

AMENDED ITEMS—AUGUST 17, 2020

ORDER OF AGENDA:

SUGGESTED MOTION:

Move to approve order of the agenda with the addition of a grant application through the North Dakota Outdoor Heritage Fund and County Highway 16 update to the regular agenda.

REGULAR AGENDA:

5a. North Dakota Outdoor Heritage Fund grant application

Information/action

SUGGESTED MOTION:

Move to authorize county staff to work with FM Diversion Authority and Metropolitan Council of Governments (Metro COG) to include the efforts identified by Metro COG with the design and construction work being done by U.S. Army Corps of Engineers, identify the funding gap needed, and authorize Cass County to act as the political subdivision for a grant request for recreational features from the North Dakota Outdoor Heritage Fund.

5b. County Highway 16 update

Information/action

County staff will provide an update regarding response received from attorney representing KNB Properties, LLC/Kevin Biffert

Drain 27 Wetland Restoration Project

Draft Outline of Presentation:

- Federal Mitigation Requirement for Diversion Project
 - USACE identified multiple locations – chose Drain 27 area
 - Two Public Meetings Held (April and July, 2020)
 - Draft Environmental Assessment
 - Public Comment Period has ended
 - EA included potential recreational component
 - Show Construction Schedule to highlight window of opportunity
- MetroCog Involvement
 - FMDA request led to MetroCog Recreation Study
 - Partners included FMDA, MetroCog, West Fargo, WF Parks, Fargo, Fargo Parks, Horace, Horace Parks, USACE, and Cass County
 - MetroCog public comment period has ended
 - Wetlands area was identified as a recreational node
 - Potential Costs Identified

Notes	Item	Unit Measure	Unit Cost	Qty	Estimated Cost	Rounded
	Small Parking Lot (aggregate surface)	Each	\$ 16,500	1	\$ 16,500	
	Restrooms (Portable Toilet Enclosure)	Each	\$ 5,000	1	\$ 5,000	
	Entrance Sign Monument (Minor)	Each	\$ 20,000	1	\$ 20,000	
	Node wayfinding signage/kiosk	Each	\$ 5,000	1	\$ 5,000	
					Subtotal	\$ 46,500
					Site Grading & Erosion Control (5%)	\$ 2,325
					Contingency (30%)	\$ 13,950
						\$ 62,775
					Design (10%)	\$ 6,278
					Const. Mgmt (8%)	\$ 5,022
					Total Estimated Cost	\$ 74,075
						\$ 80,000

1. All costs are assumed in 2020 dollars
2. Costs do not include property acquisition costs
3. Assumes clearing of existing trees will not be needed

- If deemed feasible to go with 5-ft wide natural surface trail, we could do roughly four miles for \$41,437 (\$10,359/mile). A concrete trail of the same width and length (the preferable material type for floodplains) would come in at \$643,009 (\$160,752/mile). The most expensive option would be a wetland boardwalk, which would come in at around \$5,171,000 to \$6,464,000 for four miles (\$1,293,000 to \$1,616,000/mile).
- ND Outdoor Heritage Fund (OHF) – Grant Applications Due Sept. 1
 - MetroCog was interested in applying for funding for the identified recreational node
 - OHF applicants need to be a political subdivision
 - OHF Funding Guidelines

- **Directive A** - Providing access to private and public lands for sportsmen, including projects that create fish and wildlife habitat and provide access for sportsmen;
 - **Directive B** - Improving, maintaining and restoring water quality, soil conditions, plant diversity, animal systems, and by supporting other practices of stewardship to enhance farming and ranching;
 - **Directive C** - Developing, enhancing, conserving and restoring wildlife and fish habitat on private and public lands; and
 - **Directive D** - Conserving natural areas and creating other areas for recreation through the establishment and development of parks and other recreation areas.
- **Request**
 - For the County Commission to direct staff to work with FMDA and MetroCog to link the efforts identified by MetroCog with the design and construction work being done by USACE. Identify the funding gap needed and authorize the County to act as the political subdivision for a grant request from the ND Outdoor Heritage Fund.

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August 5, 2020

VIA EMAIL

Birch Burdick
burdick@casscountynd.gov

RE: KNB Properties LLC – County Highway 16

Dear Birch,

This is in response to your letter of July 22, 2020.

We think it is important to first look at the big picture of what is occurring. Korber, the company operating in the building on KNB Properties LLC (“KNB”) property along Highway 16 is a Primary Sector Business. It is exactly the type of business the Greater Fargo-Moorhead Economic Development Corporation (“GFMEDC”) is trying to grow. We note recently the Cass County Commission approved \$700,000 in funds to GFMEDC to be used to support Primary Sector Business Development. It should be noted that Korber has approximately 150 employees and does tens of millions of dollars of business designing and manufacturing complex equipment which is then shipped to other parts of the country and other parts of the world. These jobs are skilled worker jobs with excellent compensation packages.

It must also be noted that Grand Farm is doing research and new business development on this property. This is being coordinated by Emerging Prairie. There are gatherings regularly held at this property by various groups to demonstrate, observe and examine the technology being designed and tested as part of the Grand Farm. In short, KNB Properties LLC is doing a good job contributing to the development of the economy of this area in working with companies developing advanced technical expertise and creating well-paying jobs that bring in new money and foster economic growth.

Despite these positives, KNB finds itself subject to increasingly intensified actions and threats by Cass County. Ostensibly, this is because Cass County has concerns regarding the access to Highway 16. In considering this, it needs to be noted that, to our knowledge,

no one has claimed that Highway 16 is now an unsafe area because of the presence of the access for Korber and the Grand Farm operations. We know that Cass County lowered the speed limit in the area to 45 mph. There have been no reports indicating there is a problem with this road or the access that was installed.

The centering of the culvert and the riprap around the culvert have been completed. Despite spring flood waters approaching Highway 16 from the Wild Rice River on the south, there have been no indications of any geotechnical problems existing with the roadway or the KNB property. KNB had two geotechnical studies done prior to building on this property. NDDOT, which has exit and entrance ramps tied in to Highway 16 from I-29, has not expressed any concerns regarding safety with the present approach. In fact, NDDOT has indicated it would improve the NDDOT frontage road on the east side of I-29 if requested to do so. NDDOT has also expressed they have no issue with the approach that exists into the frontage road and would let a concrete access be put in if requested.

KNB offered to put in a new concrete access and widen the roadway to allow a turning lane and a bypass lane on Highway 16. This was not offered because they considered it necessary, it was only offered as a means of showing good faith to the County. To our knowledge, there has been no study done indicating these steps would be necessary or that there exists a problem that would be solved by this work.

As we have pointed out previously, Highway 14 to the west of I-29 is much busier than Highway 16, yet no turn lane or bypass is present.

Assuming the new approach, turn lane and bypass lanes are constructed, the County apparently still wants to push on requiring a subdivision and platting through the County. As we have consistently stated, this property is located in Stanley Township. Stanley Township is an organized township. This property is outside the Fargo extraterritorial jurisdiction. There are properties located on the other side of the interstate where no subdivision has been required and they have road approaches on to county roads. It appears the pressure to change the approach is intended to force KNB to seek subdivision approval from Cass County.

If the County were to take any action to remove the present approach, it would be liable for all business losses caused, including any losses caused to Korber. In addition, given the information I provided to you above about Primary Sector Businesses, Grand Farm and the move by GFMEDC and the County to attract more Primary Sector Businesses, we believe the press and public reaction would not be what the County would want.

The County has also insisted that it be deeded additional land owned by KNB. Nothing has been offered as compensation. No facts have been presented showing this is a necessity.

We respectfully request that the County consider the points raised in this letter. While it sees no need or benefit in doing so, KNB will stand by its commitment to move the approach, put in a turn lane and a bypass lane. KNB respectfully requests that this be determined to be necessary by a study. KNB has been quoted \$2,000 for a traffic study by an engineering firm and is willing to pay this cost.

At such time as KNB is going to be developing the rest of its property, it will apply for appropriate subdivision and platting. It is too early in the process. Other than the parcel Korber is on, no final determinations have been made on the use of the rest of the land. No subdivision or platting is necessary. The Stanley Township Board is well aware of what has happened and they are not requiring any change in zoning, any subdividing, any registration of a subdivision or any platting.

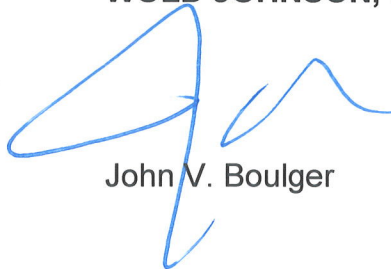
While KNB Properties LLC would like to get along well with Cass County, it asks that the County consider the good that is occurring with respect to this land and the development of Primary Sector Businesses rather than a need to show an exercise of power.

I would be pleased to meet with you to discuss this. I could also have Kevin Biffert available to participate in any meeting.

Thank you for consideration of the points in this letter.

Yours truly,

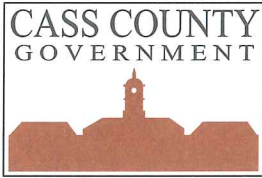
WOLD JOHNSON, P.C.



John V. Boulger

JVB:ji

Enclosure: None.
cc: Kevin Biffert, KNB Properties LLC



State's Attorney

July 22, 2020

Birch P. Burdick

SENT VIA EMAIL ONLY
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Re: KNB Properties, County Highway 16 and road access

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Tanya Johnson Martinez
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Joshua J. Traiser
Tracy E. Hines
SheraLynn Ternes
Derek K. Steiner
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Dear John:

This is a follow-up to our prior communications on this topic including, but not limited to, the letter from the Cass Commission Chair to Kevin Biffert dated January 22, 2020 (re: Cass County Right of Way Encroachment), my email to you of February 4, 2020 (subject: Biffert property along Highway 16 – access), and your letter to Jason Benson dated July 13, 2020. Due to the lack of acceptable progress in resolving this matter, yesterday the Cass County Commission directed me to send you this letter notifying you that:

- The clock previously referred to in the January 22 letter and February 4 email is no longer on hold.
- The steps referenced in the January 22 letter, and otherwise authorized by statute or ordinance, may be taken on or after August 25, 2020.
- Cass County will give you at least seven (7) days notice prior to taking those steps.

Victim/Witness Coordinators:

Brenda Olson-Wray
Debbie Tibiatowski
Amy Getz

Feel free to contact me if you have further questions.

Check Division/ Restitution:

Charlotte Eversvik
Casidy Heilman

Sincerely,

Birch P. Burdick
Cass County State's Attorney

Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

Cc: Jason Benson, County Engineer
Cass County Commission

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BPB/lr