

**DIVERSION AUTHORITY
Land Management Committee
City Commission Room
Fargo City Hall
Wednesday, February 22, 2017
3:00 p.m.**

Present: Cass County Commission Representative Mary Scherling (via teleconference); Clay County Commission Representative Kevin Campbell; Clay County Commission Representative Jenny Mongeau; Fargo City Administrator Bruce Grubb; Fargo Division Engineer Nathan Boerboom; Cass County Commission Representative Chad Peterson; Oxbow Mayor Jim Nyhof.

Others present: Eric Dodds - AE2S; Mark Brodshaug - Cass County Joint Water Resource District (CCJWRD)

Absent: Cass County Joint Water Resource District Representative Rodger Olson; Moorhead Mayor Del Rae Williams; Moorhead City Engineer Bob Zimmerman; Moorhead City Council Representative Heidi Durand; Fargo City Commission Representative John Strand.

The meeting was called to order by Mark Brodshaug.

Agenda Review

Eric Dodds said a letter from United States Army Corps of Engineers (USACE) regarding deadlines for land acquisitions for cultural resource testing and biotic and geomorphic monitoring was added to the agenda. Kevin Campbell moved the Order of Agenda be approved. Jenny Mongeau seconded the motion. All the members voted aye and the motion was declared carried.

Approve January 11, 2017 Minutes

Mr. Campbell moved the minutes from the January 11, 2017 meeting be approved. Mr. Nyhof seconded the motion. All the members voted aye and the motion was declared carried.

Property Acquisition Update

Mr. Dodds said the Property Acquisition Status Report includes updates of Diversion channel Phase 1, which is the north end of the channel and sites for the Maple River and Sheyenne River aqueducts. He said Phase 2 is all other properties north of Interstate 94 along the channel. He said opportunistic acquisitions could be anywhere; however, most have been in the staging area. He said monitoring sites are scattered across Cass and Richland counties and his team is helping the Corps get rights-of-entry and easements on those sites. He said these are areas where the Corps has committed to long-term environmental monitoring and adaptive management for the project. He said the Corps starts by monitoring biotic conditions before the project starts and establishes a baseline. He said as the project operates, the Corps will continue to monitor those conditions and if anything unique happens, they will adapt and manage those sites accordingly. He said this involves many parcels upstream and downstream and not all of the sites are along the channel. He said culturally sensitive areas need to

be mitigated prior to construction and there is pre-design work that needs to be done, so his team is working with the Corps to secure those lands.

Mr. Brodshaug said there will be Minnesota biotic monitoring sites at some point in Clay and Wilkin counties. He said the Corps is still working with the Minnesota Department of Natural Resources (MDNR) so the decision was made to start baseline work in North Dakota, then come back at a later point and establish a baseline in Minnesota. He said there are no requests for Minnesota properties yet.

In response to a question from Mr. Boerboom about a timeline for getting land for the Wild Rice and Drayton dam projects, Mr. Dodds said it depends on funding for the Corps for those projects this year. He said if the Corps does get funding, those two dam projects are in their work plan. He said the Corps would have to obligate those dollars by fall. He said there have been meetings with the City of Drayton and American Crystal Sugar and it seems there is willingness to secure those land rights.

In response to a question from Ms. Mongeau about Minnesota and Clay County biotic monitoring sites and when will the locations will be known, Mr. Dodds said locations have been identified and residents will be getting letters; however, he was not sure who would send out the letters.

Mr. Campbell said there is sensitivity of the position with the MDNR and there is no activity in Minnesota; therefore, that is partially why there is no activity.

Mr. Dodds shared a heat map with the Land group, which showed a range of appraised or acquired land values. He said those who follow farmland values know values have changed quite a bit. He said with land prices low, now would be a good time to buy. He said the Phase 2 land parcels map shows the status of the land and parcel acquisitions.

In response to a question from Mr. Campbell as to if there have been any voluntary buyouts, Mr. Brodshaug said there were some voluntary buyouts.

CCJWRD Update

Mr. Dodds said the letter from the Corps added to the Agenda packet was to put some things in writing about deadlines for acquisitions of property. He said the Corps wants to know when the sites in North Dakota will be ready for biotic study and cultural mitigation. He said three sites for cultural mitigation have been identified. He said there are a lot of moving parts; however, he will be drafting a letter back to the Corps by February 27, 2017, after a discussion with the CCJWRD board. He said, in particular, committing to a deadline for having the land rights may require the joint board to take some actions if voluntary deals are not completed and court action may be necessary. He said he feels confident the land can be acquired by June 1, 2017 as noted in the letter from the Corps, and he feels substantially more confident with a July 1, 2017 date.

Mr. Brodshaug said there have been many talks about Phase 1 buyouts. He said the first deadlines are cultural work that is a priority due to requirements of the National Historic Protection Act.

In response to a question from Ms. Scherling about the letter and is there a reason time constraints are so short, Mr. Dodds said the Corps has the responsibility of mitigating the cultural sites prior to construction on the channel. The Corps wants to mitigate those sites in 2017, he said, and right now, the P3 schedule suggests a financial close with the P3 contractor a year from now. He said the Corps has to complete cultural mitigation work on two sites, which are archaeological digs and they know there are artifacts. He said the cultural mitigation process will take about four to five months; therefore, access to the land is needed by the middle of this year to complete the cultural work prior to the 2018 construction season. He said work to secure those rights is continuing. He said a third site does not have the full extent of an archaeological dig yet; however, potholing in the area is needed to determine the extent of artifacts.

Mr. Brodshaug said the locations of most of these have been known and the letter is confirming a deadline for contracting purposes.

In response to a question from Ms. Scherling as to if landowners were being cooperative, Mr. Brodshaug said landowners were being cooperative; however, there are details and differences in valuations and talks are ongoing.

Oxbow Home Removals

Mr. Dodds provided a map of Oxbow indicating green parcels are build-ready and blue parcels are properties where the home removal project is ongoing. He said six of 11 homes in the blue area have been removed and will be repurposed. He said the Finance Committee wanted to know if the Land group was comfortable proceeding with the next phase of home removal in Oxbow. The two primary questions, he said, include making sure there are as many opportunities as possible for reuse of Oxbow homes and any homes bought for the Diversion project. He said the city and county have been through hundreds of buyouts over the last several years and tried different approaches. He said the best approach so far has been to package up a number of homes, issue a removal construction package that requires the contractor to move the homes, demolish the foundations, remove utilities and backfill and establish it ready for construction. He said contractors then have the opportunity to sell anything above ground and let the market dictate whether there is an interest in flood buyout homes or not. In the first round, he said, there were 11 homes and the contractor sold or is going to repurpose eight of them. He said they also received a very good bid price from the contractor. The second question from Finance, he said, is now the right time to be moving forward with the next round of home removal. He said there is lawsuit activity and an injunction against levee construction in Oxbow. He said the lawsuit does allow home removal, therefore there is no legal question as to if homes can or cannot be removed. He said the bottom line from the Technical and Land group's standpoint is that it is the right time. He said the Land group has been actively managing these vacant homes and there are security concerns, access issues, paying utility bills and taxes, and ultimately the homes have to be removed for construction of the levee. He said the Technical and Land groups recommend they should be removed.

Mr. Nyhof said the levee structure is on hold and if Oxbow had to deal with a flood this year, with the condition of Schnell Drive, there would be no chance for flood protection.

In response to a question from Mr. Nyhof on issuing a package on those homes, Mr. Dodds said if the committee agrees to proceed, the yellow grouping of the homes could be advertised, the bid awarded in early April and have the homes removed this summer.

Mr. Campbell said Clay County purchased two city blocks recently and put it all to a contractor with the hope they would try to repurpose as much as possible. He said the plan worked well. He said the contractor knows what their schedule is. He said from a land management standpoint, he would go along with removal; however, he would want some review by the people who hold the checkbook.

Mr. Grubb said he and Mr. Peterson appeared in front of a House subcommittee in Bismarck recently and talked about funding. He said there was some criticism about continuing expenses in Oxbow. He said Bismarck is also hearing from the other side. He said the Legislature is now in crossover and it will be two to three weeks yet for a decision about State Water Commission funding.

Mr. Peterson said it has been difficult combatting misinformation and going ahead with more home removal might be seen as a stick in the eye. He said he understands the logic of getting as much done as quickly as possible; however, politically it would be advantageous to wait, get through the session, make sure there is another six-plus weeks to inform Bismarck and maybe proceed this summer or fall. He said he is aware of the issues in Oxbow with vandalism and nuisances and he is sympathetic; however, there are the political realities out west.

Mr. Nyhof said in the southern half of Oxbow there are four blue properties and four yellow properties for the next phase. He said the contractor at Oxbow now is willing to do the work for nothing. He asked if there was any way to get a change order or some impact to that contractor to wipe out everything to the north so the City can set the stage for flood protection. He said nothing in the southern half needs to be touched right now, those houses are not necessary for flood protection, they are purely for the footprint of the levee. He said everything north is needed to protect the City.

Mr. Peterson said it would be a compelling argument if this were done due to necessity and not by choice. He said that would be hard evidence to refute.

Mr. Grubb said if there was a plan that clearly explained completing this removal makes perfect sense, we could communicate that in Bismarck.

Mr. Boerboom said if the committee moves forward with a bid as it is, the bid opening could be set in mid-May after the Legislature is done. He said the committee can always delay the bid opening or cancel it.

Mr. Nyhof said in May there will to be some property owners still living on the south end. He said for the protection of the City that will to exist after May and the rest of River Bend Road, the damage occurring to the street and doing work in summer versus winter, he said winter is better for the City and easier for a contractor.

Mr. Campbell said he is concerned about the change order process because of dollar amounts and fairness in bidding. He said with a change order for a significant dollar amount it might be bypassing the ability for open bidding.

Mr. Boerboom said any additional home removal has to be its own separate bid package.

Mr. Brodshaug said the Land group did try to find a developer to move the houses in Oxbow, put them on new foundations and sell them; however, it was too much of a risk for a developer to take on. He said a developer does not get utility, foundation and dirt work done for nothing.

Mitigation Plan Adoption Discussion

Mr. Dodds said he wanted to have discussion on adopting a mitigation plan. He said his team had been working on developing a standalone mitigation plan. He said the MDNR the requested the plan be accelerated and submitted to the MNDR and the State Water Commission in the hopes they could engage in dialogue, then go to the Diversion board and ask for adoption. He said there were great intentions and his team is very confident about the mitigation plan; however, the team has not been able to do any engagement with the MDNR or State Water Commission. He said there is value in the Land group and the Diversion board to adopt the mitigation plan. The discussion he would like to have now, he said, is if the Land group is interested in adopting the plan and are there any specific items that need a more thorough discussion, such as other channels, groups or meetings that would be helpful. He said Steve Topping, Executive Director of Water Management and Structures in Manitoba, is willing to have a discussion with the Land group. He said Winnipeg went through similar mitigation issues and some were successful and others they would have done differently. He said it was also suggested the Land group meet with various farm groups. He said he is not looking for definite answers today; however, he wants the group to initiate discussions and to think about adopting the plan.

Mr. Grubb suggested the plan be adopted as a draft due to the fact it looks like some action was taken.

Mr. Campbell said mitigation so far has been on the North Dakota side. He said there have not have been any discussions with property owners on the Minnesota side and there might be some concerns in Clay County or Moorhead and he would want those to be included in the plan. He said he could agree to a draft; however, he has yet to listen to the people of Clay County as to their concerns and if they are being addressed.

Ms. Scherling said there is not enough detail for a final approval. She said she thinks about cemeteries and there have been conversations; however, the group is not ready to make recommendations for specific cemeteries. She said she likes the idea of approving a draft and then work out the details later.

Mr. Grubb said he likes the idea of a draft and a written product that is complete and out for review. He said it is a good message to send.

Mr. Dodds said a lot of effort went into the plan and the primary authors are proud of the work done, therefore they would like to get some kind of blessing with a draft and then continue to work on finer points. There are unresolved issues, he said, and this plan does not solve everything, including cemeteries. He said the Corps has identified some things and has met with individual cemetery associations. He said Comstock recently reached out for information, organic farmland has been acquired in Minnesota and there have been other acquisitions in Minnesota, therefore this is not completely isolated from the Minnesota side. He said he could provide a copy of the complete mitigation plan to the Land group; however, a full copy of the plan is on the Diversion website.

Ms. Mongeou said she is agreeable with the draft; however, meetings should continue, especially with farmers and cemetery committees. She said the Land group discussed cemeteries one time over a year ago. She said it is important to have individuals and residents offer input before it is passed.

Mr. Peterson said a draft is a good idea and it shows the Land group has committed to something and would open up opportunities for dialogue.

Upstream Mitigation – Structure Impacts

Mr. Dodds said he is continuing to refine and set in stone the number of structures needed upstream. On a handout to the group, he said the categories in orange are those that will need a buyout as they are in the floodway. He said the yellow category is other properties outside of the floodway still impacted and may prompt some buyouts or other mitigation strategies. He said what he wants to focus on are policy questions, the pros and cons of building ring levees, raising a road to save one house and many other “what ifs.” He said the green category is properties outside the impact pool or they would have minor impacts during a 100-year flood event. He said they fall outside mitigation requirements; however, the Corps has committed to doing an analysis on some of those in the green category on a case-by-case basis.

Mr. Campbell said he would like to see a map showing how many structures are in each county, the floodway and a delineation of counties, states and locations.

The meeting adjourned at 3:58 p.m.