more flowage easement studies will be done since not knowing gives some people angst about what to expect, Mr. Dodds said the project has changed significantly since Crown Appraisals, Inc. completed their Phase 1 study in 2018. Negotiations with Crown Appraisals will be needed to update the Phase 1 study with sales that have occurred over the last few years, he said. He anticipates working with Crown Appraisals on Phase 2 Flowage Easement Valuations, he said, and they will define a flowage easement value for all the parcels in the upstream mitigation area. He said the appraisers will need to know with absolute certainty what they are appraising and exactly where there are impacts or not. Until the final sign-off from FEMA on the CLOMR model and the final sign-off on the mitigation plan from the Office of the State Engineer, there would be a risk of having Crown Appraisals start and stop and have rework, he said. When those pieces are in place, he said, along with the Corps final design/alignment of the southern embankment, and Crown Appraisals, Inc. could be engaged to start on the Phase 2 study. He said he hopes for that to be done this spring, and it could take a year to complete a full valuation of the 300 or 400 parcels in the staging area. The rules for valuation for parcels differ on the North Dakota side versus the Minnesota side, he said.

Ms. Scherling said that in 80 percent to 90 percent of the cases, it is known which parcels will be affected, especially near the embankment. She asked why things could not get started in those areas.

Mr. Dodds said it could be possible to start if there is confidence that the hydraulic model will not change based on FEMA's review and that the State Engineer will approve the mitigation plan as drafted. He said if the flowage easement study proceeds without certainty around some of those primaries, there is a risk the appraiser would have to stop and restart some of their efforts.

Ms. Scherling said the vast majority of the area that will be inundated will need a flowage easement, so if that area were indicated, perhaps the rest could be added when it is more defined. She is suggesting that, she said, because property owners are troubled by not knowing what a flowage easement will be worth. She said the answer may not make them happy; however, it could address the fear of the unknown.

Mr. Paulsen said he agrees; however, there are constraints about doing certain steps before others. He said he would suggest certain parcels could be appraised first, rather than wait for all the flowage evaluations at one time. To appraise a flowage easement there needs to be some specifics and each property will be different, he said, depending on depth of new floodwater on the property and the location. He said each parcel needs to be treated separately and appraised, and that value needs to be created. It is known with some level of certainty what will be required to mitigate; however, he stated, until there is approval from the office of the State Engineer on the mitigation plan, nothing is set in stone. He said Mr. Dodd's

concern is about setting the appraisers loose and later having to start from scratch if something changes.

In response to a question from Mr. Paulsen about whether the study could be developed in phases rather than one study for all parcels to be delivered at one time, Mr. Dodds said he has had discussions with Crown Appraisals about starting up again and he could pick up those conversations and inquire about staging. He pointed out the environmental monitoring areas in the report and he said there are ongoing efforts to obtain easements or rights of entries to allow the Corps to do biotic and geomorphic monitoring this spring. He said the priority is to secure an easement; however, where a property owner on the North Dakota has many questions or is resistant to an easement, a right of entry to allow monitoring in 2020 has been requested. The property owner is made aware for 2020 purposes, a right of entry will be pursued although a long-term easement will still be requested, he said. Court action had to be used in the past to get those rights of entries, he said, and court action is anticipated again.

In response to a question from Ms. Scherling asking how paying for a right of entry affects payment for an easement, Mr. Dodds said historically, there has not been payments for rights of entries. He said there has been work with Clay County and the MCCJPA to secure rights of entries on the Minnesota side for the first round of monitoring. It is all driven by the timeline to get the access in place so the Corps can do survey work starting in the spring, he said.

Ms. Scherling said the environmental monitoring is very noninvasive. She said much of it is done from the banks without entering the land. She said it ensures the project is not harming the environment as time goes on, which is a good thing for landowners; however, she understands that someone who is unhappy with the process may be suspicious and not eager to sign.

Mr. Dodds said there have been eight or nine informational meetings and hundreds of property owners were invited to them to hear about the program. Those who were able to attend likely appreciated the information, he said, and gained an understanding of what is going to be expected. Most of the monitoring traffic will be on the waterway itself, he said, with very limited traffic on people's property. He said the permanency of an easement seems to be something people are concerned about and it was a perpetual easement originally that has now been narrowed back to a 50-year easement. He said at the Corps, the scientists feel the easements are needed for at least a 50-year period in order to make sure the biotic and geomorphic conditions are properly monitored. A number of other provisions have been changed in the easement document to address concerns that were raised, he said, unfortunately, it is taking some time and the clock is ticking.

Mr. Breitling said there has been discussion at the Cass County Joint Water Resource Board level that the level of compensation may need to be increased in order to entice the property owners to sign.

Mr. Dodds said the County minimum of \$750.00 for a permanent easement is being used as a payment mechanism; however, if there is a whole batch that would have to go to court for some reason, perhaps that money would be better spent trying to entice more property owners to sell. If someone has already been paid the \$750.00, he said, they would have to receive the appropriate amount if the decision is made to increase it.

In response to a question from Ms. Scherling asking whether these types of easements are used in other ways, Mr. Dodds said this easement is exclusively to access property for biotic and geomorphic monitoring.

Mr. Dodds said there are other types of easements that are more intrusive than what this project asks for, such as for a road in rural areas or utility easements. Utility easements allow the power company to enter whenever they want or need to, he said. This form of easement is being pioneered here, he said and the math done in the context of temporary construction type easements works out to less than the \$750.00, making the County minimum seem appropriate.

Mr. Boerboom said in town, levee easements are typically about 90% of land value the easement is actually encumbering and it restricts the owner from using the land in the same way they can today. He said if a levee is being put on the land, that is all that will ever be on that land. In the case of biotic and geomorphic monitoring, it is every 5 or 6 years that someone is walking on the property for a day, he stated.

Ms. Scherling said, in her personal view, she would like to be able to back up how the \$750.00 was determined. She said it important to be fair to everybody and to make sure everybody is compensated; however, the bank vault is not just open and flowing with cash. These are taxpayer dollars, and whether it is \$750.00 or not, the amount needs to be justified, she said.

Mr. Dodds said there will be some property owners where easement negotiations will not succeed and the plan for those is to hire an appraiser to value the easements, which is not a typical appraisal assignment. He said CCJWRD Board has authorized the start of formal negotiations on 86 different parcels with formal letters being sent to 34. There are continued discussions and negotiations working toward a settlement on some, he stated, and in other situations, the two sides are just stuck.

Ms. Scherling said the court system could be a step toward getting a judgment and to arrive at a number on what the valuation really is, although it would be an expensive way.

Mr. Dodds said if cases end up in court, ultimately the court will decide an appropriate value that will be the basis. The property owner will then have their information and maybe a second appraisal from their side, he said.

Mr. Strand said yet, in the meantime, more money would be spent on the process than the easement is worth.

Mr. Dodds said discussions also include land and fee titles. Money is spent and the attorneys end up taking some away, he said, when in hindsight, it could have been paid to the property owner. Care must be taken not to go above appraised value, he said, so the goal is to find a balance point.

Mr. Strand said he would prefer that mitigation and easements are a high priority rather than all this spending on lawsuits. He said it would be better for everybody to agree that those funds are better invested in the people impacted and to knock off delays.

Ms. Scherling said there would be a handful of people whose reality is that there is no amount of money in the world that will compensate them, so those probably have to go through the court system.

Mr. Breitling said there are some time restraints to move ahead with the project, which forces one to do things they may not otherwise be favorably inclined to do.

Mr. Dodds said the acquisition philosophies document from the mitigation plan were reviewed last month and one key tenet of that is to use court action or eminent domain as a last resort. He said that is being held true, there is not a rush to eminent domain and efforts are made to negotiate in good faith. Sometimes timeframes force the route, he said; however, it is certainly not the first option for the CCJWRD Board and his team.

Ag Impacts and Mitigation Update:

Mr. Dodds said the project will have impacts on the ag community upstream of the metro area. Flowage easements are a required mitigation tool, he said, and there is some additional mitigation in the works. He said the NDSU Agribusiness and Applied Economics Department is working to update the Ag Risk Study originally done in 2016. The ND Legislature asked them to expand the study in 2017, he said, and now with the reconfiguration of the project as Plan B, there will be an updated version, probably by March. He said the original version identified and quantified the cost implications for delayed planting caused by the project in the staging area. Most often, he said, the spring flood comes and goes before regional planting starts. There are some situations when there is a late flood and plantings could be delayed, he said, and result in a reduction in yield at harvest time and potential revenue loss which is what the NDSU group is working to quantify. He said he anticipates asking them for a Board presentation, probably in the March. He said several years ago there was work done with a crop insurance expert, Watts and Associates. He said the Diversion Authority has committed to developing a summer flood crop loss program to provide a revenue source for producers in the rare event the project operates in the summer on growing crops. The assumption in that case, he said, is that the producers would be ineligible for Federal Crop Insurance so to mitigate for that risk, the Diversion Authority has committed to establishing a summer flood crop loss program, essentially like a rider that the insurance market would offer producers on an annual basis. He said work will be done with Watts and Associates to sort out details and formulate the plan. Also, he said, Rodger Olson has been advocating exploring a prevent plant program. The intention now is that the flowage easement would compensate for prevent-plant risks; however, Mr. Olson would like it explored further and Watts is framing out a concept of how a prevent-plant rider could be put together. He expects a proposal from Watts before February's meeting, he said, and once they are under contract it could take them four or five months to frame that out.

Mr. Strand said potential benefits could be focused on, along with the potential risks. He said it is conceivable that an event could actually replenish some topsoil into the region and he suggested looking to see if there are benefits to at least note.

Mr. Dodds said there have been anecdotal comments that the most productive land is along the river and they are valuable comments to consider; however, his gut feeling is that the Diversion Authority probably should not advocate for those potential benefits.

Ms. Scherling said there is also potential for some passive drainage outside the channel that perhaps in a normal year could provide getting water off land sooner.

Mr. Paulsen said the area is fortunate to have a world-class agricultural University in the community and there have been discussions on what type of additional research could be brought in to really dive in on a technical specific level on unknown issues. He said he anticipates a meeting with NDSU in the next month to brainstorm research topics.

Formal Negotiations Update

Mr. Dodds said CCJWRD Board has authorized the start of formal negotiations on 86 different parcels and 34 formal negotiation letters have been sent to property owners. Other details and appraisals continue to be reviewed to get letters formulated for the rest, he said, and four agreements have been reached after starting the formal process.

Cass County Joint Water Resource District (CCJWRD) Update

Mr. Dodds said the CCJWRD Board continues to meet twice a month. It is an active group, he said, and is making good progress.

Moorhead Clay County Joint Powers Authority (MCCJPA) Update

Mr. Campbell said the group is just getting started and making progress. He said they are working on the right of ways for soil boring needs along the southern embankment. Work continues in obtaining easements for the bio/geo, he said, and there has been some success. There may be some already done deals on flowage easements on Minnesota properties, he said.

Metro COG Update

Adam Altenburg of Metro COG, said work continues on the recreational component, along with the project partners. The project review committee met January 16th and looked at some recreational concepts, he said, such as the bikeway network, potential winter trails and character segments of visitation which will be a good road map if and when funding is available and if conditions allow. Governance structure continues to be examined, he said, there was discussion on potential partners and lead agencies, as well as Metro COG's potential involvement as a lead agency. He said they continue to examine scenarios and look at potential limited partners such as North Dakota Parks and Recreation and meetings are planned with Fargo, West Fargo and Horace Parks to better gauge the potential involvement. Also being looked at are potential health benefits, visitor spending, annual visitation and visitor recapture, numbers and metrics for business attractiveness; he said, as well as with putting numbers together for potential job creation, looking at student attractiveness; and future branding. He said the schedule includes potential additional public involvement activities in March with a draft report in May and final approval in July.

Other Business

Ms. Scherling thanked Mr. Dodds and the CCJWRD Board for their work. She said she also appreciates all the hard work done by Mr. Campbell with the MCCJPA. It is a difficult task, she stated, and bigger than most people truly understand.

Mr. Campbell moved the meeting adjourn. Second by Mr. Breitling. All the members present voted aye and motion was declared carried.

The meeting adjourned at 3:51 p.m.

The next meeting will be February 26, 2020 at 3:00 p.m.