

CLAY COUNTY BOARD OF COMMISSIONERS
8:30 A.M., TUESDAY, MAY 25, 2021
 Community Room, 3rd Floor, Courthouse
MINUTES

The Clay County Board of Commissioners met in regular session with the following Commissioners present: Kevin Campbell, Jenny Mongeau, Frank Gross, Jenna Kahly, and David Ebinger. Others present: County Administrator Stephen Larson, County Attorney Brian Melton, and Sr. Administrative Asst. Colleen Eck.

CALL TO ORDER

Chair Campbell called the meeting to order at 8:30 a.m.

APPROVAL OF AGENDA

On motion by Commissioner Ebinger, seconded by Commissioner Gross, and unanimously carried, the Board approved the agenda.

CITIZENS TO BE HEARD

There were no citizens present who wished to be heard.

APPROVAL OF PAYMENT OF BILLS AND VOUCHERS

On motion by Commissioner Gross, seconded by Commissioner Mongeau, and unanimously carried, the Board approved payment of bills and vouchers totaling \$6,655,850 from 117 vendors. From that total, 82 warrants issued were under \$2,000 (\$43,609) and the following 35 were over \$2,000:

Independent School Dist 152	\$4,341,776	Northwestern MN Juvenile Detention	\$ 8,220
Independent School Dist 2164	\$ 695,838	Independent School Dist Otc 548	\$ 7,749
Independent School District 146	\$ 459,653	Lakes Country Service Co-op	\$ 5,755
Independent School Dist 150	\$ 445,706	MN Life	\$ 5,295
Independent School Dist 914	\$ 229,600	Netwrix Corp	\$ 5,247
Wallwork Truck Center	\$ 144,461	Clay Co Public Health	\$ 5,082
West Central Regional Juvenile Center	\$ 62,332	Retrofit Companies, Inc.	\$ 4,441
MN Counties Computer Co-op	\$ 22,658	City Of Moorhead	\$ 4,143
M-R Sign Company Inc.	\$ 20,713	Express Lane - Hawley	\$ 3,632
Independent School Dist Nc 2854	\$ 19,381	Madison National Life	\$ 3,478
T.L. Stroh Architects, Ltd	\$ 15,000	Proffutt LTD	\$ 2,890
Trinity Services Group, Inc.	\$ 13,757	Rick Electric, Inc.	\$ 2,653
Independent School Dist Bc 2889	\$ 13,605	Xcel Energy	\$ 2,602
Hampton Place Development LLC	\$ 13,240	Independent School Dist Nc 2527	\$ 2,596
Veolia North America	\$ 12,925	Johnson/Jarred	\$ 2,556
Pitney Bowes	\$ 11,595	Straightline Sealcoating & Striping, Inc.	\$ 2,309
Lutheran Social Service of Mn	\$ 10,437	Stellar Services, LLC	\$ 2,159
Fargo Glass & Paint	\$ 8,758		

APPROVAL OF MINUTES FROM MAY 11, 2021

On motion by Commissioner Gross, seconded by Commissioner Kahly, and unanimously carried, the Board approved the minutes from May 11, 2021.

RESOURCE RECOVERY CAMPUS UPDATE

Construction Engineers' representatives Ben Mattson, Senior Project Manager, and Lance Monson, Pre-Construction Manager, were present along with Solid Waste Manager Kirk Rosenberger for the Resource Recovery Campus update. Rosenberger noted there has been a drastic increase in the price of materials over the past year and the increases continue with as much as 5% per week. Their request today was for a Guaranteed Maximum Price (GMP) for Bid Package #1 for the most critical project materials. Burns & McDonnell prepared the bid packets, and the bids came into Construction Engineers. The total for Bid Package #1 is \$14,704,719. It includes all the earthwork, building concrete, pre-engineered metal building, mechanical, electrical, paving and utilities.

Commissioners Mongeau and Campbell and Mr. Larson met with Construction Engineers yesterday and will conduct a finance meeting on Thursday morning to review the full funding plan. There are concerns about the increased price tag for the project. Commissioner Campbell noted that the GMP was not on the agenda, it is important to act on GMP Bid Package #1 before it escalates even more. The second GMP bid package will be presented in two to three weeks. They will have a total GMP at that time. They may need to look at a slight increase in the Solid Waste service fee as well as the landfill tipping fee to cover operations. The service fees collected annually total approximately \$3.5 million. The County's bond will be reduced by utilizing \$3.5 million from the Solid Waste funds. There are also funds for future landfill cell expansion which is eight years out. They will also utilize those funds and then bond for future landfill expansion costs.

Commissioner Mongeau agreed with Commissioner Campbell's comments. She added that this is a joint project with the City of Moorhead and Council Member Hendrickson from Moorhead is present for the meeting. She commented on the significant amount of volatility in the market. Mr. Rosenberger noted that Burns & McDonnell and Construction Engineers have worked very hard to keep these prices down as much as possible. The projected cost of the project was \$12 million five years ago and may now be \$20.3 million but now includes a lot of equipment. There were six Solid Waste projects in the state and Clay County received the largest award of \$7.5 million. The request had been for \$8.5 million.

On motion by Commissioner Gross, seconded by Commissioner Ebinger, and unanimously carried, the Board approved GMP Bid Package #1 for the Resource Recovery Campus via roll call vote.

RESOLUTION 2021-25 REQUESTING CLAY COUNTY, MN TO UTILIZE COURT ACTION TO ACQUIRE RIGHT OF WAY

Eric Dodds, AE2S Program Manager; Attorney Chris McShane, Onstad Twichell Law Firm; and Terry Williams, USACE (online) are representing the Metro Flood Diversion Authority. Also present were Dale Ahlsten and Scott Stenger from Prosource, Jessica Warner from AE2S, Council Member Hendrickson, and Dr. Zimmerman, City of Moorhead Engineer.

Mr. Dodds noted this item relates to property they have been trying to secure for the Red River Control Structure (RRCS). In the meeting packets he included a brief memo, an updated resolution (Resolution 2021-

25), a letter from the US Army Corps of Engineers (USACE), finalized right-of-way drawings for MN properties affected by the RRCS, three negotiating summaries, and three last written offers. Negotiations have been occurring with the property owner for several months, and in some cases, communications began well over a year ago. They were able to reach an agreement with one out of the four property owners for the RRCS but were unable to reach agreements with the three owners for OINs 249, 251 and 9325. The resolution states the property owners will be sent a last written offer to secure right-of-way with a deadline of June 9 to respond. This timeline is acceptable to the USACE but does not meet their original request. There has been some opposition to the project as well as value issues, with requests from property owners for as much as three to four times the appraised value. There may also be interests in full property buyouts. The process has been through the MCCJPA Board.

The timeline was provided as follows:

Last Written Offer sent with request for acceptance – May 26, 2021.

Property owner to consider the Last Written Offer – June 9, 2021.

File action (if offer is not accepted) – June 10, 2021.

Right of way secured after 90 days – September 7, 2021.

Negotiations continue throughout the entire process.

Commissioner Campbell commented that the MCCJPA Board will always try to be fair and flexible as possible but also need to be a good steward of the public's money and follow the rules for values and offers. He added that eminent domain is taken very seriously and is always a last resort. Mr. Dodds noted they are focusing strictly on the land that is needed for the RRCS but will continue to be flexible. He is hopeful the situations will be resolved.

Attorney McShane noted they are focused on land needed for flood damage reduction. There is a process called a 90-day quick take after proper notice has been provided. It will require a hearing with the judge to acquire the right-of-way needed for the RRCS. The next step is appointing eminent domain commissioners for a three-member panel which was also done on the ND side. It is up to that commission to decide when the matter will be resolved. It is generally easier and less expensive to address the right-of-way and the flowage easement at the same time. Additional explanations were provided regarding the process. All federal and state guidelines will be followed.

Ms. Williams stated this will be the largest contract the federal government will award for this project. The I29 contract was the largest at \$67 million and this contract will be at least three times that amount. In order to have the Red River Control Structure completed by 2026 to have a fully operational project they need to award this contract early in 2022. It will take four and a half full construction seasons to complete it. They currently have \$175 million of construction ongoing. The land acquisitions are done by the Diversion Authority to progress the federal project. They would like to have all the land acquired by September. This will be the first piece of the project they will be building in MN. There is a lot of coordination with both ND and MN to build the Red River structure.

Commissioner Mongeau expressed frustration over the shorter timeline from the USACE and was not sure that it provides MN landowners the same flexibility that was provided to others. For that reason, she will not support the request.

On motion by Commissioner Ebinger, seconded by Commissioner Gross, and carried with one nay vote by Commissioner Mongeau, the Board executed Resolution 2021-25 (as amended) to authorize sending last written offers for three properties (OINs 249, 251, 9325) that are necessary for the Red River Control Structure component of the FM Area Diversion and to authorize Ohnstad Twitchell to file an eminent domain action if the last written offers are not accepted by June 9, 2021.

RESOLUTION 2021-25

RESOLUTION TO UTILIZE COURT ACTION TO ACQUIRE RIGHT OF WAY FOR THE RED RIVER CONTROL STRUCTURE

WHEREAS, the United States Army Corps of Engineers (“USACE”), the Metro Flood Diversion Authority (“Diversion Authority”), the City of Fargo, North Dakota, and the City of Moorhead, Minnesota are federal and non-federal sponsors of the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Project”); and

WHEREAS, Clay County, Minnesota (the “County”) is a political subdivision of the State of Minnesota; and

WHEREAS, the member entities of the Diversion Authority consist of the City of Fargo, North Dakota; the City of Moorhead, Minnesota; Cass County, North Dakota; Clay County, Minnesota; and the Cass County Joint Water Resource District; and

WHEREAS, the USACE, in conjunction with the local sponsors, will be constructing the Red River Control Structure, which is a necessary component of the Project. It is necessary to acquire certain property in Clay County, Minnesota for the construction, operation, and maintenance of the Red River Control Structure. Portions of the following properties in Clay County, Minnesota, are identified as necessary for the Red River Control Structure: OIN 249; OIN 251; and OIN 9325 (collectively the “RRCS MN-Properties”); and

WHEREAS, the Moorhead-Clay County Joint Powers Authority (“MCCJPA”) is the Minnesota entity formed for the purpose of seeking and obtaining the right of way to real property and real property interests to parcels in Minnesota necessary for purposes of constructing, operating, and maintaining the Project; and

WHEREAS, the Minnesota Land Acquisition Joint Powers Agreement (“JPA”) indicates MCCJPA will notify the Diversion Authority if negotiations are unsuccessful, and the member entities of the MCCJPA—Clay County and Moorhead—will be responsible for acquiring the necessary property, through court action if necessary; and

WHEREAS, on April 22, 2021 the MCCJPA passed Resolution 2021-1 Resolution by the Moorhead-Clay County Joint Powers Authority to notify the Diversion Authority that negotiations have not yet been successful to acquire the necessary right of way for the RRCS MN-Properties. The Resolution went on to request that Clay County Utilize Court Action to acquire certain property rights over portions of properties identified as OINs 249, 251, and 9325, identified on Exhibit A; and

WHEREAS, the County adopted an updated Local Water Management Plan in 2017, and the updated Local Water Management Plan was approved by the Board of Water and Soil Resources. One of the four priority concerns articulated in the Local Water Management Plan is flood damage reduction.

WHEREAS, the County hereby specifically concludes it is necessary to acquire the right of way to real property and real property interests necessary for the Project in, across, and through the properties identified on the attached Exhibit A (the “Properties”) for the implementation of the local water management plan. All of the Properties are located within Clay County, Minnesota; and

WHEREAS, the record title holders of each of the Properties are identified on Exhibit A;

WHEREAS, the MCCJPA commissioned appraisals for the RRCS MN-Properties on October 8, 2020. The appraisal for OIN 249 was approved by the MCCJPA on January 28, 2021 and appraisals for OINs 251 and 9325 were approved by the MCCJPA on February 25, 2021; and

WHEREAS, the MCCJPA has provided a copy of the appraisal to the landowners, pursuant to Section 117.036 of the Minnesota Statutes.

WHEREAS, an offer has been sent to each of the landowners seeking to purchase the property rights identified on Exhibit A for the appraised amount.

WHEREAS, land agents have attempted to negotiate with all of the landowners of the RRCS MN-Properties based upon the approved appraisals since the appraisals were approved; and

WHEREAS, as of today's date, several landowners of the RRCS MN-Properties have not signed the Purchase Agreements transferring the right of way to real property and real property interests necessary for the purposes of construction, operation, and maintenance of the Red River Control Structure component of the Project to the MCCJPA. Attached as Exhibit A is a complete description of the RRCS MN-Properties for which no Purchase Agreement has been obtained to acquire the right of way to real property and real property interests necessary for the purposes of construction, operation, and maintenance of the Red River Control Structure component of the Project; and

WHEREAS, title and possession of the right of way to real property and real property interests rights identified on Exhibit A must be acquired before a contract is awarded for completion of the Red River Control Structure component of the Project; and

WHEREAS, the County must provide notice to the landowners of its intent to take possession of the right of way to real property and real property interests identified on Exhibit A, pursuant to Section 117.042 of the Minnesota Statutes.

NOW, THEREFORE, BE IT RESOLVED by the Clay County Board of Commissioners as follows:

1. **Necessity:** That in accordance with Chapter 117 of the Minnesota Statutes, Clay County declares it is necessary to acquire certain property rights in the Properties, as identified on Exhibit A, for completion of the Project.
2. **Negotiation:** Clay County hereby authorizes last written offers of just compensation to be made to the landowners in the amounts set forth on Exhibit A. The landowner shall be provided two weeks to accept the last written offers being made.
3. **Notice:** If the property owners refuse to convey the property rights necessary for the construction operation and maintenance of the Red River Control Structure component of the Project in accordance with the terms of the last written offer, Ohnstad Twichell, P.C., on behalf of Clay County, is instructed to serve the landowner with a Notice of Intent to Possess the Property identified on Exhibit A, pursuant to Minnesota Statutes Section 117.042.
4. **Court Action:** If the property owners do not agree on or before June 8, 2021, to convey the property rights necessary for the construction operation and maintenance of the Red River Control Structure component of the Project in accordance with the terms of the last written offer, Ohnstad Twichell, P.C., on behalf of Clay County, is hereby authorized to begin eminent domain proceedings to acquire the right of way to real property and real property interests identified on Exhibit A for purposes of constructing, operating, and maintaining the Red River Control Structure component of the Project.

PRELIMINARY BUDGET AND TIMELINE DISCUSSION

County Administrator Stephen Larson provided the timeline for the 2022 budget. The budget sheets will be provided to the department heads from the Auditor's Office by Friday, May 28. The deadline to turn in budget requests to the Auditor's Office is Friday, June 18. The budget will be compiled and forwarded to the County Administrator by Friday, July 2. Presentations to the Board (followed by pre-budget meetings as necessary) will be in July and August. Board action to set the preliminary levy will be scheduled for Tuesday, September 21 and the public meeting regarding budget information at 5:00 pm along with Truth in Taxation at 6:00 pm on Tuesday, December 14, 2021. Adoption of the final levy and year 2022 budget was set for Tuesday Dec. 21, 2021. The first motion will need to address upcoming changes in the Board meeting schedule.

On motion by Commissioner Gross, seconded by Commissioner Ebinger, and unanimously carried, the Board approved adding a County Board meeting on the 5th Tuesday, November 30, 2021; cancelling the meeting

on December 7, 2021 (due to the AMC Annual Meeting); changing the Board meeting on December 14, 2021 to 5:00 p.m. with Truth in Taxation at 6:00 p.m. on December 14, 2021.

On motion by Commissioner Mongeau, seconded by Commissioner Kahly, and unanimously carried, the Board adopted the timeline schedule for the 2022 budget.

CONSIDER MOTION TO APPROVE PURCHASE AGREEMENT

Administrator Larson noted that the Board had conducted a closed session on May 11th and then authorized the Facilities Director Joe Olson to enter negotiations for space that would be utilized for the County's storage needs. Handouts showed a shop/warehouse building that is in the Industrial Park at 2660 16 Avenue South in Moorhead and is currently owned by JT Lawn Services. Mr. Olson noted the offer would be \$1.3 million. The original asking price for this building was \$1.5 million. He and Mr. Larson have met with the County department heads who all agreed this building would suit their needs. The proposed plan is to purchase the building as soon as June 15 and then utilize three of the bays and lease the remainder back to JT until April 1, 2022, or sooner if JT's new building is completed sooner. This is a 16,000-sf building with nine doors, sprinkler system, and a two-level office. An environment study is part of the proposed agreement. The County had first started looking for 10,000 sf to suit the storage needs. An additional \$20,000 would be needed for fit-up costs including walls for the Sheriff's evidence area.

Mr. Larson noted the County previously negotiated on a land swap with the City of Moorhead. As part of that land swap the County would receive \$660,987.87. With a price of \$1.3 million for the JT Lawn Service building, minus \$660,987.87 from Moorhead, the remainder is \$639,012.20. That figure has been included in Mr. Olson's Capital Improvement Funds. The request would include utilizing those funds in a future bond. If the County would rent out 1,000 feet of office space, there could be \$13,000 in revenue, but they would have to provide cleaning services for approximately \$7,000. This building would also meet future needs for storage.

Commissioner Mongeau mentioned the volatile market and substantial delay with orders for steel buildings at this time. They more than likely would have found out that they would be paying the same amount to construct a much smaller building. This is a quality building that may also have a potential revenue source.

Commissioner Campbell stated it is a good building, but should be used for commercial use, not County use. He added that unlike a new building constructed on County land, this will be an ongoing redistribution of tax for the taxpayers which compounds over the years. The County's current facility before the land swap was 4,000 sf. Following discussions, they figured the County needed 7,000 sf and then it was increased to 10,000 sf and now they are looking at 16,000 sf.

Commissioner Mongeau noted that it is important to use tax dollars responsibly and this is an opportunity to secure a building at a reasonable cost. The building was previously on the market but was not sold. She added that a new building is being constructed by the sellers which helps offset the taxes.

Mr. Olson added the \$5,000 environmental study is part of the purchase agreement and is warranted as they use chemicals and fertilizers with the current business. He asked for approval to withdraw his request for proposals (RFPs) for construction.

On motion by Commissioner Gross, seconded by Commissioner Kahly, and carried with one nay vote from Commissioner Campbell, the Board approved the purchase agreement for a storage building via roll call vote, contingent on a successful environmental study.

On motion by Commissioner Mongeau, seconded by Commissioner Kahly, and carried with one nay vote by Commissioner Campbell, the Board authorized Mr. Olson to withdraw the RFPs for storage building construction.

COMMITTEE REPORTS/COUNTY ADMINISTRATOR UPDATE/DISCUSSIONS

Some of the following committee reports are from virtual meetings.

- Commissioner Mongeau attended meetings for Planning Commission; MetroCOG; Lakeland Mental Health Board; and Solid Waste Campus.
- Commissioner Ebinger attended meetings for Mutual Aid Response; Public Health Substance Abuse Committee; and Recorder’s Office Compliance Funding.
- Commissioner Kahly attended meetings for Adult Mental Health Local Advisory Council; AMC County Government 101; Historical and Cultural Society of Clay County; Early Childhood Initiative; AMC Futures; Insurance Committee; and Onward Moorhead Comprehensive Plan Update.
- Commissioner Gross attended a MN Rural Counties meeting and a Fire and EMT Recognition.
- Commissioner Campbell attended meetings for Highway Tracking; Lakes Country Service Co-op; Juvenile Detention Legislation; Prairie Lakes Municipal Solid Waste Authority budget; Solid Waste Campus; and Insurance Committee.
- County Administrator Larson attended meetings for Mutual Aid Response; South Central Behavioral Initiative; DHS Re: Licensing; Management; Strive Committee; Moorhead issues; Recorder’s Office Compliance Funding; MCCJPA pre-meeting; Land Records RE: property issue; Solid Waste Campus; Insurance Committee; and attended a Fire and EMT Recognition.

The meeting was adjourned at 10:08 a.m.

Chair Kevin Campbell
County Board of Commissioners

Stephen Larson, County Administrator